

Public and Private Authority in Global Governance

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In March 2012, Thomas Lubanga Dylio became the first person ever convicted by the International Criminal Court (ICC). Although he has appealed, Lubanga was sentenced to 14 years in prison for the forcible conscription of child soldiers. Lubanga was the founder of the Union of Congolese Patriots (UCP), an insurgent group that was a key player in the civil war fought between 1999 and 2007 in the Democratic Republic of the Congo. Under his command, the UCP carried out widespread atrocities and human rights abuses. The ICC was founded in 2002 as a standing tribunal for crimes against humanity, genocide, and war crimes, all outlawed under various United Nations human rights conventions. As of August 2013, the ICC had official investigations or trials underway in eight situations, all in Africa. Over 120 states are parties to the ICC, and dozens more have signed but not yet ratified the statute.¹ The ICC remains controversial, not least in the United States which has attempted to thwart the court from its inception. Washington fears politically motivated show trials against its leaders, and that judges will not simply interpret international humanitarian law, which is often vague, but will through their decisions and precedent make international law that it might oppose. This is the international equivalent of the concern with “activist” judges at home. Although limited in the types of crimes it may prosecute, and designed only as a court of last resort when states themselves either cannot or will not prosecute misconduct, the ICC has virtually all the powers of national courts, including the ability to incarcerate convicted war criminals like Lubanga.

Rocinha lies on the outskirts of Rio de Janeiro, the largest Favela or area of “irregular occupation” in Brazil. With nearly 70,000 residents living outside the public

¹ See the ninth annual report of the Court for 2012/13 at: http://www.icc-cpi.int/en_menus/icc/reports%20on%20activities/court%20reports%20and%20statements/Pages/Ninth-Report-of-the-Court-to-the-UN-for-201213.aspx (accessed Oct. 22, 2013).

sector on land not recognized for development, without municipal services, and with only sporadic law enforcement, Rocinha is but the biggest of many similar communities in Brazil.² Favelas are, quite literally, outside the law. In these “ungoverned spaces,” gangs rule. They often maintain a degree of social order that ensures some measure of safety for local residents, but finance their activities by running drugs, petty extortion – otherwise equivalent to taxes -- and other “illegal” activities. For decades, and especially in the run-up to the Olympics in 2016, the Brazilian government has periodically tried to eliminate the Favelas, but has been consistently thwarted by popular opposition from residents and their supporters. Brazil is not a failed state unable to broadcast power beyond its capital, but the Favelas endure not at the sufferance of the state, as one might assume, but despite its considerable efforts to impose public law and order in these areas of private authority.³ Almost every major metropolitan area in the developing world has one or more shanty towns equivalent to Brazil’s Favelas. Similar communities are even found in North American and Europe. Typically not as clearly demarcated, most major urban areas in the developed world also have neighborhoods dominated by gangs who rule the streets outside the law. The city may provide water, sanitation, and electricity, but the police presence is limited and often seen only in periodic sweeps intended to reclaim the area – operations that are, typically, short lived. Even democratic, capable, and most importantly clearly sovereign states do not control all of their own territories.

The International Accounting Standards Board (IASB) is a private, independent body that sets International Financial Regulatory Standards, now in use in nearly 120 and

² Six percent of the population, or nearly 11.4 million people, are estimated to live in Favelas in Brazil.

³ On broadcasting power, see Herbst (2000).

required in 85 countries.⁴ Although technical and often out of the limelight, accounting standards matter hugely for both investors and firms. Large national differences previously existed in how corporations, say, valued assets; in some countries, assets were “marked to market,” or reported on corporate balance sheets at their estimated market value, while in other countries, assets were valued by “amortized costs,” or the expected cash flow likely to be generated over time. Which standard is used has massive effects on the estimated value of a company and, thus, its stock price. Such differences in accounting standards, in turn, inhibited cross-border investments. Potential investors needed to be knowledgeable about local accounting practices and had to make appropriate conversions when evaluating assets from different locales, deterring small investors and giving an advantage to large institutional investors who could better absorb the costs of converting different standards into a common metric of valuation. A single accounting standard greatly reduces transactions costs for investors but imposes a one-time conversion cost on countries that harmonize. It also has differential effects on corporations that previously operated under different rules, likely benefiting some and harming others. Yet, these accounting rules -- which affect trillions of dollars of financial transactions each year -- are not under the jurisdiction of states. Rather, they are set entirely by a private foundation composed of various private stakeholders in international accounting and finance. It is a clear example of private, transnational authority in action.

As these brief examples demonstrate, the division of politics into domestic systems of hierarchy and effective political order and an international system of anarchy and weak political order is wrong, descriptively and analytically. In this essay, I explain

⁴ See Buthe and Mattli (2011).

why and develop a richer approach toward understanding governance in the world today. Briefly, I make two central points.

First, authority is not given or fixed, but is itself the product of politics. Public authorities embodied in states, non-state authorities of many forms, and individuals alone and in groups struggle over their legitimate powers and areas of autonomy. Authority is always and everywhere contested, negotiated, and dynamic. This implies that authority must be self-enforcing, an equilibrium between competing forces. Indeed, if the sovereignty of states or the anarchy of the international system means anything, they mean that the authority held by states is not enforced by any third party and must, therefore, rest on the self-interests of both the ruler, who holds authority, and the ruled, who are subject to it. “Domestic” politics are not hierarchical by nature but, paradoxically, just as dependent on self-help and self-enforcing agreements as the “anarchic” international system. Conceived as a political phenomenon, a proper understanding of authority dissolves the domestic-international divide from the inside out.

Second, authority can and does exist in myriad forms at all levels of politics, including by states over other states, by supranational entities, and by “private” actors. Equating all authority with the public or lawful authority of states, theorists have incorrectly assumed that the international system is anarchic or devoid of authority higher than states themselves. Authority is already an important source of political order at the global level. As globalization expands, the power and role of the various global authorities may also increase, if only to maintain existing levels of governance in a world of shared problems or, perhaps, to provide even greater order. The ultimate trajectory and outcome of this dynamic process is now unknown. But we can predict with certainty that,

as political projects, global authorities will be increasingly objects of struggle and contestation. Revealing these global authorities, often of long-standing, further dissolves the domestic-international divide, this time from the outside in.

