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Private International Norms in Global Economic
Governance: Coordination Service Firms
and Corporate Governance

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Abstract

Compared to the various forms of intergovernmental or public-private co-operation, transnational private self-regulation is a rather rarely studied case of global economic governance. Furthermore, existing research on transnational self-regulation has neglected the issue of corporate governance, which is central to the way capitalism is organised today. Transnational private self-regulation, however, appears to be a crucial part of any explanation of current changes of national models of corporate governance and, therefore, of the basic organisation of economic life. Three features of private self-regulation are singled out for a more detailed study, namely credit rating, private codes of “good corporate governance” and the transnational harmonisation of accounting standards. In all of these cases, co-ordination service firms such as rating agencies, institutional investors and accounting companies play an important role as mechanisms for the transnational harmonisation of corporate governance. The paper concludes that the increasing role of transnational private self-regulation raises important normative concerns and, in more particular, asks for the identification of alternative agency.

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1. Locating transnational private authority in the study of international (economic) norms

Private actors play an increasingly prominent role in the discussion about international norms. Traditionally, the development and the implementation of international norms was an inter-governmental affair. Most international regimes were based on the cooperation between governments only. Over the last decades, the influence of private actors on decision-making about these international norms has been noted more frequently, most obviously the contribution by non-governmental organizations (NGOs). Frequently, international norms now are negotiated within transnational policy networks. Within these networks, governments and inter-governmental organizations usually retain the ability to make the formal final decisions, but diverse non-state actors enjoy considerable substantial influence, based on their substantial analytical, financial and legitimacy resources. Thus, decision-making within these networks may hardly be understood by utilizing state-centric theories of international relations. Instead, it has been proposed to analyze these networks as resource exchanges between corporate (organizational) actors (Nölke 2000, 2002).

An even more radical departure from the traditional inter-governmental model lies in the evolution of „private authority in international affairs“ (Cutler/Haufler/Porter 1999a), which mostly has been studied in the field of economic activity. Here, firms (and other non-state actors) co-operate transnationally to establish rules and standards of global commerce, without directly involving governments at all. Private actors not only formulate norms, but also enforce these norms.¹ International, or, more precisely, transnational private authority is core to a „strong globalization thesis“, i.e. that globalization undermines the authority of the states and enhances the demand and capacity of firms to produce new forms of private authority in its place. The discussion on (economic) globalization – as well as the earlier discussion on interdependence - traditionally has focused on the question whether and how denationalized markets are constraining the ability of national governments to maintain national models of economic and social policy. This discussion frequently assumes a declining amount of autonomous-making decision capacity on the side of a single national government. Furthermore, it is assumed that governments co-operate with each other in order to make up for the loss of unilateral problem-solving capacity. *Ceteris paribus*, governments prefer loose co-operation in the form of international regimes, because of the limited loss of authority involved. Under certain circumstances, however, they are willing to delegate a higher degree of authority, to an international organization or even to the supranational elements of the European Union. In other cases, governments do not (only) delegate their authority to inter-governmental entities, but also involve private actors such as business and NGOs in decision-making, as in the various forms of transnational policy networks. Finally, we observe cases in which governments refrain from making decisions, but private actors set and enforce general rules for the global economy themselves (transnational private authority).

Delegation of authority away from single governments within different forms of economic governance

Low delegation

high delegation

<i>Governance Type</i>	National Policy	International Regime	International Organization	Regional Integration ²	Transnational Policy Network	Transnational Private Authority
<i>Example</i>	Tax policy	GATT	IMF	EU	World Commission on Dams	Rating Agency

Transnational private authority may be empirically identified based on three criteria:

“First, those subject to the rules and decisions being made by private sector actors must accept them as legitimate, as the representations of experts and those “in authority”. Second, there should exist a high degree of compliance with the rules and decisions. Third, the private sector must be empowered either explicitly or *implicitly* (emphasis in original, A.N.) by governments with the right to make decisions for others” (Cutler/ Haufler/Porter 1999b: 19).

Thus, private authority should not be confused with private power. The core difference is that authority rests on the combination of power *and* legitimacy:³ “*Legitimacy*... refers to the normative belief by an actor that a rule or institution ought to be obeyed. It is a subjective quality, relational between actor and institution, and defined by the actor’s *perception* (emphases in original, A.N.) of the institution” (Hurd 1999: 381). Power (or influence), in contrast, may also only be based on coercion (Hurd 1999: 400f), resting on military, financial or analytical means.⁴ Furthermore, private authority also has to be enforced. The mere proclamation of rules and principles will not be sufficient. Finally, although private actors make the rules and decisions, there is at least an implicit toleration of this authority by public actors. Thus, private authority does not necessarily undermine the role of governments – the latter are, at least in principle, able to reverse this form of authority allocation.⁵

Until most recently, the issue of private authority has largely been neglected in the discipline of International Relations (IR). The main reason for this negligence is the state-centric bias of the discipline, leading to a more or less exclusive focus on governmental actors and inter-governmental negotiations. As far as non-governmental actors have been taken into account, the focus was on the lobbying activities of actors such as NGOs, think tanks and business upon decisions finally taken by governments and inter-governmental entities, whereas self-regulation by non-governmental actors was not taken into consideration. Similarly, the relevant sub-discipline of International Political Economy/IPE has a strong macroeconomic bias. Thus, empirical studies mostly focus on issues such as the regulation of financial markets, currency questions, or the negotiation of international trade agreements. There are much less studies about the behavior of business. The only notable exception relates to the research on multinational

enterprises. Here, however, the research agenda has largely been narrowed down to the (effects of and negotiation over the) allocation of production between home and host countries, with a particular focus on developing countries.

