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Private regulation, public policy, and the perils of adverse ontological selection

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Abstract

What problems can private regulatory governance solve, and what role should public policy play? Despite access to the same empirical evidence, the current scholarship on private governance offers widely divergent answers to these questions. Through a critical review, this paper details five ontologically distinct academic logics – calculated strategic behavior; learning and experimentalist processes; political institutionalism; global value chain and convention theory; and neo-Gramscian accounts – that offer divergent conclusions based on the particular facets of private governance they illuminate, while ignoring those they obfuscate. In this crowded marketplace of ideas, scholars and practitioners are in danger of adverse ontological selection whereby certain approaches and insights are systematically ignored and certain problem conceptions are prioritized over others. As a corrective, we encourage scholars to make their assumptions explicit, and occasionally switch between logics, to better understand private governance's problem-solving potential and its interactions with public policy.

Keywords: critical review, ontological influence, private regulatory governance, public policy, public–private interaction.

1. Introduction

Private regulatory governance systems[1] now pervade the global economy. While complex and multifaceted, they share three key attributes that are considered necessary and sufficient for the definition used in this paper: the formulation of procedural and/or substantive rules and standards by nongovernmental actors (usually firms or nongovernmental organizations), their monitoring and enforcement through the same actors or third parties, and the preferential treatment of actors in compliance with such rules, for example, through improved reputation, market access, pricing conditions, or access to financing. These systems target business operations ranging from financial reporting (Büthe & Mattli 2011) and carbon accounting (Green 2010) to sustainable agriculture, fisheries, and forestry practices (Cashore *et al.* 2004; Ponte 2012; Fransen 2015).[2] State actors have supported private regulatory governance initiatives through public procurement practices (Weller & Pritchard 2013), as parts of "regulatory" or "policy mixes" (Gunningham & Sinclair 1999), and via layering with public rules (Howlett & Rayner 2007; Bartley 2011b). Such interactions have gained increased scholarly attention (Eberlein *et al.* 2014; Wood *et al.* 2015, 2019; Renckens 2021), as illustrated by the theme of this Special Issue.

Simultaneously, the study of such systems and their interactions with public policy has risen within several sub-disciplines, ranging from business ethics to rural sociology. Each discipline has brought its own (and often multiple and competing) ontological, conceptual, and epistemological orientation(s) to theorizing about the

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emergence, evolution, and problem-solving potential of private regulatory governance. This article argues that explaining divergent conclusions on these questions requires carefully unpacking the reasons behind these different accounts. This is particularly important for analyses of the role of the state and public–private interactions, given that different ontological orientations might give opposite recommendations on the most effective role of the state in supporting private regulatory governance.

As a starting point, and with the intention of opening a wider debate about whether embracing a plurality of ontologies as a corrective might have its own challenges, this article identifies five approaches under which scholars from different disciplines have studied private regulatory governance: calculated strategic behavior; learning and experimentalism; political institutionalism; power in global value chains; and neo-Gramscian perspectives. It maps these approaches on two axes: one, whether they see individual agency or broader-level structure as the dominant force shaping social and political phenomena; and two, whether they are more concerned with explaining specific phenomena and their outcomes at one point in time (synchronic) or in a historically explicit perspective across time (diachronic).

We find that the respective approaches' focal scopes – that is, which actors and relationships they put into focus, and to what factors they assign *ceteris paribus* status or ignore – affect the conclusions they draw about the problem-solving potential of private regulatory governance, the circumstances under which collaboration, coordination, competition, or collusion between private and public governance efforts may occur, and the necessity of public intervention to assist private regulatory governance initiatives in meeting their problem-solving potential.[3]

These differences matter for two reasons: one, scholars studying private regulatory governance will draw better informed conclusions if they can critically assess the broad range of perspectives in the context of their ontological grounding. Two, the co-evolution of private governance and their academic study can lead to *feedback effects* where scholarship informs private standard setting and public policymaking. Such evidence-based policymaking is often desired and seen as best practice. Yet, ignoring the existence of multiple ontologies can facilitate selection bias in the types of scholarship practitioners adopt: most likely, practitioners will favor those aligned with the prevalent ontological perspectives in their own epistemic community. This may lead to important blind spots and adverse decisionmaking if certain approaches and insights are systematically ignored and certain problem conceptions are prioritized over others (Cashore & Bernstein 2018, 2020). Ultimately, it must be understood that each theory contributes different insights to questions of how to address environmental degradation and socio-economic injustice and inequality. This insight is crucial when considering which theories' policy recommendations are most likely to reach policymakers in the crowded marketplace of ideas.[4]

We provide a first attempt to guard against *adverse ontological selection* by presenting a range of major approaches and their divergences, and putting them into conversation. It is our hope that this article will encourage fellow scholars of private governance to reflect on their ontological grounding, make it more explicit, as well as integrate knowledge from other disciplines and approaches into their findings in an interdisciplinary manner. More importantly, given that all the private regulatory systems they research were created to address some kind of specified "on the ground problem," we encourage all scholars to clearly identify what types of problems go to the heart of their own project, and what types of problems might likely be made worse off by implementing private regulatory governance initiatives.

2. Ontological diversity in private regulatory governance: An overview

The rich spectrum of theoretical perspectives on private regulatory governance can be explained by the historical development of the academic literature examining such regulatory schemes. This literature arose in disparate scholarly communities related to the particular topic at hand. Organic certification, for instance, tended to be conceptualized and assessed by those trained in disciplines with a traditional interest in agriculture, such as rural sociology, geography, and development studies (Guthman 1998; Raynolds 2000; Renard 2003; Mutersbaugh 2005). Forestry certification, another early case, tended to be analyzed by forest sociologists with backgrounds in socio-legal studies (Meidinger 1997) or the public policy of resource management (Elliott & Schlaepfer 2001), which were institutionally embedded within schools and institutes of forestry and resource management. Literature on private regulatory governance targeting climate change has no similar historically institutionalized disciplinary emphasis. Rather, the phenomenon's growing salience has attracted attention from scholars educated in public

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policy and international relations (Green 2010; Keohane & Victor 2011; Abbott 2012; Hale & Roger 2014; Abbott *et al.* 2016). This historical evolution of scholarship of private regulatory governance has led to readily distinguishable discipline-topic "clusters," and a multidisciplinary analysis of standards and certifications (alongside the organizations that serve these governance functions) that has included scholars from political science, law, economics, geography, business, sociology, ecology and conservation biology, anthropology, and development studies.

Multidisciplinarity has fostered a welter of theoretical perspectives on private regulatory governance. Some lenses are agent-centered, building explanations for why private regulation forms on the basis of actors' boundedly rational calculations and interactions. Other lenses foreground power relations derived from structural positioning and features of global supply chains or capitalism. All of these lenses are grounded in assumptions, ontologies, and epistemologies – some unique, some overlapping – that shape what they perceive to normatively matter and how research can and should inform our understanding of private regulatory governance as a phenomenon. We are not the first to note this proliferation of approaches (c.f. Falkner 2003). Authors such as Bartley (2007b), Bernstein and Cashore (2007), Auld *et al.* (2008), Fransen (2011), Eberlein *et al.* (2014), and Grabs (2020a) have distinguished between diverse views of the rise of private regulation and have drawn on multiple theoretical antecedents. While valuable, these first steps toward theoretical juxtaposition have nevertheless not assessed the broader array of theoretical lenses currently used to make sense of private regulatory governance. Indeed, each of these previous reviews have had implicit boundaries (for instance, Eberlein *et al.* (2014) omit work from rural sociology that focused on organic and Fairtrade initiatives, such as work by Julie Guthman, and do not provide any explanation for the scope of their review). Our analysis has boundaries as well, but we make them explicit in the methods section by delineating which literature was excluded from our scope and for which reasons. Such an orientation should make it easier for future work to build on these carefully delineated categories, or offer a different direction.

3. Conceptual approach to identifying and analyzing ontological differences

In our effort to make such a contribution, and for reasons of parsimony, we center our focus on ontological differences. These are differences in "fundamental assumptions scholars make about the nature of the social and political world and especially about the nature of causal relationships within that world" (Hall 2003, p. 374). They are found in conceptualizations and representational vocabulary that "carve the world at its joints" and define how to frame and, subsequently, analyze private regulatory governance initiatives. Unpacking such ontological differences, and linking them to the resulting divergent empirical accounts of private governance initiatives' problem-solving potential and interactions with public policy, can allow students of public policy and practitioners to better assess the ways in which private governance impacts different kinds of public problems, positively and negatively.

We take inspiration, in part, from Graham Allison's (1971) seminal work on the Cuban Missile Crisis, which uncovered the possibility of explaining the same event in world affairs in radically different ways subject to one's conceptualization of governmental decisionmaking. He further demonstrated how these different approaches led to widely divergent conclusions on the political and bureaucratic reforms necessary to prevent a similar crisis from reoccurring. Likewise, Young (2002) highlights differences in conclusions and policy recommendations on the effectiveness of international environmental institutions, depending on whether collective-action or social-practice models are applied. Our work carries this inquiry, hitherto focused on state action, into the realm of private regulatory governance and its interaction with public policy. Unlike Allison however, we also recognize that different ontologies do not simply offer unique explanatory accounts for the same phenomenon, they also reflect, and reinforce, different types of problems.

To advance this agenda, we inductively identify and describe five theoretical traditions (or approaches) that the literature has used to date. Our analysis first presents stylized overviews of how the five theoretical approaches explain the emergence and development of private governance, focusing on two dimensions: whether agency or structure-related explanations are favored, and whether synchronic or diachronic approaches are taken. We selected these as core ontological differences to focus on from a broader range of factors (compare Table A1 in the Appendix), given their explanatory power in shaping evaluative and prescriptive considerations.