This essay proceeds in two main steps. The first half of the paper examines the sources of order in world politics as understood – and misunderstood – in the current literature. This critical analysis reveals hidden assumptions frequently made by scholars about the origins of political order and the nature and role of authority within and between polities. The second half sketches an alternative social exchange theory of political authority and its implications for patterns of global governance in the world today. Lacking well-defined metrics of governance, this section is by necessarily tentative, but current trends are highlighted and empirical and normative questions for further research are highlighted.

Order in World Politics

Where does political order come from? Is “international” order different from “domestic” order? Does it have different roots? How can it be improved? The discipline of political science has long posited two separate realms of politics.⁵ One is hierarchic, with more or less effective order provided by a lawful authority called the state. This is the realm of domestic politics. The other is anarchic, supposedly devoid of authority in which political order may exist but is always problematic. This is the realm of international politics. As the opening examples already suggest, however, this distinction

⁵ This is stated most clearly in Waltz (1979), but is common to nearly all of the discipline. On the development of international relations as a distinct field, see Schmidt (1998). In almost every university, international relations is a separate field within political science and sometimes a separate department or school entirely. The notion that international politics is different from domestic politics is pervasive and, to the extent it is explicitly justified, based on the difference between well-ordered hierarchies and poorly-ordered anarchy.

is both theoretically and empirically untenable, and has distorted our understanding of politics within and between polities. There are differences across units and issue areas, of course. But the presence or absence of authority and order is not a salient dimension of difference.

The Nature and Sources of Political Order

In its simplest terms, political order protects people, property, and promises from undue threats.⁶ Without limits to possible challenges to life, possessions, and agreements, human existence would likely be, as Thomas Hobbes phrased it, “solitary, poor, nasty, brutish, and short.”⁷ All societies require at least some minimum level of political order to thrive.

In “domestic” political systems, political order is understood to derive primarily from public authority vested in the state. Holding a monopoly of the legitimate use of violence, the state protects individuals within its jurisdiction from coercion, sets and defends their rights to property, and enforces their agreements.⁸ States that lack the ability to provide these essential services are commonly described as having “failed.”⁹ Even in consolidated states, of course, public authority is not expected to be the only source of political order. Observers also point to the importance of personal values and social capital in building and maintaining political order.¹⁰ But the state is, nonetheless, typically seen as the primary producer of political order; indeed, reflecting its central

⁶ See Bull (1977).

⁷ Hobbes (1651/1962).

⁸ On the state as a monopolist on the legitimate use of violence, see Weber (1978).

⁹ The literature on state failure is now large, see among others Rotberg (2004), Paris (2004), Fukuyama (2006), Acemoglu and Robinson (2012).

¹⁰ On social capital, see Putnam (2000).

position, even critics of state power often call upon it to promote – somehow – personal values and social capital when they wane.

In “international” political systems, political order is typically regarded as more tenuous and fragile. In the supposed anarchy created by the absence of any lawful authority higher than states, political order is understood to be possible but ephemeral. Analysts point to three sources of international order and, more or less explicitly, advocate ways of strengthening their effects. In “cooperation under anarchy,” theorists expect that lengthening the “shadow of the future,” promoting iteration, and increasing linkages between actors will make strategies of reciprocal punishment and thus cooperation more robust.¹¹ By manipulating the strategic context of their interactions, states can spontaneously cooperate and improve world order. Order is also posited to derive from international regimes and, sometimes, international law, both institutional solutions negotiated by states themselves.¹² By providing information, lowering transactions costs, and sometimes enforcing agreements, regimes can both tie the hands of states to welfare-improving policies and strengthen world order. Finally, order is understood to follow from social norms, defined as principles of appropriate behavior more or less internalized by individuals and states.¹³ Much like the role of personal values in domestic systems, social norms mitigate the base urges of states or at least to moderate their effects. But despite all three sources of international political order, none individually or even all collectively are expected to create the same degree of political order enjoyed by societies governed by states.

¹¹ See Axelrod (1984), Ostrom (1990), and Oye (1985). This focus on changes in the strategic context of cooperation is analytically equivalent to the emphasis on social capital in domestic systems.

¹² Keohane (1984), Goldstein et al. (2001).

¹³ See Bull (1977), Finnemore (1996; 2003), Finnemore and Sikkink (1998).

Yet, governance as a concept and authorities as actors are far more complex, differentiated, and important than commonly recognized. Domestic political systems are ultimately self-enforcing or “anarchic.” The international political system has a large range of authorities and authoritative actors. The failure to appreciate this complexity distorts our understanding of both political order within and between states and the opportunities and challenges for improving global governance and human well-being in the world today.

Three Illusions

Paradigms are defined by the assumptions they make. As Thomas Kuhn famously argued, our assumptions determine what we see in the world around us.¹⁴ One of the fundamental assumptions in nearly all political science research today is that authority is derived from law. Having made this assumption, political scientists then simply do not “see” authority outside the state. Ignoring or, at least, underestimating the role of other forms of authority matters for our understanding of politics and policy. These consequences are manifest in three “illusions” common in political science.

The Legalist’s Illusion

Authority today is understood primarily in formal-legal terms. In this view, authority derives from prior law, which confers certain powers on individuals holding lawful office. In simple terms, we can think of this as the Arnold Schwarzenegger theory of authority. Schwarzenegger was a bodybuilder and B-grade action movie star with political aspirations. In an unusual but constitutionally-permitted recall election of California Governor Grey Davis in 2003, Schwarzenegger joined a field of 100 candidates that included a number of other colorful personalities -- as well as established

¹⁴ Kuhn (1970).

politicians and some regular folks who apparently thought it might be fun to join the electoral fray. Schwarzenegger was duly elected with a plurality of the votes and, thus, became Governor of the state of California with all the authority of that office. In this case – and many others one might cite – a person who we might not respect as an individual acquired authority by obtaining a lawful office. That lawful appointment confers authority on individuals as leaders is the essence of formal-legal theory.

Formal-legal authority emerged as the result of long practice and broad-based support for the rule of law in many countries. The German sociologist Max Weber described it as the primary feature of the modern bureaucratic state, and it was embodied in John Austin's highly influential juridical theory.¹⁵ The formal-legal view of authority, in essence, divides the world of each individual into a realm of private rights and public authority (see Figure 1a). Different regime types vary in how private rights and public authority are divided – liberal regimes give greater weight to the former, totalitarian regimes more weight on the latter – but the choices before an individual fall into one of two categories. In one area, he is choosing according to his free will, in the second, he is choosing whether to honor an obligation to follow the law or incur its possible sanctions.

