Partnerships and the Privatisation of Environmental Governance: On myths, forces of nature and other inevitabilities

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Abstract

Since the end of the Cold War, two parallel developments took place in global governance: fragmentation in social/environmental legislations across countries, and an increasing uniformity (or "globalisation") of economic/financial legislations. In the liberal democratic context of global governance, both of these developments are embodied in partnerships for sustainable development. Studying these partnerships in the context of private environmental governance and tracing the origin of the concept in business and law, can reveal the implications of "privatisation of governance" on sovereignty, authority, and global governance. Focusing on partnerships in the United Nations context, this paper examines the private environmental governance institutions in their historical economic context.

Keywords: global environmental governance, partnerships for sustainable development, globalisation, international relations, discourses of privatisation

Glossary and Acronyms

GP: general partnership is a type of joint business ownership, where each partner is personally liable for any debts of the company

IMF: International Monetary Fund

IR: the academic discipline of international relations

LLP: limited liability partnership is a type of joint business ownership, where all partners have limited liability

LP: limited partnership is a type of joint business ownership, some partners have limited and others unlimited liability.

MDGs: Millennium Development Goals

UN: The United Nations

UNCSD/CSD: United Nations Commission on Sustainable Development is the UN agency that was created to monitor and report on the implementation of the decisions made at the Rio Earth Summit 1992.

UNICEF: United Nations Children's Fund

UNDP: United Nations Development Programme is the United Nations' global development network to develop local capacity for development in 166 countries.

UNFIP: United Nations Fund for International Partnerships is the UN agency responsible for administering and developing partnerships between UN agencies and the private sector.

TU: Trade Unions, one of the major groups of the civil society involved with the CSD.

WSSD: World Summit on Sustainable Development is the UN Conference that took place in 2002 in Johannesburg, South Africa.

WTO: World Trade Organisation

1. Introduction

Since 2006 Dow Chemical sponsors the *Blue Planet Run* to "bring safe drinking water to 1.2 billion people" (UNOP, 2010). Coca Cola Foundation and Procter & Gamble promote the provision of a water disinfectant and "behavior change techniques directed towards improved hygiene" in water deprived poor countries (UNCSD, 2004). Royal Dutch/Shell is involved in the *Clean Air Initiative* to enhance air quality and reduce emissions (CAI-Asia, 2010). Monsanto contributes to the mitigation of "the threat posed by invasive species" (UNCSD, 2008). These are only a few examples of corporate involvement in initiatives launched to

tackle environmental and socio-economic problems relevant to (if not caused by) their core business activities. All these initiatives are called partnerships, and are registered with the United Nations (UN) as means to achieve the Millennium Development Goals (MDGs).

The UN, the only platform for negotiating solutions to global environmental problems with the involvement of *all* nation states, increasingly resorted to new mechanisms of governance that include private actors, such as partnerships, since the 1990s. As of 2011, 348 partnerships are registered with the UN Commission on Sustainable Development (UNCSD, 2011). Many similar agreements are in place with other UN agencies and overseen by the UN Fund for International Partnerships (UNFIP), which declared that its environment portfolio amounts to "140 projects valued at $167.3 million as of 31 December 2005." Yet, the role and relevance of these partnerships remains contested (Glasbergen, 2007).

Partnerships have been employed as a solution to the increasing cost of urban environmental management, such as waste management and water provision since the early 1980s. In this context, corporate partners were accountable to the governmental or municipal partners as they sign a binding contract. More recently, partnerships have become mechanisms of transnational and international governance, often without any public authority overseeing their activities. They were promoted as 'Type II outcomes' of the 2002 Johannesburg World Summit on Sustainable Development (WSSD), along with the traditional outcomes of the intergovernmental diplomatic process. Since then, public–private cooperation for sustainable development has been institutionalised into this loosely defined concept, rendering it a legitimate mechanism of *global* environmental governance. Their legitimacy and effectiveness have been debated extensively in the discipline of International relations (IR), often in a problem-solving oriented fashion. This article aims to expand these debates by analysing the historical, socio-political, and symbolic contexts of partnerships, focusing on

their relation to the privatisation processes underlying globalisation. To this aim, the business context, which has been formative in shaping the partnership concept is linked with the later developments in global capital markets and the perceptions of the modern corporation. The analysis of these narratives can illuminate the use, the influence, and the limitations of partnerships in governing the global environment today.

1.1. Contextualising Partnerships

Partnerships as governance mechanisms first appeared in the 1980s, the time of tenacious privatisation policies of the Thatcher and Reagan administrations. The New Right promoted the ideas of New Public Management, based on the assumptions that the private sector provides public goods and services more efficiently, and the public sector should downsize by retreating from certain areas. Building partnerships with the private sector, governments could ensure the provision of public services without undertaking them. Corporations could expand to previously restricted sectors while enjoying public relations benefits.

As the operations of transnational corporations intensified and expanded, so did the demand to moderate the impacts of financial globalisation and to place liberalism in a broader set of values (e.g. environmental concerns, human rights, labour rights) (Bernstein, 2001). Starting with 1992 (e.g. UN, 1992), the interdependency of environmental protection and liberal markets have become the accepted norm in global governance. By 2002, the texts resulting from WSSD performed a 'legitimating function for major trade agreements' and *sustainability partnerships,* which fit impeccably to this framework, were endorsed as the Type-II outcomes of the summit (Bernstein, 2005: 159). Once more, 'partnerships' were to efficiently provide what governments failed to do.

