Governance with/out Government

False Promises or Flawed Premises?

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Abstract

Governance with/out government has emerged as an alternative or functional equivalent to government. While there seems to be an increasing demand, the promise of governance to compensate for the weakness or failure of government rests on a major premise. Governments have to be strong enough so that non-governmental actors have an incentive to cooperate, and governments are not afraid of being captured. If this premise held, it would result in a serious dilemma for areas of limited statehood: The greater the demand for governance with/out government, the less likely it is to emerge and to be effective, precisely because government is weak.

This paper explores to what extent government and statehood are necessary to make governance with/out government work. It discusses various options of how to commit non-governmental actors to the provision of common goods without a shadow of hierarchy cast by government and concludes with suggestions for future research on governance beyond statehood.

Zusammenfassung

„Governance with/out government" wird häufig als funktionales Äquivalent zu staatlichem Regieren gehandelt. Inwiefern nicht-hierarchische Formen des Regierens Staatsversagen kompensieren können, scheint jedoch von einer wesentlichen Prämisse abzuhängen. Regierungen müssen stark genug sein, um Kooperationsanreize für nicht-staatliche Akteure zu erzeugen und gleichzeitig nicht die Gefahr des „state capture" zu fürchten. Wenn dies zutrifft, ergibt sich daraus ein ernsthaftes Governance Dilemma für Räume begrenzter Staatlichkeit. Je größer die Nachfrage nach „governance with/out government" desto weniger wahrscheinlich ist es, dass nicht-hierarchische Formen des Regierens sich herausbilden und effektiv sind, gerade weil staatliches Regieren schwach ist.

Das Papier untersucht, inwiefern staatliches Regieren und Staatlichkeit notwendige Bedingungen für die Effektivität von „governance with/out government" sind. Welche Möglichkeiten gibt es außer dem durch intakte Staatlichkeit erzeugten Schatten der Hierarchie, um nicht-staatliche Akteure zu veranlassen, sich an der Bereitstellung von Governance-Leistungen zu beteiligen?

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1. Introduction[1]

In recent years, the literature on governance within and beyond the state has focused on non-hierarchical modes of coordination and the involvement of non-governmental actors in the formulation and implementation of public policies. In the 1970s, the comparative policy and politics literature already showed that governance might help to overcome problems of government (for a good overview of the literature see Scharpf 1997; Mayntz/Scharpf 1995a). The direct participation of non-governmental actors in public policy-making would improve both the quality of public policies and the effectiveness of their implementation, since target groups could bring in their expertise and their interests. 20 years later, this argument was reintroduced into the governance literature by students of International Relations and European Politics who have been discussing "governance without government" (Rosenau/Czempiel 1992; Peters/Pierre 1998) and "new modes of governance" (Héritier 2002; Héritier/Lehmkuhl 2008) as functional equivalents to the traditional top-down, command-and-control approach of hierarchical steering by government.

Yet, empirical research has demonstrated that non-hierarchical coordination and the involvement of non-state actors do not necessarily hold their promise to increase the effectiveness and the legitimacy of public policy-making. Governance without government is likely to produce (more) adequate policy outcomes if political decisions can be hierarchically imposed. The "shadow of hierarchy" cast by government provides a crucial incentive for both government and non-governmental actors to engage in non-hierarchical coordination (cf. Mayntz/Scharpf 1995b; Scharpf 1997). If government is indeed a premise for governance without government, this results in a dilemma, if not a paradox, for research on governance – the lower the effectiveness of government, the greater the need for governance, whose effectiveness (and legitimacy) depends, however, on the presence of government.

This paper explores how much government is necessary to make governance work. The question is not only relevant for the realm of international politics, where collective rule-making has been spreading but cannot rely on a central enforcement power to ensure compliance. In "areas of limited statehood", where government is weak or absent, governance without government may be often the only way to provide common goods (Risse/Lehmkuhl 2010).

The paper starts with conceptualizing the relationship between government and governance. I will argue that the shadow of hierarchy cast by governments that can draw on consolidated statehood is a major condition for the emergence and effectiveness of governance with and without government. Since the governments of many states outside the OECD world are often too weak to cast a credible shadow of hierarchy, we should not be too surprised why research on transition countries has found only limited evidence on the emergence of governance without

government (cf. Héritier/Rhodes 2010; Börzel 2009a). In the absence of a government that is capable of threatening with hierarchical intervention, business and civil society have few incentives to cooperate. Moreover, governments that command only limited resources themselves have been reluctant to cooperate with non-state actors for fear of agency capture.

In the second part, I will tackle the nature of hierarchy and statehood to explore to what extent government is necessary to cast a credible shadow. The governance literature draws an implicit link between hierarchy, statehood and government. Hierarchy defined as the capacity to impose decisions by coercion is constitutive for government, which can draw on the monopoly of force in the provision of common goods. If governance requires at least some government, governance research is unlikely to travel to areas of limited statehood, where statehood is by definition too weak for governments to hierarchically adopt and enforce collectively binding rules. Moreover, these countries would be doomed, since governance without government is unlikely to substitute for government failure.

To what extent this governance dilemma really holds true and can be eventually overcome, is after all an empirical question, which is beyond the scope of this paper. Rather, the third part of the paper discusses whether the emphasis on government and statehood as scope conditions for effective and legitimate governance may be a fallacy of modernization theory, which has prevented us from conceiving of governance as a true functional equivalent and substitute for, rather than a compliment to, government. The fourth part then discusses possibilities to induce non-governmental actors into the provision of common goods without a shadow of hierarchy cast by government and statehood. The paper concludes with some suggestions for future research on governance beyond statehood.

2.   Governance, Government and Hierarchy

Following the work of Renate Mayntz and Fritz W. Scharpf, governance is understood in this paper as institutionalized modes of coordination through which collectively binding decisions are adopted and implemented to provide common goods (cf. Mayntz/Scharpf 1995b; Mayntz 2004; Scharpf 2000). Thus, governance consists of both structure and process (Scharpf 1997: 97; Mayntz/Scharpf 1995b: 19). Governance in terms of structure relates to the institutions and actor constellations. Here, the literature usually distinguishes between hierarchy, market (competition systems)[2] and networks (negotiation systems).[3] These are ideal types, which differ with regard to the type of actors involved and the degree of coupling between them. Governance as

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2   In the political science literature, markets are not regarded as governance since they are a " spontaneous order" (Hayek) that leaves "no place for 'conscious, deliberate and purposeful' efforts to craft formal structures" (Williamson 1996: 31). Yet, market mechanisms can be institutionalized to coordinate actors' behavior through competition (cf. Benz 2007). This paper uses the concept of competition systems to describe the institutionalization of market-based modes of political coordination.

