

**Public Authority Beyond the State:
Reconsidering the Public-Private Dimensions of State and Non-state
Forms of Governance**

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Abstract

New, non-state forms of governance— involving both corporate and noncorporate NGO actors— are emerging at the global level. These developments are changing the landscape of global politics and complicating our understandings about public and private forms of authority. Although much of the literature talks in terms of public and private, the concepts themselves are rarely defined and critically interrogated. As a result, the state has largely been assumed to mean ‘public,’ business to mean ‘private,’ and civil society sits somewhere, awkwardly, between the two. In this paper, I aim to use the work of political theorists who have written extensively on the public sphere and the public-private divide in conversation with recent scholarship on emerging forms of global governance to help bridge this gap. Though the traditional concept of the public sphere is helpful in some respects, it fails to capture the full meaning of the public because it focuses on discourse and deliberation, to the exclusion of authoritative governance. At the same time, equating public authority— the governance function of the public sphere— with the state is an inadequate framework that does not do justice to the public sphere. Ultimately, I advocate for a more comprehensive, flexible, and nuanced understanding of public that incorporates inclusive, deliberative, and participatory governance structures of varying kinds— some of which may be state-based, but others of which may not.

“We are in a transition to a new global political economy— but we are not yet sure in what essential way the new will be different from the old. We are equally unsure which assumptions are still valid and which now need to be queried.”

Susan Strange from “Territory, State, Authority and Economy” (p. 3)

Introduction: Globalization, Governance, and Authority

The globalization of capital and the emergence of a global civil society— the latter working, to some degree, to constrain the former (Lipschutz 2005)— have resulted in new forms of governance, involving both new actors and new means of shaping behavior. Though states and state-based organizations such as the United Nations (UN) and World Trade Organization (WTO) are most often associated with governance functions, corporations and non-corporate nongovernmental organizations (NGOs) are increasingly engaged in governance practices. These developments have complicated our notions about what constitutes the ‘public’ and the ‘private’ realms, which have remained central, though confused, concepts for understanding contemporary politics.

Since states are typically assumed to be public authority, scholars have taken these non-state actors to be *prima facie* private. Though in many cases states may be best understood as public and corporate or NGO governance as private, this is not necessarily the case. The factors that make a form of authority or a governance structure public or private are not inherently tied to the category of actor that is involved in governance (e.g. state, market or civil society actors), but more importantly, to the ways that governance structure is organized. Ultimately, I argue that it is possible to have *non-state forms of public authority and governance* to the extent that these governance structures are inclusive, transparent, deliberative, and participatory.

I take as a starting point for this paper that it matters whether governance is public or private. The concepts of public and private carry significant normative content that can legitimize or delegitimize authority in different contexts. “To say some activity is public is to invoke claims of public purpose, public accountability, and public disclosure. To say something is private is to claim protection from state officials and other citizens” (Starr 1989: 42). Because of these normative implications, we need a clear understanding of what constitutes these two domains.

In addition to these theoretical concerns, continued debates about privatization and the global justice movement’s call for participatory control over the commons suggests that there are real stakes in the public-private debate; this is no mere issue of semantics. Much of the strategic dispute between different ways of governing corporate behavior, through consumer-driven campaigns or government regulations, for example, are really debates about where to draw the public-private line (Lipschutz 2005). In other words, the public-private location of authority and governance is an important and contentious issue, at least when issues of public interest are involved.

Calls for responsive public authority are closely related to the normative standard that people ought to have a say over decisions that affect “one’s actions or the conditions of one’s actions” (Young 1990: 37). In other words, notions of the public sphere and public authority are intimately tied to the basic democratic principle that people ought to participate in decisions that

affect them and that it is difficult to understand or value the public apart from such an ideal.¹ Put simply, to count as a public authority, such an authority must meet public criteria. However, because of confusion about what exactly constitutes the public, there has been an unfortunate tendency among some scholars and social movements to simply equate the public with the state. This paper will attempt to clarify what is meant by public sphere in order to elucidate its core meaning (i.e. the criteria that make something public), thereby showing that it is possible to expand public authority over matters of public interest without necessarily relying on state-based forms of authority and governance.

To advance this argument, I proceed in several steps. First, I examine the uses of the concepts of public and private in contemporary literature on global governance to show that its uses are ambiguous and not especially helpful for understanding the normative differences between new patterns of governance and authority. Second, I attempt to clarify this confusion over the public-private divide, by returning to the efforts of political theorists— particularly Hannah Arendt and Jurgen Habermas— to elaborate the meaning of the public sphere. Third, I challenge the notion that public sphere should be conceived of as a purely discursive realm and, incorporating the work of Nancy Fraser, suggest that a strong public sphere should translate deliberation into governance. Then, operating with a more robust account of what is meant by the public sphere, I argue that it is a mistake to assume that the state is congruent with public authority. Although I believe we ought to maximize public authority over issues of common concern— through the creation of public spaces of governance— we should not assume that this equates with state-based regulation. Instead, I argue for a more flexible and nuanced definition of public that incorporates inclusive and participatory governance structures of varying kinds— some state-based, some not.