This was a part of a broader transformation of the UN, as a result of which UN institutions increasingly engage with the private sector and encourage non-state participation in

developmental and environmental governance, trying to attract corporate funding. The 'partnership approach' has become most visible in the Global Compact,[1] and the partnerships under the UN Commission on Sustainable Development (CSD)[2]. More than 5000 businesses joined the Compact, and over 300 sustainability partnerships registered with the CSD under these arrangements. To understand the tendency towards voluntary, private-led initiatives in global environmental governance this article aims to follow the business context that has given the partnership concept its initial meaning (in Section 2), and the legal and economic processes that link partnerships to globalisation and socialisation of capital (in Section 3). To understand *symbolic orders* that are related, albeit concealed by long stretches of time, sustainability partnerships carry the analysis across different epochs and multiple levels of governance. My aim is to reconstruct historical debates and symbolic contexts around partnerships, to reflect certain transitions in the global order, and point to some structural limitations that can inform their use as environmental governance mechanisms.

1.2. Private Governance versus Privatisation of Governance

In IR literature, *private* governance and *privatisation of* governance are two separate but related concepts. The former refers to a realm of social practice characterised by rules and norms initiated solely or mainly by non-state actors, often taken as a given realm of enquiry, much in the same way natural science understands its empirical objects as natural phenomena. However, the involvement of non-state actors does not sufficiently define private governance, as it is ensured and normalised through various processes, spanning from 'more traditional interstate negotiations, [...] to hybrid public-private partnerships and fully private co-operations' (Pattberg, 2005). Nonetheless, 'governance without government' (Rosenau and Czempiel, 1992) has been increasingly institutionalised in global politics in the last few decades. Some scholars attribute this change to the end of ideological clash (Keck and

Sikkink, 1998), others to democratisation (Glasbergen, 2002), or to the increasing complexity of governance issues (Biermann and Dingwerth, 2004). Another vein of IR scholars recognises the direction of this institutionalisation, and labels it 'privatisation of governance' (Sassen, 1996; Cutler et al., 1999; Hall and Biersteker, 2002). They reveal the neo-liberal connotations of this transformation by focusing on the features of this political process, such as:

- deregulation in some levels and areas of governance,
- an emphasis on voluntary schemes of non-/self-regulation,
- deployment of market-based approaches,
- change in the nature of non-state actor involvement (towards actual rule-making).

On this basis, privatisation of governance can be redefined as *a process through which non-state actors are increasingly included in the political decision-making –either by state actors willingly relinquishing some of their functions, or by unwillingly being abided by private authority-* and *in which regulatory approaches based on state-coercion are replaced by market-based and voluntary mechanisms.*

A full account of the dynamics leading to this process requires an analysis of historical, socio-political, and symbolic contexts of partnerships. Therefore, this article focuses on the *process of privatisation,* in line with the post-structuralist conception of institutions as *sedimented discourses,* resulting from repetitive social practices. This perspective reveals various mutually constitutive backgrounds such as the business meaning of partnerships and their similarities with corporations, narratives of globalisation that link this process to the states and the state system, and global environmental/social legislation.

2. Partnerships as a Business Concept

"Go with me to a notary, seal me there your single bond [if you repay me not] let the forfeit be nominated for an equal pound of your fair flesh, to be cut off and taken in what part of your body pleaseth me."

The Merchant of Venice, William Shakespeare (1596 [1987]: 76-78)

The Merchant is a reference point that 'set the standard for commercial conduct' in 19th century with its focus on the controversial nature of contracts (Rozmovits, 1998: 115). The play centres on a contract between Shylock, a Jewish money-lender, and Antonio, a Christian merchant, signed on Shylock's demand and Antonio's free will: When Antonio asks from Shylock to lend him the money 'like to an enemy who can exact the penalty', Shylock suggests the contract quoted above. When Antonio fails to pay back and Shylock demands his heart *(pacta sunt servanda),* their contract becomes a symbolic intersection point of debates on justice, interpretation and enforcement of contracts, and the political nature of law and economics. With this myth in mind, this section focuses on the UN appropriation of business concepts around contracts.

2.1. Partnerships as Corporate Vocabulary

At the CSD, there is consensus among the representatives of NGOs and UN employees that *partnership* is a 'corporate vocabulary.' This has been emphasised most clearly by trade union (TU) and business representatives: While the former claimed that 'a corporatist world is being born out of [partnerships],'[3] the latter used a normalising tone: 'Partnerships is part of the way

business operates; when you cannot do something alone you take a partner, and do it together.’[4]

Partnership has three closely related meanings: (1) the state of being a partner: participation (2) a legal relation between two or more persons contractually associated as joint principals in a business (3) a relationship resembling a legal partnership and usually involving close cooperation between parties having specified and joint rights and responsibilities.