3   The governance literature has identified other forms of social order, such as clans (cf. Ouchi 1980) and associations (cf. Schmitter/Lehmbruch 1979; Streeck/Schmitter 1985). Like networks, this paper conceptualizes them as negotiation systems (see below).

process points to the modes of social coordination by which actors seek to achieve changes in (mutual) behavior. Hierarchical coordination usually takes the form of authoritative decisions (e.g. administrative ordinances, court decisions). Actors must obey. Non-hierarchical coordination, by contrast, is based on voluntary commitment and compliance. Conflicts of interests are solved by negotiations. Voluntary agreement is either achieved by negotiating a compromise and granting mutual concessions (side-payments and issue-linkage) on the basis of fixed preferences (bargaining), or actors engage in processes of non-manipulative persuasion (arguing), through which they develop common interests and change their preferences accordingly (Benz 1994: 118-127; cf. Risse 2000).

Institutions are crucial in shaping both governance structures and governance processes. On the one hand, they determine the degree of coupling between actors by defining their relationships and allocating resources to them. On the other hand, institutions set the framework for the modes of coordination on which actors draw (cf. Scharpf 1997). In hierarchical structures, for instance, hierarchical and non-hierarchical modes of coordination can be used. Institutions bestow upon government the power to unilaterally impose decisions, but they can refrain from invoking their hierarchical authority when they bargain or argue with others. Negotiation and competition systems, by contrast, can only rely on bargaining and arguing. Which mode of coordination actors choose within their institutional limits is, again, influenced by institutions, which render certain modes more appropriate or socially acceptable than others.

Institutions also influence the constellations of governance actors since they regulate the resources they can draw upon in the provision of common goods. While governance research seeks to overcome the strict separation between the public and private sphere,[4] the distinction between governmental and non-governmental actors remains meaningful, both for normative and theoretical reasons (Mayntz/Scharpf 1995b: 27f). Unlike private or non-governmental actors (civil society, companies), governments have the authority to hierarchically impose common goods or command their provision by others. The authority of hierarchical coordination is based on the institutionalized monopoly over key power resources (*"Herrschaftsressourcen"*, Genschel/Zangl 2008: 4), particularly coercive force.[5] Non-governmental actors also have the capacity of hierarchical coordination and may monopolize the use of force. However, governments hold an institutionalized (claim to the) monopoly of force that they must put to use for nothing else than the provision of common goods. Thus, governments do not only command privileged resources for hierarchical coordination. Their public mandate commits them to acting in the public interest and makes them politically accountable and legally liable in case of failure (Scharpf 1991: 630).[6] In other words, what makes governments special is that they can

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4 Governance approaches emphasize mutual interdependence of public and private actors in the provision of common goods defying the classical distinction between the subject and object of steering (cf. Mayntz/Scharpf 1995b; Mayntz 2005).

5 Other "key monopolies" discussed in the literature are the levy of taxes and administration; (Genschel/ Zangl 2008: 4-6).

6 This mandate does not necessarily have to be democratically legitimate. For instance, policy delegation can commit independent regulatory agencies or professional associations to the public interest. Moreover, public actors or governments do not always act in the public interest, nor do they have to be

rely on statehood, i.e. the legitimate monopoly on force and the making of collectively binding rules to hierarchically coordinate the provision of common goods. The legalization of hierarchy based on the use of coercive force is constitutive for consolidated modern statehood while areas of limited statehood are characterized by personal rule rather than the rule of law (cf. Schuppert 2010: 43-45).

Conceptualizing governance as structure and process helps us delineate governance without government from other forms of institutionalized modes of coordination in the provision of common goods.

The essence of *government* is hierarchy based on statehood (cf. Kooiman 1993; Rhodes 1997; Pierre/Peters 2000). The institutionalized relationship of domination and subordination, which significantly constrains the autonomy of subordinate actors (tight coupling) allows for hierarchical coordination. Drawing on statehood, governments can force actors to act against their self-interest (Scharpf 1997: 171). They may be either physically coerced by the use of force or legally obliged by legitimate institutions (law). Hierarchical coordination does not leave actors either the possibility of exit or voice (cf. Hirschman 1970). Unlike arguing and bargaining, hierarchical coordination does not seek to influence actors' choices but to unilaterally constrain or nullify them.

Governance with/out government, by contrast, is based on horizontal relations between actors. While they may differ with regard to their bargaining power, no actor is subject to the will of another.[7] The institutions of competition systems do not provide for any structural coupling. Actors have full autonomy to coordinate themselves through the mutual adjustment of their actions. Negotiation systems, finally, are characterized by loose coupling. Social coordination is based on mutual agreement. Unlike in formalized negotiation systems, the horizontal relations of networks are not defined by formal institutions, but constituted by mutual resource dependencies and/or informal norms of equality.[8]

In sum, governance with/out government refers to the involvement of non-governmental actors (companies, civil society) in the provision of common goods through non-hierarchical coordination. It ranges from consultation and cooptation, delegation, and co-regulation/co-production to private self-regulation in and outside the control of government. Governance with/out government, hence, can involve governmental actors as long as they refrain from using

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intrinsically motivated to do so. Yet, unlike private actors, they have to justify their actions in the public interest and face political and legal sanctions and/or a loss of legitimacy.

7   Strong power asymmetries can, however, reduce the choices of actors (by imposing prohibitive costs) so much as that coordination becomes largely hierarchical.

8   Networks are then informal, i.e. non-formalized negotiation systems; cf. Marin/Mayntz (1991). The literature discusses other characteristics of networks, including actor constellations that equally involve public *and* private actors (Mayntz 1993) or relations based on trust, which favour problem-solving over bargaining as the dominant action orientation (Scharpf 1997: 137f; Benz 2001: 171). However, such a narrow concept of network governance is flawed both in theoretical and empirical terms; cf. Börzel (1998).

their coercive powers, i.e. do not rely on statehood. Some authors, therefore, distinguish between governance by, with and without government (cf. Zürn 2002). The paper follows this distinction by using "governance with/out government". In order to avoid conceptual overstretch, however, certain forms should remain outside this definition (figure 1).[9] Governance with/out government does not cover lobbying and mere advocacy activities of non-governmental actors aimed at governments as well as supranational and international organizations (cf. Börzel/Risse 2005).