Public and Private Authority: Evaluating Global Governance Literature

The multiple meanings of public

The term public has two main meanings, which are important to disentangle before proceeding. One meaning involves accessibility— the public is open— such that we speak of public places, public behavior, and publishing. The other meaning refers to general or common concerns— public health and public interest, for example (Starr 1989: 16). The first meaning refers to inputs and implies that something is public if it is accessible, if opinions are formed openly and inclusively. At the same time, even if decisions are made behind closed doors, we tend to think of areas of common concern as rightfully public. Thus, the second meaning of public refers to outputs and implies that if an issue is relevant to an entire political community or a significant part of it, then it is a public issue.² In other words, the second meaning constitutes the scope of the public domain or, said differently, it clarifies the boundary between what counts

¹ For example, Habermas (1974: 50) argues that one cannot separate the public sphere from the democratic reforms of the 18th century – this is when the concept of the public sphere fully emerged and the principle of public information took hold, making democratic control of the state possible.

² Whether an issue is considered relevant to a significant portion of the population is a matter of political contestation and not one that can be answer definitively within the context of this paper. Different societies, and even the same society at different times, define the boundaries of public and private differently. It was not until the 1980s, for example, that domestic violence emerged from the private realm of the household into the light of public discourse and action.

as public or private issue. This line is necessarily a site of political contestation and I will not address where the public-private boundary should fall within the context of this paper. Instead, I assume that processes of social and political engagement produce a general agreement about the scope of public issues.

Though public refers to both 1) the kind of issue being addressed and whether it is a common concern; and 2) the kinds of practices that constitute a public sphere of discourse and governance. I will focus on the second aspect of this formulation. Once an issue is generally agreed to be within the public domain, it is an open question as to what counts as a public deliberation and/or governance over that issue. Developing a satisfactory answer to this question is my current aim. Throughout the paper I use *public sphere* to refer to a realm of open, discursive deliberation and *public authority* to refer to the decisions, actions, and rules (i.e. governance) that emerges from such deliberation. Both of these are distinct from the *public domain*, which refers to whether an issue is considered common in the first place. The table below provides an overview of these distinctions, though I discuss the public sphere as well as public and private authority in detail later in the paper.

	Public	Private
Domain	An issue considered common and subject to open deliberation and governance, e.g. air pollution, defense.	An issue considered relevant only to a single person or a small group of people and not subject to public approval, e.g. musical tastes, religious beliefs.
Sphere	A discursive sphere that is inclusive, accessible and deliberative.	A discursive sphere that need not be inclusive, accessible or deliberative.
Authority	Decision-making and policy/rule implementation that is based upon and legitimated by the inclusive, accessible and deliberative public sphere.	Decision-making and policy/rule implementation that is not based upon or legitimated by an inclusive, accessible and deliberative sphere (though it may be legitimated by custom, expertise or other values).

To clarify, it is possible that an issue in the public domain could have private governance over it. It is equally possible than an issue properly considered private, is governed by a public authority. Both of these situations are problematic, though for different reasons. Ideally, issues in the public domain will be governed publicly and those in the private domain, governed privately. The question remains, though, what does it mean to have public authority or governance over a public issue? Does that entail state-based governance or can other social actors develop public governance structures? Although I ultimately argue for a flexible definition of the public that makes room for a wide variety of social actors, I begin by discussing current literature on global governance that essentially equates the public with the state.

The state as the public

Governance refers to the “constellation of authoritative rules, institutions, and practices by means of which any collectivity manages its affairs” (Ruggie 2004: 504).³ A brief review of the literature on emerging forms of global governance shows that though much of the debate about these trends is couched in the language of public and private, the criteria by which we might define those categories are rarely specified (e.g. Hall and Biersteker 2002). Though there seems to be something approaching a consensus that private forms of authority⁴ are emerging in the sphere of global governance, there is considerable confusion about what exactly constitutes public and private authority. Is the state synonymous with the public and transnational corporations with the private? Is global civil society part of the public or private sphere, or is it some combination of both? More broadly, what criteria do we use to distinguish between the public and the private?

The most common tendency in the literature on global governance is to equate the state with the public. In other words, the criteria used for determining if a form of governance is public is simply whether that authority is a state or, at least, state-based. For instance, although Lipschutz and Fogel have concerns about private authority and advocate for greater public accountability, they are somewhat ambiguous about what standards determine whether social actors or forms of governance count as public or private (2002).

No criteria are given to help us understand why we should think of different social actors and governance structures as public or private and this leads several important ambiguities. For example, should all states, even authoritarian ones, be considered public? To equate state with public does not give us any grounds for distinguishing between dramatically different governance concepts. Further, why are corporations and social movements—two ‘organizations’ that are quite distinct in both theory and practice—lumped together in the same category? Lipschutz and Fogel do argue that semi-private initiatives include either NGOs or a collection of NGOs, social groups and corporate representatives (such as the Forest Stewardship Council), but private initiatives solely involve corporate associations or individual companies (2002: 128-29). This argument seems to define civil society groups as closer to the public than corporate society groups. It remains unclear, however, on what grounds this distinction is made and, more broadly, what forms of social organizations or types of social actors constitute public or private authority.