[Figures 1a and b]

Formal-legalism is not an inappropriate characterization of a particular form of *public* authority in the world today. The problem arises when analysts assume it is the only form of authority possible. By focusing on law, the approach blinds us to other forms of authority and, especially, to the possibility of private authorities. Even when other forms of authority are recognized, the formal-legal approach treats them as

¹⁵ Weber (1978), Austin (1961). For a perceptive study of the idea of authority and juridical theory, and its influence in political science, see Schmidt (1998).

delegated by the state – the lawful public authority that is understood to sit at the apex of each society. This is, however, an extremely attenuated view of authority.

In an alternative social exchange approach, followed here, authority is premised not on law but on the creation of social order of value to subordinates sufficient to offset the loss of freedom entailed in complying with that order. Not limited to law, a social exchange view allows and, in fact, expects, many different authorities to exist at the same time, including private authorities who regulate portions of the lives of individual members. In this view, the world of each individual is divided into private rights, public authority, and one or more private authorities, with fuzzy, fluid, and negotiated boundaries between the categories (see Figure 1b). Including the many private authorities at work today likely reduces the realm of personal autonomy; certain areas of personal behavior not regulated by the state may nonetheless be subject to the authority of some private entity. For example, religions often go beyond the health and sanitary regulations of the state to define more restrictive dietary practices. It also emphasizes, however, that private authority can restrain and limit public authority, making the equilibrium between personal autonomy and public authority more robust (see below).

The Anarchist's Illusion

Personal autonomy appears to be a near universal desire for humans. All people value personal choice and freedom from coercion or authority wielded by others. The demand for personal autonomy may be greater for some than others, and it competes with other deeply held needs and values, like survival, that may often take precedence. Nonetheless, everyone appears to desire personal autonomy and to be willing to sacrifice other worthwhile goals to obtain it. There is at least a little bit of anarchist in all of us.

This normative goal influences not only behavior but also what we see and understand about the world. Recently, there has been a flourishing of studies that demonstrate the possibility for voluntary or spontaneous cooperation among individuals and groups.¹⁶ Networks that allow for coordination among very large numbers of individuals have also and justifiably received attention.¹⁷ There are, no doubt, many examples of such spontaneous cooperation occurring outside the shadow of authority. At the same time, closer examination of many frequently cited examples of anarchic cooperation reveals hidden forms of private authority that are essential to their success.

Consider the law merchant system that arose around the Champagne Fairs of the 13th century and was central to the growth of long distance trade in Europe. The law merchant is often cited as an example of “private ordering” in which a network of traders successfully built a profitable market through centralized information sharing and decentralized punishment of defecting or cheating members.¹⁸ It is frequently interpreted as demonstrating the possibility of cooperation without the state. Yet, the system can also be read as one of extensive and strong private authority. Central to the system was the *Lex Mercatoria* (Law Merchant), codes drawn up by merchants themselves by the end of the 11th century that governed most commercial transactions and provided uniform standards across then politically divided Europe. Although not public law, the *Lex Mercatoria* was private law, a set of rules and standards set by private, non-state actors. In turn, this body of private law – like most private authority -- was enforced by the exclusion or ostracism of violators, thereby denying merchants who broke the rules the opportunity to trade at future fairs. Finally, disputes were adjudicated by “private judges”

¹⁶ Among others, see Axelrod (1984) and Ostrom (1990).

¹⁷ See Kahler (2009).

¹⁸ Milgrom, North, and Weingast (1990, 4).

drawn from among the commercial class itself, though many were, it appears, also local court officials or appointed by the counts of Champagne -- suggesting a public-private partnership along this dimension.¹⁹ Even so, however, the system was not one of purely spontaneous cooperation in an otherwise unregulated market, as many believe, but was based on *private* law, *private* enforcement of the rules, and ultimately *private* authority.

Similarly, the intricate Balinese irrigation network has been touted as an example of private ordering – or even a “perfect ordering,” as Stephen Lansing describes it in his book of that title.²⁰ All irrigation networks suffer from a common pool resource problem.²¹ Each farmer has an incentive to draw as much water as possible for his crops. If all farmers do so, supply will be inadequate. “Head-enders,” those nearer the beginning of the irrigation network, have better access to adequate water but may draw too much, leaving the “tail-enders” too little. Irrigation networks were originally seen as a spur to and result of political centralization in the “hydraulic societies” of China.²² Bali stands out for the decentralized management of its irrigation network that has endured for millennia. Lansing and his collaborators describe the system as free from state authority, and argue that, in fact, central and later colonial attempts to control water access either had little or negative effects on cooperation.²³ They also demonstrate that the network likely arose without central direction as an emergent property of a complex adaptive system of individual agents. Central to solving the large scale common pool problem, they argue, is that tail-enders must coordinate the flooding and harvest of their rice

¹⁹ Edwards and Ogilvie (2011, 4).

²⁰ Lansing (2006).

²¹ Ostrom (1990).

²² Wittfogel (1957).

²³ Lansing and de Vet (2012).

paddies with the head-enders to control pests.²⁴ The ability of the tail-enders to punish head-enders by withholding coordination allows for reciprocity that facilitates voluntary cooperation. All this has been featured by proponents to show that spontaneous cooperation is possible and stable in large-scale networks.

Although he does not highlight this fact, Lansing also provides significant evidence on the role of private authority in regulating usage and disputes within the irrigation network, challenging the purely voluntary view of cooperation most have drawn from this example. Each juncture in the network is controlled by a Subak, a water temple inhabited by local gods that governs usage by farmers in the area. Farmers periodically gather at the temple to worship the deities and, importantly, to make allocation and other access decisions. Lacking any formal-legal status but providing an example of a long-standing social exchange in action, “the water temples derive all the authority they need from their practical success in managing the ecology of the rice terraces, and their symbolic association with the gods.”²⁵ Also important, the reciprocal punishment that keeps the irrigation system working is conducted at the level of the Subak, not by individual farmers, requiring additional coordination by farmers who must flood or harvest (or not) their fields in concert.²⁶ Finally, sitting literally above the Subaks, “perched dramatically on the rim of Mount Batur overlooking the crater lake,” is the supreme water temple.²⁷ Significantly, the supreme water temple does not actually control the flow of water, which seeps from the lake through volcanic soil to numerous springs which then feed the network controlled by the Subaks. Rather, the supreme

²⁴ Lansing (2006, 72-73).

