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## **A Bird's-Eye View of the Institutions of International Economic Governance**

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June 2021



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ET RÉGULATION

**This working paper offers a presentation of the *Oxford Handbook of Institutions of International Economic Governance and Market Regulation*, the table of content of which is also presented in its appendix page 52**

# A Bird's-Eye View of the Institutions of International Economic Governance

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June 2021

## Abstract:

This chapter introduces a handbook examining all the stakeholders and players that, in addition to governments and inter-governmental organizations, play a role in the design and establishment of transnational economic regimes. We highlight, first, how the characteristics of the world economy are crucially dependent upon four complementary infrastructures of a market economy that ensure governance of the exchange of goods and services, of financial resources, of information and knowledge, and of the social and environmental sustainability. Second, we underscore the diversity of international regimes. Beyond intergovernmental agreements, many processes contribute to the emergence of transnational rules. Some, such as unilateral enforcement, rely on public authorities. Others draw on private ordering. Third, we identify six categories of players, i.e., four in addition to governments and international organizations, namely: market intermediaries; transnational corporations; regulators and judges (i.e., these public “enforcers” independent of governments); and citizens (at least some active ones).

## Keywords:

Commercial Intermediaries; Compliance and Enforcement; Conflict Settlement; Design and Adoption of Norms; Inter-Governmental Negotiation; Market and Financial Regulation; Public and Private Ordering; Sustainable Development; Transaction Costs; Value Chains and Trade

## The Contrasted Approaches to Global Economic Governance

During the process of development of this handbook, we have been witnessing rising tensions around the approach to and mechanisms of transnational governance. Populism and neo-corporatism, in both democracies and authoritarian regimes, have impacted the climate of international relations, with a clear preference for a Metternichian order, allowing traditional nation-states to develop autonomous strategies, against the post-cold war hegemony of the U.S. or the liberal ideology of global integration around western principles of democracy and the free market. This movement has clearly been fueled in non-OECD countries by the ruling elite's fears of losing sovereignty, then political and economic control and, in OECD countries, by the social and individual costs of adaptation to a new international division of labor, resulting in social cleavages and disruptions of social hierarchies and, at a minimum, tensions surrounding the logic of pre-existing redistributive systems and the social safety net. At the same time, crises like the COVID 19 pandemic and climate change have been highlighting growing interdependencies at the global level that come with the development of all nations, bridging the gap between the most and least developed parts of the world and reducing extreme poverty. International cooperation is needed, even when embracing a "nationalist" perspective, since climatic, health and of course economic interdependencies need to be managed to protect social orders from the destabilization potentially instigated by reduced access to key resources, population migration, and the resulting social and territorial conflicts. Beyond the issue of the international order, these tensions have been triggering debates, often excessive, between a "liberal/capitalist/market based" and a "public good/cooperative/local community centric" process of development and globalization.

This handbook is a contribution to this debate. If the world economic order is to be discussed, its logic of performance calls for an exploration of how it was built and how it is actually governed, and even whether it is governed and governable. Governance is not a single, unitary function or practice. Rather, it is a complex matrix of technical standard setting, resource allocation mechanisms, norms and rules design and enforcement, dispute resolution procedures, and arrangements to dialogue, negotiate, and make decisions. Ultimately, the aim of governance arrangements is to establish the framework in which individuals can recognize mutual rights and obligations, get in touch, circulate information, settle agreements, exchange and cooperate, and develop collective action. In practice, (transnational) governance is,

therefore, much more than formal ordering of decision making through legal and political systems. It is also a set of proliferating local arrangements established by merchants, lawyers, engineers, corporations, and a wide array of public authorities, in order to solve specific coordination problems, so that merchandise and capital can move, services can be delivered, and information and knowledge can be shared. These arrangements are subject to adoption, imitation, bypassing, reforms and interconnection. This is why there are so many forms and levels of governance.