In most dictionary definitions, legal contracts appear as a condition to partnerships. The *resemblance* in the last definition is more likely to apply to non-business partnerships: Non-contractual relationships that ‘involve close cooperation between parties’ make the word *partnership* so ubiquitous. In the UNCSD context, this resemblance allows for the use of ‘partnerships’ for *Type-II outcomes*. Neither among the partners, nor among the partnership and the UN is there an obligation for a contract establishing ground rules. This situation raises questions of how and where the so-called joint rights and responsibilities are specified, what is meant by them among partners of significantly divergent interests, and who is liable in case of failure.

The first question is difficult to answer in terms of single partnerships, since partners in CSD partnerships rarely operate under any kind of contracts: 95% of CSD partnerships indicate no protocol, contract, or even a non-binding memorandum of understanding between partners (GSPD, 2008), nor does the CSD sign a contract with the registrants. Only recently did the UN Development Programme (UNDP) begin to sign agreements with ‘implementing partners,’ now legally defined as independent contractors *vis-à-vis* UNDP (UNDP, 2008).

At an aggregate level, the CSD defines the goal of *sustainability partnerships* in the *Bali Guidelines* (UN, 2002a) as:

> “specific commitments by various partners intended to contribute to and reinforce the implementation of the outcomes of the intergovernmental negotiations of the WSSD and to help achieve the further implementation of Agenda 21 and the MDGs.”

The Global Compact, based on the *Ten Principles* (e.g. human rights, labour, and environment) voluntarily agreed by corporations, also defines its *partnerships for development* very loosely (UN, 2003):

> “voluntary and collaborative relationships between various parties, both State and non-State, in which all participants agree to work together to achieve a common purpose or undertake a specific task and to share risks, responsibilities, resources, competencies and benefits."

Despite the emphasis on cooperation, these definitions do not suggest any joint rights and responsibilities, or ensure liability and compliance. Moreover, both initiatives insinuate their willingness to facilitate business interests: the Compact is ‘first and foremost concerned with exhibiting and building the social legitimacy of business and markets’ (UN, 1999). For CSD, General Assembly Resolution *Towards Global Partnerships* (UN, 2002b) fervently encourages corporate inclusion:

> “Stressing that efforts to meet the challenges of globalization could benefit from enhanced cooperation between the United Nations and all relevant partners, *in particular the private sector* [...]
>
> [The General Assembly notes] numerous valuable examples of cooperation between the United Nations and all relevant partners, *in particular the private sector*, [...]
>
> Stresses also the need for international cooperation to strengthen *the participation of enterprises*, [...]

> Invites the Secretary-General to continue to seek the views of relevant partners, *in particular the private sector,* on how to enhance their *cooperation* with the United Nations...” (emphases added).

This cooperative tone was questioned by some observers. According to Diane Quarless (2007), the co-chair of partnerships sessions in Bali meetings, concerns about legitimacy, accountability and transparency of partnerships were ‘very forcefully expressed, [both by] developing countries [and some NGOs].’ Similar concerns were raised by Carol Bellamy, Executive Director of UNICEF (UNICEF, 1999):

> “It is dangerous to assume that the goals of the private sector are somehow synonymous with those of the United Nations, because they most emphatically are not. Business [is] driven by the profit motive [while the UN] is driven by a set of ethical principles that sustain its mission. [...] In coming together with the private sector, the UN must carefully, and constantly, appraise the relationship.”

Ann Zammit’s (2003: *xx*) report on UN-business partnerships suggests that ‘while at one level there can be easy agreement on immediate goals or outputs, this does not necessarily entail an identity of ultimate interests;’ hence, partnerships should also be assessed in terms of their indirect, ‘possibly unintended’ outcomes with development implications.

A business representative agreed on the divergence of main goals:

> “[Corporations] cannot solve poverty. They are not really responsible for solving poverty, and they can’t do it alone, but they can really contribute to this when they go into a partnership. Partnerships [became widespread] because of this realisation that, actually, these issues are business issues.”[6]

In addition to the lack of an official document that specifies joint responsibilities, there is also

a general agreement that business and UN interests are different. Moreover, there is a lack of consensus with regard to the definition of partnerships. A TU representative directly challenged the business take on partnerships quoted above:

> “[Partnerships] are substituting privatised activity, here in the heart of UN. Business and industry these days call everything they do a partnership. Anytime you hear that rhetoric, you should become suspicious. When you agree to [sell] certain services to me, you are not my partner!”[7]

The third question is: who bears the risk if a partnership or the partnerships *regime* fails? Empirical studies suggest that such failure is probable: Partnerships are unlikely to fill the ‘implementation deficit’ in sustainable development because they lack the human and material resources; they are unable to create additional funding; they focus on building institutional frameworks rather than projects with direct impact; and contrary to the MDGs, they tend not to implement in ‘the least developed’ countries (Biermann et al., 2007: 244-249). Most CSD partnerships do not even evaluate their contribution to MDGs (OECD, 2006). Furthermore, lack of binding contracts result in initiatives with less direct goals and less stringent modes of operation, that do not fill implementation deficits, but rather voluntary, preferential gaps, as predicted by Kenny Bruno (2002) of CorpWatch at the end of the WSSD:

> "With the world's most powerful governments fully behind the corporate globalisation agenda, it was agreed even before the Summit that there would be no new mandatory agreements. Rather the focus was to be on implementation of old agreements, mainly through partnerships with the private sector. In other words, those aspects of sustainability that are convenient for private sector would be implemented."

