

**Private Governance Legitimacy:
A Comparison of ‘Input’, ‘Output’ and ‘Hybrid’ Approaches**

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Introduction

In the past, food scares, animal cruelty, pollution and other scandals would trigger a round of governmental regulation. Over the last two decades, however, a wide ranging critique of the supposedly inflexible, inefficient and costly nature of these ‘old’ governance approaches has proved effective. The critique has resulted in a raft of ‘new’, ‘informational’ policy instruments (guidelines, codes of conduct, certification, labels, ratings and rankings) being used to replace mandatory ‘command and control’ measures. Today, many industry sectors are crisscrossed with a complex array of complementary and competing, public and private, schemes, which target concerns over food safety, biosecurity, quality, animal welfare, workers’ rights, environmental impact, use of chemicals, and energy efficiency (see Abbott & Snidal 2009 for additional sectors). In particular, the proliferation of non-governmental schemes in discrete industry sectors is raising concern over their legitimacy. Since non-governmental schemes cannot rely as state regulation does on the presumed legitimacy of Westphalian authority and party-political, aggregative, democracy, what, if anything, makes them legitimate as governance arrangements? Three competing frameworks have been advanced to date in the literature. Cashore et al (2004) have developed a ‘non-state, market-driven’ framework for understanding these non-governmental schemes that focuses on the ‘output’ legitimacy of schemes with important audiences, especially business. In contrast, Cadman’s Quality Governance framework (2011) advances a perspective grounded more in ‘input’ legitimacy and the nature of the processes by which decisions are arrived at. Meanwhile, Schouten and Glasbergen (2011) have adopted what can be termed a ‘hybrid’ approach that examines schemes across their legal, political and moral dimensions.

In this paper, I compare and contrast the approaches taken by these frameworks to conceptualising the legitimacy of these informational, ‘private’ governance arrangements. The term ‘private governance’ is used here to signal a distinction between schemes developed by non-state actors (sometimes in partnership with governments) in contrast to those developed exclusively by state actors. This distinction between ‘public’ and ‘private’

governance is by no means absolute: in fact, governance of any sector turns out to be a complex amalgamation of purely public, purely private and a large number of mixed arrangements. The analysis presented here is part of a larger project that aims to assess the legitimacy of certification and labelling schemes within sets of ‘code complexes’, which are the totality of all public and private codes governing a specific industry sector. The paper is divided into five parts. Following this introduction, I outline the rise of private governance schemes in general and in the forestry, aquaculture and egg industries in particular. In section three, I undertake a general discussion of the concept of legitimacy and investigate how the concept has been used to examine public and private codes focusing on the work of the three theorists noted earlier: Cashore et al (2004), Cadman (2011) and Schouten and Glasbergen (2011). In the penultimate section, I discuss what we learn from the comparison and outline a methodology for efficiently comparing the legitimacy frameworks. In a short conclusion I recapitulate the argument and call for further work on private governance legitimacy in diverse industry sectors to enable a better understanding its nature.

Private Governance Schemes

Industry is increasingly being regulated by a combination of public and private governance across three dimensions that vary in terms of actor involvement, regulatory rigour and institutional structure (Tollefson, Zito & Gale 2012). Focusing on regulatory arrangements, one can distinguish general, non-binding ‘guidelines’ that set out industry best practices at one end of a spectrum from much more specific, performance-based requirements that effectively mandate what must be achieved if scheme membership is to be obtained and maintained. Across a ‘political’ dimension, schemes can also be differentiated on the basis of who is involved in them. Sometimes they are developed and implemented by a single actor such as an industry association; at other times, a number of actors representing diverse economic, social and environmental interests establish them. Finally, the way schemes become institutionalised also varies enormously. While ‘multistakeholder’ approaches feature in the literature, there are also many ‘unilateral’ schemes such as Responsible Care’s federalised arrangements governing the chemical industry. Similar unilateral schemes exist at the national level, especially in the food industry. In the Australian food industry, for example, suppliers to the major supermarkets must meet the requirements of *Coles Supplier Requirements*—*Food* and *Woolworth’s Quality Assurance Standard* respectively.

