Transnational private governance between the logics of empowerment and control

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Abstract
Transnational private governance initiatives that address problems of social and environmental concern now pervade many sectors. In tackling distinct substantive problems, these programs have, however, prioritized different problem-oriented logics in their institutionalized rules and procedures. One is a “logic of control” that focuses on ameliorating environmental and social externalities by establishing strict and enforceable rules; another is a “logic of empowerment” that concentrates on remedying the exclusion of marginalized actors in the global economy. Examining certification programs in the areas of fair trade, organic agriculture, fisheries, and forest management, we assess the evolutionary effects of programs prioritizing one logic and then having to accommodate the other. The challenges programs face when balancing between the two logics, we argue, elucidate specific distributional consequences for wealth, power, and regulatory capabilities that private governance programs seek to overcome.

Keywords: certification, distributional impacts, environmental governance, private governance, social governance.

1. Introduction
Transnational private governance initiatives (hereafter private governance) that address environmental and social concerns are now prominent across economic sectors. They encourage corporations and producers to adopt responsible business practices, and they often include certification and product labels for signaling such improved business behavior to access potential market advantage. From resource management to industrial production processes (Bartley 2003), private governance has been championed to address critical challenges, including fisheries depletion (Gulbrandsen 2010), forest degradation (Meidinger 2006), climate change (Levin et al. 2009), biofuel and agricultural product sustainability (Partzsch 2011), and electronic waste recycling (Renckens 2015).

These initiatives share a common concern for the social domain. However, the diversity of problems of the social domain has engendered distinct problem-oriented logics (i.e. explanations for how institutions will solve problems) that shape actors’ ideas about how private governance initiatives ought to be organized. Far from converging towards a dominant institutional logic in an emerging field (Dingwerth & Pattberg 2009), we find that competing, problem-oriented logics affect the evolving rules and practices of private governance, a pattern consistent with recent work on institutional and organizational change (e.g. Schneiberg & Soule 2005; Lounsbury 2007).

From the many possible logics affecting private governance, we focus on two. Each, we show, has influenced the emergence and design of private certification institutions, and which, once institutionalized, has then shaped and constrained agent choices surrounding specific policy content. First, a “logic of control” emphasizes ameliorating
environmental and social externalities of corporate behavior. It advances the idea that certain beneficial activities
e.g. improved environmental performance) are generally costly to undertake and, hence, require institutions
capable of controlling behavior to ensure compliance. This logic encompasses a belief that without prescriptive rules,
compliance audits, and incentives for compliance, operators would be enticed to join certification programs and
then do nothing to change their behavior – leading to “green washing” and/or ineffectiveness. Second, a
“logic of empowerment” captures ideas about the exclusion of marginalized actors in the global economy.
It advances prescriptions for how institutions can improve the socio-economic situation of the direct targets of
private governance, for example, small farmers from the global South. The logic of empowerment then holds that
programs ought to help economically excluded and marginalized participants by giving them advice, finding ways
to enhance their market position, collaborating to improve management, and advocating for their interests on the
global stage.

While ideas about stakeholder participation as a means for empowerment relate to our second logic, we argue
that they are important to analyze separately. Indeed, we show how a focus on such stakeholder participation has
been adopted more pervasively as a means for seeking inclusion within private governance, both in programs that
started from a logic of control and from a logic of empowerment. This underscores a key point: the logics encompass
different ideas for how to solve problems within the social domain. This is important as we find that the logic a
program prioritizes in its initial design affects how that program evolves: programs that began by prioritizing
empowerment have faced increasing demands to institutionalize the logic of control, and vice versa. Hence, in ways
important for scholars and practitioners to understand, both the initial logic prioritized (i.e. ideas) and the
institutionalized rules the logic supports (i.e. a program’s rules and procedures) shape the way program agents
address specific policy choices as the program evolves. In this respect, our analysis identifies the consequences of
overlapping fields (Fligstein & McAdam 2012, pp. 9–13) where different ideas about the role of private governance
intermix and are contested. As separate fields of private governance across issue areas and sectors have begun to
merge (compare Bartley 2003; Bartley & Smith 2010), we observe the challenges programs have faced when
balancing between the two. By discussing the means by which private governance has attempted to overcome these
challenges, we elucidate their distributional consequences in terms of wealth (i.e. the distribution of aggregate,
accumulated wealth), power (i.e. the distribution of who exercises control over others), and regulatory capabilities
(i.e. the distribution of the potential to exert regulatory power), as specified by Cafaggi and Pistor (2012; 2015).

It lies beyond the scope of this article to propose an explanation for why one or another logic informed the design
of any given program. Our purpose is simply to identify these distinct logics and reveal why they are important. We
therefore encourage future research to explore the mechanisms by which programs experience pressure to accom-
modate one or the other logic. Many plausible mechanisms exist, including: changes in the macro-political mood
raising the salience of the problem one logic is expected to address (e.g. the growth hormone and Bovine Spongiform
Encephalopathy [BSE] crises in Europe that helped justify more stringent EU risk regulation following our logic of
control, see Vogel 2012, pp. 54–66; Mattli & Büthe 2005): learning processes, where information is exchanged among
program officials and stakeholders to create new understandings of how problems might be solved by following an
alternative logic (e.g. the emulation of the Fairtrade model by the Forest Stewardship Council [FSC], see Auld
2014a); or political contestation, where different participants in a program’s policy community seek to transform
rules to better fit the logic serving their organizational interests (Mattli & Büthe 2005; Auld 2014b).