²⁵ Lansing (2006, 87).

²⁶ Lansing (2006, 71).

²⁷ Lansing (2006, 151).

temple uses and affirms its authority in providing two essential services, both lacking any formal-legal standing but that have emerged over centuries of practice. The high priests of the temple adjudicate disputes between Subaks or groups of Subaks over water rights. The priests also have a right to veto the building of new irrigation works or the tapping of new water sources if they conclude that the resulting diversions will adversely affect downstream Subaks.²⁸ At both the level of the Subaks and the supreme water temple, the authority of the collectives of farmers over their members and the priests over the entire network is wrapped in – and can only be understood within – a Balinese religious cosmology that embodies and, in turn, legitimates the power of the collective over the individual. The offerings to the gods, the rituals, and collective labor performed at the Subaks at regular intervals and at the supreme water temple annually are enormously costly, “imposing a relentless series of obligations on households.”²⁹ Nonetheless, these costly actions serve to bind together the local community and, in turn, merge the individual Subaks into a private religious authority unified by a legitimating belief in the collective.

By defining authority only in formal-legal terms, analysts miss the important role of private authority in society, as these two examples attest. In wanting to promote personal autonomy, scholars may be overly-optimistic about the possibility of private orderings, as touted by liberals, or markets, as championed by conservatives, as alternatives to public authority. Local organizations that aim to solve collective action problems may themselves be private authorities, not just manifestations of individuals acting spontaneously, autonomously, and collectively outside any system of rule. The

²⁸ Lansing (2006, 175).

²⁹ Lansing (2006, 126).

alternative to public authority is often not autonomy or personal freedom, but governance by a private authority based on a social exchange and justified by tradition, religion, or some other set of normative ideas. These private authorities, in turn, can often be more repressive and constraining than public authorities – which are sometimes in principle democratically accountable. Together, a focus on formal-legal authority and our desire to maximize autonomy and freedom can blind us to the rich tapestry of authorities that govern life in the modern world.

The Moralists' Illusion

Authority is, by definition, legitimate power. It is power exercised over a collective with the understanding that such power – within circumscribed limits – is rightful or proper. Many analysts infer from this fact that legitimacy derives from moral or normative beliefs -- or that to be legitimate, power must align with previously accepted social norms. This is particularly noticeable, for instance, in the debate over the authority of the European Union (EU) and its so-called democratic deficit. Citing democratic accountability as the primary norm governing modern politics, critics charge that the EU either lacks authority or that it should lack authority because of the lack of direct democracy in the Council and Commission.³⁰ The view that authority rests on or requires prior moral precepts has the relationship backwards. Morality follows rather than precedes legitimacy or, at least, coevolves with authority.

Although authority is typically wrapped in normative justifications, it can exist independently of any such moral understandings. Legitimacy requires only that each individual believe that a sufficient number of other individuals will follow the ruler's

³⁰ For a recent debate on this supposed deficit, see Majone (1998), Moravcsik (2004), and Follesdal and Hix (2006).

commands that he is best off following those commands as well, either because the rules solve a coordination problem (e.g., rules of the road) or because defection from the rules will be detected more easily and punished. Understood in this way, legitimacy is nothing more than an equilibrium in which all or most individuals follow the rules propounded by the leader given expectations that others will follow the rules.³¹ Given widespread respect for the law in Western societies, at least, this is somewhat difficult to see in the case of public authority, but it is more visible in the case of private authorities. Individuals respect the rules of many private authorities not necessarily because they believe them to be morally correct or normative justified, but because following the rules is necessary to receive the benefits of association given that everyone else is following the rules. Workers within a corporation, for instance, respect the commands of the supervisors and, ultimately, the chief executive officer not out of moral obligation but because the rules coordinate production, permit a division of labor, create higher productivity than each worker could obtain on his own, and thus return higher wages (see below). Labor unions and professional associations are also largely devoid of moral foundations, yet they exercise authority over limited aspects of the lives of their members.

Norms, in turn, are not inherently “good” but are norms precisely because they are widely shared amongst a community. They are not absolute statements of principle. Rather, statements become good or principled because they are widely shared. Slavery was a norm until a large enough number of individuals were persuaded that it was actually abhorrent. Female genital cutting is a norm in parts of Africa today that may be changing due to collective interventions in community marriage markets.³² Human rights

³¹ Bicchieri (2006).

³² Mackie (1996; 2000).

became a norm only after a long struggle to convince enough people that governments should respect certain limited political and civil rights of their citizens.³³ When statement A fits with already accepted statement or norm B, A will be more likely to be accepted and, thus, to become normative. Nonetheless, when an idea is held by a sufficiently large number of people it appears “natural” and good – it becomes normative – of its own accord. Which ideas become norms is the outcome of a political process.

Having arrived at an equilibrium in which individuals follow rules because they believe others will follow the rules, it is quite common to justify rule-following in normative terms. Norms become, at a minimum, a way of communicating beliefs and expectations to others. It is right that the government regulates how we drive. It is wrong for the government to regulate business practices. It is right that the government does not restrict the religious practices of citizens, except perhaps through zoning rules that limit where religious minorities may build mosques. Implicit in such statements is the assertion that some rules will be respected – treated as legitimate and followed – and other rules will not. Sharing and acknowledging these statements help individuals coordinate on rule-following.

As congealed expectations about which rules will be followed by whom, norms shape subsequent negotiations between separate authorities and individuals over the limits of their authority. Proponents of greater authority for any entity, public or private, attempt to justify enhanced power, first, as a necessary exception to the rules, second, by reinterpreting rules, and third, by reframing the new authority in terms of other norms.

The Bush administration after September 11, 2001, for example, used all three strategies

³³ Keck and Sikkink (1998). However, note that the UDHR articulates a long series of rights, only some of which are now regarded as norms. This is, at least in part, a product of how the human rights network developed over time. See Wong (2012).

to justify its expansion of public authority to include “enhanced interrogation” methods, the indefinite detention of “unlawful combatants,” the waiving of habeas corpus for suspected terrorists, and extended security measures that infringe on civil liberties at airports and other public venues. It claimed such practices were necessary exceptions given the enhanced threat to Americans. It reinterpreted current rules to permit previously banned practices, famously rewriting the definition of torture to permit waterboarding. And it appealed to principles not of personal liberty but of national security throughout. Conversely, opponents of current or even greater authority also manipulate norms. Catholic organizations, for instance, have appealed to the separation of church and state to oppose President Barak Obama’s health care plan that requires employers who provide health insurance to their employees to cover contraceptive services. Businesses in the United States have waged a decades long battle to roll back government regulations by promoting market-based ideologies. Norms are not fixed. As these examples attest, they are weapons in the battle over the proper powers of governments and other authorities.