There is a similar trend in the work of other governance scholars. For example, in Haufler’s work on international regimes and non-state actors, she maintains a problematic understanding of the difference between the public and the private (1993). Following, Krasner’s formulation, “regimes can be defined as sets of implicit and explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area” (Krasner 1983: 2). Understood in this way, Haufler argues that a number of non-state organizations (both corporations and non-corporate NGOs) have begun to engage in activities

³ This definition is intentionally broad. It can refer to a wide variety of practices that range in scale from the family to the global political economy. Although this generality does not help distinguish between different types of governance it is useful precisely because it establishes the scope of governance and its associated issues.

⁴ Authority means occupying a social location in which one can effectively make decisions over a given territory or issue area. This definition leaves open the question of whether that authority is public or private in nature, as well as the related question of whether that authority is viewed as legitimate.

that ought to be considered international regimes (1993). I do not contest her argument that non-state actors should at times be considered to function as regimes.

However, throughout the essay she describes these non-state actors as private and assumes that states are public. This distinction results from a lack of clarity about what actually constitutes public and private spheres of governance or forms of authority. Because of this confusion, it is much harder to answer questions she poses, such as “does it matter whether or not [regimes] are private or public?” (Haufler 1993: 109). I suspect that this difference is very important, but we cannot begin to answer it until we have a clearer understanding of what constitute public and private realms instead of assuming that the public is the state and the private is everything else.

Expanding the public beyond the state

Although some scholars within the global governance literature (e.g. Lipschutz and Fogel 2005. Haufler 1993) tend to essentially equate public and state, others seem willing to expand our account of the public sphere, such that any number of non-state actors— even actors referred to as private— are thought of as components of public. For example, in his article ‘Reconstituting the Global Public Domain,’ Ruggie argues that both transnational corporations and civil society organizations, along with states, constitute the public sphere. In his view, the global public domain (what I would call the global *public sphere and public authority*) refers to the arena in which social purposes and the roles of various social actors are “articulated, contested, and take shape as social facts” and is “an increasingly institutionalized arena of discourse, contestation and action concerning the production of global public goods, involving private as well as public actors” (2005: 504).⁵ As we will see, this definition of the public, which emphasizes inclusivity and deliberation, has a strong historical tradition within political theory. It also represents a significant and, in some respects, justified departure from traditional global governance literature in which the public domain and the state/interstate realm were essentially synonymous.

However, this approach also falls short. Reconstituting the global *public sphere* is not the most accurate way of understanding changes that are happening in the global political economy. Ruggie is certainly correct that private actors are asserting governance authority over issues of public significance. However, it is not clear that this is properly conceptualized simply as new actors operating within the global public sphere. As I will demonstrate shortly, a key component of the public sphere is that it is inclusive, transparent, and accountable; similarly, public authorities should govern on comparable bases. Given that private actors are not always inclusive, transparent, or accountable in the way that public institutions are expected to be, it should not be assumed *a priori* that they are part of the public domain.

Although it is certainly possible that non-state actors can be considered part of the public sphere or a location of public authority, it is not necessarily so. At the same time, the extent to which public authority entails only states limits the range of public issues to those viewed as important by governments (Ruggie 2005: 519). While Ruggie is correct that we ought to broaden our conception of the public, I argue that we need to think more carefully about the meaning of public and the conditions in which different kinds of social actors may be legitimately called public.

⁵ According to my formulation, discourse and contestation fit largely in the category of public sphere, while action and the provision of public goods more likely fall into the category of public authority.

What both of these approaches lack— one that equates the public with states and one that classifies all manner of non-state organizations that govern issues in the public domain as public authorities— is that they do not critically interrogate the meaning of the concepts public and private. Instead, they use the terms in distinct ways such that their real meanings are lost. This paper attempts to address this deficiency by linking literature in political theory about the public sphere with current research on emerging forms of global governance. Prior to addressing these historical conceptions of the public sphere, it is important to talk about contemporary uses of private, which also make consistent appearances in the global governance literature.

Private authority in global governance.

In many cases, the private is talked about as a movement toward privatization and away from the public. For many scholars, then, privatization is simply shifting authority from states to a wide variety of non-state actors. Private organizations “claim, explicitly and implicitly, to promote the public interest. They take on functions generally performed by government regulatory programs, and may change or even displace such programs” (Meidinger 2000: 3). Privatization refers to a withdrawal from open deliberation and/or from understanding a given range of issues as of common concern (Starr 1989: 17-18). However, in many cases private authority is emerging over issue areas that were not previously public because they were not governed at all (Ruggie 2005: 503); the behavior of transnational corporations is one such issue area in which forms of private governance have emerged, but is not really a form of privatization.

In the introduction to their edited volume *The Emergence of Private Authority in Global Governance*, Hall and Biersteker, acknowledge the ambiguity and inadequacy of the current usage of public and private authority and, yet, continue to fall into the same problematic schema. They state that the traditional understanding is that “states are both the source, and the exclusive location, of legitimate, public authority” (2002: 3). However, they are not satisfied with this view and seek to redefine the relationship.