The first dimension explores how approaches deal with the agency-structure problem well-known to social inquiry in general (Giddens 1982) and political science in particular (Wendt 1987; Dessler 1989). It describes the

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dilemma that "human agency is the only moving force behind the actions, events, and outcomes of the social world"; but "human agency can be realized only in concrete historical circumstances that condition the possibilities for action and influence its course" (Dessler 1989, p. 443). Though it is uncontentious that both elements play a role in determining social outcomes, different theoretical approaches lie on a spectrum in stressing one element – agency or structure – over the other in their research questions, assumptions about human behavior, causal explanatory theories, and theories of change (Dessler 1989). Making this difference explicit helps to explain divergences in their evaluation of past and likely outcomes of private regulatory governance.

The second dimension describes whether theoretical approaches see as their primary aim the analysis of phenomena bound in time, or their development over time. The synchronic perspective prioritizes space over time and sees the world as a "system of interrelated parts with a tendency to equilibrium" (Cox & Schechter 2002, p. 28). Hence, historical dimensions of policy development are of less importance than "getting the mechanism right" and replicating it across cases. A diachronic perspective, in turn, prioritizes time over space and enquires "into the ruptures and conflicts that bring about system transformation" (Cox & Schechter 2002, p. 28). It thus takes a more longitudinal approach to scientific inquiry and highlights the importance of context-specific, historical, and evolutionary knowledge. Differences along these two dimensions will influence theoretical approaches in their perspective of what needs to happen to make private regulatory governance work well, and how public policy can support this path.

In order to link our analysis to the rapidly developing literature on public–private regulatory interactions (see other contributions to this Special Issue; Eberlein *et al.* 2014, Wood *et al.* 2015, 2019, Renckens 2021), we furthermore closely examine the role of the state for each approach: both from a positivist perspective – that is, what importance state action has for the emergence and development of private standards, and what interaction pathways are highlighted in the analysis – and a problem-oriented viewpoint – i.e., what public policy actions are necessary or should be taken to support the effectiveness and regulatory power of private governance.

4. Methods

We use a critical review methodology to assess the literature on private regulatory governance and advance its conceptual development. Our review focused on scholarship that treats the emergence, evolution, and functioning of private regulatory governance as the central phenomenon of interest. We did not focus on work examining broader phenomena, such as transnational governance, or work that uses private regulatory governance as an illustration of some other social, political or economic process. Notably, our analysis excludes, but also provides a basis for future assessments of impact evaluations, which usually attempt to characterize the on-the-ground effects of private regulation, but, with rare exceptions (e.g. Grabs 2020b), rarely confront their own implicit ontological preferences or biases. Moreover, we do not review work from anthropology, ecology, or land science, and the work of socio-legal scholars. This final field of scholarship is well developed and extensively reviewed by others (e.g. Wood 2015) and is understood to transcend the agency-structure and synchronic-diachronic dimensions we focus on in our review. Hence our work paves the way for further assessments on how the ontologies reviewed in this article might have conversations with other epistemic communities that do not fit within our scope conditions.

A critical review "presents, analyses and synthesizes material from diverse sources," "includes a degree of analysis and conceptual innovation," and presents as a result "a synthesis of existing models or schools of thought or […] a completely new interpretation of the existing data" (Grant & Booth 2009, p. 93). Its main advantage lies in the ability to take stock of previous achievements, identify (and possibly resolve) competing schools of thought, and provide conceptual innovation. It can further highlight "problems, discrepancies or areas in which the existing knowledge about a topic is untrustworthy" (Paré *et al.* 2015, p. 189). It thus focuses on analyzing the conceptual contributions of each included item and providing its own interpretative contribution, thereby accelerating the process of evolution or accretion usually necessary for conceptual innovation (Grant & Booth 2009).

Accounting for the space constraints typical for journal articles, and given the close engagement with the reviewed texts necessary for a critical review, such a review needs to balance parsimony with representativeness when selecting which material to analyze. This challenge is heightened by the fact that the search and appraisal criteria of a critical review are less formal and structured than those found in meta-analyses, systematic, or umbrella reviews (Grant & Booth 2009), and it "rarely involve[s] a comprehensive search of *all* of the relevant literature" (Paré *et al.* 2015, p. 189), instead pursuing a more selective approach. If the review's aim is to provide a

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comprehensive summary of all research efforts in the field of interest, a critical review method is thus more vulnerable on the grounds of subjectivity (Paré *et al.* 2015). Yet, as Grant and Booth (2009, p. 97) note, this is usually not the intended purpose of a critical review, as its "interpretative elements are necessarily subjective" as well. Hence, "the resulting product is the starting point for further evaluation, not an endpoint in itself."

Given these considerations, we believe the critical review methodology is best suited for our purposes for two main reasons. First, this paper's main aim is to highlight and illustrate the co-existence of multiple ontological approaches in the study of private regulation, rather than provide a comprehensive, multidisciplinary review of all literature on private regulation in existence. We leave the latter project to future work. Second, the purpose of this exercise is to compare and contrast the ontologies, framings, and language used in the study of private regulatory governance across disciplines. It thus explicitly recognizes that private regulatory governance has been studied under a variety of names and concepts. Recognition of this leads to several challenges about what type of empirical review of the literature is most appropriate. One approach would be to make a selection of appropriate journals as well as keywords and conduct an exhaustive but focused systematic literature review.[5] However, given the diversity of terms used for studying the same phenomenon in different disciplines, for our purposes this approach is both challenging as well as prone to bias and oversight of potentially relevant pieces.

Instead, we aimed to identify the broadest possible range of pieces tackling private regulatory governance phenomena from a variety of disciplines, including political science, public policy, management studies, business ethics, industrial relations, law, geography, sociology, development studies, and environmental studies. We did this in three steps: first, by drawing on the extensive bibliographies assembled by the three co-authors in over 20 years of experience in working on private regulatory governance in a multidisciplinary manner (but publishing mainly within the political science, public policy, and development studies realms); second, by supplementing this list with relevant work highlighted in review articles created in relevant subfields (Falkner 2003; Schneiberg & Bartley 2008; Vogel 2008, 2010; Büthe 2010; Mayer & Gereffi 2010; Bartley 2011a; Esbenshade 2012; Auld & Gulbrandsen 2013; Wahl & Bull 2014; Bush *et al.* 2015; Ponte 2016) and finally, by soliciting feedback from scholars working on private regulatory governance to help us identify potential omissions.

After assembling a list of key articles, we inductively classified them in groups according to their explicit mention of a theory or framework (e.g. Neo-Gramscian, Global Value Chain, or convention theory) or implicit alignment with broader theoretical frameworks (e.g. individual rational choice or political institutionalism). We then compared the resulting groups in terms of their underlying ideas about how actors behave and how private governance emerges, develops, and institutionalizes. Through this assessment, we joined some of the distinct sub-groups into larger groups due to their similarities in approach. This process identified the five categories of ideal-type theoretical approaches that our analysis reviews. Through a recursive feedback process that solicited input from colleagues in adjacent disciplines, we refined the framework and ensured that our scope was as extensive as possible given the space constraints present. Given these constraints, we are only able to incorporate a small share of the articles that might be of relevance for this framework; thus, we encourage future researchers to probe the relevance of our analysis in their particular subdisciplines and, if necessary, extend it.

Figure 1 presents the five theoretical traditions we identified alongside their conceptual distribution on the agency-structure and synchronic-diachronic continua. Their representation as areas rather than points captures the variance between approaches within the same theoretical tradition, and the existence of efforts to combine and connect various strands of the literature.

For all these reasons we do not claim exhaustiveness in coverage of either literature or theoretical approaches. Our approach also means that the mention of a specific author or paper in one category does not signify that the paper or author belongs exclusively to that camp. Nevertheless, we believe our review captures to a high degree the ontological diversity that exists in the study of private regulatory governance.

5. Five academic logics for analyzing private regulatory governance

5.1. Agent/synchronic: Calculated strategic behavior

We start with a group of models and approaches that use calculated strategic behavior – at an individual, firm, or organizational level – as the main explanation for outcomes within the realms of (private) governance. These contributions are rooted in models of rational choice or bounded rationality, and follow a "logic of consequences"

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(March & Olsen 1996) where agents make choices based on pragmatic evaluations of the costs and benefits of likely outcomes. Agents also have considerable freedom to change their choice – for instance, of participating in a voluntary scheme – if shifting circumstances lower the relative pay-off of their initial selection. Hence, the problem-solving effectiveness of private governance initiatives depends strongly on the confluence of demand and supply factors that create continuous incentives to "ratchet-up" private governance efforts, both in sectoral breadth and topical depth. The synchronic focus on achieving demand-and-supply equilibria within existing market structures and institutional fit with micro-level rational-choice agent behavior leads analysts to be cautiously optimistic on the likely problem-solving potential of private governance schemes, particularly when problems are narrowly viewed as market information failures. Conversely, such theories rarely reflect on the historical dimensions of the issue at hand, but take these as given and focus on finding workable solutions to the identified coordination problems.[6]

This category of theories treats the state as an actor with unique capacities and limits. An actor-centric view brings attention to what the state is not doing (intentionally or not) and how private regulatory governance serves to address state failures, in some instances, or operate as a resistance to the state in other instances. Normatively, from a problem-solving perspective, states are also seen as actors with specific capacities that can help coordinate actions. This is particularly the case if public policy action creates sustained economic incentives to comply with private schemes (for instance, by creating demand for certified products or allowing certifications to signal compliance with import restrictions), or provides incentives for schemes to improve their internal procedures and standard-setting practices.