Authority exists in great variety across countries, time, and issue areas. Norms appear not to be necessary for authority, as in the case of corporations, nor even fixed ideals that determine the shape of authority. Norms are part of the struggle over who has authority for what, deployed on all sides in their attempts to justify and importantly legitimate their own claims to power. The weapons with which battles are fought matter, of course. Norms affect the debate over the nature of any particular authority. As congealed expectations they matter precisely because they help coordinate the actions of large number of individuals and are, therefore, themselves hard to change. But legitimacy

does not require nor can it be reduced to a moral precept or justification. All authority is political.

Global Governance

Order derives from many sources. It is not – and never has been – the exclusive product of authority, of any form. At the same time, however, these illusions have blinded us to the diversity of authorities in the world and incorrectly attributed at least some order produced by private authorities to spontaneous cooperation, regimes, or norms. International order is also the product of authority at the international level, collectively known as “global governance.”

As a concept, global governance has been used in many different ways. For my purposes, governance is the exercise of authority by an actor over some limited community. Authority can be wielded by governments, of course, but also by families, clans, religious orders, professional associations, and a host of other actors. Public authorities in the form of modern states are unique in that they create obligations for the community over which they rule that are rendered into law and enforced by a monopoly over the legitimate use of violence, although that is not the only form of enforcement applied. Supranational authorities take a similar public form in that they create law, even when they rely on national governments to enforce it. Private authorities also create obligations that--though they lack the status of law--are equally binding on members of a community and typically enforced by exclusion. Governance thus subsumes and is broader than mere government (public or legal authority), a characteristic on which nearly all definitions agree.³⁴ Global governance, in turn, is the set of actors that wield authority across national borders, including states that exercise authority over other states

³⁴ Young (1994, 15-16).

(hierarchy), international organizations that possess authority over their member states (supranationalism), and nongovernmental organizations and corporations that exert authority over communities located in two or more states.

This conception of global governance differs from others in two key ways. First, it limits governance to authority relationships. Some definitions are considerably broader and nearly synonymous with all of international politics. The Commission on Global Governance, for instance, defines its purview as

the sum of many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and co-operative action taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions either have agreed to or perceive to be in their interest.³⁵

If the concept of global governance is to be useful, in my view, it should be limited to actors and relationships that possess at least a measure of authority than spans national borders.³⁶ Non-authoritative relations are already better described through the analytic constructs of cooperation and conflict, transnational relations, and intergovernmentalism. We gain little by lumping these disparate interactions under the label of global governance.

Second, global governance and authority more generally need not be Pareto-improving. Some definitions restrict global governance to collective action that aims and ideally succeeds in resolving common problems. The Commission on Global Governance, as above, defines cooperation as the goal of governance. Similarly, in another widely cited definition, Young limits governance to

³⁵ Governance (1995, 4).

³⁶ Rosenau (2002, 72) captures the centrality of authority.

the establishment and operation of social institutions (in the sense of rules of the game that serve to define social practices assign roles, and guide interactions among the occupants of these roles) capable of resolving conflicts, facilitating cooperation, or, more generally, alleviating collective-action problems in a world of interdependent actors, reducing conflict, and facilitating cooperation.³⁷

Some forms of governance may be observed more frequently in interactions that are Pareto-improving, although this is speculative since we currently lack metrics for “counting” instances of governance and cooperation. But authority can also be used to benefit a leader or her supporters at the expense of others in the relevant community. Authority is always wielded by someone for some purpose: sometimes it is used to increase the welfare of everyone in a community, sometimes to redistribute welfare from the community to the leader (and her supporters), and sometimes for both ends simultaneously.³⁸ We should not presume that authority is always used nobly, fairly, or in the interests of all within a community subject to its obligations.

Scholars of global governance have been reluctant to highlight the concept of authority, I suspect, for fear of being dismissed by others committed to the assumption that international relations is inherently anarchic. If governance is the exercise of authority, and international politics is by assumption devoid of authority, then there can be no such thing as global governance. As a result, even those who see global governance as central to contemporary international politics often cloak their analyses in euphemisms that describe it more generally as cooperation so as to open a space in which its effects can be observed. As a discipline, as I have already argued, we have been wearing blinders of formal-legalism that mask the possibility of authority between and over states.

³⁷ Young (1994, 15-16).

³⁸ Krasner (1991).

Shedding these blinders is an important step in seeing global governance for what it is, a set of authority relationships.

Public and Private Governance

Authority comes in many forms, not just the formal-legal variant that underpins modern conceptions of the state. Drawing upon social exchange theory, authority is an equilibrium in which a leader provides a social order of sufficient value to followers to offset the loss of personal autonomy they suffer, and followers comply with the rules necessary for that social order and, in turn, respect the leader.³⁹ In equilibrium, the leader (a person or entity) provides just enough order to gain the compliance of the community to the taxes and constraints required to sustain that order, and each individual complies just enough on average to induce the leader to actually provide it. The leader gets sufficient return on effort to make the provision of order worthwhile, and the community gets sufficient order to offset the loss of freedom entailed in consenting to that authority. If the leader extracts too much or provides too little order, the community can withdraw its compliance, and the leader's authority evaporates. In this way, authority, contingent on the actions of both leader and community, is an equilibrium produced and reproduced through on-going interactions.⁴⁰

For the power of the leader to be regarded as rightful or legitimate, a sufficiently large number of the members of the relevant community must believe that, on balance, they are getting enough out of the relationship to justify their subordination. How this

³⁹ Although “ruler” might be more accurate, the term is unnecessarily associated with state authority. “Leader” highlights the commonalities, which I develop below, between public and private authority. The leader can be a singular (e.g., absolute monarch or owner of a firm) or collective entity (the government of the United States or a board of directors).

⁴⁰ On theories of the state, to which this approach has been limited, see Barzel (2002), Levi (1988), North (1981; 1990), and Olson (2000).

exchange of order for autonomy is assessed at any historical moment is conditioned, as above, by prevailing social norms, themselves informed by tradition, religion, and yet other norms. The kind of social order demanded by followers and how members value personal autonomy are very much understood through socially-constructed beliefs and ideologies. Though the precise equilibrium will vary across cultures, countries, and time, the core bargain of order for subordination is necessary for all power to be regarded as legitimate.