The literature on international governance is extensive and characterized by a long-standing tradition. It would be impossible to synthesize it in a few pages. Since many of the current debates have been triggered by the consequences of the so-called "second globalization," let's start from there. In the 1990's, right after the collapse of the Soviet empire, attention focused on the possibility of adapting the multilateral governance system, inherited from the Second World War, to allow greater international cooperation through supra-national governance by intergovernmental organizations (IGO) either at the global level (the U.N. system and the WTO) or at the regional level (in Europe and in the Americas, in particular). The debates were about the mandates of these organizations, their responsibilities toward more fragile countries, the negotiation of trade deals and economic integration treaties, etc. States were considered the main players. In the 2000's, the debate shifted progressively, inspired by the literature on "global" governance (e.g., Rosenau 1995; Rosenau and Czempiel 1992), which highlighted three major trends: the rise of multilevel governance; the role of non-state actors; and the legitimacy of global ordering. Indeed, the interplay between different levels of governance - local, national, regional and global - led to the conclusion that it was meaningless to disentangle players beyond and below the political nation-state. Thus, international governance should consider all kinds of public authorities: local, national, regional, global. Second, came the idea that governance is not conducted exclusively by governments and international organizations,<sup>1</sup> but also by the private sector and non-governmental organizations (NGOs). As a result, states are not replaced as the primary instrument of global governance, but rather supplemented by other actors (Nye and Donahue 2010). Finally, debates developed around the legitimacy of ruling above the states. In particular, the question was to consider whether legitimacy drew from the process -

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<sup>1</sup> Note that these agencies include not only formal treaty-based intergovernmental organizations (e.g., the U.N. or the WTO), but also transgovernmental networks (e.g., the Nuclear Suppliers Group, NSG), private organizations (e.g., the International Federation of Association Football, FIFA), and multistakeholder arrangements (e.g., the Forest Stewardship Council, FSC); Cf. Liaropoulos (2017).

e.g., the fact that representatives of affected interests have agreed amongst themselves on a decision-making process that meets reasonable standards of inclusiveness, transparency and accountability (Dingwerth 2008), or whether transnational rules should meet some possibly universally recognized moral standards. In the early 2020's, the debate shifted again, as noted for instance by Scholte (2019). It seems that there is no longer an agreement, at least among the elites, on the clear primacy of world order principles such as open international markets, universal human rights, representative multi-party democracy, international law and multilateral institutions (Lake et al. 2021; De Vries et al. 2021). Second, widespread anti-globalist populism makes many people across the planet resistant to governance beyond the state (Stephen & Parizek, 2019; Zürn, 2018; Hoogue et al, 2019). Third, the institutions of global governance are rapidly diversifying beyond traditional intergovernmental organizations. Today much, if not most, new global regulation is occurring through informal trans-governmental networks, private mechanisms, and multistakeholder initiatives (Djelic, and Sahlin-Andersson, 2006; Bütte and Mattli, 2011; Boström and Höllström, 2010; Raymond and DeNardis 2015). The legal order is the end result of negotiations and conflict settlements, rather than of deliberative processes, initiatives of rational design and philosophically informed thinking on the hierarchy of norms.

This introduction aims at clarifying how this handbook seeks to contribute to the understanding of these complex and evolving settings. The world order inherited from the post war organization of international relations led to an academic focus on states and international organizations. This handbook examines all the stakeholders and players that, in addition to governments and IGOs, play a role in the design of the current institutional frameworks supporting transnational economic activities, and their dynamics. The contributors to this handbook identify the actors, and analyze their strategies and the way in which the latter aggregate into systems of rules and mechanisms of governance. In this introduction we will, first, explain in detail our analytical project and the resulting editorial strategy. This will lead us to point out that this handbook could be considered from three perspectives. First, it analyzes how the characteristics of the world economy are crucially dependent upon four complementary infrastructures of a market economy that ensure governance of the exchange of goods and services, of financial resources, of information and knowledge, and of the social and environmental sustainability of economic activity. Second, the contributors to this handbook underscore the diversity of international regimes. Beyond intergovernmental agreements, many processes contribute to the emergence

of transnational rules. Some, such as unilateral enforcement, rely on public authorities. Others draw on private ordering. Grasping this diversity and the logic of each regime is essential to understand a world order comprised of entangled, mechanisms. Third, the handbook identifies six categories of players, i.e., four in addition to governments and international organizations, namely: market intermediaries; transnational corporations; regulators and judges (i.e., these public “enforcers” independent of governments); and citizens (at least some active ones).