“Being public does not, however, imply that a state or public institution must be involved, or be wielding authority... It does, however, imply that the social recognition of authority should be publically expressed. This opens the possibility for the emergence of *private*, non-state based, or non-state legitimated authority” (*ibid*: 5; emphasis added).

The authors are clearly uncomfortable with simply equating the state and the public, but still maintain that non-state based or legitimated authority is private, rather than simply non-state. It is noteworthy, for example, that the title of their book still speaks of “private authority” when they really mean non-state authority, which, according to my argumentation, may be public or private.

Although there are good reasons to be skeptical of private authority over issues of common concern (Lipschutz and Fogel 2002. Lipschutz 2005), public authority does not always entail state authority. “It is a critical question whether moving from public to private in the sense of state to non-state entails a movement in the other senses: from open to closed (in access to information) or from the whole to the part (particularly in the distribution of benefits)” (Starr 1989: 21; parentheses in original). The challenge is identifying both state and non-state forms of *public* authority. To do this, however, we first need a clearer understanding of what is meant by public in the first place. The next section seeks to elucidate the classic meaning of the public

sphere, setting the stage for a more nuanced discussion of public authority and its role in governance.

The Discursive Public Sphere: Access, Inclusion, and Deliberation

The public-private dichotomy has a long intellectual tradition within Western political theory, ranging from the Greeks to classical liberalism and its Marxist critics to contemporary feminist and postmodern scholarship (e.g. Aristotle's *Nicomachean Ethics*, Marx's *On The Jewish Question*, and Fraser's 'Rethinking the Public Sphere'). In this section, I focus on 20th century theorizing of the public sphere, in particular the work of Hannah Arendt and Jurgen Habermas. Both philosophers have advanced a prominent view of the public sphere that seems to constitute the basis for our popular understandings of the term. As a brief look at these scholars demonstrates, the public sphere denotes an arena of life in which all people are able to come together and deliberate openly and as equals about matters of common concern.

Throughout, I highlight three concepts that capture the essential meaning of the public sphere. The criteria that define the public sphere are inclusivity, accessibility, and deliberation, which I now define in turn.

- *Inclusivity*: All persons that are rightfully part of a political community⁶ are able to participate as equals in the public sphere by presenting information, expressing opinions and listening to the information and opinions of others.
- *Accessibility*: Information about matters of common concern (i.e. about issues in the public domain) should be freely and openly available to all persons; this includes the ability to obtain information about the activities of state, market, and civil society organizations operating in the public sphere, as well as the ability of citizens and citizen groups to put their own information and opinions into the public sphere
- *Deliberation*: People should be able to freely discuss ideas, policies, and actions, to openly critique the activities of others in the public domain, and to establish forums for the development of public opinion.

These criteria capture the vision of the public sphere as developed by Arendt and Habermas, a view that largely informs popular conceptions of the public sphere and the public in general. Though there are certainly important differences between these thinkers' models of public space (Benhabib 1992), for the purposes of this working paper I focus on their significant similarities.

In her seminal work, *The Human Condition*, Arendt places a high emphasis on an inclusive and deliberative sphere, speaking of "a way of life in which speech and only speech made sense and where the central concern of all citizens was to talk with each other" (1958: 27). In other words, the act of speaking and of listening, of debate and deliberation, are the activities of citizens in the public sphere. Following the Greeks, Arendt draws a sharp distinction between the private realm of the household, which is marked by necessity—the activities one must simply

⁶ The question of who is 'rightfully' part of the polis is, of course, a highly controversial issue. In contemporary politics, we see this question presented in debates about immigration, voting rights for felons and so on. At a theoretical level, who 'the people' are remains similarly contested. Should this be defined primarily by membership in a nation-state or an ethnic group? Or, perhaps, it should not be defined by territory at all, but by a principle of affectedness, such that anyone who is legitimately affected by a decision ought to have say in that decision. For the purposes of this essay, I remain agnostic on this question. Inclusivity simply demands that however we answer the question of "constituting the demos" (Goodin 2007), that all those who are part of the polis be able to participate in the deliberative public sphere as equals.

do to survive—and the public realm of political thought and action. “The distinction between a private and a public sphere of life corresponds to the household and the political realms” (*ibid*: 28).

An important component of Arendt’s vision of the public is that of equality— a real discussion of ideas requires that social inequalities not be allowed to taint the public sphere. The private realm of the household is the realm of necessity and could be marked by sharp inequalities. The public realm, however, was a realm of freedom in which people are equals, in the sense of non-domination— “a sphere where neither rule nor being ruled existed” (*ibid*: 33).⁷

Beyond equality and deliberation, Arendt emphasizes what I call access, by which she means that information in the public sphere must be available to all: “Everything that appears in public can be seen and heard by everybody and has the widest possible publicity” (*ibid*: 50). One cannot, therefore, have a public sphere in which information on matters of common concern is not available to all citizens. Moreover, one cannot speak of a public sphere in which some citizens are not able to present information that can then be made available to others. Indeed, for Arendt, privacy entails a lack of communication. “Men have become entirely private, that is, when they have been deprived of seeing and hearing others, of being seen and being heard by them” (*ibid*: 58). Ultimately, Arendt develops a vision of the public sphere that emphasizes deliberation among equals in a context of open information and communication.