Understood in this way, authority is held by a range of private actors, not just the state. The modern corporation is in many ways the exemplar of private authority. The corporation is an authority structure or hierarchy in which workers give up their autonomy of production and decision-making, accept the commands of the owner/manager as they relate to production, and grant residual rights of control to the owner(s) to decide all matters not previously addressed in employment contracts in exchange for the reduced transactions costs and greater output permitted by centralized authority.⁴¹ More concretely, the worker gives up his freedom to decide his own production techniques, quantities, and quality, his hours and pace of production, and numerous other dimensions of labor. In return, the employee gains increased productivity and returns from coordination and integration in the corporate unit. Thus, the owner/manager acquires authority over workers who comply with commands because of the higher wages paid relative to their next best alternative. Other common private authorities include the family, in which parents everywhere have authority over their offspring that decreases as the latter mature; kin-groups, real or imagined, that vest varying authority in clan elders or ethnic group leaders; religions, which are among the

⁴¹ Coase (1973); Williamson (1985).

most pervasive and influential private authorities in the world today; and finally militias, gangs, and mafias that exist outside the law and wield violence over their members and employ it against others in “illegal” ways. Moreover, all of these private authorities exist within and sometimes across national borders.

Like the state, private authorities provide orders to their members in return for compliance and respect, governing in their own ways over various distinct but overlapping communities. One can simultaneously be a citizen under the authority of the state, a child (or even an adult) under the authority of parents who expect adherence to family duty, an employee working for and under the authority of a corporation that controls your labor, a member of a union that has the authority to negotiate wages on your behalf and call strikes if necessary, and an adherent to a faith that determines what you can eat or wear and when and how you can have sex with whom. The state is not the only entity that exercises authority over individuals in their daily lives. Indeed, compared to the full range of authorities that regulate our individual lives, the state may not even be the most important.

Private authorities are foundational in all societies. Historically, private authorities precede public authorities, and already possess the loyalty and sometimes the affection of those over whom others would rule. They constitute the field where public authority is built and on which it must find its niche. They constrain public authority, shaping its contours and meaning. This simple fact is often overlooked. It implies that private authorities exist not merely at the sufferance of the state but in deep, meaningful interaction with it – and sometimes, as in the case of private militias, gangs, and mafias,

completely “outside” the law and the state. Private and public authority are both autonomous, co-equal, and “sovereign” realms.

In turn, the pattern of authority in any polity at any moment is a bargain between individuals, the state, and private actors. Authority is negotiated. No leader – public or private – has inherent authority, but must earn legitimate power from both her subordinates and other authorities within the society. A leader acquires authority over members in the exchange of order for compliance. The leader, with the support of her followers, then negotiates with other “private” authorities over whose rules will apply when, where, for whom, and for what issues or behaviors. As with any bargain, each leader brings her resources to bear: the number and strength of her members, allies she can recruit in support of her position, normative and rhetorical justifications, and more. The stronger leader will increase the range of behaviors she can legitimately regulate, the weaker leader will reduce her sphere of legitimate power. Authority is always contingent and dynamic.

It is through this bargaining process that private authorities balance public authority, public authority checks private authorities, and individuals struggle to protect personal autonomy. Religions defend the separation of church and state against public encroachment, states prevent religion from abusing the faithful (e.g., outlawing polygamy even when sanctioned by the church), and individuals rally to defend reproductive freedom from both. Corporations defend “free market” principles, even as states – with the support of their voters -- attempt to regulate practices that produce large negative externalities. Unions defend collective bargaining, corporations seek to impose “right to

work” rules, and individuals seek to control their labor, often negotiating personal contracts with employers that allow for “flex-time” or greater autonomy on the job.

As the product of this bargaining, the scope of public authority varies widely across polities. Indeed, at a macrolevel, how public authority is distributed within the state and between state and society is the primary defining characteristic of different regime types. In totalitarian regimes, public authority is highly centralized within the state, private authority is typically decentralized, and the state aims to eviscerate or coopt all remaining private authorities. Facing a weak or weakening society, the state claims a large sphere of public authority – indeed, total authority – that intrudes deeply into all facets of political, economic, and social life. In weak or failing states, private authorities are well entrenched, sometimes highly centralized, but always salient and – seeking to preserve their own autonomy and power -- prevent the consolidation of public authority. In such polities, private authorities are “too strong” relative to public authority. The result is a very narrow scope of public authority by both issue area and geographic reach. Between these extremes are a variety of limited or “liberal” states in which public and private authority are relatively balanced, each checking the other. The scope of public authority is limited and stable when relatively centralized public authorities confront relatively centralized private authorities or relatively decentralized states interact and negotiate with relatively decentralized societies. These two equilibria differ in important ways, but much less so than the fact of negotiated limits to public authority.⁴² It is the entire tapestry of interwoven and intricately balanced authority that matters to society, its prosperity, and its level of individual freedom.

Forms of Global Governance

⁴² Lake (forthcoming).

Like all authority, global governance is continuously contested, negotiated, and dynamic. Global governance manifests itself today in three primary forms: state-to-state hierarchies, supranational authorities, and private transnational authorities. As I have shown elsewhere, dominant states exercise authority over subordinate states in economic and security affairs, creating a range of economic and security hierarchies in world politics.⁴³ At the supranational level, in addition to the ICC discussed in the opening paragraph, the WTO today exercises substantial authority over states and their economic relations. It now has an extensively articulated body of rules regulating the types, levels, and uses of barriers to trade that reach far into what were previously regarded as “domestic” economic practices. These rules are now obligatory for all members, and rates of compliance are generally high. It also has an autonomous judiciary, the Appellate Body, that hears disputes, reaches decisions that often find against the immediate interests of the largest states, and authorizes states to punish noncompliance. In short, the WTO legitimately issues binding rules, expects and receives broad compliance from member states, and authorizes punishment against violators.

Similarly, in addition to the IASB noted in the introduction, credit rating agencies, and especially the big two – Standard and Poor’s and Moody’s, also wield considerable private authority within and increasingly over states.⁴⁴ With the growth of international capital markets, credit rating agencies not only grade corporate financial instruments and municipal and state bonds but increasingly, since the 1990s, sovereign debt.⁴⁵ This ability

⁴³ Lake (2009).