Given this contrast between empirical developments and academic treatment, it has been concluded that the issue of private authority on issues such as bond rating is at the cutting edge within the discussion on globalization in general and on financial markets in particular (Cohen 2002:442). This paper concurs that the evolution of private authority is one of the most significant recent developments in global economic governance. Existing empirical research on transnational private authority has not yet realized the overall dimension of this development, but has mainly dealt with more peripheral aspects of economic governance (section 2). More specifically, existing research on transnational private authority has largely excluded the important issue of corporate governance. Traditionally, this issue - which is central for the way capitalism is organized in modern societies - has been dealt with at the national level. Transnational private authority, however, appears to be at the core of current pressures for convergence of national models of capitalism (section 3). Established theories of IR/IPE are unable to deal with the issue of private authority. Furthermore, the development of more appropriate theories is in a very early stage, still mostly being limited to broad typologies of transnational private authority (section 4). In order to study transnational private authority on corporate governance in a more systematical manner, a theoretical framework is constructed based on a combination of a transnational policy network approach with a political economy perspective on capitalist diversity (section 5). Three features of private authority over questions of corporate governance are singled out for a more detailed study, namely the work of rating agencies, private codes of “good corporate governance” and the transnational harmonization of accounting standards (section 6). The paper concludes that the increasing role of transnational private authority for the convergence of different models of capitalism raises important normative concerns and, in more particular, asks for the identification of alternative agency (section 7). Thus, the focus of the paper is on the development of an agenda for further studies, based on the identification on certain research lacunae, a broadly outlined theoretical approach and a first cut on empirical developments. This research agenda is based on the hypothesis that transnational private authority on corporate governance does not only form an important part of global governance, but is also crucially affecting domestic economic systems. Thus, research on this type of transnational relations will help us to understand the interface between the global political economy and national political economies more thoroughly.

2. State of empirical research on transnational private authority

Although Susan Strange (1996) made wide-ranging claims regarding the increasing role of private authority on a global scale, these claims have not yet been matched with systematic research. Existing empirical studies very much concentrate on a selected number of issues that mostly carry a somewhat peripheral character for the organization of economic activity. Three main empirical fields may be differentiated:

- voluntary codes for „good corporate conduct“, mainly in terms of human rights and the environment (Braun 2001, Haufler 2001, Wolf 2002), are the result of NGO activism to press business to pay more attention to unwelcome side effects of some its activities;
- technical standards in the widest sense are meant to lower transaction costs with regard to a number of issues which are not dealt with in much detail by governments, such as the governance of the internet (Spar 1999), technical standards in the narrow sense of that term (Salter 1999) or private international law/*lex mercatoria* (Cutler 1999);
- and finally there is the self-regulation of certain industries such as insurance (Strange 1996: chapter 9, Haufler 1997), mineral markets (Webb 1999) or maritime transport (Cutler 1999).

These studies have been very important to bring the issue of transnational private authority on the academic agenda. Furthermore, they have already raised a number of the fundamental questions regarding this issue, such as the effectiveness and legitimacy of private self-regulation. All of these studies, however, deal with highly specific features of global economic governance. There is no systematical empirical evidence of which sectors and which organizational formats are suited at all to host transnational self-regulation (Ronit 2001: 564). Most existing studies of transnational private authority focus on cases where only a limited number of industries or a selective part of the economic process are being regulated, whereas the fundamental organization of economic life is not affected. Furthermore, and somewhat more irritating, private authority mostly carries a rather useful, positive character. Most of these studies demonstrate that business is able to govern itself and that it can deal with certain negative side effects of economic activity. Although there are some critical comments on the legitimacy and accountability of the private authority involved most normative assessments more or less obviously focus on the efficiency of this type of regulation and frequently try to develop proposals to further improve this efficiency.

In contrast to this “mainstream” literature, this paper argues that private authority also affects more fundamental aspects of economic governance. Furthermore, conventional notions of efficiency may be too narrow to assess the impact of this form of regulation. Instead, this paper proposes to look at the role of private authority for a fundamental convergence of capitalist models. Thus, a more embedded perspective on business activities is being taken, relating core elements of economic life to each other. Furthermore, it is also advisable to look at the long-term distributive consequences of transnational private authority and at its effects on less obvious stakeholders.

3. Corporate governance as a neglected issue of transnational private authority (research)

Currently, one of the most important issue areas of transnational private authority appears to be in the field of corporate governance.⁶ Corporate governance may be broadly defined as the rules and practices governing the power relations between the various stakeholders in the modern

corporation: shareholders, creditors, managers, workers, and elements of the society (and the state) at large (cf. Hopt et al. 1999: 5, O'Sullivan 2000: 1). Within this configuration three sets of relations are central: management-shareholder, management-employee, and company-society relations. In order to delimit its empirical scope, the focus of this paper is on shareholder relations: Relations between shareholders and management are at the heart of the quintessential struggle over ownership and control (Becht et al 2002; Berle and Means 1932/1991).