5.1.1. Calculated strategic behavior of individual consumers

At the lowest level of aggregation, micro-level theories focus on individual consumers' boundedly rational behavior in relation to eco-labeling, certification schemes and other types of consumer-facing private regulatory governance. Two intersecting streams of literature are relevant: one originates in political science and the other builds on social psychology, behavioral economics and microeconomic theories of supply, demand and information signaling within markets.

The political science literature has generally treated consumers' preference for eco-labeled products as an instance of political consumerism (Stolle & Micheletti 2013). Political consumerism is understood as harnessing the "consumer choice of producers and products with the goal of changing objectionable institutional or market practices," based on attitudes and values such as social justice, fairness, and ethical assessments of unfavorable business practices (Micheletti *et al.* 2004, pp. xiv–xv). Positive political consumerism consists of the preference for products that carry certain ethical, political, or other process-based attributes (Micheletti & Stolle 2008). This avenue of action critically relies on the possibility of identifying such preferred products among the plethora of market options. Third-party eco-labels and other types of certification schemes are hence given the functional role to empower citizen-consumers through the provision of consumer choice within the marketplace. Limits to positive political consumerism include the fact that "many products – in particular brand name clothing and shoes – are not covered by labeling schemes" (Micheletti & Stolle 2005, p. 259). The mobilization of different types of political consumerism, in turn, is seen to constitute a powerful form of individualized collective action (Micheletti 2003) that could utilize demand-side market signals to make individual citizen-consumers' voices heard in new arenas of political action in which states have tended to "lose control [...] over the authoritative allocation of values in society" (Stolle *et al.* 2005, p. 251). In comparison to the remaining agent-centric approaches below, scholars of political consumerism are optimistic about the likely effectiveness of harnessing individual consumers as change agents driving demand – so long as they are provided with the instruments (i.e. eco-labels and certification schemes) to make informed purchasing choices.

The same ontological framework, focusing on boundedly rational individual behavior, offers more nuanced accounts that see limits to such transformative action. Consumer research in behavioral economics and social psychology provides increasing evidence of an "attitude-behavior gap" in which consumers' stated preferences for ethically or sustainably labeled products do not match their purchasing practices (Vermeir & Verbeke 2006; Papaoikonomou *et al.* 2011). Two explanations are offered for this gap. The first notes consumers' limited processing and decisionmaking abilities in an increasingly overwhelming and complex marketplace (Carrington *et al.* 2014). It suggests that consumers' use of choice heuristics, or decisionmaking short cuts, mean they may

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buy things that do not align with their ethical or political preferences (Macdonald & Sharp 2000). The second finding relates more closely to the difficulty of appropriately assuring and reflecting the value of so-called "credence attributes" (that is, product attributes which cannot be discovered either before or after purchase, such as the conditions of their production process).[7] The information asymmetry inherent in abstracting a set of practices into a single label (such as, "organic") can lead to a phenomenon akin to Akerlof's (1970) "market for lemons," in which consumers' uncertainty about the credibility of the credence attribute leads to a lower willingness-to-pay for such goods than their real cost of production would warrant (Grolleau & BenAbid 2001; Harbaugh *et al.* 2011). In consequence, insufficient consumer demand is created to allow for the sector to thrive (see e.g. De Pelsmacker *et al.* 2005). In both cases, these limits to effective political consumerism may be overcome if strong private regulatory organizations engage in in-depth and continuous awareness-raising campaigns to demarcate their particular niche market and defend the legitimacy of the credence attributes their labels guarantee (Guthman 2004a). Nevertheless, consumer research speaks to the existence of "label fatigue" as eco-labels and firm-issued seals have proliferated in supermarkets, overwhelming intendedly conscious consumers (Harbaugh *et al.* 2011; Isenhour 2015).

Theories focused on the calculated strategic behavior of individual consumers thus view state intervention – both from a positivistic and problem-oriented perspective – as helping correct market failures in the "credence market" for sustainable products. Consumer protection from fraud and disinformation has in effect been used as a strong argument for the co-optation of private governance by the state, such as the intervention of various public authorities (for instance in the European Union, Japan and the United States) in the definition and accreditation of organic standards (Arcuri 2015). Scholars focused on the publicization of formerly private regulatory regimes accordingly analyze the effects of such actions on consumer choice and changes to a certification program's average level of stringency and, hence, level of credence attributes provided. Normatively, many information economists argue that public regulation and monitoring is necessary to overcome the information asymmetry between consumers and producers and ensure the efficient functioning of markets, particularly given the likelihood of adverse selection in a purely private regime (Vetter & Karantininis 2002; Brécard 2014). While sophisticated, the narrow focus of this actor-centric approach causes it to see private governance as providing potentially positive outcomes if information asymmetries are corrected. It does not emphasize structural challenges that caused the problems in the first place, or examine whether private governance might resolve or reinforce structural issues such as power imbalances or the persistent exploitation of labor or resources.

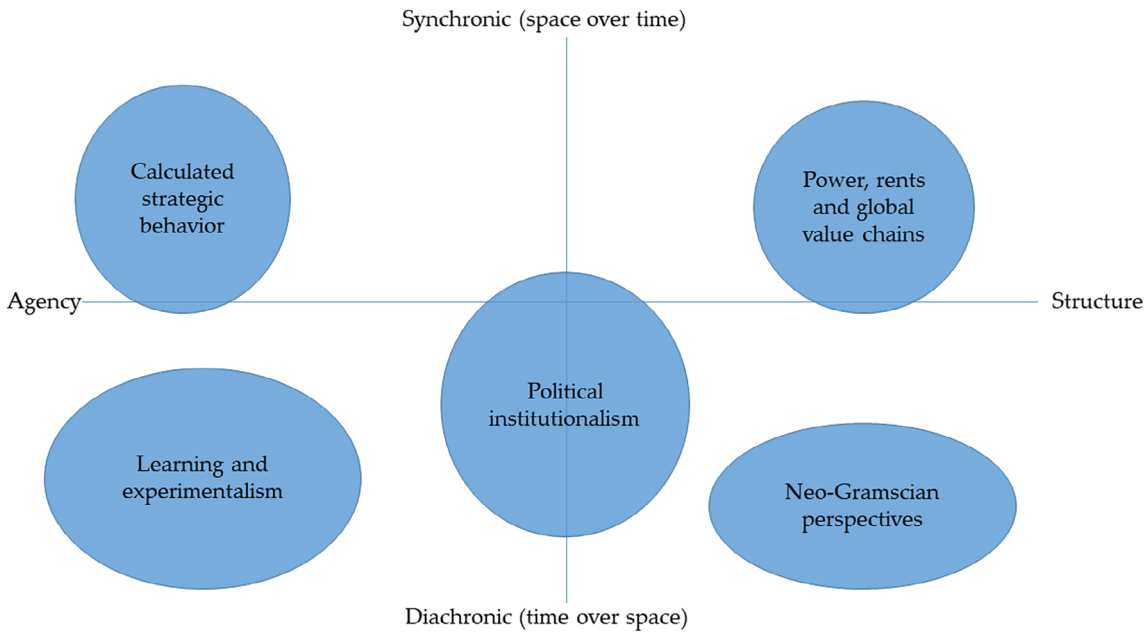

Figure 1 The five presented ontologically distinct academic logics for analyzing private regulatory governance.

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5.1.2. Calculated strategic behavior of producing firms

Mattli and Woods (2009) focus more on producing firms by examining who benefits from the development and enforcement of private regulation. This captures the main preoccupation of (bounded) rational choice theorists who focus their analysis on individual firm-level actors, and who presuppose that these actors aim to make optimal choices – in the case of economic producers, mainly defined by profit maximization – subject to the constraints imposed and the information available to them.

This framework is strongly informed by game theoretical approaches to collective action problems (Abbott & Snidal 2001) and club theory, where firms and producers are seen to join voluntary regulatory schemes to protect their collective reputation (Potoski & Prakash 2005, 2009). Voluntary standards are conceptualized as "clubs that require firms to incur costs not required by law that lead to the production of positive environmental externalities" which in return provide shared branding benefits to club members (Prakash & Potoski 2007, p. 774). Such branding benefits aim to protect firms from sustained "naming and shaming" by NGOs that is perceived to damage their reputation and shareholder value (Fransen & Burgoon 2012; Dauvergne 2017). Rational choice themes also show up in those who emphasize the pragmatic expectations of firms to gain a competitive edge, avoid costs, or improve market access or profit rates (Cashore 2002; Gulbrandsen 2004).

From a game theoretical perspective, private governance is seen with moderate optimism. It is expected to be particularly successful in solving coordination problems with few distributional consequences, in which private governance rules tend to become self-enforcing because every actor benefits from their adoption. On the contrary, in cooperation problems (e.g. the prisoners' dilemma), compliance with private governance involves individual sacrifices, which makes shirking and freeriding more likely and complicates effective institutionalization (Büthe 2010; Auld 2014).[8] An absence of focal institutions in most issue areas, where collective standard-setting may take place (e.g. the International Organization for Standardization), is an additional hurdle to achieving collective benefits. Thus, standard-setting and certification organizations have to simultaneously create their standards and the reputational branding benefits that club members enjoy, while also many times competing with alternative initiatives for members and viability. In those cases, rational actor behavior under conditions of iterative rule-making, competition between standards, and easy entry and exit conditions of voluntary schemes can lead to regulatory capture (Gulbrandsen 2004; Pattberg 2005) and adverse selection (Lenox & Nash 2003). Alternatively, high compliance costs with private regulatory institutions can create institutionalized trade barriers due to regional economic disparities (Espach 2006; Marx & Cuypers 2010) and incomplete on-the-ground implementation.