To be clear, we are not arguing that the competing logics and the paths programs take to accommodate them are
the only factors that determine the distributional outcomes of private governance (see, Mattli & Büthe 2005).
Indeed, we document that exogenous political-economic conditions and the characteristics of the sectors in which
private governance develops interact with program rules to influence whether collective action problems or econ-
omies of scale preclude some actors from benefiting from private governance. Rather, our focus, consistent with Lall’s
(2014) analysis of how first-movers shape the winners and losers from financial and accounting standards, is to show
that examining the ideas our logics advance can both elucidate specific distributional consequences, and, as impor-
tantly, that these consequences can then change over time as programs are pressed to accommodate competing
logics.

The analysis builds from 15 years of research examining private governance. We draw on stakeholder interviews,
a review of primary documents, and a synthesis of findings from the research of others. The article focuses on private
governance in four issue areas: organic agriculture and fair trade, which illustrate an initial institutionalized priority for the logic of empowerment; and forestry and fisheries, which illustrate an initial institutionalized priority for the logic of control. Though the logics were largely derived inductively, the analysis draws insights from neo-institutionalism and work on participatory and empowerment evaluation to theoretically ground our observations.

The article proceeds in three parts. First, we define transnational private governance and outline its key features. Second, we describe the logics of control and empowerment. Third, we highlight two separate paths programs can travel – one from an emphasis on control to attention for empowerment and vice versa – while discussing both common and unique challenges to these paths and their distributional consequences.

2. Transnational private governance

Transnational private governance has emerged in the last two decades as both an alternative and complement to public regulation (Bartley 2003; Levin et al. 2009). One of the main characteristics of private, or non-state, governance is that the state is not directly involved in standard setting. It is private actors (e.g. non-governmental organizations [NGOs], corporations, or business associations) that set the rules. While hybrid configurations exist wherein the state helps set the rules – such as recent roundtable standard setting models for biofuels or water governance – in this article we focus on purely private governance arrangements (cf. Abbott & Snidal 2009). In these cases, the state does not – at least initially – require adherence to the privately developed rules. States, however, do play an important supporting role, as private rules are not developed in a vacuum; they emerge within a larger public regulatory and institutional context, including property and contract law. States can also be more directly involved through financial or in-kind support of private governance, through public procurement policies requiring certified products, or by having state-owned enterprises certified (Cashore 2002). A private standard setting initiative’s “transnational” character then derives from its functioning not being confined to the boundaries of one state’s territory, but rather to supply chains that operate across borders.

A further distinction involves the role of the market. One category, termed non-market private standards, is defined as “rule-making by an international nongovernmental organization that is viewed by public and private actors alike as the obvious forum for the issue in question; in other words, it is the focal institution” (Büthe & Mattli 2011, p. 29). The International Electrotechnical Commission (IEC) and the International Organization for Standardization (ISO) are two such organizations; for various reasons (e.g. formal recognition within trade agreements and market efficiencies from product harmonization), their standard setting power across a range of technical product standards is widely accepted. Distributional conflicts over which standard should be adopted by ISO and IEC do occur (Büthe & Mattli 2011); however, once adopted, compliance is often beneficial for actors. By contrast, market-based initiatives – which are the focus of this article – depend on market demand and company support for their survival and authority. This implies that competition can exist between various standard setting initiatives that employ different standards for similar products or production processes (Büthe & Mattli 2011, pp. 25–29).

Market-based initiatives are classified in various ways. Abbott and Snidal (2009) focus on the actors involved in standard setting and the stages of a regulatory governance process. Other analysts use the character of compliance incentives, enforcement mechanisms, and stakeholder involvement (Fransen & Kolk 2007; Fransen 2011). These characteristics help distinguish corporate or sectoral codes of conduct and environmental management systems from stricter third-party audited certification programs. Similarly, Potoski and Prakash (2009) focus on the stringency of the standard and enforcement mechanisms to differentiate between programs.

The initiatives we examine have evolved to become “complete” regimes (see Scott 2002); they include processes for rulemaking, implementation, compliance and enforcement, and sometimes adjudication (Auld 2014b). Although others have disaggregated private rulemakers to understand the actors and stakes involved in “stages” of a regulatory governance sequence (Büthe 2010, p. 315), we focus on how programs define the issue they develop standards for and the resulting consequences for governance design as a whole. This is important because different components of private governance, as complete regimes, can serve different functions depending on the logic at play. Hence, we use the term private governance, and not private regulation, because seeing standards, enforcement, and compliance through a regulatory lens already implies the ideas of control. Distinguishing between the logics of empowerment and control, we argue, helps to unpack the conflation of private governance and regulation for market-based initiatives addressing issues in the social domain.
3. Logics of control and empowerment

The problems addressed by private governance provide distinct normative underpinnings. We examine two such problems: overcoming marginalization of peripheral actors in the global economy; and ameliorating environmental and social harm resulting from capitalist industrialization and globalization. These normative ends justify programs being based on different logics. We define logics as explanations for how an institution is expected to solve an inter-subjectively defined problem. Narrower and more specific than institutional logics (Thornton et al. 2012), they are closest to instrument logics (i.e. the general norms that guide the approach taken to implementing policy goals, Howlett & Cashore 2009) and programmatic ideas (i.e. “elite prescriptions that enable politicians, corporate leaders, and other decision makers to chart a clear and specific course of action,” Campbell 2004, p. 94). They embody a causal theory of how procedural and substantive rules will lead to certain outcomes. Put differently, taking insights from practice and theory, logics prescribe a course of action to advance some end. The logics we examine focus on how private governance, through an initial problem definition, seeks to influence its “targets” – the producers or operators at the primary stage of production in a given supply chain.