Management – shareholder relations in turn consist of three major components. Here, we follow the common distinction between exit and voice (Hirschman 1970) or between external – through the market for corporate control and evaluation – and internal – through the governing structure of the corporation itself – mechanisms of control (Jensen 1993). The third key issue is that of transparency and accountability, the regulation of which is highly relevant to both internal and external dimensions. We thus arrive at the following three key instances of corporate governance regulation:

- the internal governance structure of the firm;
- the external control and evaluation of the firm and
- regulation affecting transparency and accountability.

Corporate governance has in the 1990s become a buzzword of the global business community and is now receiving even wider attention given the worldwide economic, societal and political repercussions of the Enron collapse and other recent corporate disasters. In a broader perspective, corporate governance is a core element of major models of capitalism such as the Anglo-Saxon and the Rhenish ones. Here, the central debate is on the question whether we witness a process of convergence of different types of corporate governance and, therefore, of types of capitalism. Although this debate is far from being settled, there appear to be strong transnational pressures to change the structure of corporate governance within the Rhenish model of capitalism. Given that Germany is the prototype for this model, it is at the focus of most empirical studies. Based on a wave of recent research on corporate governance in Germany, there is by now abundant evidence for radical changes within this governance structure (cf. Deeg 2002). Changes in corporate governance, however, may have far-reaching consequences for the capitalist model as a whole (cf. Nölke 1998, 1999). Core comparative advantages of the Rhenish model traditionally are the fairly balanced and consensual relationship between labor and capital and the availability of patient capital being provided by major banks (“Hausbanken”) and internally generated funds. Management has to meet an arrangement with well-organized representatives of both labor and capital, which often participate directly in the decision-making process. Thus, these decision-making processes may take a long time, but the implementation of jointly made decisions is comparatively smooth. Moreover, the Rhenish model of corporate finance leads to a relatively long-term perspective with regard to the economic well-being of firms. “Hausbanken” are less interested in short-term price movements on the stock markets than in the long-term solvency of their loans. The same long-term perspective applies to other sources of investment capital. At the same time, stable ownership structures provide firms with considerable protection against take-

over. All of these factors also support the long-term investment in human resource development that is crucial for the Rhenish specialization in high skill and high quality products. These comparative advantages may now, however, be undermined by a shift of corporate governance structures in favor of shareholders. This may, in turn, lead to the familiar "... pressures of "short-terminism" that plague American and British companies – pressure from shareholders to maximize dividends by concentrating on quarterly results and short-range return on investment variables" (Sally 1995: 69), and to a more conflictive relationship with the representatives of labor. Radical changes in corporate governance structures, therefore, may threaten the very basis of the Rhenish capitalist model, because its elements are highly interdependent and may not be easily transferred and exchanged.

Some observers applaud these recent developments, since they assume that the Rhenish model is systematically underperforming, if compared with its Anglo-Saxon rival. Still, further erosion of the Rhenish model appears to be problematic, not only from a labor perspective. Even if the Anglo-Saxon model is assumed to be generally more efficient, a selective transfer of the US system of corporate governance into the German system of capitalism hardly appears to be promising, given the strong interdependencies between the different elements of national systems of capitalism. Thus, the selective "disembedding" of single mechanisms of national models of capitalism for a transfer into another national model has rarely proved to be an attractive perspective, as several attempts to export the German system of apprenticeship have demonstrated.⁷ The alternative of the Rhenish model completely shifting towards the Anglo-Saxon model of capitalism would, however, appear equally unattractive (at least in the short and medium-term), given the inability of the Rhenish model to compete in simple low-cost products on the one hand and products which demand high short-term investments in more risky business ventures on rapidly changing markets on the other. Thus, the disembedding of Rhenish corporate governance may lead to a loss of its comparative advantages in high skill and high quality products, without providing an attractive reform perspective. This would not only be to the disadvantage of Germany (and other "Rhenish" countries), but also to the overall welfare of capitalist societies:

"To the extent that national or other institutional specificities serve as niches allowing firms and economies to develop competitive new products and processes, their disappearance must diminish the aggregate entrepreneurial creativity and vitality of capitalism as a system. It is furthermore highly unlikely that any one approach to running a capitalist economy will monopolize all the virtues – which would seem to offer good Popperian, or even Hayekian, reasons for seeking to preserve the innovative potential inherent in a healthy level of 'socio-diversity' within global capitalism" (Crouch/Streeck 1997b: 15).

Whereas ongoing changes within continental corporate governance systems (and their implications for the Rhenish model as a whole) are well documented by now, there is, however, far less evidence on the transnational forces that support these changes. Most research on

corporate governance – and on its embeddedness in the more general “varieties of capitalism” – is strictly comparative, thus excluding the transfer mechanisms between (national) models (cf., e.g., Crouch/Streeck 1997a, Hall/Soskice 2001). Within remaining research, the conventional explanation of the evolution of transnational convergence of corporate governance focuses on the functional requirements of liberalized markets (cf. O’Sullivan 2000, Weil/Gotshal/Manges 2002). Furthermore, competing substantial claims are mostly being discussed in a technical manner, assuming that standards are mainly a question of the most (market-) efficient solution. This explanation is at least incomplete, given the remaining diversity of corporate governance models and the fact that a number of potential movements towards convergence are highly controversial political issues. As far as there is a political explanation, authors focus on the role of national governments and, most prominently, the European Union as the dominant transfer mechanisms for corporate governance standards (e.g. Bieling/Steinhilber 2002). Issues such as financial liberalization or European Company Law are at the forefront.