Under such conditions, state action can provide important demand incentives through public procurement (Cashore 2002), the provision of assistance to encourage participation in regulatory regimes and facilitate compliance (Gulbrandsen 2004), or the reinforcement of private standards by state-based regulatory policies (Vogel 2009). To be sure, rational choice theorists are not sanguine: the majority of authors writing from a rational-choice perspective range from agnostic to critical about the ability of market conditions alone to provide sustained incentives for large-scale compliance (particularly in the Global South) without the shadow of state action (Abbott & Snidal 2009b). Nonetheless, there is a tendency to advocate for institutional tinkering in order to achieve results, rather than critiquing private governance itself. Rational choice theories that criticize private governance see the concept of "orchestration," or centralized steering, as an important task for improving uptake. This includes emphasizing the role of international organizations and governments to allow decentralized private regulation to realize its true potential (Abbott & Snidal 2009a). Such efforts – as all attempts at effective, resource-efficient governance – are recognized as being subject to principal-agent dilemmas and trade-offs between competence and control (Abbott *et al.* 2018). Still, just what these trade-offs mean for solving the core problems targeted by private regulatory governance (e.g. deforestation or human rights abuses) is underemphasized in favor of institutional solutions to coordination challenges.

5.1.3. Calculated strategic behavior of certification organizations

A third, closely related strand of literature sees private standard-setting and certification organizations themselves as rational actors that take decisions expected to lead to optimal outcomes for their organizational survival. This perspective flips from problem solving around environmental and social challenges to a focus on institutional

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reproduction. Standards are studied as the result of a process of institutional emergence and constitute a dependent variable, rather than representing the main independent variable that might drive problem solving.

Using an organizational ecology approach, Abbott *et al.* (2013, 2016) point to the confluence of strategic and structural factors (particularly the low entry costs, higher organizational flexibility and initial low organizational density of private regulatory organizations) as important explanatory variables that lead private transnational regulatory organizations to proliferate, rapidly expand into sparsely populated policy niches to avoid costly competition, and make alliances with intergovernmental organizations to gain legitimacy and access resources.[9] Auld (2014) highlights how strategic organizational decisions in the initial phases of the emergence of private governance institutions may create path dependencies and inertia due to winning coalitions favoring the status quo over change. Relatedly, others point to the possibility of "co-opetition" and a divide-and-rule approach between mainstream and niche standards (Ingenbleek & Meulenberg 2006; Reinecke *et al.* 2012). This is particularly likely in areas where there are no network compatibility pressures (as opposed to the case of nonmarket, technical standards (Büthe & Mattli 2011)) and thus no inherent pressure for standards to converge (Smith & Fischlein 2010). This "live-and-let-live" approach however contributes to fragmented private governance communities and significant coordination challenges among organizations that focus on the same transnational production chains (Bitzer *et al.* 2012; Fransen *et al.* 2016). Other authors highlight competitive elements, focusing on the emergence of "standard markets" (Reinecke *et al.* 2012) where different standard-setting organizations compete for sustainable market shares (Smith & Fischlein 2010; Bitzer *et al.* 2012) and in the process need to cater to producer and buyer preferences. This literature is then concerned with whether such competition might lead to a race to the bottom and the watering-down of compliance requirements (Bitzer *et al.* 2008; Ponte 2014). While this approach allows for negative impacts, the focus is generally on institutional shortcomings, rather than carefully tracing their effects, positive or negative, to field-level social or ecological outcomes. As a result, fragmentation is seen as an institutional challenge that could be potentially overcome by creating new path dependencies or strategies. This, in turn, leaves the potential for positive outcomes, especially when the state's role is focused on overcoming such barriers for effective implementation of private regulatory governance.

For example, Dingwerth and Pattberg (2009), drawing on Bartley (2007a), point to certification organizations' reliance on external funding from government agencies and private foundations as a leverage point that may lead to "coercive isomorphism" and the upward improvement of standards. Relatedly, Overdevest (2010) and Reinecke *et al.* (2012) theorize that the need to demonstrate legitimacy to both buyers of certified products and the broader legitimizing community can lead to "trading up" (Vogel 1995), including through meta-standardization initiatives such as ISEAL (the International Social and Environmental Accreditation and Labelling Alliance) (Samerwong *et al.* 2017), NGO-based benchmarking procedures (Overdevest 2010), and the instrumentalist use of transparency and stakeholder consultations (Auld & Gulbrandsen 2010).[10] However, such approaches frequently focus on aligning procedural aspects of standard setting, rather than substantive rules that affect problem-solving behavior (Reinecke *et al.* 2012; Renard & Loconto 2013). The recent proliferation of meta-standardization initiatives also threatens to erode even that type of coercive pressure and simply move strategic organizational behavior up one analytical level (Fransen 2015; Samerwong *et al.* 2017). Recognizing these threats, scholars in this perspective emphasize governmental funding or procurement conditions as an important stopgap measure, stepping in as an ultimate authority on both procedural and substantive aspects of credible and legitimate private standards (Overdevest 2010; UNFSS 2016).

Theorists in this tradition see the rise of private regulatory governance, as well as its proliferation and fragmentation, in the context of an "empty regulatory space" regarding specific transnational issues created by the retreat of nation-states and their respective claims to regulatory authority in such issue areas (Bartley 2018). This "empty space" leads to a horizontal order within which organizations with little a priori claims to legitimacy or authority compete, akin to a state of anarchy in realist international relations accounts. Yet, the shadow of the state has not completely disappeared and can act as a "gorilla in the closet" (Verbruggen 2013) to guide private regulatory actors toward improved effectiveness through taking actions of orchestration. Most scholars in this approach furthermore agree that such orchestration, as a return of the state as ultimate arbiter of legitimate regulatory action, will be highly instrumental to maximize the problem-solving potential of private regulatory initiatives.

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5.2. Agent/diachronic: Learning and experimentalism

The next set of theoretical approaches offer two fundamental ontological changes. First, they assume the existence of *problem complexity*, in which objectively optimal solutions are not readily apparent. Thus, the rationalist frameworks explored above – both regarding the creation of effective market mechanisms as well as the coordination of "upscaling" private governance according to principal-agent relationships – fall short since they do not account for the uncertainty of the policy environment and changes in the problem definition itself. In this ontological orientation, the collaboration between multiple types of actors, knowledge, and expertise is required for problem solving. The central interaction between these actors is thus one of deliberation, rather than confrontation or negotiation – which has important consequences for ideal public policy interventions. Further, these approaches take a *diachronic* view that centers on incremental change in actors' preferences, attitudes, knowledge and interactive patterns. This allows authors a greater level of forward-looking optimism about private governance's problem-solving potential.

In stark contrast to the strategic rational-choice model, theoretical approaches centered on learning and deliberation allow firms and other actors to change their preferences and views of optimal pathways of action. Rather than seeing companies as continuously reverting to cost–benefit analyses when making production and sourcing decisions, these theories raise the potential for deliberative interaction to spur learning and lead to a "re-definition of disparate interests and the prerequisites for widespread community building" (Bernstein & Cashore 2007, p. 358). This sentiment is mirrored in the business ethics literature on Political Corporate Social Responsibility (Scherer *et al.* 2016), which recognizes the possibility for corporations to adopt increasingly political roles in co-defining and solving global problems through Habermasian deliberative decisionmaking processes. Breaking from purely strategic decisionmaking can occur through the argumentative self-entrapment of firms, where firms "begin to acknowledge certain actors, stakes, and rules that they cannot reject at will subsequently" (Scherer & Palazzo 2007, p. 1111). Such firms may then contribute to the institutionalization of new norms in an effort to preserve behavioral consistency. Similar arguments in favor of a constructive perspective of norm generation in business can be found in other private governance analyses. Mattli and Woods (2009) caution that private regulatory processes based on strategic negotiations between firms and NGOs are vulnerable to backsliding. Yet, they acknowledge that this fate can be avoided through the emergence of new ideas, especially "if it can offer a new mind-set to former captured actors, reshaping their preferences and redefining their understanding of what regulatory arrangements are best for them" (Mattli and Woods 2009, p. 36). In hierarchical corporations, shifts in the worldview of executives are particularly powerful due to their influence on corporate decisionmaking, as van der Ven (2014) explores using socialization theory.

Bernstein and Cashore (2007) hone in on the potential of nonstate market-driven (NSMD) governance systems to institutionalize through the creation of forums that allow for the exchange of expert information, the development of best practices, and the development of a learning environment – based on broader global legitimating norms such as fairness and deliberative processes – that allows stakeholders to build community. The normative pressure created through multi-stakeholder engagement is seen as a promising mechanism for eliminating fundamental conflicts and creating a shared political community that views NSMD systems as the legitimate and appropriate arena for supply chain governance. Mutual learning of both industry and civil society actors about desirable outcomes and the means to achieve these are crucial in this theory. Deliberative engagement may lead to the increasing presence of a "logic of appropriateness" among stakeholders that may solve the problem of exit and shirking identified by rational-choice scholars. In the final stage of their framework, when political legitimacy is present, strategic calculations are no longer made about participation in NSMD initiatives, but rather about shaping the processes and debates within the NSMD system itself. At this point, actors can progressively "ratchet up" standards free from the pressure of competing systems while minimizing competitive disadvantages (for instance, by passing on compliance costs to consumers) and engage in further deliberative decisionmaking on the appropriate rules and implementation formats (Cashore & Stone 2014). Thus, institutionalized NSMD systems can "provide[…] an organizational setting that, inter alia, helps interdependent actors to maintain a hold on each other" (Boström 2006, p. 345) and create common expectations and understandings through repeated interactions over time. By assuming that such collaboration is possible and would not necessarily be subject to defection, free-riding, and firms' attempts to exploit competitive advantages, this approach

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underlines the focus on the malleability of company objectives and strategies (compare Sabadoz & Singer 2017; Scherer *et al.* 2016).