## Focusing on Stakeholders’ Strategies and their Aggregation

### An International (Dis)Order?

Our project is to focus on the institutional infrastructure establishing the norms and rules supporting transnational exchange, ensuring compliance and supporting collective action on the matter. At first sight, the situation is difficult to analyze, both because there is a wide set of heterogeneous and entangled rules designed at very different levels, by an extensive array of states and non-state agents, and because the resulting complex web of governance principles is characterized by contrasting evolving trends. At a point where many of the principles that have characterized the second globalization are being questioned by all types of actors and transformations, this handbook proposes a set of analyses aimed at enhanced understanding of the current challenges faced by the world (economic) order, and also at highlighting the directions that should be explored to resolve some of the most sensitive issues on the matter.

In short, we are witnessing a highly polycentric system of governance, both because political authority is split - not only between nation-states, but also within them - and because global governance is largely in the hands of private organizations. In a globalized economy, professional communities often have the skill and the necessary capabilities to establish an effective and efficient standardization/certification system allowing for both the mastery of technology and trade and, more generally, the organization of value chains. The permanent reorganization of the latter, both within the boundaries of transnational corporations (managing networks of disseminated workshops) and within constellations of suppliers, subcontractors and partners, results in a proliferation of systems of quality setting for goods and services, contractual relationships, and appropriation regimes.

This high degree of fragmentation obviously raises the issue of the weaknesses of the existing transnational order and, henceforth, of each regional, national or sectoral order. The press, public opinion, and politicians are able to point out many missing links, inconsistencies and failures of the current proliferation of governance regimes. However, not only are there obvious obstacles to the emergence of an integrated global political and economic order, but the desirability of such an integrated order is also in question. Thus, above all, the current situation raises questions about the sustainable character of the fragmentation, and of the potential drivers propelling or hindering the resolution of the most challenging issues.

Calls for a more integrated polity are frequent in this era of populist movements against globalization. However, the time in which the economy and, more generally, civic activities, were governed by a clear system of, first, internal order within national jurisdiction and, second, international relations across them, is clearly a chimera that existed only for a very brief period of history. As in developing societies, many parallel, partly overlapping and loosely integrated orders allow for the resolution of most challenges faced by citizens, merchants and entrepreneurs, despite shortfalls, high costs, and missing links.

That said, addressing these issues is hindered, not only by the proliferation of public and private authorities that might face difficulties coordinating action because of their divergence of interests, but also by formidable cognitive boundaries resulting in the lack of a common vision or ability to even identify pragmatic, solutions. Think of (public) sectoral regulators, which have to deal with highly technical issues such as the development of new technologies (e.g., cryptocurrencies) or the transformation of value-chains (e.g., to allow the introduction of renewables into the energy mix). They face two challenges: first they often lack the practical knowledge to deal with them; and, second, they lack the economic data that would allow them to concentrate their action on the most sensitive issues. To overcome these obstacles, they need to be embedded in the epistemic community of regulated agents, which then raises the problem of potential capture, or at least conflict of interests. At the global level, these problems are magnified, not only because the fragmentation of authority prevents any benefits from the mechanism of knowledge accumulation, but also because the global society tends to be a cultural "tower of Babel" in which there is no shared vision of the issues faced by humankind, citizens, and more pragmatically economic agents.

This lack of a shared vision is one of the reasons why the transnational order is characterized by the absence of a united public authority able to govern, because it



would be considered legitimate in addressing, if not the public good, at least the collective interest, which would allow it to consider interdependencies across domains, and therefore to manage externalities, for instance, between economic life and environmental issues. The current order has been constructed by national governments, which have few incentives to relinquish sovereignty over any domain since this would clearly prevent them to manage the above-mentioned interdependencies. They are, therefore, likely to delegate only very limited (targeted) authority to intergovernmental organizations, which are, consequently, granted limited capabilities and legitimacy to build and operate transnational regulations (Brousseau, Schemeil, and Sgard, 2012).