We do not claim to have identified the only logics relevant to private governance,5 and the logics do not reflect all of the problems programs were pushed to address at their outsets. Institutionalization often narrows and simplifies issues akin to how the diverse grievances of a social movement can be narrowed by organizations that emerge from a movement (e.g. NGOs), or via policy responses adopted by targeted governments or corporations. We are interested in the logics of these institutionalized responses as, we suggest, the two logics identified have distributional implications for the activities and evolution of private governance, and that these issues are underexplored.

The logic of control is underpinned by neo-institutional theories that highlight problems of opportunism, free riding, and achieving collective action (Olson 1971; Williamson 1985; North 1990).4 This logic asserts that there are certain beneficial activities (e.g. improving corporate environmental and social performance) that are costly to undertake. Without rules to ensure these activities actually occur, compliance will be minimal. Control in this case encompasses several components: prescriptive rules, independent certification, accreditation, and product tracking. A focus on prescriptive rules emanates from a concern that without clear, non-discretionary requirements, operators that participate in private governance will not meet sustainability objectives. Independent certification is then performed to ensure that participants actually adhere to the rules and minimize shirking. There indeed exists an economic incentive for non-compliance: if all participants comply with the standard, it is beneficial for an individual company to avoid compliance costs while not jeopardizing business opportunities (cf. the Prisoners’ dilemma and cooperation problems) (Abbott & Snidal 2009; Potoski & Prakash 2009). Accreditation offers further control. Programs have created or contracted to external organizations to perform as arm’s length certifiers to assess applicants in accordance with the private governance standards. Tracking products along supply chains and percentage-base claims (i.e. rules for how much certified content a final product must contain to carry a program’s label) are a final control mechanism to advance credible claims.

The logic of empowerment, by contrast, identifies vast differences in the opportunities available to economic actors. Following longstanding concerns about the declining terms-of-trade for primary products in global trade (Bloch & Sapsford 2000), as well as about alternative, counter-hegemonic production practices, it is informed by an explicit aim to redistribute power, control, and resources to marginalized actors in global supply chains. Its solution is informed by participatory research and empowerment and participatory evaluation, which question the value of objective assessment by external actors as appropriate for advancing development (Rappaport 1987; Chambers 1994).3 It sees evaluation as an end in itself; a process whereby participation of those affected by the program creates knowledge, empowerment, and, ultimately, improvements in their situations (Korten 1980; Fetterman 1994; Zimmerman 1995; Jackson & Kassam 1998). Equally, it questions the need for and ability of external interventions that impose top-down ideas of how development or resource management ought to occur (Korten 1980; Fetterman 1994); it advocates rules and procedures for monitoring that are designed by and/or accountable to those that are involved in resource extraction (Ostrom 1990). Hence, rather than emphasizing formal institutions to check and verify compliance with pre-established prescriptive rules, this logic envisions a networked and relational approach to addressing problems in the production and distribution of goods and services.
Two variants of empowerment are relevant to certification. The first concerns redistribution. It is about giving greater power and resources to the “targets” of private governance to facilitate self-determination. The second concerns participation. This focuses on inclusion in decisionmaking processes, while not explicitly addressing redistribution or decentralized power to a program’s “targets.” We make this distinction clear because it may lead to confusion over how we have classified certification programs; indeed, empowerment through inclusion is more pervasive across certification programs, whereas the redistributive and power decentralization variant – which we focus on here – is more rare.

Identifying these logics is important as they reflect the priorities institutionalized in the early designs of private governance programs (Fig. 1). Programs tackling problems of the public domain confront institutional-design choices. It is the logic of these institutional designs that we must assess to understand the distributional consequences of private governance (see Lall 2014). Moreover, work tracing the history of certification programs has noted the increasing interactions among programs (Dingwerth & Pattberg 2009; Bartley & Smith 2010; Green 2013), while also clarifying their roots in different communities that often held distinct ideas of how best to address problems in the social domain (Bartley 2003). Figure 1 conceptualizes these empirical findings as they affect the relationship between the two logics. Typically, programs began by following one of the two logics more explicitly; they have since had to adapt to accommodate demands that the other logic also be addressed. These programs can, thus, be seen as following two evolutionary paths: an “empower then control” path (pathway 1), and a “control then empower” path (pathway 2).

It is beyond the scope of this article to trace the origins of the logics. The analysis that follows instead starts from the empirical observation that private governance has evolved to face pressure to accommodate both the logics of control and empowerment. In turn, we argue, that each of the logics, and their subsequent intermixing, have distinct distributional implications.

Figure 1  Contested logics in the evolution of private governance.
4. Evolutionary paths and distributional implications

There are both distinct and common challenges programs face along the two paths. This section reviews these challenges, focusing on their distributional implications for wealth, power, and regulatory capability, and how programs have sought to overcome them.

4.1. Pathway one: Control then empower

For programs that follow the “control then empower” path, the initial concern is developing institutions to ensure credible and rigorous claims to distinguish themselves from other types of corporate social responsibility (CSR) initiatives that lack enforceable rules for participants (Auld et al. 2008). When these programs also seek legitimacy by focusing on empowerment, they confront the challenge of not undermining established mechanisms for control. On this “control then empower” path, the self-selection problem is key: only those companies and/or operators that practice at a relatively high level tend to participate because of the costs associated with meeting the high standards of control, both for auditing and adjusting actual practices. Hence, most efforts to make these programs’ systems of control accessible for various marginalized actors focus on challenges relating to producer’s size, geographic location, and limited expertise or knowledge. Experiences of the forest and fisheries certification fields capture these dynamics well.