Another diachronic emphasis, but one where learning is a functionalist tool, rather than one that enhances legitimacy per se, can be found in experimentalist approaches. These have roots in studies of the European Union as a decentralized experimentalist decisionmaking architecture that emerges from practice rather than from formal constitutional or treaty-based rules (Sabel & Zeitlin 2008). In such environments, many problems are too complex and uncertain for decision-makers to clearly identify solution pathways and, thus, what rules should be formed pursuant of specific goals. Under these circumstances, the applicability of the principal-agent model is dubious because the principal cannot specify its goals until an agent has begun the work of implementing a rule. Instead, this model allows for decentralized experimentation, coordinated stocktaking, and peer review processes that can help to identify and scale up the most promising approaches. In these cases, the traditional accountability prescriptions that follow from the principal-agent structure applied to public administration also lose their usefulness. Peer review, transparency, and deliberation are thus seen as critical mechanisms to create accountability where it otherwise would not occur.

Various scholars (Sabel *et al.* 2000; Overdevest & Zeitlin 2014) have used these insights to explain how private regulations work and how they might work better. Yet, they disagree how much centralized oversight, sanctioning and guidance (including through public policies) would be required for an experimentalist private governance regime to work properly. With labor standards, Sabel *et al.* (2000) underscore the necessity of potential rewards and disincentives for bad behavior, through legal penalties, associational sanctions (being expelled from a trade group or labor code), and public shaming campaigns. They envision a strong coordinating and central steering role for the International Labor Organization and national governments in this regard. By contrast, examining the forestry case, Overdevest and Zeitlin (2014) argue that an experimental regime need not be overseen by a central decision-maker. Rather, they suggest that "a transnational experimentalist governance architecture may also emerge through "cooperative decentralization" of an established international regime in response to failed attempts at imposing uniform universally applicable standards" (Overdevest & Zeitlin 2014, p. 27). Their model thus emphasizes experimentation, benchmarking, and recursive learning and does not critically consider whether the outcomes are solving problems, or how the experimentalist regime is devised to ensure experimentation does not lead in a random normative direction. Bernstein and Cashore's (2007) framework, in turn, takes the presence of the state into account as one actor among many (as a purchaser or producer of goods and provider of the underlying institutional context), but does not award it a special status in the way the other theories do.

Hence, in approaches centered on learning and experimentation, the state and inter-state institutions are viewed as both actors and the source of norms that affect the environment into which private regulatory governance emerges and seeks to gain political legitimacy. While direct state authority is seen as absent in private regulatory initiatives, states can and do affect the emergence of private governance and shape the paths towards effectiveness that a given initiative might find itself on. Normatively, states ought to serve as a functional part of a complex, networked, and evolutionary governance arrangement that helps to ratchet up standards, with governments potentially serving a coordinating role and operating as a complementary source of rules that address overlapping problems to those being addressed by private governance.

5.3. Balancing agent-structure diachronically[11]: Political institutionalism

Drawing from historical institutionalism, but viewing firms as political actors in the vein of political CSR (Scherer & Palazzo 2007), Bartley (2007b) and Fransen (2011) add a political-institutional perspective. This tradition conceptualizes transnational private governance as fundamentally political processes where certification schemes arise as a "by-product of conflicts over distributional gains" (Bartley 2007b, p. 299). Private governance organizations are seen as a "product of political negotiation, their functioning affects the distribution of power among interest groups, and their competition has political consequences as well" (Fransen 2011, p. 363). This line of reasoning has close parallels with a political conception of the struggle over authority and influence in organizational fields[12] (DiMaggio & Powell 1983), where fields become "arenas of power relations" (Brint & Karabel 1991, p. 355) as well as "centers of debate in which competing interests negotiate over issue interpretation" (Hoffman 1999, p. 351).

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Focusing on the emergence of transnational private regulation of labor and environmental conditions, Bartley is skeptical that voluntary schemes can have significant impacts on distributional problems in a neoliberal context, but recognizes that "imperfect systems can sometimes create new points of leverage" (Bartley 2007b, p. 300) if civil society advocates can forge strong coalitions. Fransen (2011) traces the continued evolution of the private governance of such contentious issues and sees little likelihood for a convergence toward effective sector-wide governance. He argues that deliberative stakeholder engagement may actually reinforce and entrench political differences through "negative trust spirals; increased commitment to own identities as being opposed to the other, heightened differences; and possible conflict" (Fransen 2011, p. 364). Such conflict is more likely the more heterogeneous and geographically disparate both industry and civil society organizations are, as well as the higher the distributional consequences of attempting to govern an issue area and the greater the historical legacy of conflict between actors (Fransen & Conzelmann 2015).

Fransen (2011), then, is one of the first authors in this overview that takes an explicitly historical perspective on the institutionalization of private governance,[13] recognizing that the actors involved most likely have engaged (and clashed) previously over issues that are now at the center of private governance initiatives. These institutionally entrenched animosities will first have to be overcome before real progress can be made through deliberative engagement (see also Cashore *et al.* (2004) on the effects of pre-existing misgivings with government forest policy as an influence on the competition between NGO and business-friendly private certification programs). As noted above, Fransen is also much more critical of the applicability of deliberative democracy principles in the private regulatory sphere. Whereas authors such as Martens *et al.* (2019) assert that Habermas' five general institutional elements of deliberative democracy can also be found in private multi-stakeholder initiatives, which furthermore have their own dèmos independently of the dèmoi of nation-states, Fransen (2011) argues that the mere fact of exchanging opinions does not necessarily lead to conflict resolution, especially if there is no external pressure for convergence or agreement. In such scenarios, "social interaction processes may very well enhance, instead of counter, differences that are identified through the study of conflicts in interests. They may lead to the established consensus that it is better not to converge, to agree to disagree" (Fransen 2011, p. 364). Renard and Loconto (2013, p. 55) also criticize the implicit consensus-building model of standard-setting, asserting that "conflicts may remain unresolved and can re-emerge later in time only to be resolved in light of new controversies [or] lead to a schism between participants."

Several authors (e.g. Elgert 2012, 2016; Schouten *et al.* 2012; Cheyns 2014) further highlight that who organizes stakeholder participatory processes, who participates, what counts as participation, and who has power will have important consequences for the outcomes on problem definition and agreed-upon solutions (as well as the perceived legitimacy of the process). However, such procedural power is tied closely to pre-existing resource and power distributions (Ponte & Cheyns 2013; Renard & Loconto 2013). Even in regulatory institutions where multi-stakeholder engagement is carefully structured to allow for the equality of decisionmaking power between economic, environmental and social interests, such as the Forest Stewardship Council, experience has shown that in practice, resource imbalances between private companies and civic organizations "have been exceedingly difficult to overcome" (Moog *et al.* 2015, p. 480). Owing to the diachronic, historical elements of their analysis, scholars in this tradition thus show the rare case of switching their assessment of the problem-solving potential of private regulatory governance over time. While they started off as cautiously optimistic, their close engagement with the cross-temporal (lack of) success of such institutions in solving the problems they were created to address have made them increasingly critical of such initiatives' procedures and outcomes.

From a political-institutional perspective, states are important because they create the political and ideological context in which these contested negotiations take place, and because they are actors in their own right who participate in and shape the organizational field. Bartley (2007b) points out that in the forestry case, the fierce opposition by governments of timber-exporting countries (and, in all likelihood, willing Northern allies) jettisoned a proposal to introduce certification in an intergovernmental arena (through the International Tropical Timber Organization), foreclosing this avenue to action and steering the problem-solving process toward private regulation. Subsequently, both the United States and European governments provided substantial support to the creation of market-driven governance initiatives, though Bartley (2007b, p. 337) identifies slightly different motivations, noting that "European governments can reasonably be portrayed as responding to neoliberal constraints, while the U.S. government appears to have been more willing to push the neoliberal project." This

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example showcases both the political-institutional focus on the broader economic and political environment, and the interplay of governmental, NGO and firm actors, in interpreting the emergence and problem-solving potential of private regulatory governance. This politically attuned perspective, however, complicates the normative question of the best role for the state, given that it casts in greater doubt the potential and practicality of coordinative efforts which, according to this view, will spur their own contentious politics.

5.4. Structure/synchronic: Market power, rents, and global value chains

Putting more emphasis on structural factors that affect the effectiveness of private regulatory governance, political economy perspectives focus their analytical lens on trading relationships between producers and buyers of certified goods, honing in on relative market power. They tend to study the ways in which certification schemes are able to correct, or conversely amplify, unequal power dynamics and rent-seeking behavior along the supply chain (Fitter & Kaplinsky 2001; Guthman 2004a). They thus help fill the implementation gap in the private governance literature, which Bartley (2010, p. 1) characterized as "leaving the on-the-ground application of the resulting standards and monitoring systems as something of a black box, especially in developing countries."

Many of these studies use a global value chain approach (Gereffi & Fernandez-Stark 2016), which emphasizes structural, geographical and institutional features of supply chains and makes the distinction between producer-driven and buyer-driven commodity chains (Gereffi 1999). In the latter, defined by consolidated, transnational enterprises yielding oligopsonic power over atomized producers (c.f. Dauvergne & Lister 2012; Elder *et al.* 2014), "the main leverage […] is exercised by retailers, marketers, and manufacturers through their ability to shape mass consumption via strong brand names and their reliance on global sourcing strategies to meet this demand" (Gereffi 1999, p. 43). There are strong overlaps with the convention theory literature, which examines mutual expectations in value chains – and in particular, the different definitions of "quality" – that shape market transactions and actor coordination (Renard 2003; Boltanski & Thévenot 2006; Ponte 2016). Hence, several scholars examine how quality conventions are used to amplify the buyer-drivenness of value chains by embedding complex information in standardized procedures and private regulations (Ponte & Gibbon 2005), as well as the limits of the implementation of such standardization in the field (Ouma 2010).