Non-governmental actors who are not active participants in negotiating or competition systems pose few challenges to existing concepts and theories in political science and international relations. Also excluded are those arrangements among non-governmental actors that

- are based on self-coordination and do not aim at the provision of common goods and services (markets);
- produce common goods and services as unintended consequences (for example rating agencies) or provide public 'bads' (mafia, drug cartels, transnational terrorism).

Figure 1: Governance with/out government – the non-hierarchical involvement of non-governmental actors

governance by government

Public regulation
no involvement of private actors

Lobbying of public actors by private actors
private actors seeking to influence public actors

Consultation/Cooptation of private actors
participation of private actors in public decision-making
(for example private actors as members of state
delegation; outsourcing)

Co-Regulation/Co-production of public and private actors
Joint decision-making of public and private actors,
(for example social partners in tripartite concertation;
public-private partnerships)

Delegation to private actors   **governance with government**
participation of public actors
(for example contracting-out; standard-setting)

Private self-regulation in the shadow of hierarchy
involvement of public actors
(for example voluntary agreements)

Public adoption of private regulation
output control by public actors
(for example *erga omnes* effect given
to collective agreements of social partners)

Private self-regulation
no public involvement
(for example private regimes;
social partner autonomy)

governance without government

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9 The typology can also be read as a description of the transformation of the state driven by privatization, deregulation and delegation of governance functions turning the state from an organizational form of governance (*Herrschaftsverband*), in which government is the sole provider of common goods (governance by government), to a situation in which government primarily manages the provision by non-governmental actors (governance with government); cf. Genschel/Zangl (2008). Even the leanest state, however, entails some involvement of government. Governance without any government in form of private self-regulation is already conceptually rare.

The governance literature has heralded governance with/out government as a solution to problems caused by weak government or government failure. Its promise rests on the expectation "that the cooperation of societal and public actors (...) generates greater problem-solving capacity" (von Blumenthal 2005: 1157; my translation, TAB). Involving non-governmental actors in the provision of common goods allows tapping into their cognitive and financial resources and helps to ensure effective implementation (cf. Mayntz 1993; Kooiman 1993; Jessop 1998; Héritier 2003). They help identify relevant problems and contribute to the formulation of adequate policy solutions. Moreover, the more the actors affected by a policy have a say in decision-making, the more likely they are to accept the policy outcome to be implemented, even if their interests may not have been fully accommodated. Such governance with government increases the intervention capacity of the state and can be described as the "*state-organized unburdening of the state*" (Offe 2009: 555, emphasis in the original), which entails its transformation rather than its demise. Governance without government, by contrast, follows a different (normative) expectation – rather than enhancing government capacities, non-governmental actors are to substitute the provision of common goods by governments. Governance functions, such as health care, energy or public transport, are not only outsourced but also privatized. "Rolling back the state", however, also entails a greater reliance on civil society organizations (cf. Olson 1965; Ostrom 1990; Putnam 1993; Held 1995; critical: Rottenburg 2009).[10] Overall, governance with and without government promises to substitute for "state and government while avoiding the political costs of conflicts (...) everywhere where state capacity is deficient, on the one hand, and pure market coordination has little prospects of success, on the other" (Offe 2009: 555).

There are, however, theoretical arguments that may cast doubts about the effectiveness, accountability and legitimacy of governance with and without government (cf. Papadopoulos/ Warin 2007; Swyngedouw 2005; Börzel 2009b). Civil society organizations and companies can certainly provide governments with important resources to make public policies work (cf. Reinicke/Deng 2000) or even produce common goods on their own (cf. Cutler 2003; Cutler et al. 1999; Hall/Bierstecker 2002). However, it is unclear whether the mutual resource dependency of governmental and non-governmental actors actually leads to a net increase in the problem-solving capacity of governance. If governments are so weak that they have to share authority with companies and civil society organizations, then this can easily result in problem shifting or agency capture (cf. Hellman et al. 2000). Moreover, governments with weak regulatory capacities do not have the ability to reassume responsibility for delegated tasks in cases of private failures as functions were delegated because they were not capable of delivering them in the first place. Likewise, weak governments may not be able to resist the pressure of private actors to adopt policies that are not serving the public interest or, worse, are not able to judge what policies may be in the public interest since they lack the necessary information and expertise. Moreover, the inclusion of non-governmental actors as the primary rule targets in the process of rule making can certainly increase the problem-solving capacity by ensuring compliance. Yet, it might also

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10 Claus Offe distinguishes two contesting normative or philosophical perspectives on governance: a social-democratic-statist or corporatist and a state-critical, market-liberal or communitarian view. They conform to the two "schools of governance", represented by the German approach of the cooperative state and the Anglo-Saxon approach of new public management; cf. Börzel (1998).

simply lead to "lowest common denominator" solutions or even result in a deadlock. If those who have to bear the costs of compliance are involved in the negotiating process, they may attempt to weaken rules and regulations or prevent them altogether (cf. O'Hagan 2004; Woolfson 2006). Finally, even if governance with/out government can provide common goods (more) effectively, it is not always accepted as legitimate. Some criticize governance with/out government as neoliberal solutions in disguise, that is, as the privatization and de-regulation of formerly public services rather than the adoption of effective public policies (cf. Bohle 2008; Fagan 2006; Lane 2007). Due to the often informal character, the involvement of non-state actors is also often considered as clientelistic, intransparent, exclusive, and, thus, undemocratic.

Overall, there are neither theoretical reasons nor is there empirical evidence to assume that governance with/out government is superior to government. Fritz Scharpf has convincingly argued that hierarchy is in principle superior to other forms of governance due to its capacity to solve distributional conflicts (Scharpf 1997; cf. Schuppert 2010: 14-32). At the same time, he has also shown that the performance of different forms of governance, including hierarchy, depends on certain scope conditions, which are only seldom fully met. This may explain why we mostly find combinations, rather than ideal types, of governance by, with or without governance.

3. Government and Statehood as Prerequisites for Governance

The three institutionalized rule structures (hierarchy, negotiation systems, competition systems) with their dominant modes of coordination are ideal types that hardly exist in reality. Rather, we find combinations, both within and beyond the state (Benz 2001: 175-202). Such "governance regimes" (Benz 2001) or *governance mixes* embed different governance forms by making one subordinate to the other ("shadow"). The dominant rule structure sets or changes the rules of the game for the subordinate rule structure, entitles actors to intervene in order to correct or substitute policy outcomes and/or provides additional incentives to engage in the provision of common goods. As a result, the primary rule structure casts an institutional shadow which has a significant influence on the behavior of actors in the secondary rule structure (cf. Scharpf 1997).