The recentness of many schemes combined with their number and diversity means that there is no settled terminology to describe them. Different analysts use different terms to capture aspects of the field, and there is a tendency to highlight one specific dimension of a scheme's arrangements to the detriment of other dimensions. Some of the more common terms used to capture aspects of the field of what I am terming 'private governance' are set out in Table 1 below. Moving from right to left across the table, we can note that there has been a strong tendency in the literature to classify the field in terms of the regulatory approach used. Thus, many analysts characterise the field as essentially concerned with 'voluntary codes', 'certification and labelling schemes', 'eco-labelling', 'standards', and so forth. When a focus is placed instead on the actors involved in schemes, a different terminology emerges. Across this 'political dimension', the field is characterised as being dominated by 'private' or 'not-for-profit' groups or by some combination of both. The terminology focuses on 'private governance', or 'NGO governance', or 'multistakeholder governance' or, more colourfully the 'NGO-Industrial Complex'.

It is also possible to characterise the field of by focusing on institutional arrangements and various approaches have been adopted. Schemes have been described as operating within 'clubs', 'networks', 'multistakeholder organisations', 'public-private partnerships' and 'private regimes', among others. A focus on clubs suggests that members join voluntarily to obtain benefits from their association; in contrast, the focus on networks suggests a less formal and looser institutional arrangement that encompasses more actors with a range of motivations. Characterising institutional arrangements as 'multistakeholder' highlights another feature of private governance—the large number of diverse actors that often, but not always, participate in them.

Another way to describe the field is to either combine terms from across the regulatory, political and institutional dimensions (e.g. 'non-state, multistakeholder, regulation') or to identify some essential feature that underpins a range of schemes. One approach, derived from the business management literature, focuses on 'corporate social responsibility' (CSR). This literature, which has developed apace over the past five years (Aguinis & Glavas 2012), views corporations have not only having rights but also responsibilities related to their social, ethical and environmental impacts. It orients analysts to what corporations should be doing, with diverse schemes then providing a smörgåsbord of choice to achieve desired objectives. In another well known formulation, Cashore et al (2004) characterise the field as consisting

of ‘non-state, market-driven’ schemes that are driven by combinations of NGOs and corporations which depend on market acceptance for their success. Ponte et al (2011, p. 2) focus more simply on ‘standards’, mandatory and voluntary, the boundaries of which can be ‘porous and overlapping’. While voluntary standards have a long history in addressing ‘technical, metrological and compatibility issues’, what is new is their increasing application to people and institutions across a larger number of domains including labour, fair trade, environmental degradation and animal cruelty (Ponte et al 2011, p. 1).

Table 1: Governing Via Codes, Standards, Guidelines and Labels

Frameworks	Geography	Sectors	Institutional Dimension	Political Dimension	Regulatory Dimension
‘corporate social responsibility’ (e.g. Utting & Marques 2010)	‘global’	<i>Commodity Chain Production</i> (MSC, FSC, Rainforest Alliance, Oxfam, Kimberley Process, RSPO, IFOAM)	‘multistakeholder institutions’ (e.g. O’Rourke 2003)	‘private’	‘codes’
‘non-state, market-driven-governance’ (e.g. Cashore et al 2004)	‘international’	<i>Business</i> (Fair Trade, Bond Rating Agencies, Global Compact, Equator Principles, OECD Guidelines for MNCs, UN Global Compact)	‘voluntary clubs’ (Prakash 2000)	‘non-governmental’, ‘non-state’, or ‘civil society’ (broad)	‘certification’
‘civil society governance’ (e.g. Meidinger 2006)	‘transnational’	<i>Labour</i> (SA 8000, FLA, WRC)	‘networks’ (e.g. Piciotto 2011)	‘business’, ‘MNCs’ or ‘industry associations’	‘labelling’
‘voluntary clubs’ (e.g. Prakash 2000)	‘commodity chain’	<i>Quality</i> (e.g. ISO 9000)	‘public-private partnerships’ (Garcia-Martinez et al 2007)	‘public-private partnerships’	‘standards’
‘private governance’ (e.g. Pattberg 2007)	‘supply chain’	<i>Environment</i> (e.g., ISO 14000, GRI)	‘private regimes’	‘multiple stakeholders’	‘rankings’
‘standards’ (e.g. Ponte et al 2011)		<i>Higher Education</i> (e.g. ARWU, THE)	‘global democratic governance’ (Tollefson et al 2008)	‘NGOs’, ‘third sector organisations’, ‘civil society’ (narrow), or ‘not-for-profits’	‘ratings’
‘transnational governance’ (e.g. Gulbrandsen 2010)		<i>Finance</i> (e.g. Standards & Poor’s, Fitch)			‘reporting’
‘NGO-industrial complex’ (e.g. Gereffi et al)					
‘private regimes’ (e.g., Hauffer 2009)					