Many political economy scholars examine how, in such value chains, power asymmetries mean producers cover the costs of certification while processors and retailers capture price premiums paid by consumers (Daviron & Ponte 2005; Mutersbaugh 2005; Forero-Madero *et al.* 2007), if such premiums ever materialize at all due to price competition at the retail level (Taylor 2005; Ouma 2010). Once scaled up, environmental and ethical certifications such as organic and Fair Trade – originally viewed as "re-embedding" production into natural processes and equitable social relationships (Raynolds 2000) – are unable to maintain their challenge of mainstream trading relations (Raynolds 2000, 2009, 2012; Guthman 2004b, 2007; Fridell 2006). Instead, their increasing standardization, based on "neoliberal rationalities" (Dolan 2010), facilitates coordination and arms-length market transactions through the re-commodification of certified products (Gereffi *et al.* 2005; Daviron & Vagneron 2011) and the commodification of morality (Robbins 2013). This removes standards' original power of creating relational trade connections that allowed for Polanyian double movements (Mutersbaugh 2005; Fridell 2007; Guthman 2007). In this scenario, the only option for producers to access market advantages through certification relies on exploiting coordination benefits from increased contact with buyers and a better understanding of their preferences, and is mainly limited to product quality-related upgrading (Kaplinsky & Fitter 2004; Bitzer *et al.* 2008) – creating additional disparities between entrepreneurial producers who manage to get ahead in elite markets and the rest of participants that derive little additional benefit (Tampe 2018). In situations of contested access to common pool resources, the technification of certification has furthermore been observed to reinforce existing power imbalances and socio-economic and racial inequities (Ponte 2008; Foley 2012).

Global value chain scholars tend to view the emergence of strong private governance structures in the context of the dismantling of state-led, institutionalized commodity governance structures (for instance the International Coffee Agreement) in the 1990s during the period of neo-liberal structural adjustment programs. The abolition of marketing boards and supply management schemes in producing countries went hand-in-hand with the rise of alternative approaches to protect producer welfare (such as Fairtrade). Yet, the implementation of such schemes through value chains with inherent power disparities leads to clear limits in their ability to overcome the central

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challenges of atomized commodity production. This perspective is again concerned with the competitive aspect of private rule-making acting as a substitute for more equity-focused public policy action. In that view, the harmonization and globalization of private standards, rather than allowing for convergence, learning and "California effects" (Cashore & Stone 2014), is actually detrimental to their beneficial functioning. This is because globalized standards' requirements for abstraction, auditing and rationalization "reinforce the broader terrain of inequality by constraining the work of certification to producers and distributors, leaving retailers with cost-free rents" (Mutersbaugh 2005, p. 2044). Policy recommendations, accordingly, focus on creating space for producer-led initiatives governed again by trust rather than standardization (Renard & Loconto 2013). The power asymmetries inherent in international supply chains cause many scholars in this tradition to call for wider-reaching public policy action (Gereffi *et al.* 2001; Tampe 2018) and the "need for a shared governance approach – including stronger state regulations, sustained social pressure, more responsible individual consumerism, and tougher international legal constraints on all multinational corporations" (Raynolds *et al.* 2007, Dauvergne & Lister 2012, p. 9).

5.5. Structure/diachronic: Neo-Gramscian perspectives

Finally, authors adopting a Neo-Gramscian perspective take the broadest lens with a focus both on structural and diachronic elements. In a system-level analysis of the global economy, they analyze the role of private governance in the context of hegemony. Hegemony is defined as "a form of social domination in which one group exercises leadership and imposes its projects through the explicit or tacit consent of all those drawn into the coalition of social forces identifying their particular interest as the general interest" (Graz & Nölke 2012, p. 13). For Neo-Gramscians, it is crucial that the dominance of one group (in this context, multinational corporations) over others (civil society) is established through basic ideological consent, not coercive power (Levy & Egan 2003). Hence, "the life of the State is conceived of as a continuous process of formation and superseding of unstable equilibria between the interests of the fundamental groups and those of the subordinate equilibria in which the interests of the dominant group prevail, but only up to a certain point" (Gramsci 1971, pp. 181–82). This opens opportunities for dissenting groups (such as NGOs) to strategically challenge the prevailing hegemonic institutions in "wars of position" (which makes the Gramscian analysis less deterministic than Marxist theories). However, hegemonic actors in turn have disproportionate discursive, material, and organizational resources which they may use to maintain the status-quo (Moog *et al.* 2015; Levy *et al.* 2016). Authors in this tradition, thus, have a decidedly negative starting point when evaluating the ability of private regulatory governance to solve socio-economic problems.

The Neo-Gramscian conception of power is strategic in that "it is magnified through coordination of efforts in the economic, discursive, and organizational spheres" (Levy & Egan 2003, p. 813). Agents are viewed as being able to understand the social structures that constrain them and hold some agency to bring about change to these structures. Levy *et al.* (2016) highlight that this view contributes to a dynamic conceptualization of political CSR, in which a series of long-term, multi-dimensional interactions between hegemons and challengers constitute a dialectic process of "revolution/restoration." The focus on actors' political-strategic interactions in specific issue arenas closely resembles the organizational fields approach outlined in the section on political institutionalism, with the establishment of hegemony having parallels to the process of field stabilization, as Levy and Egan (2003, p. 810) argue. While a Neo-Gramscian approach thus engages with the focus on norms, social learning and the development of cognitive legitimacy in the sense of "taken-for-grantedness" of particular institutional arrangements (Suchman 1995; Cashore 2002) that is at the core of the learning and deliberative theories (discussed above), its emphasis on the embeddedness of such struggles in the prevailing neoliberal capitalist market structure makes this perspective inherently more pessimistic about the ability of civic actors to change the hegemony of powerful multinational corporations (Levy & Egan 2003; Moog *et al.* 2015).

Furthermore, Neo-Gramscians see a strong danger that private governance schemes are systematically instrumentalized as tools to reinforce the existing hegemonic structures. Corporate actors are likely to dominate the bargaining process during standard-setting and their dynamic renegotiation and emerge victorious, using their discursive power (Fuchs *et al.* 2009) to strategically re-align the object of private regulation according to their own aims. Less powerful challenger organizations' only option is to nudge hegemons toward a Gramscian "passive revolution" (Levy & Egan 2003) from above in which "a hegemonic system adapts and evolves as it

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Table 1 Differing ontological approaches and consequences for the study of private regulatory governance and public–private interaction

Theoretical approach	Logic (private regulatory governance will lead to problem-solving if/when…)	Explanatory role of state	Optimism or pessimism regarding problem-solving potential	Role of state in problem solving
Agent-synchronic (calculated strategic behavior)	Institutional environment is incentive-compatible for the internalization of environmental and social externalities and upward competition; opportunities for cheating are minimized	State as actor with specific capacities and limits; failings of state as partial motivation for rise of private governance	Cautiously optimistic in potential to overcome market information failures and solve collective action problems, though limits due to bounded rationality, incentives to shirk, and a potential "race to the bottom"	Functional role to steer and coordinate benefits of private governance activities
Agent-diachronic (learning and experimentalist processes)	Effective frameworks allow for deliberative processes that lead to industry-wide learning, refinement of collective goals, and collective problem-solving	State as part of experimentalist governance infrastructure needed to respond to complex problems	Forward-looking cautious optimism due to potential of actors to change their motivations and problem-solving approaches through learning and experimentation	Functional role to orchestrate decentralized problem-solving; differing accounts on amounts of steering necessary
Agent/structure-diachronic (political institutionalism)	Civil society groups can forge strong alliances to take advantage of points of leverage that emerge from "imperfect" negotiated systems and move them toward convergence at a high level	States as shaping both larger political context and specific conditions within which private regulatory governance emerges	Skeptical, given the historical nonemergence of a strong alignment of values, priorities and actions amongst contentious, politicized stakeholders with different pre-existing resources and power	Depends on the underlying ideological and normative background of state actors which may lead them to create or, alternatively, strive to overcome large-scale macroeconomic and political barriers to problem-solving effectiveness
Structure-synchronic (global value chain and convention theory)	Private regulations are able to allow all (esp. marginalized) producers to capture higher shares of the final price by shifting relative power dynamics or enabling "upgrading" along the value chain	States' retreat from transnational economic governance opens up space for private regulation (less likely to be equity-enhancing)	Pessimistic due to the interaction of private governance with larger-scale, hierarchical, often exploitative governance mechanisms within the value chain based on market power	Stronger intervention and "shared governance approach" to allow for better benefit-sharing
Structure-diachronic (neo-Gramscian perspectives)	Challenger organizations (in civil society) use their limited resources strategically and win in the "war of position" with current market actors (large firms) and achieve new hegemonic equilibrium	State as promoting or unable to intervene in neoliberal project of deregulation and replacement with private rules	Pessimistic due to the overarching strategic power of hegemonic actors that allows them to quickly absorb, dominate and re-interpret efforts to subvert the dominant system of value distribution	Depends on ideological orientation of government in power; unlikely to contribute to problem-solving unless questioning of greater economic system

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absorbs challenges and preserves essential features" (Levy *et al.* 2016, p. 366) – which in many instances are the features that private governance schemes such as Fair Trade aimed to disrupt in the first place (Guthman 2007). Private governance is thus conceived as a strategic and marginal concession to foreclose bigger challenges that threaten a hegemon's position (Bloomfield 2012, p. 394).