In contrast, this paper argues that politically less visible, but potentially more important developments are happening within the private sector, especially in the wider context of the financial markets. First, there is a comparatively limited role of public regulation on issues of corporate governance. Market developments are very dynamic. Dominant actors prefer to keep governments out of this issue area, because a homogeneous regulation might not do justice to the complexity of situations involved. Furthermore, international public regulation of corporate governance is frequently being blocked because of the high national stakes involved, as in the cases of European Company Law or the Take-over Directive. As far as we can still find successful public regulation in this sector, it is largely based on private self-regulation. Thus, the European Union, e.g., requires business to adopt International Accounting Standards (IAS) by 2005. Finally, there are private actors that are very actively promoting a convergence of corporate governance (towards the Anglo-Saxon model) on their own, such as institutional investors and rating agencies. In sum, effects of transnational private authority may be a crucial part of any explanation for current changes in corporate governance and, thus, for the basic organization of economic life.

4. State of theories on transnational private authority

As mentioned before, established (mainstream) theories of IR/IPE are unable to address the issue of transnational private authority, because of their state-centric bias. Existing theories on private self-regulation on the national level (e.g., Streeck/Schmitter 1985) may only to a limited extent be transferred to the transnational level, because they are frequently linked to certain features of corporatism which are absent outside of the domestic context (especially the participation of labor). Correspondingly, the development of theories on transnational private authority is still in an early stage. Due to the absence of links with established theories, conceptual development very much follows an inductive approach. Thus, broad classifications and typologies of different forms and mechanisms of transnational private authority such as informal industry norms,

coordination service firms, production alliances, cartels or private regimes dominate the field (cf. Cutler/Haufler/Porter 1999b).⁸ Furthermore, there are some rather general explanations regarding the emergence and the operating principles of transnational private authority (cf. Cutler/Haufler/Porter 1999c). For some very specific cases of transnational private authority, such as rating agencies, more elaborate theoretical models are being developed (cf., e.g., Kerwer 2001), without, however, being placed in a more comprehensive, comparative perspective. Although both the problem solving as well as the legitimacy dimensions of the evolution of transnational private authority have been highlighted, there is as yet no systematical theoretical reflection on how to assess these normative implications.

In an over-all perspective, the current state of theory development on transnational private authority is not yet satisfactory. Broad typologies are a valuable option for early theory development, but have to be complemented by more advanced approaches focusing on the explanation of the working of transnational private authority as well as on the precise conditions under which this element of global governance is relevant. Furthermore, the normative focus of existing theories may be too narrow and too ahistorical. In order to assess the implications and desirability of transnational private authority within global economic governance, we have to embed this phenomenon into a more general and historical perspective of economic activity. Finally, it may be wise not to attempt to design a general theory of transnational private authority at once, but rather focus on a specific sub-category first, and then move on to other categories. This could help to overcome not only the conceptual limitation of mere typologies (which frequently go hand in hand with a too broad approach), but also the risk of an idiosyncratic approach based on only one case of transnational private authority.

5. Elements of an alternative approach: Transnational policy networks and the varieties of capitalism

One promising point of departure for conceptual development is the resource dependency theory on transnational policy networks (cf. Nölke 2000). In marked contrast to conventional theories of international relations, this approach gives considerable space to the activities of private actors. Transnational policy networks, however, focus on public-private interaction and on policy advocacy or on policy participation of private actors at most, but not on private self-regulation (cf. Porter/Coleman 2002: 3). The degree of private influence on governmental or inter-governmental decisions, which is a good indicator for the relevance of transnational (global) policy networks, misses therefore the point as far as private self-regulation is concerned. Furthermore, policy network approaches are quite weak on political economy issues. Thus, they are unable to identify the larger picture and the significance of socio-economic changes that may be caused by transnational private authority, as well as the historical context that has given birth to this type of authority. Here, we can draw on theories of capitalist diversity (Crouch/Streeck 1997a, Hall/Soskice 2001), which are weak on the analysis of transnational governance, but strong on the overall relevance of current and historical developments for the organization of capitalist economies.

As a concrete analytical instrument an (inter-) organizational approach is chosen, since single firms and their inter-organizational networks appear to be at the center of most forms of transnational private authority. Thus, the issue of transnational private authority is phrased in terms of a network of private organizations which are able to transnationally influence the conduct of other private organizations, inter alia based on legitimacy accepted by the latter and on a more or less implicit empowerment of (inter-) governmental actors. Sociological approaches on resource dependencies in inter-organizational networks (cf. Nölke 1995: 72-85) may serve as a starting point for the analysis of relationships between single companies, but have to be embedded in more general concepts of political economy. Thus, these organizations are representing the interests of different socio-economic groups, such as managers, (various categories of) shareholders and employees. Policy networks assume that political decision-making and implementation is mainly based on the exchange of material and immaterial resources between mutually – but frequently asymmetrically – dependent organizations. Typical resources to be exchanged in policy networks include finance, information and legitimacy (cf. Nölke 1995: 98f). Within the framework of transnational private authority in global economic governance, legitimacy appears to be a core resource, but will always be combined with more conventional power resources such as finance and information.⁹ The outcome of resource exchanges in a transnational political economy perspective, however, may very much transcend the corporate actors involved in these exchanges, given the potentially far-reaching relevance of private corporate governance standards for the organization of capitalist economies as a whole. In order to analyze these outcomes, the organizational logic of policy networks thus has to be combined with a comprehensive (transnational) political economy perspective. The same logic applies to the preconditions for the evolution of transnational private authority that also can only be properly understood in the context of the historical development of capitalist economies.