The use of codes, standards, guidelines and certification and labelling schemes increasingly govern global and national production (Gale & Haward 2011; Ponte et al 2011). While mandatory public codes have long been deployed to safeguard human health and prevent disease outbreaks, the recent growth of voluntary, private codes has been fuelled by industry fears of regulation and civil society efforts to promote sustainable, ethical production. This has occurred in the context of a shift in government's role from 'rowing' to 'steering' under the New Public Sector Management (O'Faircheallaigh et al 1999; Webb 2004). The crisscrossing nature of public and private governance arrangements is evident in many industry sectors today. In Australia, the production of timber, fish and eggs serve as good examples to illustrate the more general phenomenon.

Public and Private Governance for Timber Production

Forest management in Australia is a state matter and within states it is governed by 'code complexes'—combinations of public, private and hybrid codes. For example, Tasmania's forests are managed in accordance with the state's *Forest Practices Code 1985*, developed by the Forest Practices Authority in consultation with Private Forests Tasmania and the wider community (Hollander 2006). The sector is also guided by the *Forest Safety Code (Tasmania) 2007*, developed by the Safety Standards Committee of the Tasmanian Forest Industries Training Board. The use of chemicals is governed by codes of practice for aerial and ground spraying, as well as a *Code of Practice for the Supply and Use of Veterinary Chemical Products 2012*. Business may select from two competing voluntary schemes that certify the 'sustainability' of forest management: the performance-based *Forest Stewardship Council* or the process-based *Australian Forestry Standard (AFS)* (Gale and Haward 2011). These schemes also offer chain-of-custody certification so that it is possible to track the movement of products from the forest to the retailer to minimise cheating and fraud.

A similar set of public and private codes governs forest practices in Victoria. There, an overarching *Code of Practice for Timber Production 2007* governs public and private commercial forestry on native and plantations estates. The Code references a range of other guidelines and standards including *Management Procedures for Timber Harvesting, Ridding and Regeneration of Victoria's State Forests 2009*, the *Native Forest Silviculture Guideline series*, and the *Safety in Forest Operations (Harvesting and Haulage) Industry Standard (July 2007)* (DEPI 2013a). The Victorian government is committed to the achievement of 'sustainable forestry' in line with Montreal Protocol requirements (Gale and Cadman, In

Press), which it states will be achieved through ISO 14001 certification processes. Meanwhile, VicForests, which is responsible for the commercial harvest and sale of the state's public native timber, has obtained AFS certification for its operations (DEPI 2013b).

Public and Private Governance for Fish Production

In the aquaculture sector, a *Code of Conduct for Australian Aquaculture* has been developed by the Australian Aquaculture Forum to govern a range of environmental concerns. For animal welfare, the National Aquaculture Council of Australia has developed a set of *Aquatic Animal Welfare Guidelines*. These national codes are supplemented by state-based, industry-specific codes such as the *Tasmanian Salmonid Farming Industry—Code of Practice* developed by the Tasmanian Salmonid Growers Association (TSGA). TSGA unites Tasmania's aquaculture companies, which collectively constitute the largest aquaculture industry in Australasia. At the global level, several codes exist to which the aquaculture industry can be certified. These include Global G.A.P., which certifies operations under its *GLOBALG.A.P. Aquaculture Standard*; Friend of the Sea, which certifies sustainable aquaculture operations under its *Certification Criteria Checklist for Aquaculture Products (Fishfarming Inland/Marine Species)*; and the newly established Aquaculture Stewardship Council (ASC), which certifies and labels national aquaculture operations to its global standards, which for salmon species, is the *ASC Salmon Standard version 1.0 (June 2012)*.

Private and Public Governance for Egg Production

In the poultry sector, egg producers are guided by a national, voluntary *Model Code of Practice for Animal Welfare—Domestic Poultry*. This becomes mandatory when referenced in state-based animal welfare legislation as it is, for example, in Queensland. With regard to food safety, egg producers are guided by Food Standards Australia New Zealand's (FSANZ) *Primary Production and Processing Standard for Eggs and Egg Product*. Egg farmers may be certified under the Australian Egg Corporation Limited's (AECL) *Egg Corp Assured (ECA)* quality assurance scheme and/or, if producing for one of the major supermarkets, under *Coles Requirements* or *Woolworths Quality Assurance* schemes. Organic egg producers must be certified by an accredited body, such as the Biological Farmers of Australia, which operates the *Australian Certified Organic Standard*. When transporting chickens, egg producers are referred to the *Model Code of Practice for the Welfare of Animals: Land Transport of Poultry*; and when marketing eggs, they are guided by a range of FSANZ codes that includes the *Australia New Zealand Food Standards Code Labelling of*