The state plays an interesting role in Neo-Gramscian accounts. Generous accounts view states as constrained by neoliberal institutions, such as the World Trade Organization, that limit their ability to advance real sustainability. Private governance serves to make things worse by further legitimizing state withdrawal from responsibility for global environmental problems (Moog *et al.* 2015). In a slight variant, others see states as both structurally dependent on businesses (for tax revenues, employment and investment) and ideologically aligned in their prioritization of competitiveness and economic growth (Levy & Egan 2003). Public policy involvement through collusion with private regulatory entities is thus considered either unhelpful or downright detrimental for the goals of civil society, at least as long as states continue to pursue neoliberal agendas.

One of the most critical perspectives comes from Bloomfield (2012). He notes that even the notion of states losing control over business may be an artifact of the ideological hegemonic structures at work, reinforced by intellectual elites such as mainstream international relations and global governance scholars "forward[ing] the myth of the powerless state in a global economy, naturalizing a deliberate policy of nonintervention in markets" (Bloomfield 2012, p. 394). Rather, "a critical lens suggests that the state has maintained significant control[;] from the perspective of the neoliberal state, the real challengers are not the economic forces it has unleashed, but the civil society initiatives that have emerged to reregulate them" (Bloomfield 2012, p. 408). Consequently, he issues a warning "against simply reinvesting our energies into "reestablishing" state control. Despite the short-comings of approaches that seemingly conform to the requisites of deregulation, the state is not necessarily a reliable alternative. After all, it is not only vital to ask who regulates, but for whom they are regulating" (Bloomfield 2012, p. 409).

6. Discussion and conclusions

Our review underscores that different theoretical approaches deal with the same research subject – private regulatory governance – from radically different viewpoints and ontological underpinnings (Fig. 1). The ontological differences relate to how these theories view what is real in the world in general and what is relevant to examine about private regulatory governance. While this overview is limited to two – agency-structure and synchronic-diachronic – out of many possible dimensions that could be juxtaposed (see Table A1 in the Appendix),[14] we find that these central differentiating dimensions help clarify: the theoretical approaches' respective problem framing, that is, their *problematique*; the likely contribution of private governance for problem solving; and the importance of public policy interventions in achieving those aims (see also Table 1).

Approaches that focus on agency over economic or political structures are the most optimistic that private governance institutions can serve as effective arenas to solve collective action problems. This is particularly the case in the bottom-left corner of Figure 1, where a diachronic emphasis sees agents' preferences and behavior as malleable over time, subject to the influence of norm cascades and collective learning. Such perspectives (c.f. Bernstein & Cashore 2012, 2007) are future-oriented, taking current actors and behaviors as points of departure but seeing a broad array of possible pathways forward. More static, synchronic analyses that focus on actors' agency (in the top-left corner) facilitate the most fine-grained, micro-level investigation of comparative costs and benefits of various types of regulations, including private governance institutions. Akin to most theories of rational choice and bounded rationality (c.f. Hall & Taylor 1996), approaches using calculated strategic behavior allow for parsimonious and elegant explanations of observed behavior by individuals, firms and organizations that participate in private regulatory governance regimes. By extension, they highlight rationalist-economic barriers to the proper functioning of private governance that public policy may address. However, in contrast to diachronic approaches, they say little about wider-reaching changes to socio-political systems that may be initiated by the interaction of public and private governance.

Structural-diachronic approaches such as neo-Gramscian perspectives are well equipped to deal with such questions (Fig. 1). This lens is able to fit its analysis of private regulatory governance into a much wider context and point out power dynamics that fall outside the micro-level's scope. As a tradeoff, however, the aggregation of

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actors into "historical blocs" and the focus on a dyadic struggle may hide intra-bloc differences in objectives and strategies. Bringing more accuracy to specific interactions within present power structures is possible when adopting a more synchronic focus, such as is done in global value chain analysis. This analysis can again be extended toward a more diachronic emphasis when including evolutionary changes to terms of trade and agreements by incorporating convention theory. Finally, political institutionalism, due to its more balanced approach on the horizontal axis, draws on the interaction of agents and (imposed or pre-existing legal and socio-economic) structures as its central *problematique*. In total, the analysis illustrates that here, as in Allison's (1971) case, most approaches offer only partial models of the way in which private regulatory governance works. We can therefore also follow Allison in inquiring whether the models can "be understood as building blocks in a larger model of the determinants of outcomes" (Allison 1971, p. 275).

However, treating the different ontologies as building blocks may be problematic. They exhibit notable differences in the extent to which they allow individual agents' choices to overcome structural preconditions, for instance those related to power and resource asymmetries (on the horizontal axis) (c.f. O'Neill *et al.* 2004), and whether they view social phenomena through an inherently static or dynamic lens (on the vertical axis). These ontological differences may provide a powerful explanation for why different scholars talk past each other even when engaging with the same institutional phenomena, and raise important questions about whether frameworks in opposing cells can be fruitfully integrated into a general model. Hence, our analysis is consistent with Allison's findings that "refining partial paradigms, and specifying the classes of actions for which they are relevant, may be a more fruitful path to limited theory and propositions than the route of instant generalization" (Allison 1971, p. 275; compare also Shapiro, 2002). The identification of such limiting conditions is highly instructive to provide refined policy advice. To contribute to this goal, Table 1 draws out the different approaches' view of solution pathways, the role of the state to date, their optimism, skepticism or pessimism regarding private governance's problem-solving potential, and their implicit or explicit normative stand on the necessity and type of public intervention that may allow private regulatory governance to achieve the goals it was created to address. The important point here is not simply that there are competing explanations for understanding the same phenomenon, but competing explanations often reflect different problem definitions that, more often than not, are inversely related to each other (Cashore & Bernstein 2020). Hence, no amount of ontological pluralism can solve this dilemma.

Recursive and reflexive theory-testing in this fashion is all the more important given that the derivation of policy advice from scholarship emerging from a variety of academic and ontological traditions is challenging when evidence is selected – implicitly or explicitly – in function of its fit to the theoretical model. As Allison (1971, p. 4) observed, "conceptual models not only fix the mesh of the nets that the analyst drags through the material in order to explain a particular action; they also direct him to cast his nets in select ponds, at certain depths, in order to catch the fish he is after." The confluence of these factors however raises important questions regarding the public policy relevance of theoretical approaches to date. The more an approach focuses on a small sub-set of factors of the institutional landscape, the greater is its burden to prove that its conclusions are internally valid. Similarly, the more focused on a few case studies a literature becomes, the more questions arise regarding the external validity of its theoretical frame, its findings and normative recommendations.[15] Finally, the more historically grounded a theory becomes, the less clarity we have on its temporal validity – that is, could a successful private governance institution arise at any moment in time or are all cases under observation so defined by their socio-economic and political circumstances that different circumstances will lead to radically different outcomes? Teasing out these implications becomes vitally important if we aim to use the existing literature to inform public policy.

Finally, a clear focus on the nature of the problem, and the ability of "partial paradigms" to inform our knowledge on the ability of institutional solutions to effectively address them, is of particular relevance in the field of private regulatory governance given the issue areas it operates in (Cashore & Bernstein 2018). Private regulation has intended to complement or replace state action in some of the most pressing issues humanity faces including climate change mitigation, the degradation of natural resources, and the exploitation of a large share of the global work force. Tackling these issues will require providing policymakers with an exhaustive array of viewpoints that reach beyond those fitting their own epistemic communities and take a critical lens to problem-solving. A scholarly overemphasis on institutional characteristics and concepts such as inclusivity, accountability and

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deliberation may overlook that, from a problem-solving perspective (Dentoni *et al.* 2012, 2018), these are only intermediary features, subservient to the end of improving environmental conservation and social labor conditions and living standards. Hence, too narrow analyses might find institutional success at assembling multi-stakeholder regimes without proving problem-solving effectiveness, especially if underlying dynamics exist that are only perceptible by using a broader lens.

For instance, one can argue that there are clear limits to using responsible and ethical consumption as a solution to environmental and social harms (Maniates 2001; Bartley 2010; Barkin & DeSombre 2013). In this sense, it may well be the case that the most important underlying causal dynamics affecting deforestation, fishery depletion and biodiversity destruction are absolute global consumption levels – which are only marginally affected, or may even be negatively influenced, by encouraging the buying and selling of certified products, and for which other policy interventions would be more appropriate, such as firm-level or consumption taxes. Some ontologies, such as political consumerism, may conversely and inadvertently focus their research and policy recommendations in areas that compound, rather than alleviate the problem. Our point is that if we are to free ourselves from the implicit shackles of ontological influences, we must not avoid, but render explicit, their assumptions. To arrive at a more problem-focused approach to private governance scholarship and to create effective public policy recommendations, this article thus calls for more critical comparison of the applicability of various ontologies, more cross-disciplinary work where appropriate – as pursued in a first step in many papers of this Special Issue – as well as more explicit and self-conscious discussions of latent ontological choices that may affect the presentation of private governance and its outcomes. In addition, we call for a greater conversation about what kinds of public problems society wishes to address – whether it is the biodiversity or climate crisis, or engaging livelihoods and local peoples in sharing the prosperity of the commodification of nature – and to develop private and public approaches accordingly, and to recognizing the countervailing impacts that are inevitably going to occur.