6. Coordination service firms and corporate governance

The activities of so-called „coordination service firms“ (Cutler/Haufler/Porter 1999b: 10f) such as rating agencies, institutional investors, trade exchanges, investment banks, multinational law, accounting, insurance and management consultancy firms are at the core of transnational private authority on corporate governance. Recently, the Enron (and Worldcom etc.) debacle has demonstrated the importance of these institutions for corporate governance. Therefore, this type of transnational private authority is singled out for a more in-depth study. The basic assumption is that these firms by setting and enforcing standards of company behavior enjoy considerable authority over other firms – and, correspondingly, over more general issues of socio-economic governance. Thus, private actors take over (regulatory) roles, which traditionally are held by governments, with far-reaching consequences.

Based on the theoretical discussion outlined above, the remainder of the paper will undertake a first cut of empirical developments in these fields, in order to give an assessment of

the importance of this type of private transnational authority for global economic governance. Corresponding to the three key instances for corporate governance regulation mentioned above, the paper will focus on three groups of coordination service firms:

- Institutional investors develop (and enforce) codes of conduct for the internal corporate governance structures of listed companies;
- rating agencies assess the value of bonds issued by firms and other institutions, thereby inducing certain types of business behavior and
- major accounting firms favor certain standards of transparency and accountability over others, thus affecting the financial management of listed companies.

6.1. Institutional investors and internal corporate governance structures¹⁰

The evolution of codes of conduct for corporate governance has considerably intensified during the last years – out of the 35 codes currently existing in the EU Member States, 25 have been issued since 1997 (Weil/Gotshal/Manges 2002: 2). Although there are a number of competing standards, there also has been a strong tendency towards substantial convergence. Remaining differences primarily reflect the strong historical association of corporate governance systems with different (national) models of capitalism. Furthermore, public authorities, on the national, European and global level have endorsed some private standards. Thus, codes of conduct on corporate governance have become enmeshed in a complex web of multi-level governance.

Given the dominance of economic and legal literature on corporate governance, the political struggle behind this evolution of private authority is largely unaccounted for. The most important driving force for the development and enforcement of these codes, however, appear to be institutional investors. The term institutional investor generally refers to “... an investor with money under professional management in an organization that invests on behalf of a group of individuals, another organization, or a group of organizations” (Brancato 1997: 21). In the US, the most important investors are mutual funds and pension funds. In the last few decades, the importance of these investors vis-à-vis individual investors has increased rapidly. The share of institutional investors in terms of all US financial assets rose from 8,4% in 1950 to 12,3% in 1970, and further to 20,5% in 1990 (Harms 1997: 15). Whereas in 1965 84% of all US industry shares were owned by individual investors (and 16% by institutional investors), in 1990 individual investors held only 54% (as opposed to 46% by institutional investors) (ibid, p. 21). This accumulation of shares leads to a considerable concentration of power within the hands of institutional investors which is further intensified by a comparatively high degree accumulation of assets in the hand of a few, rather large investors.

Since the early 1980s, this concentration process has led to a very active role of institutional investors in terms of corporate governance. Accordingly, institutional investors no longer limit themselves to the option of exiting, selling their shares if they are not satisfied with the share development of a certain company, but use the voice option and directly influence corporate governance. To be sure, the classical system of operation on the basis decisions to

sell (“The Wall Street Walk”) had also had an effect on corporate governance. Yet these effects were largely limited to a more indirect, structural influence, whereas the exercise of direct, active influence on management decisions remained rather rare, in comparison to the more recent, active behavior. This behavior has, *inter alia*, become necessary due to the increasing concentration of shares of a particular company with a particular institutional investor – if the exit option is chosen and shares are sold in large numbers, a downturn of prices now is unavoidable. In terms of internal corporate governance structures, institutional investors increasingly have put pressure on the companies they (partially) own, especially in comparison to the more passive approach of atomized individual investors. Typical issues include altering the structure and election practices of a company’s board of directors, splitting the roles of chairman and chief executive, increasing current dividend payments and altering executives’ and directors’ compensation packages. The financial resources of institutional investors are complemented by the legitimacy that these organizations and their associations have accumulated as the leading experts on questions of internal corporate governance standards. Recommendations, which were developed by organizations of the movement for “institutional activism” such as the Council of Institutional Investors (CII) or the Investors’ Rights Association of America (IRAA), are accepted as basis for the collective enforcement of corporate governance standards. These general guidelines are complemented by the accumulation of intelligence on companies with deviant behavior (cf. Brancato 1997: chapter 3).

More recently, (US) institutional investors are slowly beginning to transnationalize their investments. While the principal US institutions making foreign equity investments (i.e. pension funds and mutual funds) increased their foreign equity holdings from \$97,5 billion in 1990 to \$ 281,7 billion in 1994, this represents an aggregate increase in pension fund assets devoted to foreign equities from 3,1 percent in 1990 to only 5,5 percent in 1994, and an increase in mutual fund assets from 1,7 percent to 3,9 percent (Brancato 1997: 127). According to the long-term policy statements of many US institutional investors, an expansion of the international component of their shareholding portfolios towards a 20 percent share is to be expected (Black et al. 1998: 201). The repercussions of this transnationalization process are already to be felt within other economies.¹¹ International institutional investors already by 1997 held shares of around 20 percent and more in some of the most important German firms (Siemens 18%, RWE 19%, BASF 27%, Hoechst 51%; all figures taken from Balzer/Nölting 1997). Furthermore, the assets of German investment funds are also growing rapidly – in 1996 they amounted to DM 62,5 billion, more than five times the amount in 1991 (BVI 1997: 10).