4.1.1. Size discrimination – enhancing participation of small operators

Research notes that the product-tracking rules that follow the logic of control favor large and vertically integrated firms. Tracking requirements for forest certification have meant that companies with processing facilities and forestlands have been better positioned to certify (Cashore et al. 2004). A related difficulty is associated with economies of scale. The reduced unit costs of audits that result from large ownership create potentially huge disadvantages for small operators (Haener & Luckert 1998; Ponte 2008; Ebeling & Yasué 2009). Size discrimination is also a problem because the buyers seeking to source certified products often want large volumes, not the small quantities available from smaller operators (Klooster 2005).

Several programs have sought to overcome these facets of size discrimination. The FSC learned from the Rainforest Alliance’s Smartwood program to quickly introduce various mechanisms to address problems of small owners. These include procedures for group certification (i.e. where separate landowners are certified together to reduce the per-owner costs of being audited) and resource manager certification (i.e. where a consultant is certified for the management services he or she provides to forest owners) (Morris & Dunne 2004). The Marine Stewardship Council (MSC) has also developed an approach to assess small-scale, data-deficient fisheries that would otherwise be ineligible because of the program’s requirements for scientific data on a fishery’s track record and current status. In 2007, the MSC began a pilot project to provide these fisheries better access to the program (Marine Stewardship Council 2007b), and while some fisheries have enrolled, this remains a problem. Opening up programs to smaller producers, thus, intends to overcome exclusion resulting from the original program design, while less intensive auditing, fewer data requirements, and cost dissemination are ways to empower more marginalized producers and adhere to principles of fairness and equal access, while, nonetheless, continuing to prioritize control and consistency.

4.1.2. Spatial discrimination – enhancing participation of operators in developing countries

Although within countries there is considerable variation in the capacities of operators to participate in private governance, existing trends in uptake highlight that operators from developing countries face greater barriers to participation. Several authors refer to the high direct costs of auditing and certification as the main impediments to greater uptake in the global South (Thornber et al. 1999; Morris & Dunne 2004; Vandergeest 2007; Ponte 2008; Ebeling & Yasué 2009). Verification or auditing of compliance can be expensive, as it involves field visits by experts, significant paper work, and follow-up to ensure practices continue. But there are other challenges too.

First, there are policy issues. Those operators that must perform to a certain level to adhere to domestic law will find participating in certification, all else equal, easier than operators practicing in areas where laws are weak, or exist but are not enforced. Furthermore, the presence of stronger institutions (e.g. relating to land tenure or fishing quota security) also increases the potential of certification. For instance, Ebeling and Yasué (2009) compared forest certification in Bolivia and Ecuador to find that stronger government enforcement of forestry regulations,
compatibility of domestic forestry laws with certification requirements, and tax benefits to certified producers increase the likelihood of companies seeking certification.

Second, there are barriers associated with limited technical knowledge about product qualities, limited connection to market channels (particularly accessing international markets), limited marketing expertise, and poor infrastructure. Patteberg (2006), for example, provides two reasons why certifying tropical forests is more expensive than temperate or boreal forests: tropical forests are more complex and we have limited technical knowledge of how to manage them. In both instances, compliance costs increase as certification requires more preparation and time. Furthermore, poor infrastructure can inhibit smooth tracking of certified products and impose extra costs (Cashore et al. 2006). Costs again rise when companies need to establish relationships with new suppliers that can meet private governance standards (Morris & Dunne 2004). Finally, private governance programs may also be less well resourced to certify in these parts of the world. A lack of accredited auditors in the global South can lead to costly delays in the certification process, whereas competition between multiple auditors is expected to reduce costs (Morris & Dunne 2004; Ponte 2008).

A key concern with the limited uptake in the global South is that certification might become a non-tariff trade barrier (Patteberg 2006; Delzeit & Holm-Müller 2009). If retailers in the North pledge to sell mainly or only certified products and these products are sourced relatively less from countries of the global South, this may prevent poorer producers from accessing these markets. Certification might, thus, make it harder for producers in certain countries to access global markets (Fuchs et al. 2009).

Private governance systems have adopted several strategies to overcome the challenges operators in these countries face. Many programs have procedures for tailoring global principles and criteria to the social, political, and ecological conditions of a region. The FSC does this by delegating standards setting work to national initiatives or, when these standards are not yet in place, letting accredited auditors develop generic standards for a region. Similarly, the MSC gives the auditor control over this localization process (Gulbrandsen 2010). The MSC also launched its Developing World Program, an initiative designed to get more stakeholders from developing countries involved in and aware of the MSC, and ensure the MSC standard remains relevant to these fisheries (Marine Stewardship Council 2007a, 2008). Outside the programs there have been additional attempts by foundations and development assistance agencies to provide funds to increase participation in certain countries (Klooster 2006).

4.1.3. Distributional implications

The initial choice of programs to focus on the logic of control has direct implications for the distribution of power, wealth, and regulatory capability; a program’s efforts to accommodate the logic of empowerment affect these distributional implications as well (Table 1).