What is often overlooked by the literature is that governance with/out government tends to be embedded in hierarchical structures. In the modern state, government, business and civil society almost always negotiate under a shadow of hierarchy. This shadow of hierarchy is so important for governance with/out government because it generates major incentives for cooperation for both government and non-governmental actors and the self-coordination of non-governmental actors, respectively (cf. Scharpf 1997; Mayntz and Scharpf 1995b). Non-hierarchical coordination entails high transaction costs for the non-governmental actors involved. Not being institutionally committed to the provision of common goods, they are not inclined to bear such costs. If the policy outcome does not fully correspond to their preferences, it may take the threat of a hierarchically imposed decision in order to change the cost-benefit calculations in favor of a voluntary agreement closer to the common good rather than particularistic self-

interest. Moreover, the possibility of hierarchical intervention reduces the incentive of actors for reneging on their voluntary commitment. This is particularly true for the self-coordination of non-governmental actors. Business associations or societal networks rarely have sufficient sanctioning capacities to deter opportunistic behavior of their members in the implementation of voluntary agreements (free-rider problem). Therefore, we hardly ever find societal self-coordination without the involvement of governmental actors that have the capacity for taking and enforcing unilateral decisions. Finally, opportunistic behavior of non-governmental actors is rendered less likely, if governments review the negotiation outcomes in order to ensure that they correspond to the common good. This is most important if companies, professional associations, pressure groups or consultancies are involved. Unlike governments and not-for-profit organizations (e.g. public interest groups), they are not obliged by formal institutions or social norms to pursue the common good.[11]

If the shadow of hierarchy provides an important incentive for non-state actors to cooperate, their willingness to engage in governance without government should increase with the degree to which government is capable of resorting to hierarchical modes of governance. For governments, it is exactly the reverse – the higher their capacity for hierarchical policy-making, the fewer incentives they have to cooperate with non-governmental actors. In order to avoid falling prone to what Renate Mayntz called the "functionalist fallacy of governance research" (Mayntz 2004: 71; my translation, TAB), we must assume that governments seek to increase or at least to maintain their autonomy as well as their problem-solving capacity in the policy process (Pfeffer/Salancik 2003). Since the cooperation with third (non-)governmental actors entails a significant loss of autonomy, they are only willing to engage with others, if they (re-)gain problem-solving capacity compared to using hierarchical modes of coordination. The "strength of weakness" (Kohler-Koch 1996), which is also referred to as the "*neue Staatsräson*" in the International Relations literature (*new raison d'état*, Wolf 2000) is a core feature of the modern state (cf. Mann 1993; Scharpf 1991; Mayntz 1993; for a similar argument on international organizations see Liese 2010).

In sum, the shadow of hierarchy provides both governments and non-governmental actors with an important incentive for cooperation, albeit in opposite ways (see figure 2).

This incentive constellation might change, if we move to areas of limited statehood, where governments may not be capable of casting any shadow of hierarchy or are so weak that they are afraid of being captured. The next section will explore the nature of hierarchy and statehood more closely and discuss to what extent statehood is necessary to cast a credible shadow.

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11 This is not to say that governments are motivated to pursue the common good and always do so. But unlike private actors, governments and non-governmental organizations can be held accountable and face legal and/or social sanctions, if they abuse their legal or moral authority to pursue private self-interests.

Figure 2: The shadow of hierarchy and reverse incentives for cooperation for governments and non-governmental actors
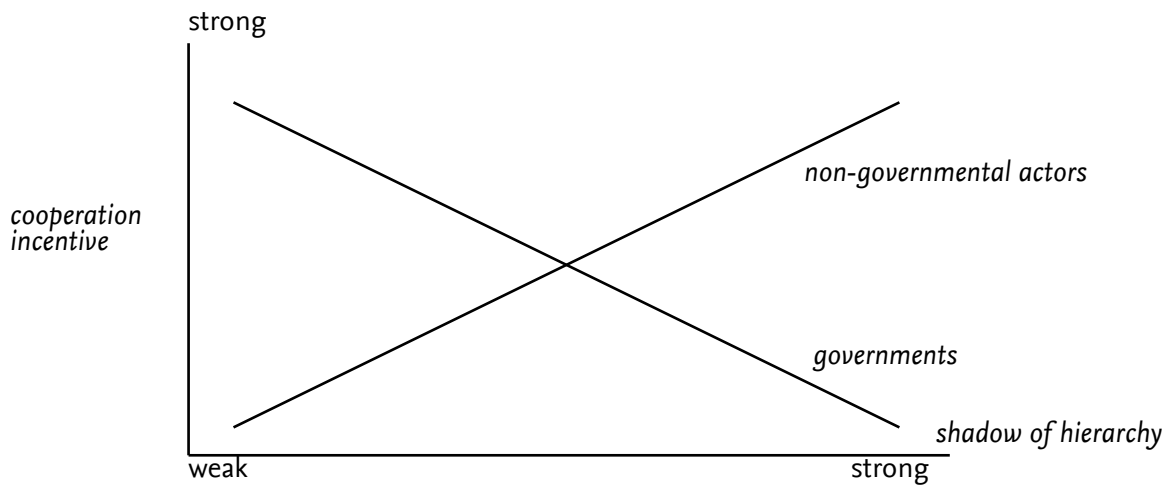
4.   Governance, Statehood and the Shadow of Hierarchy

The governance literature draws an implicit link between hierarchy and government. Hierarchy is defined as the capacity to unilaterally impose and enforce collectively binding decisions against the resistance of those who oppose them. Statehood bases this capacity on the monopoly of force. But what if governments are not capable of invoking their monopoly in the provision of common goods? Is coercion the only source of hierarchical coordination? The literature on state capacity discusses several factors that enable governments to effectively adopt and enforce public policies.

4.1   Government capacity

Resource-centered approaches define state capacity as a government's ability to act, i.e. the sum of its legal authority and financial, military, and human *resources* (Przeworski 1990; Zürn 1997; Haas 1998; Simmons 1998). But even if governments have sufficient resources, their administrations may still face difficulties in pooling and coordinating them, particularly if the required resources are dispersed among various public agencies (e.g. ministries) and levels of government. The efficiency or coordination capacity of a bureaucracy to mobilize and channel resources into the policy process is also key to (credibly threaten with) the unilateral imposition and enforcement of political decisions (cf. Mbaye 2001; Börzel 2003).