Turning to Habermas, we see similar themes. The criteria of access, inclusion, and deliberation continue to define the public sphere. The public sphere is:

“...a realm of our social life in which something approaching public opinion can be formed. Access is guaranteed to all citizens... Citizens behave as a public body [distinct from business transactions or the government bureaucrats] when they confer in an unrestricted fashion...about matters of general interest” (Habermas 1974: 49).

In other words, private individuals come together to form a public body when they debate matters of common concern. The public *sphere* refers to the institutions— built through the participation of individuals— that make public information accessible and foster debate, such as newspapers, television and the Internet.

Having identified and defined the public sphere, Habermas suggests that it is no longer what it once was. In the classic liberal model, the public sphere is conceived as a medium by which private individuals form a collective body to communicate the interests of bourgeois society to the state (*ibid*: 53). Today though, in the context of welfare-state mass democracies, Habermas argues that the public sphere has been reduced to a conflict over resources between competing interests, rather than open debate about the common good. Accordingly, the ‘public sphere’ has lost much of its critical function. “At one time the process of making proceedings public was intended to subject persons or affairs to public reason, and to make political decisions subject to appeal before the court of public opinion. But often today the process of making public simply serves the arcane policies of special interests...” (Fraser 1990: 55).

⁷ It is a great irony, however, that propertied Greek men were able to participate in the public sphere only because “large groups of human beings – like women, slaves, children, laborers, noncitizen residents, and all non-Greeks – were excluded from it while they made possible through their labor for the daily necessities of life that ‘leisure for politics’ that the few enjoyed...” (Benhabib 1992: 75).

While the specifics of Habermas's account of the transformation of the bourgeois public sphere are unnecessary for the purposes of this essay,⁸ there is one noteworthy point that emerges from his discussion of the classic liberal model of the public sphere. For Habermas, as well as for Arendt, the public sphere is a discursive realm separate from authoritative governance (i.e. the state).

“Although state authority is so to speak the executor of the political public sphere, it is not part of it. To be sure, state authority is usually considered ‘public’ authority, but it derives its task of caring for the well-being of all citizens primarily from this aspect of the public sphere. Only when the exercise of political control is effectively subordinated to the democratic demand that information be accessible to the public, does the political public sphere win an institutionalized influence over the government...” (Habermas 1974: 49).

In other words, Habermas understands the public sphere to be distinct from the sphere of government— it *is* the sphere of nongovernmental deliberation and opinion-formation. Despite this sharp separation between the discursive activities of the public sphere and the governance functions of the state, both Arendt and Habermas share a vision of a public sphere that is highly participatory. The “emphasis on political participation and the widest reaching democratization of decision-making processes is one that Jurgen Habermas’s critical theory shares with the tradition usually referred to as that of republican or civic virtue (in which Arendt is typically included)” (Benhabib 1992: 86; parentheses added).

However, because of the sharp separation between the state’s governance function and the public sphere, their participatory politics tend to be circumscribed to deliberation to the exclusion of *decision-making*. Although there are some good reasons for this, the next section questions this definition and suggests that a more thorough definition relevant to contemporary governance issues includes both a deliberative and a governing component to the public sphere.

‘Strong Publics’⁹: Connecting Discourse and Governance

Having defined the public sphere as an inclusive, deliberative realm to which all have access, I suggest that these criteria should guide our thinking about public authority and public governance. However, prior to moving into this argument it is necessary to critically evaluate the Habermasian formulation of the public sphere. According to Habermas:

“...the public sphere connoted an ideal of unrestricted rational discussion of public matters. The discussion was to be open and accessible to all; merely private interests were to be inadmissible; inequalities of status were to be bracketed; and discussants were to deliberate as peers. The result of such discussion would be “public opinion” in the strong sense of a consensus about the common good (Fraser 1990: 59).

⁸ For a more detailed discussion of this transformation, see Habermas’s (1991) “The Structural Transformation of the Public Sphere.”

⁹ I am indebted to Nancy Fraser for this term and for her excellent critique of Habermas’s public sphere (Fraser 1990. Fraser 1995).

Of course, such an idealized sphere never really existed, as early republican governments were deeply premised on *exclusion* (of women and the poor, for example). These excluded groups also developed ‘publics’ of their own, through women’s clubs and movements, peasant associations, and labor organizations (*ibid*: 61). Fraser questions “the assumption that it is possible for interlocutors in a public sphere to bracket status differentials and to deliberate ‘as if’ they were social equals (*ibid*: 62).¹⁰ Ultimately, Fraser and other scholars have disputed the empirical reality that Habermas’s public sphere ever really did exist. Although this is no doubt an important argument— one that should lead us to ask serious question about the conditions in which a viable public sphere can actually exist— there is an additional problem with Habermas’s account on a theoretical level.