Ingredients and Australia New Zealand Food Standards Code Nutrition Information Requirements. Free range producers have a wide range of options to choose from when retailing eggs to the market. They can opt to be certified under Free Range Egg & Poultry Australia Limited *Range Care* standard, or the Humane Society International's *Humane Choice* scheme, or the RSPCA's *Approved Farming Scheme*, among others (Gale 2013).

Industry Politics

While sometimes treated as such, the development and implementation of private governance schemes are not neutral, technical exercises. Such schemes have an important political dimension because their structure and operation can alter the distribution of costs and benefits to differently situated actors along the supply chain (Büthe 2010). A dramatic recent example of this comes from the Australian egg industry. In 2011, one of the free-range egg organisations, Free Range Egg and Poultry Australia Limited (FREPA), expressed outrage over a proposed new standard developed by its own industry umbrella group, AECL. In proposing a new *Egg Standards Australia* standard, it claimed that AECL was also redefining the meaning of 'free range' production to permit an outdoor stocking density of up to 20,000 hens per hectare. Since this constituted an almost 14-fold increase over the current Model Code's stated 1,500 hens per hectare,¹ FREPA claimed it threatened the viability of their members' business model.

FREPA and other groups lodged an objection to the Australian Competition and Consumer Commission (ACCC) over AECL's application for a certification trade mark (CTM) for Egg Standards Australia. Under the Trade Mark Act 1995, the ACCC investigates whether applicants are eligible to hold a CTM and determine whether or not the rules governing the CTM are or are not to the 'detriment of the public' (ACCC 2012). To inform its assessment of the AECL application, the ACCC called for public submissions, receiving over 1700 of these all but seven of which opposed the application (ACCC 2012, p. 8). While many of the submissions appear to have been from individuals as part of a campaign organised by Humane Society International (HSI 2013), substantive objections were lodged by other groups besides FREPA, including the consumer group *Choice*. While a wide range of objections to the rules were noted, attention was focused on the issue of outdoor stocking

¹ The exact wording in the Model Code is open to interpretation, however. While it states that the outdoor stocking density for layer hens should be '1500 birds per hectare', it adds the caveat that 'Any higher bird density is acceptable only where regulator rotation of birds onto fresh range areas occurs and close management is undertaken which provides some continuing fodder cover' (CSIRO 2002, p. 28).

density, with the ACCC concluding ‘that the proposed maximum outdoor stocking density of 20,000 birds per hectare is inconsistent with consumer expectations of farm practices adopted in free range egg production’ (ACCC 2012, p. 22). On 21 December, AECL announced it was withdrawing its CTM application indicating it intended to ‘submit a new CTM application after taking stock, thoroughly reviewing the issues raised and making any necessary amendments to the minimum standards’ (AECL 2012).

Such industry politics is not confined to the poultry sector. In the Australian native forest industry, representatives of business and government joined forces in the early 2000s to develop the AFS forest certification scheme to compete with the growing international influence of the internationally based Forest Stewardship Council (Gale and Haward 2011). Competition between these schemes in Australia, Canada, the UK and elsewhere has led to one commentator dramatising the result as the ‘certification wars’ (Humphreys 2006). At stake in these ‘wars’ is the norm of ‘sustainable forest management’, which can take an ‘economistic’ or ‘eco-social’ character (Gale & Cadman, In Press). Building on intergovernmental negotiations known as the Montreal Protocol that occurred in the mid-1990s, the AFS scheme embraces an economistic norm of SFM, which results in a significant downplaying of forests social and environmental values. In contrast, the FSC scheme provides stronger protections for indigenous peoples and community rights and high conservation values and biodiversity (Gale & Cadman, In Press). The ‘war’ between AFS and FSC reached a high point in Australia in 2005/6, when The Wilderness Society released a detailed critique of the AFS standard entitled *Certifying the Incredible*, prompting an equally vigorous response by AFS (*A Response to Incredible Claims by The Wilderness Society*) and subsequent attacks by several government ministers on the FSC.²