While it is likely that the partnership regime will fail to solve environmental problems, its failure will be difficult to assess and no party will bear the responsibility. In sum,

sustainability partnerships only *resemble* contract-based business partnerships, despite inheriting their positive connotations. Yet, the symbolic order from out of which partnerships emerged has several implications on the questions of risk and liability in global environmental governance.

2.2. Partnerships and Corporations

In management studies and commercial law, *partnership* appears as a type of business ownership, among three others: sole proprietorship, corporation, cooperative. Each type indicates distinct advantages in forming, operating, and dissolving businesses. The most discernible separation is whether the firm has a separate legal person. In a proprietorship and in some types of partnerships, the business entity has no separate legal existence from its owner/s, whereas in corporations, limited liability partnerships and co-ops it does. Therefore the business entity can (legally) operate like a real person, while having no relationship with the biological persons who own the business.

This separation has two implications. Firstly, the control owners have over the management of the enterprise differs on this basis. Generally, if the business has no separate legal existence, the management is done by the owner/s (*sole proprietorship* and *general* or *liability partnerships*). If the enterprise is a legal person, there is usually a board and a professional management team, such as *corporations*, where owners are shareholders with no managerial role and limited decision-making power. *Limited liability partnerships* are managed directly by partners, and *co-ops* by all members.

Secondly, the firm's separate legal person protects the owner/s from risk with limiting the liabilities: While *unlimited liability* refers to owner/s being personally responsible for all the debt that may result from the venture (all the property of the owner/s could be liquidated to pay the debts), *limited liability* means that each owner's responsibility is limited to the

amount she invested in that particular business (owner/s can only lose their initial investment); hence the risk for the investor is reduced.

In different types of business ownership liabilities differ (Table 1). For partnerships, liability conditions are the determining factor in their categorisation and regulation. A partnership is a *general partnership (GP)*, if each partner is personally liable for any debts of the company, a *limited liability partnership (LLP)*, if all partners have limited liability, or a *limited partnership (LP),* if the silent partners have limited and managing partners have unlimited liability.

In sum, the most critical similarity between corporations and partnerships are in the distribution of risk and liability. In both cases, owners are protected from the possible failure of their ventures.

2.3. Corporations in Governance

Business partnerships and corporations differ in terms of ownership and control: Unlike LLPs, shareholders of a corporation are numerous and dispersed, while managers operate the day-to-day business, which is termed in business law as 'the divorce of ownership from control' (Berle and Means, 1932). Inversely, with this separation of shareholders from managers in corporations, rights of ownership are unbundled.

In management theory, shareholders are generally regarded as having the *ownership* of a corporation, and the corporation as a 'nexus of contracts' (the shareholder view of the corporation). As the rights of creditors, employees and others are protected by contractual and common law, corporations should pursue the interests of their shareholders. Some critics disagree with both of these points: Firstly, they argue that all other stakeholders "are not compensated by means of 'complete' contracts (that specify exactly what is to happen in all

circumstances)" (Blair, 1995: 230). Secondly, they argue that shareholders are not the only owners: They see this as a misconception owing to a 'legal and social convention,' as rights of possession and control are customarily packed together with rights to receive benefits through the use of the asset and responsibility for bearing the risk incurring from its misuse (Blair, 1995). This is a natural consequence of private property being in the form of physical property throughout (most of) history. However, in corporations these rights are unpacked, and distributed to several participants in the enterprise. Since a shareholder does not effectively undertake all the responsibilities that ownership of real property normally implies, and is reduced to a recipient of the wages of his capital, they should not be entitled to rights normally associated with ownership either (Berle and Means, 1932: 355-6):

> "The owners of passive property, by surrendering control and responsibility over the active property, have surrendered the right that the corporation should be operated in their sole interests. [This does not imply that the new powers should be used in the interest of the managers, who have] cleared the way for the claims of a [wider] group. They have placed the community in a position to demand that the modern corporation serve all society."

These critics argue that in addition to the shareholders; managers, workers, creditors, and even a larger body of stakeholders are influenced, and thereby their interests need to be considered in corporate operations. This is one of the ideational origins of the corporate social responsibility paradigm.

Another point of contestation concerned residual risks and claims. Shareholders of a corporation are investors that provide the initial capital in return for a proportionate share of the net profits, after all debts, credits, and other obligations are paid. Shareholders are said to take a *residual risk* and therefore have a *residual claim* because payments to shareholders are paid last, so they risk not making any profits. For neo-classical economics, this is another

reason for corporations to pursue the best interests of their shareholders, and not a larger stakeholder group. However, the principle of limited liability for shareholders is in direct contradiction with this assumption that shareholders are the only residual risk claimants and therefore residual risk bearers (ibid: 225-234): Not only does limited liability shift some of the residual risk to the creditors (e.g. bankruptcy), but also to workers (e.g. lay-offs) or the rest of the society (e.g. the failure to complete infrastructure projects).