The imposition of strict and prescriptive rules, both regarding substantive aspects of production processes and auditing, generates a clear distinction between regulators and regulatory targets, as those in charge of making the rules have larger regulatory capability and exert power over those that must follow the rules. Similarly, it creates a

Table 1 Distributional implications of the “control then empower” path

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<tr>
<th>Distributional Effect</th>
<th>Issue at Stake</th>
<th>Institutional Response</th>
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<tbody>
<tr>
<td>Wealth</td>
<td>Costly verification; preferential market access for large and vertically integrated firms, producers from the global North, and more resourceful producers</td>
<td>Group certification; resource managers certification; funding to increase participation of less resourceful producers</td>
</tr>
<tr>
<td>Power</td>
<td>Prescriptive rules and high substantive production requirements; strict auditing procedures; self-selection of high-level performers</td>
<td>More lenient requirements in terms of auditing or scientific data availability; awareness raising programs in developing countries</td>
</tr>
<tr>
<td>Regulatory Capability</td>
<td>Centralization of standard setting</td>
<td>Adaptation of standards to local conditions by delegation of standard setting to national initiatives, or larger control authority for auditors</td>
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</table>
clear distinction between regulators, on the one hand, and firms along the supply chain that decide to participate and outside audiences that evaluate the program’s legitimacy and authority, on the other (Cashore 2002). Furthermore, an initial focus on control also pits regulatory targets against each other in terms of wealth distribution, as some producers will have easier access to certification because of organizational characteristics or resource availability. The extension of the logic of control to include the logic of empowerment can, thus, affect wealth distribution when the inclusion of more marginalized producers and firms leads to larger market access, the potential availability of price premiums, and learning processes. Imposing fewer requirements in terms of auditing or scientific data availability also loosens the forceful imposition of rigid rules and, as such, mitigates power imbalances between regulators and regulatory targets.

However, more flexible implementation of rules does not necessarily lead to more regulatory capability for the newly included. Even when rules are specifically tailored to local conditions, increased regulatory capability is not assured. A flexible interpretation of the rules by auditors still places regulatory power in the hands of outsiders, while regulatory targets merely undergo the auditing process. Only when standard setting itself is delegated to the local level (as done by the FSC) might regulatory capability actually be increased, albeit within the confines of the overall (global) program. As we will see in the section on common challenges, private governance systems have adopted other institutional solutions to address this specific challenge.

4.2. Pathway two: Empower then control

Programs following the “empower then control” path aim initially to improve the situation of the most marginalized of the world’s producers and/or workers through empowerment that redistributes wealth. When these programs begin to confront pressure to ensure more consistency and control, the dilemma is ensuring this does not undermine efforts to advance empowerment. This section explores this dilemma, drawing on organic and fair trade agriculture as cases; it identifies both the distributional implications implied by the initial logic of empowerment and those associated with accommodating the logic of control.

4.2.1. Controlling to empower – enhancing market uptake, but at what cost

The most notable tension facing programs on this path is the strong force of neoliberal market norms, as they conflict with the logic of empowerment followed in the hopes of helping marginalized economic actors. These programs attempt to overcome vested power relations in supply chains by creating knowledge networks, cutting out middlemen, and establishing direct and long-term connections between producers and consumers, thereby relocating the creation of added value (Langman 1992; Tallontire 2000; Raynolds 2002, 2009; Jaffee 2007; Schmid 2007). At the same time, they attempt to address traditional economic concerns of efficiency and productivity (Le Mare 2008; Vieira & Maia 2009).

Quality conventions are one constraint that programs have had to address. They have done so by fostering capacity and creating control mechanisms to ensure consistency of quality among products so as to meet certain market standards. Furthermore, relating back to the concerns about size discrimination noted above, with Fairtrade there are worries that courting larger retailers to license the logo, although generating greater demand, can mean these companies have undue influence over the direction and focus of Fairtrade, moving it away from its original aims (Bacon 2010). Indeed, courting large-scale buyers has been one of the most controversial issues confronting many programs, but most notably Fairtrade and organics. Low and Davenport (2006) argue that when large retailers become the main channels for these products an “assimilation” discourse replaces Fairtrade’s original “alternative commercialization” discourse: such products remain a niche market with “a limited amount of shelf space” while having to compete with regular brands in the same store (Low & Davenport 2006, p. 322).

Programs have also adopted institutional and procedural changes in response to increasing “logic of control” pressures. The fact that in 1997 independent fair trade organizations formed Fairtrade Labelling Organizations International (now Fairtrade International, or FLO) – as a means to harmonize fair trade standards and monitoring approaches across countries – can be considered an institutional response to such pressures. Furthermore, with FLO, certification was initially an in-house process and involved both an assessment and a consultation about how to improve practices (Fairtrade Labelling Organizations International 1999; Courville 2003; Slob & Oldenziel 2003). Pressures for consistency across assessments and credibility to outside observers eventually led the program in 2002 to create an independent certification committee comprising representatives from producers, traders, and national
initiatives that would make certification decisions (Zonneveld 2003). Then, in September 2003, FLO delegated certification to an independent legal entity – FL
cert GmbH (Ltd) (Fairtrade Labelling Organizations International 2003) – explaining that the move would increase the program’s credibility and protect it from liabilities associated with the commercial activities of certification. The program also sought to adhere to international norms for standard setting and certification organizations, such as those contained in the ISO Guide 65 that advises against performing assessments and offering advice simultaneously, viewing this as a conflict of interest possibly undermining the credibility of the assessment (Mutersbaugh 2005). As a result, following the creation of FLO-Cert, producer support evolved into a separate function; FLO’s producer services and relations unit formed in 2004 (Auld 2011).

However, rather than develop an accreditation body for overseeing outside auditors – a common practice among private governance systems – FLO chose to develop a single certifier. It did this partly because of its aim to serve the world’s most marginalized producers; FLO officials explained that this meant few commercial certifiers would be interested in accrediting with the program, because of the market’s small size (Auld 2014b).