In the fishing industry, the establishment of the Aquaculture Stewardship Council (ASC) has seen earlier objections to the certification of wild fisheries by the Marine Stewardship Council recapitulated in the farmed fish sector (Gale & Haward 2011). Over 70 human rights and environmental civil society organisations from around the world issued an open letter opposing its formation in May 2009 (Letter to WWF 2009). In 2010, the Washington-based NGO Food & Water Watch issued an analysis of major fish certification schemes, arguing

² Thus, the Australian reports that both Senator Eric Abetz (then Federal Minister for Forests) and Malcolm Ferguson (ALP opposition spokesperson for forestry) both condemned the FSC at an Australian Forest Growers in Launceston, Tasmania (Roberts 2006).

that all were deficient across several criteria. Even though ASC was not operational at the time, Food & Water Watch expressed concern about its approach noting that ‘issues with mangrove systems and free-riders are problems expected to arise based on Aquaculture Dialogue standards as currently written’ (Food and Water Watch 2010, p. 12). A group of mangrove activists issued a letter of complaint against the ASC in 2011, objecting to what they viewed as deficiencies in consultation processes and the standard used to certify shrimp, and claiming that the standard could ‘very well result in further loss of mangrove forests and displacement of local communities’ (NGO Statement 2011).

In short, developing and operationalising standards may result in intra-industry struggles over the distribution of costs and benefits of different schemes as well as disputes between standards promoters and detractors outside the industry, the latter located especially within grassroots NGOs who strongly object to some of the social and ecological compromises reached to accommodate the interests of major corporations. It is in this context of competing audiences—industry, social, environmental—that the question of the legitimacy of a standard arises. What processes and/or outcomes should be required of a private governance arrangement to secure its legitimacy within and outside an industry sector?

The Legitimacy of Private Governance

The classical concept of legitimacy as expressed by Aristotle distinguishes between ‘good’ and ‘bad’ forms of government based on whether they rule in the broader interests of the *demos* (monarchy, aristocracy, polity) or not (tyranny, oligarchy, democracy). Aristotle believed that the people’s interests could be served by a wide variety of different types of ‘inputs’ into the decision-making process. Under monarchy and aristocracy, the rights of people were quite narrowly constrained: yet, government could still be legitimate providing the rulers ruled with the broader interests of the people in mind and in accordance with the constitution. In contrast, a large say for the people in the form of democracy could constitute the ‘tyranny of the majority’ if they ruled with only their own (economically poor) interests in mind and not in accordance with the constitution. In Aristotle’s formulation, then, legitimate governance is governance according to the constitution and in the interests of the people, but this still permits quite an array of institutional forms.

The modern discussion of legitimacy owes a large debt to Weber, who noted that ‘the basis of every system of authority, and correspondingly of every kind of willingness to obey, is a

belief, a belief by virtue of which persons exercising authority are lent prestige' (quoted in Kane & Patapan 2010, p. 594). Individuals can be given prestige because they rule on the basis of charisma, in accordance with tradition, or in accordance with the law. These forms of legitimate rule constitute stages in the development of states however such that the modern state exercises rational-bureaucratic authority and rule on the basis of tradition (e.g. royalty) or charisma (e.g. religio-political presence) is no longer acceptable. This marks some advance on our understanding of legitimacy, although we still need to inquire into how states form and how law gets made. With regard to the former, Weber has been argued to have a Hobbesian view of state formation as the 'forcible maintenance of orderly dominion over a territory and its inhabitants' (quoted in Kane & Patapan 2010, p. 595). Notably, Weber is unwilling to endow the state with a particular governmental form, noting only in his celebrated definition of the state that it be a political entity whose 'administrative staff successfully upholds a claim on the monopoly of the legitimate use of violence in the enforcement of its order' (quoted in Kane & Patapan 2010, p. 594).

It was thus up to Locke in his *Two Treatise of Government* to distinguish between different types of governments and to endow only those that protect a citizen's natural rights with the right to rule. The key distinction between Hobbes and Locke in terms of the nature of the state was that while Hobbes was content for a state to be authorised howsoever it might including by force, Locke insisted that a state be founded on the basis of consent (Kane & Patapan 2010, p. 596). In particular, Locke was keen to ensure that citizens—especially those endowed with natural rights to life, liberty and property—would be able to rebel against any authority that tried to take those rights away. Building on Locke, and subsequently Rousseau and Kant, the modern legitimacy of the state is founded not only on its de facto existence and capacity to secure the prestige of its citizens a la Weber but also on its governmental form which needs to secure the consent of the people, interpreted today as competitive, multiparty electoral government.