Neo-institutionalist approaches, by contrast, argue that the domestic institutional structure influences the degree of a government's capacity to act and its *autonomy* to make decisions (cf. Olson 1982; Evans 1995; Katzenstein 1978). Domestic veto players can block the implementation of international rules because of the costs they would (partially) have to bear (cf. Putnam 1988;

Duina 1997; Haverland 2000). A high number of veto players reduce a government's capacity to make the necessary changes to the *status quo* for the implementation of costly rules (cf. Alesina/Rosenthal 1995; Tsebelis 2002). At the same time, however, the implementation literature has argued that the involvement of those affected by public policies in the decision-making may increase compliance and effectiveness by accommodating diverse interests and fostering the acceptance of the policy (cf. Mayntz 1983; Héritier 2003; Franck 1990; see also Lijphart 1999). Another critique of the concept of government autonomy or the "insulated state" comes from the more recent development studies literature, which points to the differential success of authoritarian, i.e. "insulated" regimes in promoting economic growth (East Asia vs. Latin America, cf. Evans 1995; Amsden 1989).

To produce a credible shadow of hierarchy, governments require sufficient, albeit not excessive resources, efficiency and autonomy. Interestingly, none of these capacities are wedded to statehood, and hence, exclusive to governments. The use of coercive force is the prerogative of government. Yet, coercion is not only the essence of hierarchy; it provides the key incentive for non-governmental actors to voluntarily commit themselves to collectively binding decisions and keeps them honest, deterring opportunistic behavior and ensuring compliance. This is not to say that non-governmental actors cannot be coercive – after all, the concept of hierarchy was developed in institutional economics to distinguish the firm as a governance form from markets and networks (cf. Williamson 1985; Powell 1990). The capacity of a firm to make actors act against their will is based on a contractual relationship. It precludes, however, the use of physical force. Again, nothing prevents a firm from exercising physical coercion (see the Hudson Bay Company in North America or Blackwater in Iraq). But in order to be legitimate, the authorization by government (delegation) is required, which also ensures accountability to the public. The literature on governance of areas in area of limited statehood provides ample examples of what happens, if companies are not subject to government control, be it internal or external (cf. Deitelhoff/Wolf 2010). Moreover, firms can hardly ever claim the (legitimate) monopoly of force. If actors compete over the use of force, opportunistic actors have the option of exit or voice, which undermines the effectiveness of hierarchical coordination in the provision of common goods (cf. Scharpf 1997).

In sum, the effectiveness of hierarchical coordination relies on coercion. Only actors that have the capacity to enforce collectively binding decisions against the resistance of those who have to bear the costs or whose preferences are not accommodated can cast a credible shadow of hierarchy. Without the threat of hierarchical intervention, opportunistic, non-governmental actors, who are not obliged to the common good, have often no real incentive to engage in the provision of common goods. Statehood renders the monopoly of coercive force the prerogative of government. Thus, governance with/out government ultimately relies on government and statehood to be effective (and legitimate), which results in a paradox or at least a major dilemma. The weaker the government and the more limited statehood are, the greater the demand for governance with/out government, which, however, is less likely to emerge and to be effective and legitimate. Whether government and statehood are indeed a major premise for governance with/out government depends, therefore, on the question whether there are other ways to in-

duce non-governmental actors into providing common goods than the shadow of hierarchy cast by government relying on consolidated statehood.

4.2   Governance and Society

The collective self-organization of society has been discussed as an alternative to the provision of common goods by government (cf. Olson 1965; Ostrom 1990; Putnam 1993). Yet, like governments, non-governmental actors must have the necessary action capacity and autonomy to engage in governance with/out government. On the one hand, they need sufficient personnel, information, expertise, money and organizational resources to make strategic decisions, to act as reliable negotiation partners and to offer each other and/or government something in exchange for becoming involved in the policy process. On the other hand, non-governmental actors have to have the necessary autonomy in order to act free from political control (cf. Mayntz 1993). While the state does not have to be necessarily democratic, it must be constrained in order to ensure an autonomous public sphere. Thus, it takes both capacity and autonomy for non-governmental actors to accumulate social capital (cf. Putnam 1993; Lin 2001; Hooghe/Stolle 2003). Social capital is based on social trust and fosters the willingness to cooperate and engage in the provision of common goods. It emerges in voluntary associations, which socialize their members in norms of diffuse reciprocity and make them trust each other. They generate the expectation that 'good citizens' contribute to the common good and comply with collective rules. Through establishing strong social norms and fostering mutual trust, social capital can substitute for (the shadow of) hierarchy in solving collective action problems. Rather than incentives, it is a sense of moral obligation that generates civic engagement, which is not undermined by the anticipation of defection since free riding is not acceptable and entails social sanctions. Equally non-acceptable are political outcomes that satisfy particularistic interest rather than serve the common good (cf. Putnam 1993).

However, the extent to which social capital may serve as a functional equivalent to the shadow of hierarchy is disputed in the literature. Margret Levi has argued that the trust of citizens in the compliance with collectively binding rules and regulations is not generated by social trust but by the enforcement capacity of government, i.e. the shadow of hierarchy (Levi/Stoker 2000; Levi 1998; cf. van Deth 2000). Moreover, particularly in areas of limited statehood, societal and economic interests tend to lack the necessary resources and/or the political willingness to organize and cooperate with each other and/or government. Civil society actors often do not have sufficient organizational resources to serve as a reliable partner in the cooperation. Companies, in turn, shy away from cooperation with their competitors and with government because they doubt that government is capable of enforcing mutual agreements given unstable majorities in parliament and frequent government turnovers. Political instability weakens the credibility of government to unilaterally adopt and impose costly policies. Not only has industry little incentive to offer its resources for the making of policies that incur significant costs upon them; government is also afraid of being captured by business, if the latter has superior resources. Next to the fear of "state capture", policy-makers and administrators are often faced with public

skepticism against governance with/out government, which is seen as forms of clientelism and in contradiction to democratic institutions. This perception is reinforced by attempts of politicians to shift political decisions into multi-stakeholder fora in order to circumvent opposition or deadlock in parliamentary or party arenas. Finally, the privatization or delegation of public tasks to private actors, particularly in the area of public services (drinking water), meets strong opposition at the local level.