The transnationalization of institutional investing is not limited to the acquisition of shares, but also comprises of investor activism. Thus, German investment funds, while mostly being administered by German banks, increasingly differ from the traditionally more reluctant behavior of their parent companies. They are not only beginning to issue general guidelines for changes in corporate governance of German companies, but also take a more critical stance at the general meetings of individual German firms where they hold shares (cf.

Balzer/Nölting 1997: 80). Still, they have not yet reached the more aggressive behavior of their US counterparts, such as the famous California Public Employees' Retirement System (CalPERS). CalPERS and other institutional investors have teamed up in institutions such as the International Corporate Governance Network (ICGN) in order to aggressively challenge traditional practices of corporate governance in Germany and other countries with deviate from the Anglo-Saxon model (cf. Balzer/Nölting 1997: 88f). Typical issues of concern include voting rights of shareholders, executive remuneration or the composition of corporate boards. Given the absence of binding public regulations on internal corporate governance structures, these networks play a core role in developing and enforcing private or semi-private corporate governance codes. These codes increasingly define what the global business community considers adequate corporate governance. Correspondingly, a large part of recent changes in German (and other continental) corporate governance mechanisms has been attributed to the activities of Anglo-Saxon institutional investors and their networks (cf. Lannoo 1999: 287-290, Cioffi 2000: 585, Detomasi 2001: 20-28).

The basic mechanism of transnational private authority of institutional investors over internal corporate governance structures consists of the pooling of their analytical, financial and legitimacy resources. These assets are then used to exploit the dependency of other companies on these resources, e.g. by issuing guidelines for correct corporate governance, selling shares, and using voting rights or publishing lists of companies with deviating corporate governance practices. Given the existence of a multitude of corporate governance codes and of an even greater variety of institutional investors, their ability to exercise transnational private authority has, however, not yet been optimized.

6.2 Rating agencies and external evaluation

Debt rating agencies work towards the same direction of spreading Anglo-Saxon standards of corporate governance, although through a somewhat different mechanism. They exercise their authority in two manners (cf. King/Sinclair 2001: 4): On the one side, they shape the behavior of market participants by limiting thinking to a range of legitimate possibilities. On the other, less frequent side, they may even occasionally exercise an explicit veto over certain options, by using a ratings downgrade. Rating agencies have received the most attention for their evaluation of public institutions, because this assessment forms one of the most obvious cases of political relevance of transnational private authority (cf. Hillebrand 2001). Although the proper task of rating agencies is to assess the "quality" of other companies' (and public institutions') debts, they also have influence on issues of corporate governance, since the latter form an important element of their assessment criteria for business enterprises. Furthermore, both the authority of institutional investors and of rating agencies are the product (and core elements) of an ongoing (US-led) process of the disintermediation of finance, which is leading to an decreasing role of commercial banks for the provision of capital (cf. King/Sinclair 2001: 5-8). Insofar that the epistemic authority of rating agencies favors the US system of disintermediated finance, it is

not politically neutral, but rather actively favors a specific socio-economic model which is very much in line of the short-term investment horizon of the Anglo-Saxon approach (Sinclair 1994: 149).

The resource base of rating agencies is somewhat different from the one used by institutional investors. Whereas the authority of the latter is mainly based on their financial resources (and on their legitimacy as standard-setters for internal corporate governance structures), rating agencies derive their authority from their analytical resources (and the legitimacy that is derived from the expert character of these analytical resources in the perception of market participants). The demand for the analytical output of rating agencies stems from the overwhelming quantity of information available to market actors. Rating agencies condense this information into some sort of recommendation, which is then used as a benchmark for other market actors. Although the latter may depart from these marks, they still are the standards for the work of other actors (King/Sinclair 2001: 4f). Analytical resources (and the related legitimacy), however, are somewhat more unstable than financial resources, since they may be severely affected by perceived rating miscalls. Thus, the reputation as global experts for debt quality, which has been accumulated by rating agencies over decades, may be eroded quickly, as indicated by the Mexico crisis and the Asian financial crisis of the 1990s (King/Sinclair 2001: 10). Resource dependencies between rating agencies and other business companies exist not only in case of institutional investors, but also with the companies whose debts are rated by these agencies. It is here that rating agencies exercise their main authority over corporate governance, since most companies cannot afford a low ranking and will therefore consider to adjust their corporate governance structures, if these give concern to a rating agency. Although based on less tangible resources than the ones available to institutional investors, the authority of rating agencies over the basic organization of capitalist economies should not be underrated. Even if a company that is issuing a bond does not agree with a particular rating, it has to take account of other market actors that will be acting upon that particular rating (King/Sinclair 2001:11).