At the same time, as pointed out above, the circulation of goods, capital, information and knowledge, and the operations of individuals and organizations are increasingly driven and monitored by rules and standards established and enforced across national boundaries. Courts and regulators are more and more able to impose compliance beyond the frontiers of their jurisdictions. Professional organizations and arbitrators resolve conflicts and manage credible threats in spaces that surpass national orders. Some global operators, among which the most recent are digital platforms, are able to establish norms and manage their enforcement. Accordingly, there is transnational compliance without transnational public rulers, and transnational enforcement capabilities without international (public) bodies to manage them. Of course, this comes with limited capabilities of enforcement, flaws in the way compliance is guaranteed, and questions about the legitimacy of the underlying mechanisms. Think of the issues raised by extraterritorial execution of sentences, the automated removal of contents by digital algorithms, the assessment of sovereign debts by private rating agencies, etc.

One of the questions raised by the current global order is whether what historically occurred, especially in Europe, where fragmented economic and political spaces merged into integrated national systems, could happen on a higher level, either regionally or globally. It is, thus, interesting to investigate how the mechanisms that govern the current global economic system were developed.

### Decentralized Emergence Spurred by Pragmatism

As developed in the first section of the handbook, and by a vast historic and economic literature on the development of long-distance trade beyond the boundaries of empires, trade was place-based and mediated by networks of intermediaries before

nation-states developed. The contribution by Barry Weingast, in particular, reminds us how trading institutions developed from the de facto alliance between emerging cities and rising monarchies in medieval Europe. Merchants and craftsmen benefitted from franchises granting them freedom and an ability to accumulate wealth and human capital in a win-win exchange with kings that mutually reinforced them against lords. The latter benefitted from the development of cities in accessing luxury goods, and from technical progress and having their land increase in value with the subsequent specialization of agriculture. Cities grew through long-distance trade, specialization and exchange, and capital accumulation. They were the places where institutional infrastructure and impersonal and lasting organizations developed to facilitate trade and the provision of public goods. The alliance between cities and national authorities allowed the later to initiate the development of impersonal and perpetual organizations at the "national" level.

This "archeology" of the emergence of nation-states and trading cities explains the characteristics of the first globalization, which was, in a sense, the achievement of this mutual development. Until its end, international trade and financial markets were, to a large extent, place-based. Some cities and, in particular, Amsterdam, then London, hosted the development of market institutions - with standards for quality assessment, blueprints for contracts, dispute resolution mechanisms, credible sanctioning of deviant behaviors, etc. - allowing exchanges to occur securely and on a broad scale (Jérôme Sgard). These (most often) private orders were organized under the legal and monetary regime of the country, the public authorities of which warranted last resort enforcement. The key role of the physical and localized foundations of markets and the strong relationships between the exchange of merchandise and financial instruments explain why the performance of both merchandise and financial markets was so strongly impacted by wars, political turmoil, and all kinds of events affecting access to a specific resource or place and was, as a result, subject to crises and reversals of fortune (Olivier Accominotti & Stefano Ugolini).

The imperial domination of the United Kingdom and the gold-based, English monetary system guaranteed the global reach of a secure system of contract settlement and enforcement that triggered the first globalization. The stability of the later was eroded, inter alia, by the de facto low level of resilience of a system based on a single (and contested) hegemon and a single currency to finance trade. The spread of the industrial revolution in other nations initiated the development of alternative places and instruments for financing international exchanges. At the same time, the rise of the rule of law in non-imperial countries ensured the credibility of

contracts and quality standards developed by other nation-states. Both trends permitted the development of a more decentralized, then less integrated, while potentially more resilient, system of international exchange.

The transaction costs resulting from the less integrated system of trade initiated two trends that strongly shaped the second globalization. First, transnational corporations developed to overcome the difficulties of managing contractual relationships across jurisdictions. Second, intergovernmental agreements were concluded to permit the securing of contracts and conflict settlement across jurisdictions.