It is beyond the scope of this paper to discuss the societal preconditions for the emergence and effectiveness of governance with/out government. Suffice to say that governance research appears to be rather wedded to modernization theory assuming a positive relationship between government and governance with/out government. The emergence of non-hierarchical forms of governance is conceived as part of a dialectical modernization process, in which formal organizations replace unstructured actor constellations by formal hierarchy (the state). The concentration and centralization of political power leads to an expansion of the state, which goes hand in hand with an internal differentiation of formal hierarchies laying the foundations for the emergence of partly autonomous functional subsystems in society (Tilly 1975; Mann 1988; Luhmann 1996). Political and societal decentralization give rise to the formation of inter-organizational relations, which horizontally link the functional subsystems and allow to 'govern' them through modes of non-hierarchical coordination (cf. Mayntz 1993; Mayntz/Scharpf 1995a). This dialectical modernization process culminates in the ascendance of the 'negotiating state' (cf. Mayntz 1993, 1995) or 'governance with government' (cf. Zürn 2002). It certainly characterizes the evolution of modern governance in the OECD world. Under conditions of constrained and/or democratic statehood, government and society have both the capacity and the willingness to cooperate in the provision of common goods. Their relative power may vary between statist France, corporatist Sweden and pluralist Great Britain. However, unlike in countries, which do not belong to the club of industrialized liberal democracies, both the shadow of hierarchy and collective self-organization are more or less given.

Outside the OECD world, by contrast, the two key conditions for governance with/out government are hard to find. Semi-authoritarian and authoritarian regimes systematically suppress the formation of societal interests. While this is a problem of too strong a government, failed and failing states do not provide sufficient stability to allow for collective self-organization and democratization processes. Nor are they particularly attractive to external non-governmental actors, if they cannot provide a minimum of security and order.

If the logic of modernization theory holds true, the emergence, effectiveness and legitimacy of governance with/out government becomes less likely with both the growth and the decline of government (figure 3). In weak, failing and failed states, government is too weak to adopt and enforce collectively binding rules in the provision of common goods. In semi-authoritarian and authoritarian regimes, by contrast, it is the lacking constraints on the capacity to hierarchically impose political decisions. Institutions fail to make government accountable to the common good preventing corruption and rent-seeking behavior, on the one hand, and to protect non-governmental actors against arbitrary government interventions, on the other. In other

words, governance with/out government is most likely to emerge in liberal democracies where it is the least needed. Western governments may decide to delegate the provision of common goods to non-governmental actors or leave them to the market. However, this is first of all a political choice and not a functional necessity to do so.

Figure 3: Government and governance
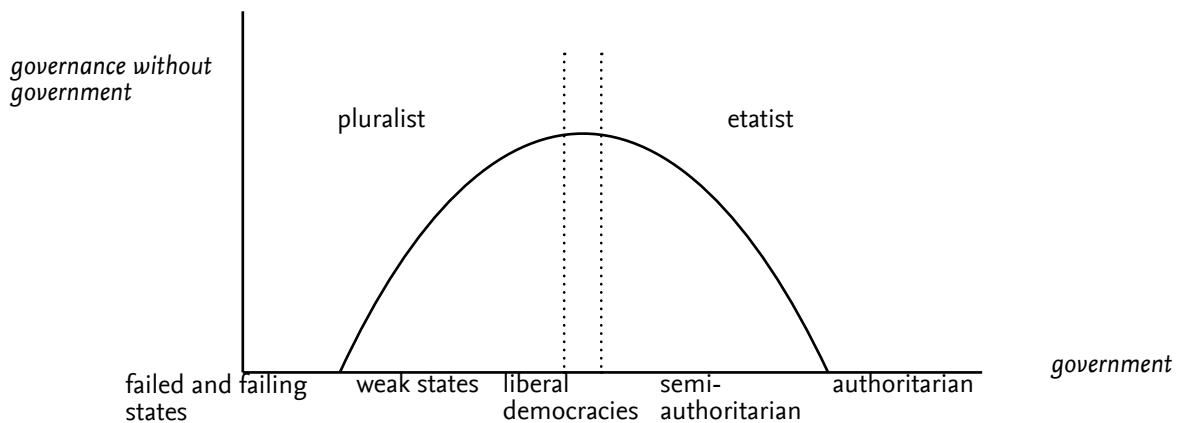
5. **Governance with/out Government and the Paradox of Double Weakness**

Governance with/out government has emerged as an alternative or functional equivalent to government. It gained prominence in the OECD world in the 1970s, when political and social differentiation appeared to have become major constraints on the effectiveness of hierarchical coordination by government (cf. Mayntz/Scharpf 1995a; Mayntz 1997; Kooiman 1993; Leibfried/ Zürn 2005). Governance with/out government travelled to international politics in the 1990s as a possible solution to anarchy, i.e. the absence of central government (cf. Rosenau/Czempiel 1992). Finally, it arrived in areas of limited statehood, where government is seriously weakened or nearly absent (cf. Risse/Lehmkuhl 2006, 2007, 2010). While there seems to be an increasing demand for governance with/out government both within and beyond the state, its promise to compensate for the weakness or failure of government appears to rest on two major premises. On the one hand, government has to possess sufficient capacities in terms of both resources and autonomy in order to cast a credible shadow of hierarchy so that non-governmental actors have an incentive to cooperate, and governmental actors are not afraid of being captured. On the other hand, these government capacities must not be too strong in order to provide an incentive for governmental actors to seek cooperation with non-governmental actors. In other words, what is required to make governance with/out government work is a medium shadow of hierarchy.

Indeed, governance research confirms that the reports of the demise of the state are greatly exaggerated – rather than decline or extinction we find a transformation of the state with government and statehood retaining a key role as a "governance broker" (*Herrschaftsmanager*, Genschel/

Zangl 2008), "coordinator", (Mayntz 2004: 75) or "shadow of hierarchy" (Scharpf 1997; cf. Rhodes 1996; Jessop 1998). Statehood provides government with a unique resource or "institutional competence" (Schuppert, 2010: 17) to solve societal problems, such as the provision of security and order, the (re)allocation of values or the safeguarding of economic stability. "Governance needs government" (Schuppert 2010: 128). The (shadow of) statehood is not only important for the effective provision of common goods but also for its legitimacy (Sonderforschungsbereich 700 2009: 5).