Compared with institutional investors, rating agencies are considerably assisted in their exercise of transnational private authority by a far higher concentration within this business sector. Although there is intensified competition and an increasing number of agencies since the 1990s, the two major agencies of Moody's Investor Service (Moody's) and Standard&Poor's (S&P) still largely dominate the market. Other agencies rather occupy niche markets, such as Fitch Ratings for municipal and financial institutions. The dominating role of Moody's and S&P is not limited to the US. It is their transnational authority over European and Asian market actors, which has caused the most controversy (King/Sinclair 2001: 12). This controversy has been intensified by the Basle II capital adequacy proposals, which mandate rating agency outputs for less sophisticated banks (cf. King/Sinclair 2001: 17-25). As in case of the semi-public corporate governance codes being elaborated by institutional investors, private authority here becomes enmeshed in a public-private system of multi-level governance. Third-party enforcement of debt

rating has a long history in the US (cf. Kerwer 2001, King/Sinclair 2001: 14-17), but now goes global. These most recent developments have not only been criticized because of a number of practical problems involved, but also because they may further undermine the Rhenish model, in this case especially the financial basis of some “Mittelstand” companies.

6.3 Accounting companies and transparency standards

Both institutional investors and rating agencies rely upon accounting companies for accurate information about the performance of business. Without proper accounting figures, neither bond-rating nor institutional investing may be done in an acceptable manner. Regulations of transparency and accountability are a core element of corporate governance. In contrast to institutional investors and rating agencies, the role of accounting companies within the (transnational) political economy of modern capitalism has hardly been studied yet. Still, the potential of accounting companies for the development of powerful transnational private authority has already been indicated by Susan Strange’s seminal study on the “Retreat of the State” (1996, chapter 10). Strange focused on the extreme concentration of the accountancy market, where the Big Six (in the meantime the Big Four) had market shares of more than 95 per cent in the most important national markets, thereby giving them considerable structural power.

Even more important than the structural power of the big accountancy companies observed by Susan Strange may be the authority conferred by the elaboration of transnational private accounting standards. Traditionally, accounting standards have been developed on the national level, in most cases with a strong involvement of national governments. Economic transnationalization and the disintermediation of finance, however, have recently asked for a harmonization of national standards. Accounting companies are also in favor of pooling their resources in transnational standard setting bodies, since this will strengthen their position towards national regulators and single clients. Transnational harmonized accounting standards are also important for the legitimacy resource base of the whole profession, because it increasingly becomes obvious that different (national) standards lead to dramatically different results for the same company (Sundgren 1997: 15). In the absence of inter-governmental co-operation for the regulation of the accountancy profession, the shift of standard setting to the transnational level leads to a further case of the evolution of powerful transnational private authority over issues of corporate governance. In contrast, the importance of national public regulations, such as the German Handelsgesetzbuch (HGB), is being tremendously eroded.

Given the dominance of professional literature within accounting studies, the political struggle behind this evolution of private authority is yet largely unaccounted for, although transnational private accounting regulations are not only very much contested, but also the basis for international public regulation. The first substantial attempts for cross-border harmonization of accounting regulations have already been undertaken in the early 1970s. During the 1990s, the controversy between the Generally Accepted Accounting Principles (GAAP) of the US, the

transnational International Accounting Standards (IAS) (or International Financial Reporting Standards (IFRS) as they are called more recently) set by the International Accounting Standards Board (IASB) and various national standards in Europe has dominated the issue area. Numerous European companies have applied the GAAP to be listed on the New York Stock Exchange. Outside of the US, the London-based IAS/IFRS have increasingly been adopted. Recently, the EU has decided that European companies have to adapt the (private) IAS standard by 2005. In the aftermath of Enron, even US authorities consider the acceptance of (some of) these rules. Conventional explanations of the evolution of private authority on accounting focus on the functional requirements of liberalized markets for the harmonization of standards. Furthermore, competing substantial claims are mostly being discussed in a technical manner, assuming that standards are mainly a question of the most (market-) efficient solution. From the perspective of this paper, however, these standard-setting procedures have to be understood within the context of the variety of capitalist models and the concrete interests of different socio-economic groups. Thus, the rather conservative, debtor-oriented accounting standards of the German (HGB) may, e.g., be explained by the strong role of the German banks during the evolution of this model of capitalism. The complex, case-oriented structures of the US GAAP are, inter alia, due to the lobbying efforts and the evasive behavior of US companies in diverse economic sectors. Since accounting standards are not neutral towards different models of capitalism, transnational standard setting may severely threaten established practices on the national level. Increasing importance of transnational accounting standards, thus, recently led to the foundation of a German committee for accounting standards (Deutsches Rechnungslegungs Standards Committee/ DRSC) by major German companies, with the prime intention of participating in international standard development. As of 27 March 2003, this committee has already been severely reorganized, in order to improve its ability to influence the setting of private transnational accounting standards, which so far has been fairly limited. Again, private authority based on Anglo-Saxon preferences is increasingly undermining the Rhenish model - in this case the long-term perspective of German business based on considerable hidden reserves that will be made more difficult through the increased application of transnational accounting standards.

7. Conclusion and issues for further research

All three types of coordination service firms favor a convergence of corporate governance standards towards the Anglo-Saxon model, although the case of accounting also demonstrates that there may be considerable differences between British and US approaches. Still, it has to be established whether coordination service firms (and other mechanisms) will lead to a full-scale convergence, or only a modification of the Rhenish model. All three types of coordination service firms have considerably gained in importance through the process of disintermediation of finance during the last decades. A more in-depth explanation of the reasons why these firms have become important and why they are pressing for a convergence on the Anglo-Saxon model

therefore has to take account of this process of disintermediation and the accompanying shift of power between different elements of capitalist political economies.