One of the key components of the Habermasian public sphere is that it is a purely deliberative realm, separate from the state and from governance functions in general. The public sphere denotes the “space in which citizens deliberate about their common affairs, hence, an institutionalized arena of discursive interaction” (*ibid*: 57). Although this deliberation may generate public opinion that informs state policy, the public sphere does not involve governance.

There are, no doubt, some good reasons for this sharp separation between the public sphere and the state. These non-governmental forums and associations are distinct from both state and market interactions and can be a source of criticism of both. The liberal public sphere is comprised of associations of persons— in neither purely economic nor administrative capacities— that deliberate and create public opinion. This public opinion, then, will ideally shape state decisions, but the independence of the public sphere from the state is a key component of its legitimacy (*ibid*: 75).

In other words, this separation of civil society from state functions is what lends an aura of legitimacy to deliberation and provides an independent forum from which criticism of governing institutions can be made. Further, there is a radically democratic component to this separation. As Fraser argues, Habermas’s conception of the public sphere is especially useful because it helps to distinguish between the “apparatuses of the state, on the one hand, and public arenas of citizen discourse and association, on the other” (*ibid*: 56). In other words, this distinction makes clear the state is not equivalent with ‘the people’— failure to understand this is one reason that socialist movements have tended towards statist authoritarianism, rather than participatory democracy (*ibid*: 56). As such, the liberal separation between the deliberative public sphere and the sphere of authoritative governance and decision-making does, in an important respect, bolster the legitimacy and power of the public sphere and its non-state associations.

In another respect, though, this sharp separation dramatically decreases the importance and power of the deliberative sphere, creating what Fraser calls ‘weak publics’— “publics whose deliberative practice consists exclusively in opinion-formation and does not also encompass decision-making” (*ibid*: 75). The benefits of a weak public are that its autonomy from decision-making activity may afford it a valuable critical perspective. However, this is a very limited view.

¹⁰ As Fraser notes, “In stratified societies, unequally empowered social groups tend to develop unequally valued cultural styles...” that result in “...the development of powerful informal pressures that marginalize the contributions of members of subordinate groups both in everyday life contexts and in official public spheres” (1990: 64). In doing so, she means to problematize the assumption that rough social equality is not a necessary precondition for political equality.

Although a weak public may offer a critical perspective, if it has no power to make decisions or its decisions do not translate into authoritative governance, then the importance of the critical perspective may be slight. Imagine, for example, a country that has a rich deliberative tradition and culture. Within the country there are a large number of diverse media outlets to which everyone has access and the media outlets include a range of ideological perspectives. In addition, it is not uncommon for citizens to gather to discuss matters of the day and there may even be institutionalized forums in which such debates occur. Now, operating next to this inclusive, accessible and deliberative public sphere is an authoritarian state; although it allows relatively free access to information and allows people to openly debate ideas, it maintains a monopoly on decision-making, which it does largely behind-closed-doors.¹¹ Thus, although people may participate in inclusive deliberation, the decisions that emerge will have no bearing on their actual lives as their ideas will not influence those who engage in the actual processes of governance. To say this country has a truly public sphere may not be inaccurate, but something important is lacking—it is, in Fraser’s language, a weak public, one where the deliberative and decision-making functions are sharply separated.

What, then, constitutes a strong public or a public sphere that combines deliberative and governance functions? Fraser suggests that a sovereign parliament could be considered a strong public because it encompasses both opinion-formation and decision-making (Fraser 1990: 75); although its inclusiveness and accessibility may be highly debatable. However, it may be more useful to think of non-state self-managed institutions, such as workplaces, child-care centers, and residential communities as strong publics: sites of both opinion-formation and decision-making. Further, participatory budgeting in Porto Alegre, Brazil, in which public forums have been established for citizens to *deliberate and decide* how the city budget ought to be spent and how social programs should be implemented, is an important contemporary example of a strong public sphere (see Baiocchi 2003. Branford and Kucinski 2003. Heller 2001).

However, even at sites of inclusive deliberation and decision-making, there are still questions about their public-private dimensions. Although self-managed institutions and participatory budgeting forums can be considered internally inclusive and participatory, such a model leaves open the relationship between these strong publics and “those external publics to which they might also be deemed accountable” (Fraser 1990: 76). Should citizens downstream from the worker-managed factory, for example, have a say in the factory’s operation and, if so, is a broader public sphere needed to accommodate all affected parties? What of unemployed persons who have a stake in the sorts of policies that a democratic labor union may seek to enact, but are not included in the deliberative structures of that union? These questions help elucidate an important reality: People who do not directly participate in a strong public may still be affected by it, and thus may “have a legitimate claim to a say, through some other (weaker or stronger) public sphere” (*ibid*: 76).¹² This line of argumentation suggests that there may be a role for both weak and strong public spheres and there are good reasons to think that strong public spheres will (and should) typically be held to account by other public spheres.

¹¹ Though it is by no means a perfect analogy, contemporary Iran is an example of a country with an active public sphere and a quasi-authoritarian governance structure. In this case, the public sphere’s power is dramatically limited by the authoritarian processes of decision-making and governance.