These classical and early modern debates on the nature of democratic rule are often conveniently summarised today by using the notions of 'input' and 'output' legitimacy (Sharp 1997). Risse (2004, p. 7) defines input legitimacy as 'the participatory quality of the decision-making process leading to laws and rules' based on the idea that 'those who have to comply with the rules ought to have an input in rule-making processes'. This definition clearly resonates with the Lockean idea of government by consent. In contrast, output

legitimacy refers to ‘the problem-solving quality of laws and rules’ (Risse 2004, pp. 7-8) and focuses on whether arrangements are effective in regulating the sector to which the laws and rules apply. This is a more Hobbesian/Weberian concept of legitimacy that views the performance of a governance system as key to its legitimacy, regardless of how the system is actually structured.

While it is only in the past decade that the legitimacy of private schemes has been subjected to systematic inquiry, the volume of theoretical and empirical research is developing rapidly. In an early, pioneering study Cashore, Auld and Newsom (2004, p. 32) defined legitimacy, following Suchman (1995), as ‘a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions’. With a focus on the forest industry, these analysts described how scheme managers utilise ‘converting’, ‘conforming’ and ‘informing’ strategies to influence audience perceptions of a scheme’s legitimacy. A converting strategy employs incentives to encourage audiences to alter their perception of, and behaviour towards, a scheme. A conforming strategy, in contrast, involves modifying a scheme to address audience concerns. Finally, an informing strategy requires scheme managers to provide information about a scheme, an approach mostly used to bolster acceptance among scheme supporters.

In adopting these strategies, Cashore, Auld & Newsom were interested in the kind of output legitimacy that schemes generate in internal (those who developed the scheme) and external (non-developers who interact with the scheme) audiences. Schemes can be granted three types of output legitimacy: ‘pragmatic’, ‘moral’ and ‘cognitive’. Pragmatic legitimacy is motivated by self-interest: for example, a company abides by a code because it earns a price premium. Moral legitimacy, in contrast, is motivated by acceptance that the code is ‘right’ according to a general ethical principle. It provides a stronger basis for code acceptance because actors that are convinced of a code’s rightness will abide by it even if it imposes costs. For example, consumers who accept the general ethical principle that animals feel pain as humans do will endorse tougher animal welfare standards even though it makes food more expensive. Cognitive legitimacy is deeper again. It is granted to a code that prescribes norms that have become second-nature. While code managers’ ultimate aim is have their schemes gain cognitive legitimacy, Cashore, Auld and Newsom observe that in practice only pragmatic legitimacy is usually achieved, especially amongst internal audiences who bear the costs of implementation (2004, p. 221).

A study by Cadman (2011) takes a different, input-based approach to private governance legitimacy. For Cadman, legitimacy is not a quality that can be directly manipulated by scheme managers. Instead, legitimacy arises from the way a scheme is structured and operates. Schemes are legitimate in proportion to whether their governance systems secure a high level of ‘meaningful participation’ and ‘productive deliberation’. Cadman operationalises his hierarchical framework by elaborating these two high-level principles in the form of criteria and indicators. Meaningful participation is further refined by using two criteria: interest representation and organisational responsibility. To measure the degree to which a scheme meets these criteria, each is further elaborated in the form of indicators. Indicators of ‘inclusiveness’ and ‘equality’ are used to measure the degree to which interest representation is achieved; and ‘resources’, ‘accountability’ and ‘transparency’ are used to measure the degree to which organisational responsibility is achieved. A different set of criteria and indicators is used to assess the second principle of productive deliberation. Cadman employs his framework to assess three global forest schemes: the Forest Stewardship Council (FSC), the Programme for the Endorsement of Forest Certification (PEFC) and the International Organization for Standardization (ISO)’s 14000 Environmental Management Series.³ He rank orders the governance quality of the three schemes as FSC (1), ISO (2) and PEFC (3). From Cadman’s perspective, FSC and ISO are more legitimate than PEFC because they are superior in terms of meaningful participation and productive deliberation. Legitimacy in his scheme does not directly depend on internal or external audience perceptions.