⁴⁴ Sinclair (2005, 63-68).

⁴⁵ Credit ratings for firms first arose in the early 1900s but did not become standard until the 1930s. Ratings for sovereign debt began in 1927 but become important only in the 1990s. (Sinclair 2005, 139; Langohr and Langohr 2008, 134). For a general historical introduction, see Olegario (2003). Today, more than 745,000 securities from over 42,000 issuers representing at least \$30 trillion are rated by 150 CRAs spanning 100

to rate instruments gives these agencies significant but still limited authority over corporate borrowers and countries seeking to raise capital. Credit rating agencies provide a useful service and value to those they govern. Most important, by evaluating and standardizing the risk inherent in different financial instruments, they permit an arms length market for securities to arise and function effectively. By taking a complex and subjective risk assessment and making it readily interpretable, the credit rating agencies allow anomic investors to buy and sell assets with standardized qualities. This system of rating securities greatly reduces transactions costs in financial markets, allowing such markets to broaden and deepen.⁴⁶ The rated entities--be they firms, municipalities, or countries--can thus borrow more cheaply than otherwise possible and escape dependence on banks, who often exert monopoly or oligopoly power over borrowers. Both investors, who enjoy a more liquid market, and credit issuers subject to the private authority of the agencies benefit. The benefits to credit issuers are sufficiently large that they have been (since the late-1960s) willing to pay substantial fees to the credit rating agencies for their services and, more important, subject themselves to and comply with standards set by the raters.

In recent years, much attention has been devoted to the question of whether global governance is expanding, perhaps in part to cope with the challenges of globalization. Without a mapping of patterns, however, it is difficult to draw any general conclusions about the level of global governance in the world today. Such a mapping is difficult for three reasons. First, some private authorities normally considered “domestic” are actually transnational in nature. Extended families exert authority wherever their members reside.

countries. (Langohr and Langohr 2008, 23). There are, however, only 2.5 “big” CRAs, S&P, Moody’s, and the French firm Fitch.

⁴⁶ Langohr and Langohr (2008, 111-126).

Clans may extend across national borders, especially where borders are arbitrary and strong “national” identities have not taken root. Professional associations may be international in scope. Religions often unite members from different nations.

Globalization has likely facilitated communication and exchange within established transnational private authorities, perhaps giving them new scope and powers, and led to the formation of new private authorities to deal with transnational problems. At the very least, globalization has given new salience to transnational private authorities. But the extent to which private authorities have actually expanded remains unclear.

Second, global authorities, whether or not they are themselves law-making entities, restrict state authority. This is most evident in the area of human rights where the community of states and NGOs have created rules and strong norms of civil and political rights, nearly all of which serve to enhance individual autonomy at the expense of the state. These norms, in turn, are enforced by economic sanctions and threats of exclusion from other international regimes. More indirectly, neoliberalism manifested in the WTO and IMF have rolled back the role of states in the economy, reducing the actions of individuals (and firms) they can legitimately regulate.⁴⁷ In this way, global governance actually reduces the authority of the state and increases the realm of personal autonomy, diminishing the overall level of governance and increasing the realm of private rights.

Third, new global authorities have emerged that exert new authority over practices previously excluded from the purview of states. The European Union, of course, but also other supranational entities like the WTO are exerting new authorities over previously unregulated areas of private rights.⁴⁸ If new supranational environmental rules

⁴⁷ Strange (1996) called this “market” authority.

⁴⁸ On the European Union, see Moravcsik (1998) and Hooghe and Marks (2001).

emerge, this could pose a substantial expansion of global authority into areas where liberal states at least previously possessed few rights. I suspect global governance has expanded with globalization. But without detailed analyses, we cannot know for sure whether global governance has expanded, contracted, or remained essentially unchanged in recent decades. Such a mapping of competing, overlapping, and complementary authorities will be necessary for any definitive ruling on the “size” of global governance in the world today compared to past eras.

Even without definitive measures, we can begin to explore current trends. Globalization appears to be changing the balance between different public and private authorities. Greater economic integration and pressing global problems create new challenges to public and private authorities, and disrupt the previously negotiated spheres each has carefully protected. We are in the midst of this global sea-change, and any trends are new and largely unformed. Prognostication is dangerous. Nonetheless, understanding the myriad authorities in the world today as negotiated and dynamic social exchanges suggests several likely patterns. First, there is likely to be a “retreat of the state” as national-level public authorities find themselves less able to cope with political and economic forces larger than themselves.⁴⁹ As states become less effective regulators and providers of public goods, the basis for the exchange that holds national leaders and citizens together will fray. Second, and contrary to the first trend, private authorities embedded within and justified by the status quo will work through rather than around states. In seeking to protect their own authority, and achieve outcomes consistent with the interests of their members, private authorities are increasingly using states as vehicles for projecting their demands onto the world stage. Forming public-private partnerships

⁴⁹ Strange (1996).

within states, private authorities then use the state to negotiate on their behalf with other states.⁵⁰ Rather than undermining the state, this reinforces and may, indeed, expand public authority at the expense of national private authorities. At the same time, however, it means states are tied more closely to specific private authorities with their own agendas; as a result, states are more likely to be agents of particularistic than general interests.

Third, new supranational authorities will develop despite the intent of turf-protecting states. To cope with global problems and facilitate cooperation, states delegate authority to supranational bodies, like the EU or WTO. As collaboration yields benefits to members, however, supranational bodies develop their own legitimate powers. Using the available gains from cooperation, they then seek and negotiate for greater authority at the expense of national public authorities, private authorities, and potentially personal autonomy. Even though international organizations may begin life as “agents” of their powerful members, they will escape control and form their own social exchanges and develop their own authority based on the very cooperation they were designed to achieve.⁵¹

Although current trends are notable, two important questions have been largely ignored in the literature on global governance to date. First, even if global authorities have expanded in recent decades, has the authority exerted over individuals in total expanded or has the growth in global authority come at the expense of national level public and private authorities? In other words, have private rights expanded or contracted with increased global governance? At the same time that global authorities may have

⁵⁰ See Buthe and Mattli (2011).