The proponents of the stakeholder view noted that the political legitimacy of corporate power was hardly challenged after the Great Depression, due to its 'brilliant performance' in generating wealth during and after WWII. They were cautious, however, because this fading made the discussion of corporate power even more pressing (Votaw, 1965: 87):

> "Corporations are the possessors of substantial amounts of power, and properly so. Without it they could not perform the tasks society demands from them. In a free society, however, we cannot leave the subject there. Power, in either private or public hands, raises difficult questions: How much power? In whose hands? Power for what purposes?"

By the late 1960s, the legitimacy questions faded further into the background as business leaders embraced the stakeholder view, and assumed more responsibilities (Blair, 1995). As a response, the Chicago School argued that 'the social responsibility of business is to increase its profits' (Friedman, 1970), and 'the tendency to allow and even to impel the corporations to use their resources for [other ends] confer upon them undesirable and socially dangerous powers' (Hayek, 1985: 100).

Today, the debate on whether the corporation should be perceived as *the social institution around which the society is organised* is even more critical. As corporations assumed increasing amounts of leverage in the public domain, their inclusion into governance is increasingly institutionalised, and normalised. It is beyond the scope of this paper to bring

such an extensive debate to its conclusion, but there are important points for discussion.

Firstly, corporations are not operating in a social vacuum, and are already assuming many social responsibilities, even when their actions are geared towards profit-maximisation. this is demonstrated every time they employ or lay off large amount of workers, succeed or fail to accomplish projects, enter into or leave markets, or destruct or conserve ecosystems and commons with their activities. Assuming corporations *can* act only on behalf of their shareholders without affecting the public sphere is assuming that authority solely belongs to public actors. Such an assumption would make the study of the increasing societal acceptance and political legitimation of private authority impossible (Cutler, 2002). Moreover, in actual fact, the fundamental assumptions of liberal economists often do not hold (Stiglitz, 2003), neither for macro-economic policy nor for corporate organisation, e.g. the assumptions that all firms operate under conditions of complete market transparency and information; property rights and prices are determined for all possible products; or corporate contracts are complete. Under such conditions of uncertainty, the ultimate motive of the firm is no longer restricted to profit, but also involves its *stability* and *survival* (Fligstein, 2001).

Pursuit of survival can be seen as a logical consequence of corporations being given a perpetual existence *together with* limited liability: The modern corporation is a (legal) person with perpetual life. Hence, the long-term survival strategies of corporations can no longer be regarded as against the benefit of their shareholders if better working conditions or self-imposed environmental standards are perceived as significant for the survival of the firm. Perpetual existence also brings the firm the *pursuit of stability.* Corporate self-regulation of social/environmental externalities and business demands for internationally standardised regulation must be viewed in this light.

3. Partnerships in Global Governance

Economic entities with perpetual lives and rights more expansive than those of individuals meant that their order was also separate and different. But before the order of market economy was established, i.e. before perpetual existence was granted to corporations, capital departed the mortal body of the capitalist with the introduction of limited liability to commercial law. This section starts with a summary of this experience in nineteenth-century England, a microcosm of the great transformations in the capitalist world. Then, this historical account is linked to later developments in capitalism: the recent narratives of, and contestations around, global capital markets. Finally, the interrelation of economic and social/environmental governance is examined to reveal how sustainability partnerships emerge as a new form of legality in the context of privatisation of environmental governance: The intersection of these historical and recent narratives generate the space in which different actors are positioned such that social/environmental governance is easily synchronised with financial globalisation through partnerships.

3.1. Socialisation of Capital

In England, the introduction of limited liability to commercial law occurred in the context of changes in the law of partnership. At the time, commercial law was the focus of contestation between the landed aristocracy and the financial and commercial bourgeoisie, as well as among political economists. Changes in partnership and liability laws affected the architecture of commercial and financial governance in most advanced capitalist societies. According to Bryer (1997: 38), from 1818 to 1856, Parliamentary debates on the aptness of limiting investors' liability took place "between two competing world-views, [based on] two competing systems of political economy": *The modernisers* demanded "[capital's] right of association and competition on equal terms, in the name of 'freedom of contract' and a vision of *social* capital which anticipated Marx's critique" whereas *the great capitalists* "embraced

Adam Smith's vision of a world of *individual* capitalists: a world still dominated by landowners [...], a few large [and] a mass of smaller individual capitalists [whose involvement] ensured Britain was the best of all possible capitalist worlds."

There was no clear-cut division of opinion between economic classes; both coalitions attracted individuals from all sections. In the beginning, *the modernisers* demanded limiting liability for the protection of the working classes from extensive investment losses (Saville, 1956: 418-423). Simply put, when a firm formed a partnership with another firm trading at a different place, and the latter went bankrupt for its separate ventures, to hold the remaining firm liable for the debts of the other was unjust, because only larger capitals could bear such a burden. This argument already understood the firm as a separate individual, but the emphasis was on increasing the possibilities for the working class to invest. *The great capitalists* opposed: there was no necessity of encouraging investment; limiting liabilities would cause more risky and speculative investments (while workers would be better off investing in public funds), and increase fraud.