More specifically, one decisive factor for the success of transnational private authority in the field of accounting and even more so in the field of bond rating appears to be the high concentration within the market. This concentration very much assists the development and enforcement of common standards within a small group of organizations. The same principle is to be detected in case of institutional investors, but here concentration is still too limited in order to make a set of common standards easily available. In all cases, transnational private authority is based on the resource dependencies of other companies. These dependencies may be based on the financial resources of institutional investors, or for the information, which is provided, by accounting and rating companies. All three types of coordination service firms furthermore enjoy considerable legitimacy resources as standard setters for different aspects of corporate governance. In all three cases, finally, coordination service firms have received some backing from the state or by inter-state cooperation.

The studies cited so far, however, have not yet been matched by investigations in other types of coordination service firms, such as transnational law or management consultancy companies and stock exchanges. Therefore, it still has to be established whether these observations are valid for further types of coordination service firms or other mechanisms of transnational private authority in more general. Furthermore there is as yet little reflection of the interrelationships between different mechanisms. Institutional investors, e.g., rely on rating agencies and on accountancy companies for their investment decisions (Hillebrand 2001: 161). Correspondingly, one may assume that these agencies co-ordinate their efforts for the implementation of Anglo-Saxon standards within alternative capitalist environments with each other. In order to establish firmly the actorhood of these coordination service firms, it also has to be demonstrated that alternative courses of action – in terms of investment criteria, rating standards, accounting rules etc. - are possible. Otherwise, these firms are only the „implementing agencies“ of anonymous market pressures, and thus of very limited relevance. Correspondingly, further research may search for an alternative network of institutional investors, rating agencies and other coordinating firms, such as labor-dominated pension funds (Blackburn 1999), socially responsible investing (Guay/Jansons 2002) or alternative rating concepts focusing on social/political stability (Hillebrand 2001: 169f).

The existence of an alternative to the dominating form of transnational private authority also becomes relevant from the perspective of the adaptability of the Rhenish model of capitalism, since this model is fundamentally at odds with the prerogatives of the established transnational coordination service firms. There are obvious considerations – already made by others – that some aspects of this type of private authority are problematic, e.g. the collusion between coordination service firms of different sectors/functions as in the case of cross-selling between accountants and management consultants within one auditing company. The utilization of private authority for public regulation as in the case of the involvement of rating agencies

within the Basle II capital adequacy proposals has also been severely criticized (cf. King/Sinclair 2001:17-25). These conclusions, however valid, remain within the narrow concern of short-term economic efficiency. Other observers have added that it is difficult to combine the existence of transnational private authority with conventional notions of democratic legitimacy and accountability (cf. Wolf 2002). In a broader perspective, however, the influence of transnational private authority on a possible convergence of capitalist diversity towards an Anglo-Saxon model may be the most pressing policy issue.

Notes

¹ The high degree of compliance with transnational private authority (Cutler/Haufler/Porter 1999b: 19) distinguishes this more specific case from the more general concept of private transnational norms. In contrast to norms that are established by public actors, private norms are generally far more difficult to be enforced. Therefore, private authority is a rare and important case of the wider universe of private norms. In the remainder of this paper, the focus will for this reason be on the more specific concept of authority.

² Regional integration schemes vary very much in their degree of delegation of authority by national governments. With its supranational elements, the EU shows the highest degrees of delegation. Other regional integration schemes are more similar to international regimes. Also within the EU, the authority of single governments varies significantly between the pillars and the procedures for decision-making. Finally, EU decision-making frequently is similar to transnational public policy networks, with a high degree of involvement of private actors, cf. Nölke 2003

³ For a similar definition of transnational private authority as based on power combined with legitimacy see Hall/Biersteker 2002: 4.

⁴ Private authority should also not be confused with Nye's concept of "soft power" or Strange's "structural power". Besides the conceptual woolliness of the latter concepts (cf. Baldwin 2002: 184f, 186), both do not necessarily comprise of a combination of power *and* legitimacy. Thus, private authority may also be based on structural power (besides relational power) as well as on Nye's intangible resources (besides tangible resources such as information and finance) – but always has to include legitimacy.

⁵ In some cases, private actors may even have authority over public actors, as in case of rating agencies and their "sovereign" ratings (Hillebrand 2001: 165-167). The focus of this article, however, is on self-regulation within the private sector.

⁶ The following conceptualization of corporate governance is taken from Nölke/Overbeek/Van Apeldoorn 2003, section 11, page 2.

⁷ For a similar argument regarding the difficulties of importing selected mechanisms of the German model within the French context cf. Boyer 1997: 92f.

⁸ There are some obvious parallels between the discussion on transnational private authority and the early discussion on transnational relations in general. In case of the latter, a too broad and general approach towards the subject inhibited the development of a coherent alternative to state-centric approaches, cf. Risse-Kappen 1995: 7f, 14f.

⁹ Compare this assumption with the observation made by Cutler/Haufler/Porter 1999c: 345, taking into account the close relationship between legitimacy and authority: "Two distinct roles played by power in private authority can be discerned: The first, *ex ante* consideration, is the role of power in making it possible for firms to establish private authority in the first place... The second, an *ex post* consideration, is the importance of the power produced by private authority once it is established. Actors with power create private authority, and private authority creates power".

¹⁰ This section partially draws on Nölke 1997, 1998.

¹¹ The following examples focus on the case of Germany. Lannoo 1999: 287-291 provides a comprehensive European perspective.

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