The move towards certification and accreditation is also apparent for organic agriculture. The International Federation of Organic Agriculture Movements (IFOAM), founded in 1972 by organizations from the United States, France, the United Kingdom, Sweden, and South Africa, aimed not to control how organics was practiced; rather, it sought to empower growers by creating a worldwide network for information exchange on the principles and practices of this alternative cultivation process. Inspections were initially used as a tool for producer associations to offer members technical assistance and improve practices (Langman 1992; Geier 1999).

Demands for control, however, soon took hold as concerns over consistency among the practices of different organic producers arose and as professional certification organizations became engaged, some of which were not trusted by the organic movement (Westermayer & Geier 2003). In the late 1980s, IFOAM began work on an accreditation system, which became an independent organization – International Organic Accreditation Service – in 1997 (International Organic Accreditation Service 2006). In this way, the organization moved to account more for the logic of control.

4.2.2. Distributional Implications
Programs that initially prioritize empowerment inherently focus their attention on the redistribution of wealth by devising alternative ways of playing the market, while also addressing power imbalances in the supply chain. Moving to introduce control then has particular distributional consequences (Table 2).

The key concern of the “empower then control” path is whether the actions to increase access to mainstream market channels (e.g. adhering to quality and efficiency norms) will undermine the original logic of these programs by placing undue pressure on the operators they seek to help. Even though their initial focus is on wealth redistribution and overcoming power differentials, the impact of stricter control might indeed lead to new power imbalances. Certain actors in the supply chain – in particular large retailers – regain power, while “empower then control” programs were initially established to counter the power of such vested interests. Furthermore, a larger focus on control takes away regulatory capabilities of program regulators, as certain governance tasks, such as auditing and accreditation, are placed at arm’s length or outsourced, undermining the ideals of participatory and empowerment evaluation. This can mean that standards for these processes, which are set by outsiders (e.g. by ISO), become an

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<tr>
<td>Wealth</td>
<td>Niche market support; focus on learning and equity</td>
<td>Introducing market liberal efficiency and quality norms and control mechanisms; opening up to large-scale buyers</td>
</tr>
<tr>
<td>Power</td>
<td>Avoidance of vested power positions in the supply chain, such as the strong position of retailers and middlemen</td>
<td>Ensuring access to mainstream market channels</td>
</tr>
<tr>
<td>Regulatory Capability</td>
<td>Concentration of regulatory and governance tasks</td>
<td>Separation between substantive standard setting, auditing and accreditation functions</td>
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exclusive part of the entire certification process. Moreover, regulatory targets do not necessarily gain regulatory capabilities either. While initially the focus is on learning and capacity building, the shift to stricter control implies that regulators need to develop more concrete and verifiable substantive rules to assess production processes. Whether or not regulatory targets are included in the process of developing those rules will impact their regulatory capability, which is an issue common to both pathways discussed in the next section.

4.3. Different pathways, common challenges

Private governance programs face two common problems that have consequences for distributional effects (Table 3).

4.3.1. Improving the benefits for participants

For all programs, to different degrees, increasing the benefits for participants is critical. Market and societal pressures are key factors in providing either positive incentives, such as price premiums or market access, or negative incentives, such as lost reputation or cancelled contracts.

However, the economic effects of certification are not always clear. Research on impacts finds tangible benefits for participation, such as improved pay for workers, better conditions for work, improved community infrastructure, better legal compliance, and others (Newsom & Hewitt 2005; Jaffee 2007; Bacon et al. 2008; Le Mare 2008; Sustainable Commodities Initiative & Commodity Support Network 2008). However, several negative impacts are also identified. Research on the forest sector notes industry concerns that the increased costs for social benefits are not offset by equivalent economic benefits from certification (Cashore et al. 2006). This work also notes that, because of the emphasis on a more ecosystem-based approach to resource management, overall timber production has declined as a result of reduced hectares available for production. Other critics refer to uncertainty about an increase in income at the community level because of the above-mentioned high costs of certification and the uncertainty of price premiums (e.g. Ponte 2008; Araujo et al. 2009). They also warn of an uneven distribution of these premium benefits, which would accrue not to local producers, but rather to players higher up in the supply chain (Bass et al. 2001; Daviron & Ponte 2005). Such a concern over price premiums is not limited to those programs that followed the "control then empower" path; it is also a concern for programs on the "empower then control" path which were first established to address economic marginalization. Others have argued that the higher-than-conventional prices are not necessarily sufficient to increase the quality of the lives of marginalized producers (Fridell 2006; Le Mare 2008). Fridell (2006), for instance, discusses the arbitrary limit set on the Fairtrade price paid to coffee growers, noting that although it is higher than conventional commodity rates, it is not necessarily sufficient to better the lives of marginalized growers. The Fairtrade price has also not risen commensurate with inflation, an issue that led to considerable debate within FLO and eventual reforms, including a price rise (Bacon et al. 2008; Bacon 2010).

These uneven and uncertain economic effects put into question the potential of private governance systems to improve wealth distribution, independent of the path taken. As these programs' functioning is inherently linked to the logic of the market, they remain dependent on uptake in the supply chain and customer support to address both aspects of control and empowerment. Such dependence on market forces shows the potential limits of the actions such programs can take to influence wealth distributional effects.