If government and statehood are a prerequisite for governance with/out government, this results in a serious dilemma or even paradox: the lower the capacity of government, the greater the need for governance with/out government to compensate for government weakness or government failure becomes, but the less likely it is to emerge. This paradox is reinforced if there is a dialectical relationship between the evolution of a strong government and a strong society as it is implicitly assumed or explicitly claimed by the governance literature (cf. Tilly 1975; Mayntz,1993). Whether this assumption is merely a fallacy of modernization theory or simply the result of a selection bias towards the OECD world in governance research remains to be seen. We need more empirical research on countries that lack the prerequisites of a modern state and society to find out to what extent the governance paradox exists and how it might eventually be overcome. Empirical evidence on transition countries, however, suggests that weak states are mirrored by weak societies (cf. Howard 2003; Sissenich 2010). When government fails, civil society and business are often not sufficiently autonomous or resourceful to step in. This double weakness is hardly conducive to the emergence, effectiveness and legitimacy of governance with/out government. At the same time, research on governance in areas of limited statehood shows that governance with/out government does emerge and that transnational companies and non-governmental organizations are key providers of common goods when government is too weak to deliver (cf. Risse/Lehmkuhl 2007, 2010). Thus, it may well be that the modernization bias in governance research has prevented us from theoretically conceiving of functional equivalents to government and to empirically trace them.

Functional equivalents to government and statehood would have to provide sufficient incentives for non-governmental actors to engage in the provision of common goods. They should ensure that those actors agree to provide common goods (commitment) and do not renege on their commitment maximizing their individual profit instead (compliance). This is all the more relevant for for-profit actors, which are amongst the most capable actors when it comes to providing common goods where government fails to do so. While being sufficiently autonomous and resourceful, companies are not necessarily inclined to engage in the provision of common goods, unlike civil society actors. Their business is first of all to do business. Why should firms invest in the common good, particularly under conditions of high political instability and legal uncertainty produced by weak or absent government? There are no domestic institutions which can oblige them nor is government strong enough to cause a credible shadow of hierarchy.

5.1 The shadow of anarchy

While the threat of unilaterally providing a common good provides a key incentive for non-state actors, the same may be true for the opposite. If government is not capable of adopting and enforcing collectively binding decisions, companies are not confronted with a situation in which they have to weigh the costs of cooperation and voluntary commitment against the possibility of a suboptimal hierarchically imposed policy. Rather, they face the danger of not having a common good at all. If the pursuit of their individual profit depends on the provision of certain common goods and collectively binding rules to produce them, respectively, and government is not capable or unwilling to provide them, companies do have a major incentive to step in. Thus, multinational companies in South Africa have heavily invested in the fight against HIV/AIDS, both at the individual and the associational level (cf, Börzel et al. 2010; Müller-Debus et al. 2010). As its antipode, the "shadow of anarchy" may serve a functional equivalent to the shadow of hierarchy (Mayntz/Scharpf 1995b: 23, Fn. 5; cf. Müller-Debus forthcoming).

Thus, limited statehood may change the incentive structure for non-governmental actors if they are left with no other choice than doing it themselves. Weak governments tend to be afraid of being captured, so cooperation remains unlikely (see figure 4). But non-governmental actors may engage in self-coordination if they find a minimum of security and order which NGOs require, e.g. to implement public health projects (cf. Schäferhoff 2010) or which companies expect to run their business (cf. Hönke forthcoming).

Figure 4: Limited statehood and incentives for cooperation
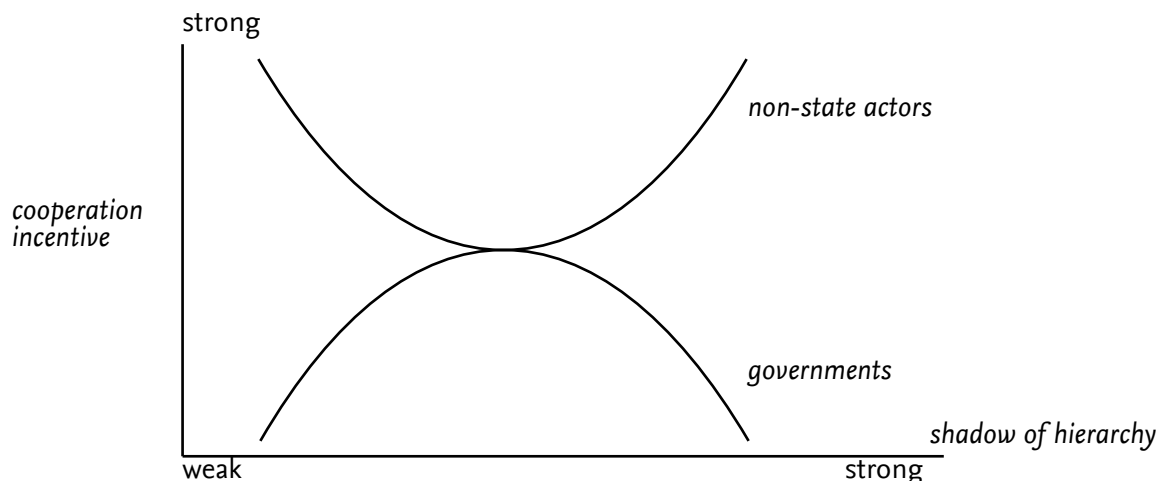
5.2 The external shadow of hierarchy

While the shadow of anarchy substitutes for the shadow of hierarchy, the latter can also be generated externally. International organizations and foreign governments can commit non-governmental actors to the common good. While companies are increasingly held account-

able to standards of corporate social responsibility as defined by the Global Compact or other agreements, non-governmental organizations and local actors can be obliged by legally binding standards of 'good governance' (cf. Ladwig/Rudolf 2010). Compliance is not only monitored and enforced by international organizations with the capacity and the legitimacy to use coercive force (UN, NATO, EU), e.g. in the various new protectorates from Bosnia to Afghanistan where central authority structures are maintained by the international community. The emerging international norm of the "responsibility to protect" can also be invoked if a state is either not willing or not capable of providing even a minimum degree of governance. Finally, national governments of (consolidated and democratic) states, where multinational companies and transnational NGOs have their headquarters, may also cast an external shadow of hierarchy forcing non-state actors to contribute to governance in areas of limited statehood. While the shadow of anarchy is defined by the absence of a state, the external shadow of hierarchy still requires consolidated statehood, e.g. in the home country of a multinational corporation. Since the shadow of anarchy provides crucial incentives for companies to engage in governance while the external shadow of hierarchy makes them honor their commitment, the two functional equivalents may complement and actually reinforce each other.