¹² Curiously, in Fraser’s later work on the public sphere (1995), she does not address the sharp separation between state (or, I prefer, governance) functions and civil society. Consequently, she did not develop a proposal about establishing ‘strong publics’ further.

In either case, a view of the public sphere that is based only on opinion-formation and not authoritative decision-making— that is a view of weak publics *as* the public— inhibits the development of forms of authority and accountability that motivate our conception of what makes something public in the first place. While open deliberation must certainly be a component of the public sphere, it neglects the role that the public sphere plays (or should play) in governance. In doing so, it dramatically limits the possibilities of democratic self-management by rendering the public sphere so weak that it loses its real force to shape decisions and outcomes. “The dominant normative conception of [global civil society] based on Habermasian communicative rationality, is profoundly inimical to actually existing politics” insofar as it fetishizes conversation and neglects action (Munck 2006: 331). In sum, I propose that we use an amended conception of the public sphere— one that includes decision-making as well as deliberation— to understand contemporary patterns of governance. The next section addresses the implications of this reevaluation and suggests that we should think of public as something broader and more fundamental than simply the apparatuses of the state.

Public Authority Beyond the State: Towards Inclusive, Transparent, and Participatory Governance

Public authority, typically equated with the state, is properly understood in relation to the public sphere. The public sphere is an inclusive, accessible, and deliberative realm. In its weak, though still important form, this is all it is. I argued in the last section that to think of the public sphere in purely deliberative terms is highly limiting and that, at least on some occasions, what is needed is a strong public sphere that combines deliberation and decision-making. The latter component— the governance function of the public sphere— is what constitutes public authority. In other words, an institution that has public authority has two components: 1) the capacity to make decisions and take action over a given territory or issue of common concern, and 2) authority emerges from an inclusive, accessible, and deliberative public to which it remains accountable. When the public sphere moves beyond talking and actually helps construct the society’s framework, parameters, and rules (when it acts to govern) this is the source of public authority.

It should be clear from this definition that public authority does not necessarily entail state-based forms of governance. Surely we cannot say that an authoritarian government with its guarded, unaccountable, and oppressive tendencies constitutes public authority— the legitimate governing component of the public sphere. Likewise, critiques of the World Trade Organization (WTO), World Bank, and International Monetary Fund— all state-based international organizations— make clear that they lack important features, such as transparency, inclusiveness, and participation that characterize the public realm (e.g. International Forum on Globalization 2002). It is noteworthy that although global justice movements tend to be deeply skeptical of private forms of authority, they are also strongly opposed to forms of authority typically thought of as public (e.g. the WTO). This is not an inconsistency on the part of these movements, but rather is symptomatic of the inadequacy of equating public with state. These movements tend to oppose forms of authority that are exclusionary, secretive, and unaccountable (to the publics over which they make decisions), whether those authorities are state or non-state. Conversely, it is possible that a non-state governance system could be more inclusive,

transparent, and participatory— in other words, public— than a state-based governance system like authoritarian government or international regime, such as the WTO.

Thus, we cannot assume that state-based governance is always truly public or that states necessarily constitute locations of public authority.¹³ Instead, public authority refers to an authority of any kind that is legitimized by the public sphere.¹⁴ That is, public authority emerges from and remains accountable to an inclusive, accessible, and deliberative public. Such authority can be exercised through the state, but it also could be exercised through other social institutions.

For example, a number of contemporary social movements have advanced a radically democratic politics that have disassociated the public from the state. Although many within the global justice movement tend to view the affirmative democratic state as a potentially workable form of governance to the extent that it is made less beholden to international capital, certain movements, such as the Zapatistas in Mexico, have chosen to pursue explicitly non-state strategies. Rather than seeking to gain control over state apparatuses, these social movements have sought to develop alternative economies and governance systems that exist outside of the state system (Hayden 2001. Marcos and Ponce de Leon 2001. Munoz Ramirez 2008).

Built upon a network of local villages and social institutes (along with international activist support), the Zapatistas have developed a system of schools, health care, food production, and trade within liberated territory in Chiapas. Beyond this, the Zapatista movement has developed a decentralized participatory governance system based upon village assemblies that guides both internal and external politics.¹⁵ What makes the Zapatistas an inspiration for so many around the world is that they are advancing an inclusive and participatory system of governance that seems more public and more democratic than a number of ‘democratic’ governments, including the Mexican state. At the core of this normative appeal is the notion that *public forms of governance*— those that are inclusive, transparent, deliberative, and participatory— *may not require, or even involve, government.*

In addition to the Zapatista movement, there is evidence that non-state forms of public authority are emerging from different social actors and over different issue areas. The Forest Stewardship Council (FSC) is a non-state governance system that has developed over global forestry. It is frequently praised as an inclusive, transparent, and deliberative governance body; one that meaningfully incorporates civil society and developing countries (Pattberg 2006: 582).¹⁶ The FSC’s General Assembly (GA) is a tripartite body with equal voting power between the economic, environmental, and social chambers. Further, there is roughly equal representation from the Global North and South in each chamber. The GA elects a nine-person board that reflects this tripartite structure (*ibid*: 583). Beyond this there are four regional offices that are

¹³ At the same time, we certainly cannot assume that all—or perhaps even many—non-state governance systems are forms of public, rather than private, authority.