A third, hybrid framework to assess private governance legitimacy has been developed by Schouten and Glasbergen (2011). These authors identify three ‘traditions’ in the literature on organisational legitimacy: (i) a legal scholarship tradition emphasising a set of formal negotiating requirements (representation, participation, neutrality, procedural regularity); (ii) a political philosophy tradition emphasising the underlying moral justifications that can be offered in support of a governance arrangement; and (iii) a sociological tradition emphasising the consent and acceptance of external audiences (2011, pp. 1892-93). According to Schouten and Glasbergen, legitimacy ‘is not an all or nothing affair’ (2011, p. 1893), and investigators need to employ all three traditions when examining it. They apply their framework to a newly established private global governance organisation, the Roundtable on Sustainable Palm Oil

³ He also compares these schemes with the United Nations Forum on Forests.

(RSPO), which aims to promote ‘sustainable’ palm oil production and consumption by producers and retailers. They find that the legal and moral aspects of legitimacy constitute its necessary conditions, but that sufficient conditions require the consent and acceptance by internal and especially external audiences. Achieving a high level of legitimacy across all three components is extremely difficult because the legal and moral compromises required of stakeholders that render negotiations feasible often undermine external audience acceptance. Outlining the extensive opposition by civil society groups to the RSPO, which is accused of ‘greenwashing’ palm oil production, these authors conclude: ‘These [legal and moral] compromises lead to a less strict standard, which in turn leads to the absence of *acceptance* of many NGOs, which reduces legitimacy’ (Schouten & Glasbergen 2011, p. 1898, emphasis in original).

Investigating the Legitimacy of Private Governance

These three input, output and hybrid frameworks constitute recent attempts to theorise the legitimacy of private governance. Although each framework conceptualises legitimacy differently, each uses a broadly similar qualitative methodology to gather data. The methodologies used entail a detailed review of the literature on each scheme (including the ‘grey’ literature produced by governments, firms and civil society organisations) supplemented by interviews using semi-structured questionnaires with individuals who are especially knowledgeable about the structure and operation of each scheme. The fact that each approach adopts a similar methodology and gathers similar data creates an opportunity to efficiently compare and contrast each framework’s conception of legitimacy across several private governance schemes.

While each legitimacy framework utilises broadly similar qualitative data drawn from literature review and interviews, each organises and interprets the data differently (Table 1). In Cashore, Auld and Newsom’s approach, the investigation would focus on how different groups (audiences) engaged with the scheme. Interview questions would inquire into whether internal and external participants participated in its development, donated money and made in-kind contributions, publicly supported the scheme in their written and oral statements, and obtained certification to the scheme when it was established. The more legitimate the scheme, the greater the degree one could anticipate both internal and external participants engaging in this behaviour.

In Cadman’s approach, the investigation would focus on the degree to which the scheme promoted meaningful participation and productive deliberation. Interview questions focused on meaningful participation would examine the degree to which internal and external participants were able to participate equitably and effectively in the development of the scheme as well as whether they were adequately resourced to do so in a context of transparency and accountability. Productive deliberation would be assessed by inquiring into the decision making arrangements (democratic practices and dispute resolution) as well as the degree to which the scheme’s implementation led to behavioural change and problem solving. The greater the score a scheme received across Cadman’s eleven indicators of organisational performance, the more legitimate it would be determined to be.

Table 1: Data Requirements of Three Frameworks for Assessing Legitimacy

Cashore, Auld & Newsom (2004)	Cadman (2011)	Schouten and Glasbergen (2011)
<i>A scheme is viewed as legitimate by groups if they...</i>	<i>A scheme can be deemed by an analyst as legitimate if...</i>	<i>A scheme is legitimate if it optimises...</i>
Participate in its development	Appropriate interests are represented	Legality approach: rules of power and connections with government
Donate money or make in-kind contributions	Organisational responsibility is achieved	Moral approach: moral justifications for participation and goals selected
Make public statements in support	Decision making is fair	Effectiveness approach: acceptance by internal and external audiences
Adopt and/or become certified to the standard	Implementation is secured	

Finally, in Schouten and Glasbergen’s approach, scheme legitimacy would be assessed across its legal, political and sociological dimensions. Data collection would focus on a scheme’s legal form and relationship to government, on the moral justifications offered by internal and external participants for their (non-)participation and the (un-)acceptability of the required compromises, and on the perceptions of internal and, perhaps especially, external audiences of the scheme’s acceptability. Since Schouten and Glasbergen view a scheme’s legitimacy as emerging from tradeoffs across these three dimensions, the more legitimate schemes will involve the optimal tradeoffs across the three dimensions.