<p>| Table 3 Common distributional challenges |</p>
<table>
<thead>
<tr>
<th>Distributional Effect</th>
<th>Issue at Stake</th>
<th>Institutional Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wealth</td>
<td>Uncertain economic benefits because of price premiums being too low or stuck in the middle of the supply chain; limited production capacity as a result of strict production rules</td>
<td>Improving supply chain uptake and customer support; increasing price premiums</td>
</tr>
<tr>
<td>Power</td>
<td>Established positions of internal dominance; founder inertia</td>
<td>Governance reforms to overcome the dominance of specific interests, and to separate the operation of the program from the founders' interests</td>
</tr>
<tr>
<td>Regulatory Capability</td>
<td>Lack of inclusion of stakeholders in decisionmaking processes undermining democratic and inclusive character</td>
<td>Tripartite representation; producer participation; engagement of stakeholders as policy participants or policy advocates</td>
</tr>
</tbody>
</table>
4.3.2. Governance – inclusiveness of decisionmaking processes

Transnational private governance, as standard setting institutions, need to consider how different stakeholders will be included in the decisionmaking process, either as policy participants (i.e., they have a formal vote over policy) or as policy advocates (i.e., they lobby for policy choices, but have no vote). Considering these programs are often viewed as complements (and even alternatives) to public policy, they have had to adjust and evolve to meet changing and growing expectations around their democratic and inclusive character.

This focus on inclusive decisionmaking highlights a different interpretation of empowerment than the one thus far discussed. As noted above, empowerment can refer to the inclusion of marginalized stakeholders in decisionmaking processes. Such inclusion could result in an increase of the regulatory capability of marginalized actors, and could, thus, be in addition to wealth-distribution effects we have noted. Many programs have confronted pressure to increase stakeholder involvement, yet as we will explain, depending on their starting points they have addressed such challenges in different ways and with varying effects on actors’ regulatory capabilities and the distribution of power.

For the FSC, inclusiveness and stakeholder engagement have been long standing priorities. The program follows a “tripartite” or “corporatist” approach to policymaking in which economic, social, and environmental actors each share one third of the votes at the global level (Tollefson et al. 2008). Each chamber is also divided equally among organizations from the global South and North. While this appears to indicate a top-down approach, the FSC’s General Assembly sets the overall direction, but, as mentioned above, specific rules are developed through bottom-up national or subnational processes, themselves mirroring, but sometimes extending, the tripartite structure. While this corporatist approach describes formalized policymaking, the broader network of actors is more diffuse. Most members of the network have either chosen not to participate in formal decisions (especially businesses) or are forbidden to do so (such as government actors as regulators). Hence, in practice, a relatively narrow set of players decides the policies, which affects whether, when, and how the vast majority of policy advocates maintain affiliation in the network.

Several authors have noted positive effects of the FSC’s tripartite structure. The program is seen to increase the inclusiveness of forest policy networks, induce larger deliberation among parties, and rebalance “power relations away from business-industry clientelist networks to more pluralistic arrangements” (Cashore et al. 2006, p. 578; Tollefson et al. 2008). Pattberg (2006) argues along the same lines that the network structure of the FSC, with its international secretariat, regional offices, and national working groups, leads to knowledge diffusion and an empowerment of Southern stakeholders as the latter’s voice is heard through the national and local adaptation of the international principles and criteria. Recent changes to rules about standard setting and certification have further reinforced the program’s efforts to use its stakeholder focus as a key facet of its legitimation strategy (Auld et al. 2009). Yet further reforms have still been called for, particularly with the dispute resolution process and better measures to ensure the Board is accountable to the membership (Tollefson et al. 2008).

Contrary to the FSC, the MSC arguably emerged as a “clientelist” network, where clientelist denotes networks that are linked to (the interests of) specific organizations. The MSC had strong initial ties to its two founders: the World Wide Fund for Nature (WWF) and Unilever. These ties were soon severed, but the program still retained a more centralized governance structure, which envisions the role of stakeholders more as policy advocates that provide technical advice and information (Auld & Gulbrandsen 2010). It has a Technical Advisory Board and a Stakeholder Council that exist to inform the decisions of the Board of Trustees, but it lacks the decentralized processes for deliberating standards development that the FSC adopted that is separate from the auditing process. Although moving beyond its clientelist origins, the MSC still remains less open to the network of policy advocates that surrounds it, which comprises various fisheries-focused organizations pursuing their own activities on fisheries management issues (Tollefson et al. 2008; Auld 2014b). The MSC, choosing to eschew a membership model and taking a more centralized and technically driven approach to standards setting, has confronted even more demands for governance reforms (Gulbrandsen 2010). For instance, Vandergeest (2007) argues that local communities have generally not been engaged in certification networks with respect to setting, monitoring, or enforcing standards, thereby reinforcing global inequities. This exclusion, he argues, is linked to the technical nature of the standards that are based on models of Western scientific knowledge (see also Bass et al. 2001; Ponte 2008).

The FLO has also faced pressure to transform its governance structure. The program’s initial governance structure came about mostly because it formed to coordinate existing national labeling initiatives (e.g., the various...
Max Havelaar and Transfair initiatives), which meant open membership was not initially considered. The national labeling initiatives were the key policy participants in the network and only they were granted voting rights. Fair Trade producers were given a voice through regional producer assemblies and the biennial Fair Trade forum (Slob & Oldenziel 2003; Zonneveld 2003). However, pressure to change soon arose; by 1999, the Producers’ Assembly was lobbying for voting rights (Rice & McLean 1999). It then took FLO seven years to change its constitution, and in May 2007, membership was granted to three producer networks: the African Fair Trade Network; the Coordination of Fairtrade Latin America and the Caribbean; and the Network of Asian Producers (Fairtrade Labelling Organizations International 2007). This reflects a shift to include important policy advocates as more direct policy participants.