In closing, we take our own advice in acknowledging the need for the explicit recognition of the limits of analysis of this piece. We know we have missed perspectives in this work. The field of socio-legal studies, for instance, is far advanced in examining the dynamics of private regulation – as captured by Wood *et al.*'s (2015) recent review and the earlier seminal work of Braithwaite and Drahos (2000). The work of anthropologists, land scientists, and ecologists are also omitted from our discussion, as are impact evaluations. Scholars have also engaged other theoretical traditions, such as Foucaultian theories of governmentality (Tregidga *et al.* 2019), theories and concepts from science and technology studies (Eden 2009), and actor-network theory (Vandergeest 2007). We did not aim to capture everything, but we did aim to be explicit about what we tried to capture. We hope this transparent foundation and critical review of the literature focused directly on the phenomenon of private regulatory governance (rather than the general shift in regulation as a whole) serves as a platform for others to deepen our understanding of the limits of different ontological lenses such that policymakers can be well aware of the limits and strengths of the lenses they are presented by academic analyses.

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Endnotes

[1] Such schemes have been alternatively conceptualized as nonstate market-driven governance (NSMD) systems (Cashore 2002; Cashore *et al.* 2004), regulatory standard-setting schemes (Abbott & Snidal 2009b), private governance organizations (Fransen 2011), transnational private regulation (Bartley 2007b), and private governance (Auld 2014), among others.

[2] Within this broad category, private regulatory governance shows a high level of diversity, with, for instance, certain initiatives advancing procedural rules (e.g. financial and accounting rules) and others focusing more on substantive rules (such as in the case of sustainable agriculture, fisheries, and forestry). However, we exclude from our definition initiatives that do not include the formulation of procedural or substantive rules (e.g. pressure campaigns or boycotts), initiatives that do not primarily aim to govern business actors, and initiatives that limit themselves to the internal self-regulation of a single organization.

[3] We engage in these conversations with the recognition that the problem-solving potential of such initiatives is seldom uniform: their ability to say, improve community livelihoods may be explained, in part, by their inability to conserve meaningful levels of biodiversity (Cashore & Bernstein 2020; Cashore & Nathan 2020).

[4] In making these arguments, we need to acknowledge two commitments a priori: First, an explicit focus of our analysis is the contributions that ontological approaches have made toward assessing the problem-solving potential of private regulatory governance. Of course, not all approaches have such an aim; critical theory, for instance, has little ambition in this regard. In this article (and in particular in Table 1) we thus focus on including mainly theories that have a problem-solving orientation, and extract the problem-solving aspects of theories that combine instrumental and anti-instrumental strands. Second, in highlighting the dangers of a "crowded marketplace of ideas," we implicitly replicate a liberal conception of theory-building that has been critiqued elsewhere (Koskenniemi 1999). Yet, we do so due to the reality that policy makers and practitioners do look toward scholarship for practical guidance, and will encounter a variety of publications using implicit ontological approaches when looking for answers. We do however acknowledge that this search is not value-free; and indeed policymakers are likely to prefer analyses that replicate their own ontological and/or epistemic background. It is all the more important to make these assumptions explicit.

[5] Others have taken this approach. Ford (2017) used broad keywords on regulation and innovation to search LexisNexis for law review articles published in Canada and America from 1980 to 2012. Her approach retrieved 5,382 articles. Using time-weighted citations and cluster analysis, she selected 198 to code in more depth to understand how the literature has handled the topic of innovation over the period of study. Eberlein *et al.* (2014), as we noted above, provide no explanation for the scope of their review nor the approach taken to selecting articles, an approach that creates unknown boundaries and notable omissions. Wood *et al.* (2015) is more explicit about the scope of his review, but the search method and inclusion criteria are omitted. We attempt to be more explicit than these recent works, while avoiding the restrictions created by a formalized method such as the one taken by Ford (2017). Indeed, in her work, she notes the clear limits of focusing on LexisNexis, as it excludes work from sociology and other disciplines that would have been available through other databases. She did not use these datasets because they did not permit sophisticated content searches available through LexisNexis.

[6] Proponents of calculated strategic behavior (especially those concerned with the behavior of certification organizations) also occasionally take on diachronic questions such as the emergence, proliferation and expansion of private governance schemes; yet, the main focus of this group of scholars is on synchronic processes.

[7] Credence attributes (such as the fair trade, child labor-free or organic character of goods) can be distinguished from search attributes (such as price or appearance) which can be verified prior to purchase, and experience attributes (such as taste, comfort, or longevity) which can be known after purchase (Ford *et al.* 1988).

[8] As Büthe and Mattli (2011) point out, in practice many coordination problems such as technical standard-setting also tend to be highly distributive in nature since the final outcome influences relative adaptation costs, leading to high-stakes negotiations at the point of rule-making.

[9] While the theoretical origins of organizational ecology lie in a purely structural view of organizational emergence and change, Abbott *et al.*'s explicit (Abbott *et al.* 2013) and implicit (Abbott *et al.* 2016) highlighting of strategic organizational behavior within these structures warrant the inclusion of this literature within the present subcategory in our view.

[10] While this literature turns to legitimacy as a term, it is used in consequentialist terms that emphasize stakeholder evaluations rather than norm-generating phenomena that cut across entire communities.

[11] In classifying political institutionalism as mainly diachronic, we do not aim to claim that some political institutionalists do not apply synchronic approaches, clearly evidenced by Bartley (2007a; in a more general way, see the Varieties of

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Capitalism and national business systems literature), but rather that diachronic questions are prioritized. Even those analyses that compare institutions across cases do so in a historically informed way and with an eye to junctures and critical decisions that influence political institutions as well as decisions made within them.

[12] Here, an organizational field is defined as "a community of organizations that partakes of a common meaning system and whose participants interact more frequently and fatefully with one another than with actors outside the field" (Scott 1995, p. 56).

[13] Though Auld (2014) provides an in-depth historical institutional account of private governance emergence and evolution.

[14] Such dimensions include: their level of abstraction; their unit of analysis; the identity of their focal actors; their use and conceptualization of power; their choice of focusing on horizontal or vertical interactions; their choice of focusing on negotiation or deliberation as main interaction mechanism; or their choice of focusing on rules-in-the-book or rules-in-practice.

[15] To add to the complexity, the expectation that theories should showcase both internal and external validity is itself grounded in certain epistemologies that not all authors are likely to share (McKeown 1999).

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APPENDIX

Table A1 Key ontological differences between the five presented theoretical traditions for analyzing private regulatory governance

	Calculated strategic behavior	Learning and experimentalism	Political institutionalism	Market power, rents and global value chains	Neo-Gramscian perspectives
Intellectual origin	Collective choice theory Liberal institutionalism New institutional economics	Regime theory Deliberative democracy Socialization theory Pragmatic sociology	Economic sociology (Markets as politics) Historical institutionalism	Political economy Transaction cost economics	Antonio Gramsci's (1971) Prison Notebooks
Level of abstraction	Micro-level	Macro-level	Meso-level	Meso-level	Macro-level
Agent or structure	Agent	Agent	Agent and structure	Structure	Structure
Synchronic or diachronic	Synchronic	Diachronic	Diachronic	Synchronic	Diachronic
Focal actors' sources of behavior	Cost–benefit analysis (incl. reputational costs)	Norms, legitimacy of process, continuous improvement	Relative costs and benefits, distributional gains	Rational choice based on position in the value chain and relative market power, conventions	Strategic aim to protect/challenge current hegemony of ideas and market organization
Negotiation or deliberation	Negotiation	Deliberation	Negotiation	Negotiation (but implicit)	Negotiation

(*Continues*)

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Table A1 Continued

	Calculated strategic behavior	Learning and experimentalism	Political institutionalism	Market power, rents and global value chains	Neo-Gramscian perspectives
Logic (private regulatory governance will lead to problem-solving if/ when…)	Institutional environment is incentive-compatible for the internalization of environmental and social externalities and upward competition; opportunities for cheating are minimized	Effective frameworks allow for deliberative processes that lead to industry-wide learning, refinement of collective goals, and collective problem-solving	Civil society groups can forge strong alliances to take advantage of points of leverage that emerge from "imperfect" negotiated systems and move them toward convergence at a high level	Private regulations are able to allow all (esp. marginalized) producers to capture higher shares of the final price by shifting relative power dynamics or enabling "upgrading" along the value chain	Challenger organizations (in civil society) use their limited resources strategically and win in the "war of position" with current market actors (large firms) and achieve new hegemonic equilibrium
Rules in the book or rules in practice	Rules in the books: mostly, implementation is assumed to follow from participation	Rules in the books: mostly, implementation is assumed to follow from participation	Rules in the books: mostly, implementation is assumed to follow from participation	Rules in practice: focus on how rules in the books may be implemented in various ways depending on power asymmetries	Rules in practice: focus on instrumentalization and redefinition of meaning of rules in the books
Main focus within ANIME (Abbott & Snidal 2009b)	(Agenda-setting) Negotiation	(Agenda-setting) Negotiation	Agenda-setting Negotiation	Implementation	Agenda-setting Negotiation Implementation
Role of power	Mainly material, but also related to competencies: Go-It-Alone-Power Inclusion power Veto power (Abbott and Snidal 2009a, 2009b)	Not much discussion of power. If mentioned, mainly material, but balance between market and nonmarket actors due to competencies and moral high ground	Material, structural, ideological, discursive, and procedural power is at the center of analysis (can influence outcomes and outcomes can shift power relations)	Focus on structural power within value chains	Strategic power (based on material resources and discursive potential, but important how power is used)
Role of public policy	Change costs or benefits for participating actors "Orchestration" (Abbott and Snidal 2009a, 2009b) of private governance efforts	Not the focus of analysis; provides surrounding infrastructure for deliberative agreement (and provides central oversight over experimentalist regime for Sabel *et al.* (2000))	Sets framework conditions for distribution of power and opportunities through broader economic context (neo-liberalism); may support private regulatory governance either ideologically or as best alternative in deregulated global market place	Stronger state regulations to shift power dynamics back toward smaller producers rather than buyers; avoidance of overly technified and bureaucratic standards	Limited due to neo-liberal agendas or constraints

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