The second globalization has, thus, been characterized by international treaties among nation-states, which allowed for exchange on a more widespread basis. Nonetheless, many factors are hindering the development of integrated international jurisdictions. First, this implies relinquishing elements of sovereignty. Second, the differences across cultures (henceforth “national” preferences) make these agreements difficult to reach. Third, the disparities in terms of industrial specialization, governance capabilities, and social organizations result in unbalanced distributions of costs and benefits, both among and within nations. Nevertheless, the post-World-War II era, because of the strength, and then the collapse, of the U.S.S.R., was an exceptional era of progress in the opening up of economies and jurisdictional integration because of the American determination to strengthen its economic, political and economic leadership, thanks to an access to markets and (cheap) labor in less advanced economies in exchange for capital, technology and more multilateralism in international relations: Think of Europe and Japan from the 1950’s, China from the 1980’s, and transitional and emerging countries from the 1990’s.

That being said, because of the countless failures and missing links of the transnational public order, it is supplemented by many private mechanisms of governance, both within and among firms. Those tools have their own limitations because they are decentrally and pragmatically built without any consideration for their potential negative impacts on other stakeholders and on society in general. In short, more complex and hazardous transactions became internalized by large transnational corporations, and international agreements allowed for the development of long-term contracts supporting the exchange of commodities completed by (often place-based) markets allowing marginal and short-term adaptations.

In the most recent period, before the trade war launched by the Trump administration, the gradual reduction of traditional barriers to trade, such as tariffs and quotas, led the agenda for international cooperation on trade. The focus was on the transaction

cost impacts of differences in national regulatory regimes, hence on the specificities/priorities of public policies... pushing international negotiation on trade into the realm of domestic politics, which is certainly one of the causes of the development of populist-nationalist movements against globalization in many countries. (cf., Bernard Hoekman's and Carsten Herman-Pillath's contributions.) Second, corporations had increasing incentives to outsource the management of their operations. The globalization of competition, the pressure of shareholders and the rapid evolution of comparative advantages across national economies, sub-national labor markets and even industrial districts combined to explain this. It has been becoming crucial to be able to agilely reconfigure production processes and reorganize (global) value chains. Hence the trend, very well analyzed in the contributions by John Humphrey, and by Johan Swinnen and Rob Kuijpers, to standardize interfaces along the steps of the value chains. This has been behind the proliferation of private quality and contractual standards that complement and often exceed many of the public standards in force today. They are able to substitute for public ordering, both because they are, from the onset, global, and because they are intended to address the concerns expressed by stakeholders in value chains, as well as by the ultimate consumers, who worry, not only about the health and safety of products, but also about the social or environmental impacts of global supply chains.

At the same time, the complexity of these value chains, as well as of the technology, often makes it difficult to identify causal factors, and to actually measure the potential benefits and harms of alternative standards, not to mention identifying infringers or localizing liabilities. Private norms and standards hardly meet the goals of national regulators and public authorities. When they are accountable to their citizens, the latter have incentives to develop legal norms respecting national preferences. At the same time, since there is forum shopping by transnational players, national authorities always face a pivotal trade-off between managing public policies according to the preferences of their citizens and protecting the competitiveness of the national industry and the attractiveness of their territory.

The development of market supporting institutions has also triggered the emergence of institutions for collective action on many occasions in history. As analyzed by Tine de Moor, in the Middle Ages, and subsequently in the context of the Industrial Revolution, co-operative institutions formed in reaction to the development of the free market, both to protect individuals from the market, and to allow the resulting communities to be integrated into the market economy. Nowadays, we are witnessing the development of many initiatives, local and global, based on individuals or

organizations, to manage collective action in the context of the digital transformation or of the ecological transition. Given the interplay between these mechanisms of cooperation and the development of markets, the willingness to cooperate and reciprocate and compete, self-governance and the general interest, it is obviously essential to not forget the analysis of collective action in the context of an examination of the dynamic of international economic governance. This is why several contributions to this handbook analyze these initiatives and the actors behind them (e.g., Paul Stern, Michael Vandenberg and Jonathan Gilligan, or Oran Young, in particular).