⁵¹ On international organizations as agents, see Hawkins et al. (2006).

acquired new rights over individuals, they have also likely constrained and reduced the authority of their states. The net effect on private rights is hardly clear. Moreover, these effects will differ depending on prior levels of authority. Liberal states will contract less than formerly totalitarian states. In countries with large transnational religious movements, private global governance will expand relative to more secular societies. The expansion of global governance is likely not a uniform phenomenon, and differences need to be taken into account in judging its effects. But the question remains as to whether global governance has led to an expansion or contraction of private rights and personal autonomy or freedom.

Second, regardless of total scope of authority over any single individual, has the mix of authorities changed in some significant way? Within societies, and especially polities with liberal states, the rich array of private authorities plays a crucial role in maintaining those limits. In the pursuit of their own power and purpose, private authorities constrain state authority and mobilize their members to resist state encroachments on their prerogatives. As authority shifts to the global level, especially in public forms as states expand their roles in representing their citizens in global arenas or as supranational authorities, will private authorities “keep up” with this trend? Will the balance between public and private authorities so crucial to maintaining liberal states at home be reproduced at the global level, or will authority shift towards more public forms? At present, the growth in private global authorities appears to be lagging, although again we lack specific indicators and measures of this trend. Global civil society has recently attracted attention by scholars and analysts, but most global civil society groups and especially TANs are interest associations -- akin to lobbies within polities --

rather than authorities that can legitimately issue commands over their members. TANS shape the normative context within which authority is legitimated, but few authoritative transnational entities able to exercise legitimate power over their members have emerged. Although global civil society groups have been effective in promoting norms – especially liberal norms of freedom, democracy, and human rights – they are less successful in solving collective action problems and mobilizing large numbers of individuals to counter state power.

The main private authorities that have successfully expanded their legitimate powers at the global level appear to be corporations and business federations – at least at an impressionistic level. Labor unions, civic associations, and other private authorities appear not to have made this transition in large numbers. Does this matter? If rich patchworks of private authorities are central to preserving limits on states within polities, there may be a dearth of private authorities to similarly constrain the growth of authority at the global level. To the extent business dominates the field of private authorities, will this push the limits and uses of global public authorities in socially undesirable ways? Even before these possible trends mature and before we can document fully the distribution of authorities in the world today, we should begin asking such questions and addressing their normative implications. The current focus on the lack of accountability in supranational institutions is justified, but the balance between public and private authority may tip in favor of the former and the types of private authority brought to bear may be skewed in one particular direction. In the absence of transnational private authorities, the problem of who checks and balances global authorities threatens not only

states, who I suspect will struggle to preserve their authority with some success, but also the realm of private rights and personal liberties, which may be much more at risk.

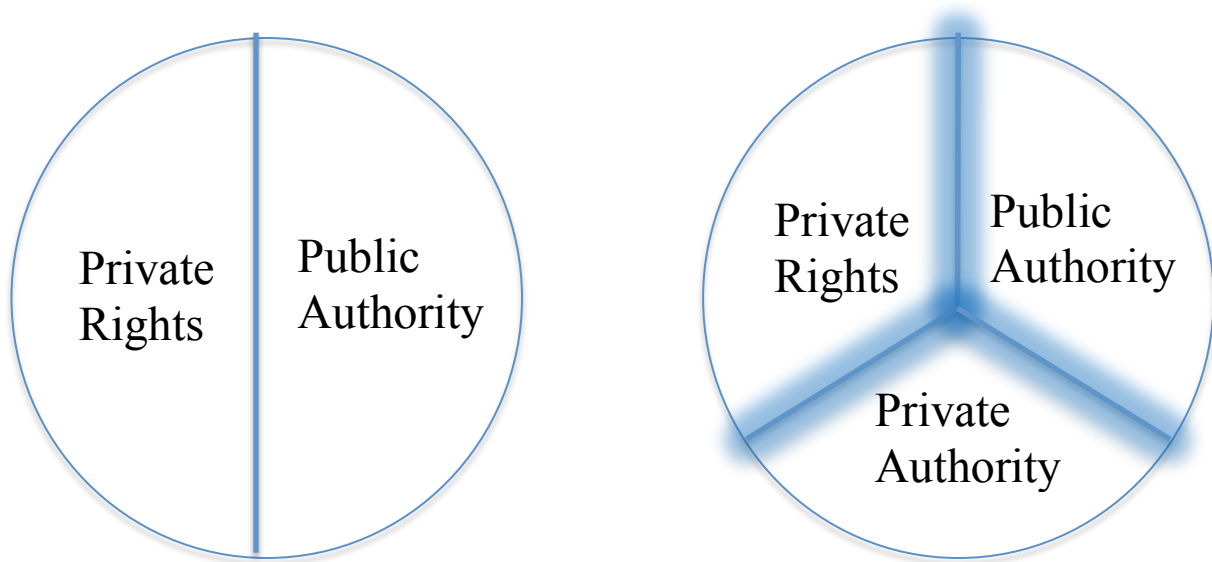
Conclusion

Authority, long ignored in international relations, contributes to global political order. The international system is not anarchic but, rather, a patchwork of many different and often competing authorities whose rights and responsibilities, as well as their boundaries, are fluid, dynamic, and ultimately continuously negotiated. What order exists is not entirely spontaneous nor the product of social norms. Governance at the global level is both real and, it appears, consequential. Properly understood, authority is more widespread in international relations than commonly assumed.

It follows that domestic and international politics are not inherently different. Both contain elements of voluntary or spontaneous ordering as well as authoritative ordering. The authorities in each must also be self-enforcing, the product of political struggle. Nonetheless, domestic systems have a richer and denser ecology of private authorities that, at least in liberal democracies, constrain the authority of the state. This is ironic, given the attention to public authority as the defining characteristic of modern states. The international system, on the other hand, appears to be less populated by transnational private authorities, leaving the field more open to states or supranational authorities. As globalization expands, it is likely that supranational authorities will expand as well. Perhaps greater authority at this level will provoke a counter-mobilization by private transnational authorities, although to date only private authorities in the form of multinational corporations or associated business associations appear to be taking this leap. Ultimately, if we desire to maximize personal autonomy within a world

of multiple authorities, it is the mix of authoritative actors and their respective rights that matter. It is to this question that we ought to turn our attention – both theoretically and empirically.

Figure 1: Schemas of Authority



<p>a. <i>Formal-legal approach</i>: Dichotomous view of public authority and private rights</p>	<p>b. <i>Social exchange approach</i>: at least a trichotomous view of public authority, private rights, and private authority – and the last might be divided into multiple authorities</p>
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