The fact that the three legitimacy frameworks utilise similar types of data means that it should be possible to efficiently compare private governance schemes across each. A key informant questionnaire could be calibrated to investigate the range of issues that inform Cashore et al’s, Cadman’s and Schouten and Glasbergen’s approaches. A study of this nature could assist in elucidating what is at stake in determining private governance legitimacy as

well as the degree to which the concept of legitimacy is theory dependent. To fully test the different schemes, it would be useful to apply them to schemes other than those used to develop and test them. Since all three schemes have emerged from investigations into commodity production (timber and palm oil), a novel area to target for a comparative legitimacy analysis could be in the apparel sector. For example, one could compare the Worldwide Responsible Accredited Production (WARP), Workers Rights Consortium (WRC), Ethical Trading Initiative (ETI) and Better Cotton Initiative (BCI) across each of the three legitimacy frameworks. The template for such a comparison is set out in Table 2 below.

Table 2: Template for Comparing Private Governance Legitimacy Frameworks in the Apparel Industry

Framework	WARP	WRC	ETI	BCI	Legitimacy Comparison
Cashore et al, 2004	Data on conforming, converting and information strategies	Schemes that garner acceptable level of industry support ranked more legitimate than other			
Cadman, 2011	Rating on 11 indicators of legitimacy for meaningful participation and productive deliberation	Rating on 11 indicators of legitimacy for meaningful participation and productive deliberation	Rating on 11 indicators of legitimacy for meaningful participation and productive deliberation	Rating on 11 indicators of legitimacy for meaningful participation and productive deliberation	Schemes that rate well across 11 equally weighted criteria of legitimacy deemed more legitimate
Schouten & Glassbergen, 2011	Assessment of tradeoffs across legal, political and sociological dimensions of legitimacy	Assessment of tradeoffs across legal, political and sociological dimensions of legitimacy	Assessment of tradeoffs across legal, political and sociological dimensions of legitimacy	Assessment of tradeoffs across legal, political and sociological dimensions of legitimacy	Schemes minimising tradeoffs across legal, political and sociological dimensions deemed more legitimate
Comparison	Inter-framework consensus on legitimacy of WARP scheme?	Inter-framework consensus on legitimacy of WRC scheme?	Inter-framework consensus on legitimacy of ETI scheme?	Inter-framework consensus on legitimacy of BCI scheme?	Assessment of theory dependence of concept of 'legitimacy'

Conclusion

Private governance has developed apace in the past two decades and there are now a huge number of schemes utilising differing types of codes, standards, certification and labelling arrangements. These schemes span diverse industries, are national or transnational in scope, and are promoted or challenged by governments, industry and civil society organisations. With the growth in private governance arrangements showing no sign of abating, a critical

question to ask is what makes such them legitimate. Because such schemes cannot rely on the authority of the Wesphalian state, analysts have looked elsewhere for answers and developed potentially competing accounts of scheme legitimacy. There is now a need to compare these schemes to determine whether they reach similar or different conclusions regarding the legitimacy of different private governance schemes. If there is substantial agreement across the three frameworks in the assessment of a scheme's legitimacy, then there is greater confidence that the three frameworks are each assessing a common underlying concept of legitimacy. If, on the other hand, different frameworks rate the legitimacy of different schemes very differently, then it suggests that the concept could be either theory-dependent or that there is a need to further refine it to minimise the apparent confusion.

This paper has highlighted these issues and proposed an efficient methodology for investigating them. Given that each of the three frameworks utilises a broadly qualitative approach to gathering data, it should be possible to compare them across a limited number of private governance schemes and resolve some of the outstanding issues. In particular, it appears feasible to develop a semi-structured questionnaire instrument to gather the required data from key informants that is needed for each legitimacy framework. The data obtained, along with other relevant information derived from formal and grey literature reviews, could then be fed into each of the three framework templates enabling within and across framework comparisons to be made. Such an approach could be expected to answer questions regarding the internal consistency and discriminatory capacity of each individual framework as well as reveal the degree to which frameworks are measuring the same concept of legitimacy.

There is quite a lot at stake in such an analysis. If there is inter-subjective agreement among the three frameworks as to the legitimacy and illegitimacy of private governance schemes, it would clearly strengthen the claims of some schemes and potentially disadvantage others. If little inter-subjective agreement is found between the three frameworks in terms of how they rank a scheme's legitimacy, then it could signal a need to 'go back to the drawing board' and rethink what the concept means and how it might best be assessed in the context of private governance.

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