¹⁴ According to this framework, any authority that emerges over an issue in the public domain and is not legitimized or accountable to an inclusive, accessible, and deliberative public sphere would be referred to as a private authority. From the standpoint of those who believe that the public domain should be governed by public authorities, such a private authority should be viewed as illegitimate.

¹⁵ The documentary *A Place Called Chiapas* features an excellent section on how Zapatista village representatives negotiated over a period of several weeks with Mexican state officials.

¹⁶ Pattberg refers to the FSC as an example of ‘private governance.’ Although there are good questions to ask about whether the FSC is adequately inclusive and empowering of traditionally marginalized groups, I believe he uses this terminology of private simply because it is non-state, rather than because he has a negative evaluation of the FSC’s governance practices.

better able to integrate local expertise and concerns. What emerges from this governance system is a way of certifying forests that, ideally, are managed sustainably with the approval of the indigenous communities that inhabit them, the businesses that benefit from them, and the

There are clearly important differences between these two examples. The Zapatista governance system emerged from a social movement involving open conflict between indigenous communities and the Mexican state. Part of the reason for this conflict has been that the Mexican state already viewed itself as having authority over Chiapas and that the Zapatistas positioned themselves as shifting that authority away from the state and toward indigenous governance systems. The FSC, on the other hand, emerged over an issue area, global forestry, that has not previously had a clear authority or governance system. Although the process of forming the FSC was still a source of contention between different groups, it emerged in a much more consensual fashion. Nonetheless, what both of these examples make clear is that to be public, any governance structures must embody principles of inclusion, transparency, deliberation, and participation.

Conclusion: Implications for Public Governance

My objective in this essay has been to disentangle the state from the public. The two concepts are distinct and should not be treated as though they are identical. At the same time, I do not mean to suggest that state can never be public. Nor do I mean to suggest that all non-state actors are, or are even capable of, exercising public authority. In fact, I think that in a variety of situations, the state may be the social institution most capable of becoming the location of public authority and a space for the exercise of public governance. It also seems likely that many non-state entities would generally exercise private forms of authority.

There are good reasons for thinking that a variety of non-state actors will have a more difficult time creating public governance structures. Transnational corporations, for example, frequently will not be the most likely candidates for exercising public authority, even though they clearly exercise authority over issues of common concern (i.e. the public domain). It is certainly possible that corporations can be involved in public forms of governance (as the discussion of the FSC above indicates). However, aspects of their traditional organization— a tendency to be hierarchically organized and required by law to maximize profits, for example— may complicate their ability to be genuinely inclusive, accessible, deliberative, and accountable to the broader publics (outside of their financial stakeholders) who are clearly implicated, for better or worse, in their operation. Similarly, certain non-corporate NGOs will also tend toward private forms of authority. Hierarchical labor unions or development organizations that are structurally accountable to Northern interests, rather than the communities in which they operate, are likely to have a difficult time measuring up on public criteria.

Thus, my claim is not that the state is never public and non-state organizations are always public. Rather, my claim is simply that the state is not always public and non-state organizations are not always private. In other words, *it is possible to have non-state forms of public authority and systems of public governance.*

This more flexible understanding adheres more accurately to the normative meaning of the public and, in doing so, sharpens our ability to distinguish and critique different forms of authority. Further, defining public more broadly provides an opening for civil society

organizations and social movements, businesses and labor organizations to create governance structures that are potentially public and legitimate. While civil society groups almost always want to influence discourse, they sometimes seek to gain authority and govern a given issue area (global forestry for the FSC) or territory (Chiapas for the Zapatistas). The more flexible understanding of public authority that I am advocating makes it theoretically possible for such initiatives to become legitimate public governance structures. This creates an opening for a wide variety of actors to participate in the creation of public forms of governance around issues of pressing concern.

For scholars and citizens alike, the task will be to evaluate these new forms of authority, which surely will emerge from a multiplicity of actors and take shape in diverse ways, to determine if they meet the criteria of public governance. Do they make information accessible and the governance processes transparent? Are they inclusive of all relevant (keeping in mind that this is itself a contentious issue) interests and communities? Do they foster active deliberation among these people and do they then effectively translate that deliberation into decisions? To the extent that one can answer these questions affirmatively, the authority in question should be considered public— whether it is a state or non-state entity. Those forms of authority that do not measure up— that exercise private authority over the public domain— should be looked on with suspicion; but so should those who cling to the notion that the state is exclusive location of public, democratic legitimacy.

A final note: It is probably best to understand public and private forms of authority on a continuum, rather than as dichotomous. Most contemporary governance structures will not fit neatly into either category, but will exhibit aspects of both. For those who believe that the public domain ought to be subject to debate within an active public sphere and governed by an accountable and participatory public authority, the aim should be to establish structure and processes that are *more* public, rather than waiting for structures that are perfectly so. Ultimately, I suggest that expanding and enriching public authority— an authority that can emerge from both state and non-state sources— over matters of common concern should be a central governance goal.

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