### A Collection of Analytically Informed Case Studies

This highly simplified historical survey highlights not only that the current world economic order is the result of the actions of a great deal of state and non-state actors, but also that neither a bottom-up nor a top-down logic prevails, resulting in the hybrid/contested character of the international framework. These explain the approach that we chose to explore the related issues and the logic of the handbook's organization.

Since alternative institutional arrangements have strong distributive consequences, it is pointless to analyse their characteristics and properties without considering the processes by which they emerge and evolve. The result of the interactions among different types of players in various arenas develops into mechanisms governing economic exchanges or the production and access to collective resources, establishing regimes of appropriation, settling disputes and ensuring enforcement. They co-exist and mutually adjust, while at times they can also overlap, or simply fall short. The resulting institutional imperfections hinder the social division of labor, innovation and risk sharing, which incentivize all types of players to implement local and (sometimes) innovative solutions to reduce the cost of exchange, correct (market or hierarchical) failures, and capture rents.

Understanding this fundamental dynamic underscores the interplay, first, between designed institutions and self-emerging ones; and second, between institutions that target economic activities and political/civic ones. Hence there is a need to analyse a large set of economic, political and legal institutional arrangements to understand the dynamics of the economy, and its governance.

Consequently, our approach is micro-founded. We do not start from the broad, macro, “holistic” approaches that directly consider aggregates and integrated ensembles, as political jurisdictions, to analyse how the global economy is governed. A micro, bottom-up perspective seems more promising to us because then the priority is given to the agents themselves, whether market participants or regulators, and how they adopt rules, bend them and act upon them. We want to better grasp how a norm system, a market platform or deliberative forum emerges by looking at who had the initiative, who invested in it, who operates it or who mediates in case of conflict. The focus is, therefore, not on grand statesmen, but on professions, epistemic communities, networks of bureaucrats, civic associations, and private firms. Since we are no longer in the world of Bretton Woods, we analyse central bankers, or IMF officials confronted with a systemic risk, climate scientists discussing with diplomats, arbiters in commercial disputes, or a U.S. prosecutor taking on a large European bank. The goal is to understand, in a precise and empirical way, how interactions between these players shape regulations, build or fragment specific “market jurisdictions,” and lead to outcomes regarding regularity, predictability, dynamics, etc.

Nonetheless, this broad approach does not imply that we are uninterested in aggregation or composition effects. Starting with a micro-perspective on the governance of the global economy also helps to envisage it dynamically. Local orders, or private jurisdictions, have an uneven capacity to evolve and change over time. They may also respond to initiatives or innovations in their immediate regulatory jurisdiction. Market forces, social preferences and political conflicts, of course, affect them as well. International governance is fluid; hence it may change and evolve quite rapidly. Rejecting from the outset the superior perspective of ruling bodies, their creatures and their in-house architects does not imply that they have no place here. Our proposed actor-centric approach does not ignore states and sovereign actors, but it sheds light on the fact that states are complex organizations with various branches and agencies, characterized by contrasting behavioral approaches. The later with their own specific strategies, design and implement policies. The proposed set of case studies highlights how these agents’ motivations and the games they play aggregate. Such an approach allows us to demonstrate that international economic governance is not built by powerful players following a comprehensive logic. Rather, it is the result of decentralized/local initiatives, resulting in missing links and coordination failures within a system comprised of norm setting processes and enforcement mechanisms that are heterogeneous in nature (public, private and hybrid; bilateral and multilateral; governing a wide diversity of transactions, or only very specific ones, etc.). The

proposed agent-centric perspective is key to understanding the dynamics at play, since both the initiatives to rectify failures and the crises occurring when they are not dealt with are the drivers of evolution.