It was John Stuart Mill, who recognised the potential contradiction in the principle although he favoured limited liability to enhance cooperative production: 'the great value of a limitation of responsibility as relates to the working classes would be not so much to facilitate the investment of their savings, not so much to enable the poor to lend to those who are rich, as to enable the rich to lend to those who are poor' (ibid). As he had foreseen, once the coalition supporting limited liability included more capitalists, the emphasis shifted from the benefits of small ventures for working class investors to systemic issues such as freedom of contract, right of association, and equal competition. Eventually, the discussion expanded into 'the workings of industry and commerce, the psychology of businessmen and the relationship of the business, [...] society and government. [...] The issue was placed squarely in the context

of the arguments for *laissez faire*, [and became] a question of free trade against monopoly' (ibid: 422-430).

After decade-long parliamentary discussions, limited liability was included in the law of partnership, with the 1855 Amendment to the Joint-Stock Companies Act of 1844. The application of *laissez faire* principles expanded from business and commerce to money, which now had its own market, free circulation, and rights of association separate from its possessor. Thus, the 'equality of capital', and 'the divorce of ownership from control' were legally established. These principles swiftly materialised in early twentieth-century England, particularly with the resulting growth of joint-stock companies (Hannah, 2007).

These developments led to Marx's conceptualisation of *socialisation of capital*. In *Capital*, Marx (1867 [1991]: 567-568) links this transformation with the shift in the perceived role of companies:

> "social concentration of means of production and labour-power now receives the form of social capital (capital of directly associated individuals) in contrast to private capital, and its enterprises appear as social enterprises as opposed to private ones. This is the abolition of capital as private property [...] This result of capitalist production in its highest development is a necessary point of transition towards the transformation of capital back into the property of the producers, though no longer as the private property of individual producers, but rather as their property as associated producers, as directly social property."

This observation resonates that of a banker from Manchester, opposing limited liability: 'It seems to me that we deal, and ought to deal, with men as individuals not with *an abstraction called capital*, which we are thus called upon to recognise as *possessing a separate and independent existence*' (in Bryer, 1997: 37). The responsibility of debts resulting from an investment no longer belonged to the investor's real person; separate investments by the same

investor had independent lives, debts, and consequences. As a result, 'capital the abstraction' was taking command of production, in Marx' words, by freeing itself 'from the idiosyncrasies of its owner and conform to the law of social capital' (ibid: 49). The two functions of the capitalist were also separated: What Marx termed the separation of the provider of capital (the money capitalist) from the organiser of production (the industrial capitalist), was the 'divorce of ownership and control.'

Steven Toms (2007: 6) understands *socialisation of capital* as a historical continuum: Its application to ownership begins with the invention of partnerships in business law, expands with the promotion of capital mobility through capital markets, and peaks with the breakdown of restrictions on the transfer of globally accumulating capital. This process continues as regulations on capital mobility are being further reduced, and by the institutionalisation of these rules through global financial organisations securing free trade (especially in capital markets). For instance, whenever national economic interests obstruct capital mobilisation and transfer, the WTO ensures that national legislation is overruled by a new, global set of rules. As Lipschutz and Fogel (2002: 119) point out 'from the perspective of global capital, it is preferable to deal with single sets of rules that apply to all countries,' therefore what we observe is not only national legislations being brought in line with this global set of rules, but also an increasing standardisation of global trade rules.

3.2. Myths and Inevitabilities of Globalisation

After capital became an abstraction separate from the capitalist, socialisation of capital began to further capital mobility. The logical end result of this process was the organising of fragmented national economic policies into a somewhat uniform rule-system. The second half of twentieth-century is marked by the increasing accumulation of financial power in the corporation (the actor) and by the creation of capital markets and global governance

institutions such as the International Monetary Fund (IMF), the World Bank, and the WTO (the architecture). Hardt and Negri (2004: 107) argue that the rules prescribed in the name of regulatory harmonisation and market cohesion are codes of conduct among business actors. The more influence corporations exert on the normative processes regulating globalisation, the more capital operates in a conventional but weak form of 'global governance without government':

> "The resulting regime of global law is [...] not an external constraint that regulates capital but rather an internal expression of agreement among capitalists. This is really a kind of capitalist utopia."

With the empowerment of global governance institutions, financial interactions are increasingly regulated at the global level. As capital can flow from one territory to the other effortlessly regardless of social repercussions, 'being global gives [corporate] actors power over individual governments' (Sassen, 1996: 41). While the *domestic* financial policies promote *deregulation*, increasingly uniform and expansive regulation defines *global* financial governance. Socialisation of capital continues with what may be called 'selective regulation' (Lipschutz and Fogel, 2002).

Two crucial discursive elements accommodate the way socialisation of capital and financial globalisation affect and transform statehood and the international system: *the narrative of inevitability* (of globalisation) and *the myth of the self-regulating markets*. While the former ensures compliance to global financial rules by reducing fragmentation among national *economic* policies, the latter maintains fragmentation in *social and environmental* legislations.

From a neo-liberal perspective, selective regulation in the economic realm ensures certainty and stability, and reduces transaction costs for international economic actors. But more importantly, it is said to eliminate politics from polarised issue areas by shifting regulatory

authority from the domestic to the global sphere, where contestation is limited (ibid). Regulation at the *global* level causes a fundamental depoliticisation of market economy, through the narrative of inevitability and inalterability of economic globalisation.