Making stakeholders direct participants in rulemaking is arguably the most effective way to increase their regulatory capability; however, all of the private governance programs discussed above have had difficulty tackling this challenge. The participation of more stakeholders with varying interests can threaten internal cohesion and established positions of internal dominance (Auld 2014b). Reflecting the longstanding difficulty of bringing together a cohesive perspective, as of September 2011, the US national Fair Trade labeling initiative left FLO to take its own approach. This in part had to do with Fair Trade USA disagreeing with other FLO members about the need to extend coffee certification to plantations; concerns over the cost of FLO membership fees was another consideration (Fair Trade USA 2011a,b). These challenges also speak to the issues programs on both paths face in trying to avoid entrenching the interests of program founders.

5. Conclusions

We have discussed two problem-oriented logics that serve as the foundation for the legitimacy of private governance programs. The “logic of control” focuses on ameliorating environmental and social externalities of corporate behavior and asserts that because such beneficial behavior is costly to undertake, controlling institutions are needed to ensure compliance. The “logic of empowerment” addresses economic marginalization of peripheral actors in the global economy and underscores that specific rules are needed to ensure that these actors gain from participating in private governance. Following the empirical observation that the communities developing disparate private governance programs are increasingly entwined (compare Bartley 2003; Bartley & Smith 2010), we have argued that programs now face heightened pressures to accommodate both logics. Indeed, in contrast to Dingwerth and Pattberg (2009, p. 708) that identify “commonly accepted core norms” among the key players in an emerging organizational field of transnational rulemakers, our analysis uncovers extant, contested logics that underpin the institutional design choices of private governance. Despite possible isomorphic pressures, the different pathways programs take encompass different challenges.

Discussing common and path-dependent challenges, we used Cafaggi and Pistor’s (2012; 2015) ideas of wealth, power, and regulatory capability to identify various distributional effects. Wealth distribution is an inherent facet of programs that focus on empowerment; for the “control then empower” path it is relevant for efforts addressing size and geographic discrimination. However, private governance programs are not always able to steer these wealth distributional effects, as the economic impacts of their interventions are often uncertain. Furthermore, while the inclusion of marginalized actors can affect wealth distribution, this does not imply a concurrent improvement in the distribution of power or regulatory capability.

Power-distributional effects, we have argued, are an inherent characteristic of private governance when compared to other CSR initiatives as enforceable rules with third party verification are imposed on economic actors. However, we have also identified new emerging power dynamics when programs travel along their paths to accommodate both logics. On the “control then empower” path, for example, we have seen that the inclusion of marginalized producers might result in increased dependency from foreign capital when the costs of certification are considered a major barrier. On the “empower then control” path, the increased focus on product quality and the role of large retailers can give increased power to players higher up the supply chain (cf. De Schutter Forthcoming).

With regulatory capabilities, we identified several instances in which private governance influences their distribution. One of the main ways in which programs on both paths have addressed this issue is through a focus on which actors to include in the decisionmaking process. While more stakeholder involvement would imply a larger democratic character, regulatory capabilities are not necessarily increased when regulatory authority is not delegated to the local level.
Finally, our paper also points to the need for further research on the effects of competing problem-oriented logics on the evolution of transnational private governance and resulting distributional consequences. The four initiatives examined arose from different groups of founders and came to embody one or the other of the logics; they have subsequently faced pressures to accommodate both logics as separate fields have intertwined. Given this, we posit that newly emerging programs, because of the experience of the early programs, will more immediately feel pressure to address both logics at the stage of the organizational development/emergence, even if initial issue framing or problem definitions still create certain specific path-dependent consequences linked to one of the two identified logics. This difference in the initial conditions programs will face demands research attention to understand the consequences for the operation of private governance initiatives and the interactions of these initiatives in an increasingly crowded field.

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Notes

1 Fligstein and McAdam (2012) define strategic action fields as: “a constructed mesolevel social order in which actors (who can be individual or collective) are attuned to and interact with one another on the basis of shared (which is not to say consensual) understandings about the purpose of the field, relationships to others in the field (including who has power and why), and the rules governing legitimate action in the field.” (p. 9)

2 We use “fair trade” to capture general fairness issues in international trade. “Fair Trade” connotes the Fair Trade movement, which is based on a definition of fair trade delineated in 2001 by the Fairtrade Labeling Organizations International (FLO), the International Fair Trade Association (now the World Fair Trade Organization, WFTO), the Network of European Worldshops, and the European Fair Trade Association (Fair Trade Advocacy Office s.d.), and the Charter of Fair Trade Principles released in 2009 by FLO and the WFTO (World Fair Trade Organization & Fairtrade Labelling Organizations International 2009). The term “Fairtrade” is used to refer to FLO’s certification program.

3 Other logics see private governance as a means to improve corporate reputations or preempt regulations, as is the case for industry self-regulation or environmental management systems (Haufler 2001; Bartley 2007). These logics are set aside, though we recognize that they may interact with the logics of empowerment and control to influence the distribution of wealth, power, and regulatory capability.

4 Work on voluntary environmental programs exemplifies this perspective (King & Lenox 2000; Prakash & Potoski 2007).

5 The logic of empowerment is akin to Chambers’ (1994) participatory rural appraisal, which involves “a family of approaches and methods to enable rural people to share, enhance and analyze their knowledge of life and conditions, to plan and to act.” (p. 953)

6 Reasons may include intra-organizational (power) struggles, or unintended/path-dependent consequences of initial issue framing (cf. Lall 2014). The main point is that because we observe divergent problem definitions and isomorphic dynamics across programs, it is crucial to identify where programs started and the paths they subsequently followed.

References