5.3 The shadow of the (socially embedded) market

NGOs can not only mobilize IOs and foreign governments to make companies engage in the provision of common goods. They can also launch international campaigns directly naming and shaming them to make them comply with their commitments. This can be particularly harmful to the reputation of companies that have a brand name to protect and whose products target markets in (consolidated and democratic) states where consumers care about the provision of common goods (cf. Hönke et al. 2008; Müller-Debus et al. 2010). Such transnational companies sometimes enter a "regulatory contest to the top". They enforce regulatory standards down their supply chain or lobby governments to adopt stricter standards to keep competitors out (Börzel et al. 2010). In a similar vein, the extractive industry has made joint ventures with Chinese mining companies conditioned upon the respect for certain social standards (cf. Hackenesch 2009). The shadow of the market can render the non-provision of common goods significant competitive (dis-)advantages; yet, such economic incentives depend on the social embeddedness of markets, in which the demand of consumers is also influenced by moral obligations.

5.4   The shadow of (traditional) community

Social norms are not only institutionalized at the international level or in areas of consolidated statehood. Traditional communities do have standards of human rights, even if they do not always fully conform to the global regimes. While African governments often do not care whether Chinese companies comply with rights standards, local communities do (cf. Hackenesch 2009). Likewise, companies may be embedded in local communities defined by clan structures or business activities which share certain standards of appropriate behavior that may include the

respect for (certain) human rights. South African mining companies, for instance, are subject to considerable peer pressure since one rotten apple can spoil the reputation of the entire sector decreasing the share value on the international stock markets (cf. Hönke forthcoming).

The literature provides ample evidence for the existence of functional equivalents to the shadow of hierarchy cast by governments drawing on consolidated statehood. The extent to which they can really substitute the shadow of hierarchy in areas of limited statehood is ultimately an empirical question that can only be answered by comparative case studies. At the theoretical level, however, there is no reason to assume that government and statehood should be the only premise for governance with/out government.

6.   Governance Beyond Statehood: Towards a Typology of Varieties of Governance

The shadows are, like the governance forms that cast them, ideal types, which seldom come on their own. They mix, so we need to explore their interaction effects. This will also allow us to assess the role of statehood for making governance effective and legitimate. Conceptualizing varieties of governance must not make statehood part of the definition, which renders most of the existing typologies of limited use. Statehood (as a property) is not only conflated with the (modern) state (as an organization). The literature often defines it either in terms of the effective provision of common goods by the state (cf. Zürcher 2007; Schneckener 2006; Rotberg 2003; Jackson 1990), or as the ontological reference point that needs to be differentiated according to the changing governance functions "the state" is to fulfill (cf. Leibfried/Zürn 2005; Schuppert 2010) and the roles it is to play (cf. Wolf 2008), or in terms of the ways in which statehood is transformed in its appropriation at the local level (cf. Schlichte 2005; Hönke 2009). Without defying statehood altogether, we need to go beyond its mere qualification (*"Relativierung des Staates"*, Schuppert 2010: 135) to overcome the state-centeredness of our thinking about governance with/out government. Rather than the "de-governmentalization" of governance (Wolf 2008: 208), this requires the systematic exploration of the role of statehood for and in governance. After all, governments can participate in the provision of common goods without resorting to statehood. Likewise, governance with/out government can still operate under a shadow of hierarchy cast by the statehood of external governments, which are not directly part of the provision of common goods.

A typology of varieties of governance beyond statehood should be based on a clear distinction between functions, actors and modes of governance, on the one hand, and the quality of the provision of common goods in terms of effectiveness and legitimacy, on the other. Who engages in what kind of coordination to provide security, order and welfare for a community and how effective and legitimate is the provision of these common goods (for a similar approach see Draude 2007)?

The four shadows discussed in this paper vary with regard to the actors but are all based on incentives that shall induce non-governmental actors to engage in the provision of common

goods. The external shadow of hierarchy is cast by governments who can rely on consolidated statehood to issue credible legislative threats that make companies commit to and comply with norms and rules set by themselves or by international organizations they are party to. The shadow of the market is often generated by such norms and rules but needs to be prolonged by NGOs and consumers in areas of consolidated statehood. The shadow of the community, by contrast, does not necessarily rely on consolidated statehood since it is based on the acceptance by and responsibility towards social groups (peers, local communities). The shadows can complement and reinforce each other as in case of corporate social responsibility, where the external shadow of hierarchy frequently combines with the shadow of the market, particularly for transnational companies with a brand name to protect. While the threat of legally binding international norms and rules makes companies commit to voluntary standards, such as the global compact, (fear of) naming and shaming campaigns by NGOs help to ensure compliance. Likewise, the shadow of anarchy induces companies to engage in the fight against HIV/AIDS but only in form of a club good by limiting prevention and treatment to their employees and their families. Societal pressure can then demand an extension to the wider community. At the same time, the shadows can also cancel each other out or create negative externalities for each other. The external shadow of hierarchy cast by international organizations and third states can weaken the shadow of the community by turning civil society actors into implementation agents of international state-building and development programs. Moreover, grass roots organizations defying "projectification" may challenge the legitimacy of external actors in the provision of common goods. In a similar vein, the external shadow of hierarchy and the shadow of the market may induce weak governments to avoid their responsibilities for fighting crime or diseases, placing the blame on the international community or the evils of globalization. The "dark sides" of the shadows have hardly been explored (cf. Peters forthcoming).

Once we develop a typology that allows us to identify the role of statehood, we will be able to analyze the impact of the various governance mixes on the effective and legitimate provision of common goods. Incentives may promote the commitment and ensure short-term compliance. But how sustainable is the provision of common goods if actors are largely motivated by cost-benefit calculations, even if these are shaped by normative considerations? Can the incentive-based logic of the shadows generate legitimacy in terms of social acceptance, particularly if they operate outside an explicit public mandate by (external) governments? These considerations raise a final caveat with regard to the functional equivalents to government and statehood. The four shadows work according to the logic of instrumental rationality, albeit a socially embedded one. Yet, arguing and persuasion provide an alternative mode of non-hierarchical coordination, which seeks to change actors' preferences by referring to collectively shared norms and values instead of merely manipulating their cost-benefit calculations by providing positive and negative incentives (Risse 2000). Again, such "soft modes of steering" (Göhler/Höppner/De La Rosa 2009) may complement rather than compete with the instrumental logic of the shadows. The latter may be sufficient to make non-governmental actors commit to the provision of common goods. Sustainable compliance, however, requires norm internalization through processes of arguing and persuasion (see e.g. Risse/Ropp/Sikkink 1999, Checkel 2005).

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