These narratives are operationalised in politics, for instance when Tony Blair (2005) declared resisting, discussing, (and therefore politicising) globalisation redundant by equating it to a 'force of nature':

> "I hear people say we have to stop and debate globalization. You might as well debate whether autumn should follow summer [...] In the era of rapid globalization, there is no mystery about what works -an open, liberal economy, prepared constantly to change to remain competitive."

Cameron and Palan (2004) note that the narrative of the market economy has consequences for the practice of statehood since it externalises globalisation, and makes it an irresistible force that states can only adapt to. Openness and competitiveness institutionalise in the structure of the contemporary world system as the states are 'disciplined (and in fact self-disciplining) by outside pressures should they fail to realize the logic of transition' from national statehood to competitive market statehood (ibid: 123). The external disciplining forces are the *hyper-mobile capital*, and the *institutions of global governance*. The former can always flow to other markets in line with standardised global regulations. The latter ensure compliance of states by restricting policy options and creating enforcement mechanisms. For example, the WTO 'regulate[s] the behaviour of states engaging in trade' rather than trade *per se* (ibid: 124).

This perceived inevitability was disputed by Kofi Annan (2000). In explaining his attempts 'to bring business in', he agreed that globalisation required adaptation, but it could be altered:

> "It has been said that arguing against globalization is like *arguing against the laws of gravity*. But that does not mean we should accept a law that allows only heavyweights to survive."

To reverse the 'laws of gravity' and introduce social and environmental limits to the negative effects of globalisation was also demanded by alternative globalisation movements in Seattle, Doha, and Porto Alegre. But selective regulation also characterises globalisation in terms of different regulatory areas (Lipschutz and Fogel, 2002): While uniformity is institutionalised in global financial regulation, in spheres of global environmental or social regulation it is regarded as inefficient, as it would introduce politics into issues that should be addressed by efficient markets. The theme of inevitability in globalisation discourses rests on this assumption of 'the invisible hand,' the myth of self-regulating markets.

A system that is able to regulate itself indeed resembles a force of nature; this is what *homeostasis* refers to in systems theory. Such self-regulating systems do not require intervention, as this can disrupt 'natural cycles.' However, markets are not natural systems and their survival-as-usual need not be the utmost goal of the international system. As Rousseau noted (1762 [1968]), 'the influence of private interests in public affairs [causes] the State [to be] altered in substance, [making] all reformation impossible'. For him, this not only makes private involvement in governance dangerous, but also reveals an obvious fact about self-regulation: those 'that would always govern well would not need to be governed.'

This skepticism about corporate self-regulation should not suggest that fragmentation of social/environmental legislations is dictated by corporate agendas. There is considerable divergence in corporate, sectoral, regional and national interests regarding social/environmental legislations. This divergence of interests makes it unlikely to reach international consensus, and creates clear advantages (for both corporate and state actors) for

pursuing market-based, self-regulatory schemes: Different corporations can opt for different national legislations whereas states can exert some degree of control on their economic policies, by creating regulatory environments that promote certain sectors. More importantly, poorer countries resist global standards on environment as they are likely to be dictated by industrialised countries.

Over sixty years ago, Karl Polanyi (1944: 3) regarded self-regulating markets as a 'stark utopia,' because the evolution of markets and regulation were intertwined, and markets needed rules in order to function. Moreover, the social order would inevitably be disrupted by a self-regulating market. The famous 'double movement' he conceptualised, demonstrates how *the paradox* of the self-regulating market is resolved in practice: dislocations caused by free markets are almost always counterbalanced by actions of various classes in society, as well as the state. These cushioning acts keep the speed of *laissez faire* forces under control and allow for social adjustment. This is still the case, as different social groups, (now transnationally) try to limit the disruption of the socio-ecological fabric by demanding 'global regulation of social/environmental externalities' (Lipschutz and Fogel 2002: 136).

However, as Rousseau has foreseen, the states ('altered in substance') no longer assume this responsibility. On the contrary, as Tony Blair highlights, capital is further promoted while social values are adjusted to the new order. Governments act as mediators when IMF prescriptions must be accepted by or forced upon the society, as has been the case in Argentina and Turkey in the early 2000s. Protests of dislocated peoples against large-scale dam projects (often supported by a development bank or the World Bank) reveal how this new role of the state is played out in countries (such as India, Laos, Brazil, and Israel) that prioritise industrialisation.

In this context, the corporation represents the medium between hyper-mobile capital and the

public sphere. Its image, as the primary if not the only *social institution* capable of embracing *and* benefiting from the new global order, further consolidates the stakeholder view of the firm. Moreover, it highlights the competition between the order of states and corporations: The diffused global order of the corporations (i.e. capital markets) challenges the international order among states. Although this does not suggest governance *without* government, it does suggest a redefinition of the role of state actors, the only accountable representatives of people in international relations. States no longer perceive their role as 'counterbalancing the disruptive effects of the global market economy (i.e. market failures) on the society,' but as 'facilitating the market in consolidating its order'.

3.3. New Forms of Legality

The neo-liberal narratives of free trade, open markets, and competitive statehood make market failures more difficult to detect, as they take place at the global level. It is also more difficult for (most) actors to intervene, due to costs and capacities required to be a global player. Simultaneously, statehood as such is being transformed as national legislations are subjugated to global regimes: With the increasing influence of the WTO on trade policies, the IMF on monetary policies, and the World Bank on developmental policies, it is often states that are regulated by the institutions of the 'market order.' With these organisations, dominant narratives of globalisation are becoming consolidated into concrete structural programmes, international agreements, and governance mechanisms.

To take part in this new order, state actors reinvent their functions, but it is impossible to suggest the state is withering away. As Hardt and Negri (2004: 107) suggest "the private authority that emerges in this realm of business contracts can exist only with the backing of political authorities. [...] Behind every utopia of capitalist self-government there is a strong supporting political authority." Faced with increasingly stringent global regulations,

governments may even *benefit from* the blurring boundaries between public and private, and from the obfuscation that national economic policies are dictated by global financial markets.

States also exercise power by the production of *new forms of legality*, which are in line with the order of global capital markets. These *new* forms of legality are not the not-so-recent Bretton Woods institutions (which seamlessly merge with an international legal system), but private governance institutions of the last decade, such as partnerships, private standardisation and self-regulation institutions, or carbon markets. These new mechanisms maintain (and even symbolise) the fragmentation of global social/environmental policies: Type-II partnerships, initially designed to complement international agreements (the Type-I outcomes), reveal how governments failed to reach an agreement on *any* environmental issue discussed at the WSSD. Carbon markets represent not only a minimal and ineffectual consensus among governments, but more importantly, their agreement that climate and energy policies remain within their jurisdiction. When state actors perceive a private standardisation mechanism as harmful to their interests, they endorse other similar 'private' mechanisms: The competition that Malaysian Timber Certification Council posed to Forest Stewardship Council's standards by more relaxed private-regulation is an example. Mostly, the fragmentation maintained by these arrangements is agreeable to both state and corporate actors.

With their emphasis on market-based approaches and voluntary/private origins, new forms of legality transform the social/environmental sphere towards compatibility with the logic of the market. The effectiveness and sustainability of these approaches remain highly ambiguous, since they are not regulated or monitored. Yet, in the regulatory vacuum of globalisation, private governance institutions fill a gap, which results from the disagreements and fragmented interests of actors. Privatisation of governance is the consolidation of partial,

fragmented, and preferential solutions to social/environmental problems originating (largely) from the very process of globalisation.

4. Conclusion

This paper aimed to open up certain obscured debates around private governance institutions, increasing in number and form in the sphere of global environmental governance. Partnerships may be only one form of these institutions, but they are the most common and important one. Their importance results from the concept's historical, social, and economic links with privatisation and its endorsement by the UN in achieving sustainable development since 2002.

Analysing the historical background of the concept first in business law and then in relation to globalisation reveals several important points about global governance in general and environmental governance in particular. First, the application of the term partnerships to hybrid mechanisms of environmental governance points to a change towards the limitation of legal liabilities. Not only are failures difficult to detect due to the voluntary, unmonitored nature of these arrangements but in case of failure, the responsibility is so diffused that no party can be held accountable.

Secondly, if the end product (the black-box of Type-II outcomes) is opened up, it is possible to note that new forms of legality result from certain transformations at the global level. As the narratives of globalisation and markets consolidate homogenisation in financial governance the state resumes new functions, and invents ways of internalising globalisation and resisting it at once. By inventing new forms of legality the state system *copes* with the market order, while the continued fragmentation of social/environmental governance allows for state actors to maintain some degree of control over their economies. In contrast, the corporation becomes both a legitimate stakeholder in global politics and the medium between

hypermobile capital and the public sphere. Hence, its social influence is consolidated.

While this is the case for the actors, privatisation of governance also represents a change in understanding: As market failures are not corrected by the states and regarded as inevitable, they are transformed into *state failures* in social/environmental spheres. Governance deficits simply refer to these failures in creating a uniform set of global rules over fragmented national policies. Implementation deficits highlight how states are unable to implement, even when international environmental legislation is in place. Addressing governance deficits through private governance mechanisms presumes that global financial markets correct state failures. Sustainability partnerships, for instance, are mechanisms to implement what states failed to implement, (self-)regulate where states fail to regulate.

In this context, private governance institutions keep legislative discourses in social/environmental issue areas analogous to those of financial governance, operating within the same frames of reference. The question, then, is not so much whether the corporations and markets possess authority over social and environmental issues, but whether these demands should be made from them. Should *social and environmental* regulation fall in within the purview of markets or politics? In the final analysis, the answer will determine the legitimacy of privatisation of environmental governance and its emerging institutions.

Notes

[1] "The Global Compact is a framework for businesses that are committed to aligning their operations and strategies with ten universally accepted principles [in] human rights, labour, the environment and anti-corruption" (UN, 1999).

[2] CSD Partnerships are "voluntary multi-stakeholder initiatives which contribute to the implementation of inter-governmental commitments in Agenda 21, the Programme for the Further Implementation of Agenda 21 and the JPOI" (UN, 2004).

[3] Interview with TU representative to CSD, May 2007.

[4] Interview with business representative to CSD, May 2007.

[5] www.merriam-webster.com

Table 1. *Liability and control in business ownership*

level of control over management	*Type of liability*	
	Limited	**Unlimited**
Low	LP (limited partners) Corporation	
Medium	Cooperative	
High	LLP	LP (unlimited partners) Sole proprietorship GP

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