While we are strongly influenced by the institutional and organizational economics (IOE) approach, we do not attempt to organize the contributions to this book by forging and imposing a common conceptual framework. First, it would hardly be compatible with the IOE spirit itself, that is marked by transdisciplinary analyses, since the studied phenomena must be considered through the combined lenses of social sciences: economics, law, management, history, political science, sociology, and anthropology. Second, we ourselves assembled a group of scholars from all these disciplines to benefit from their sound knowledge of the phenomena and actors at stake, and we asked them all to provide contributions based on case studies and the provision of empirical evidence. Not only is this consistent with the micro-foundational and ground up approach that informs the project, but it also avoids attempting to build a holistic analytical framework that would claim to be able to grasp all the dimensions of the vast array of phenomena and actors at stake.

To present this set of heterogeneous contributions, we decided to organize the chapters into four main sections that first group a set of contributions highlighting the way transnational markets were and are micro-founded by the strategies of and the interactions among various kind of actors. The micro-foundations of trade make it possible, but their bottom-up process of emergence leads to inconsistencies and missing links. Focusing on compliance and conflict settlement is, consequently, essential to identify weaknesses and failures, which is the object of the contributions in the second section of the handbook. However, arrangements about enforcement are not sufficient to rectify the failures of transnational economic governance. Since norms of exchange have been integrated and developed within the boundaries of nation-states/national jurisdictions, the concrete regulation of movement of goods, capital, information, and collective risks results in tension between sovereignty (constructed in the realm of the polity and based on the legitimization of a common interest/common good) and the pragmatism of exchange (constructed in the realm of the economy on the basis of net gain from trade for stakeholders). The way sovereign bodies interact among themselves and with non-state actors is central in the contributions gathered in the third section of the handbook. The fourth section includes contributions that explore whether orders could be organized without hierarchies; among authorities or norms. This leads to a necessity to think about order

in a biological fashion: spontaneous and non-hierarchical even if there are many forms of organization and rational design.

While we believe this organization of the handbook is consistent with its purpose and fundamental logic, several alternative organizations would have been possible. This is partly due to the open-ended character of our approach by case studies, allowing alternative lines of reading. In a sense, since several approaches would have been possible, our handbook could be envisaged as a matrix, each contribution being characterized by the type of institutional infrastructure examined, the kind of player involved, and the process considered. To help readers make their own syntheses of the book, we propose in the following pages to discuss each dimension of a three-dimensional matrix that allows for the establishment of links between contributions. We will highlight, in particular, four complementary infrastructures of a market economy, five principal regimes of transnational integration, and six main categories of actors (each of which has many more variations).

Indeed, the contributions gathered in this handbook could be grouped around three alternative topics. First, they point out that the transnationalization of the economy relies on the building of four complementary institutional infrastructures aimed at governing, respectively, the exchange of goods and services, access to financial resources, the circulation of information and knowledge, and finally the social and environmental sustainability of the economic system. Second, the various chapters analyze the properties and specific dynamics of the alternative processes through which international regimes of governance are built. They range from purely private arrangements to intergovernmental agreement, with a significant number of hybrids between these two extremes. Third, the authors of this handbook focus on the key role played in all these processes by six categories of actors: first, merchants and intermediaries who provide the services of transaction engineers; second, corporations that either internalize or externalize the organization of transnational exchanges; third, regulators and judges, who are partly the agents of governments, partly independent from them and whose partial autonomy might develop in the interstices of international relations; fourth, governments, that might build transnational infrastructures, or guarantee or forbid private ordering; fifth, social activists, organized or not within nongovernmental organizations, playing on various levers, including emotional politics, to articulate public and private ordering efforts; and, lastly, intergovernmental organizations (IGO), which tend to become autonomous players, even if they are initially spurred by governments' intentions because they develop strategies to benefit from discretion vis-à-vis their numerous



and divided principals, by developing cooperation with the other actors of transnational governance.

## Four Critical Infrastructures of a Market Economy

Economic, political, institutional and civic agents interact in designing and operationalizing the coordination of resources facilitating exchanges among agents who do not know each other. Mechanisms of credit and risk pooling are also essential to the performance of any system of production and exchange. The mechanisms facilitating the transmission and use of information and knowledge are key in developing a common playing field. Lastly, mechanisms aimed at endogenizing, at least, dealing with the consequences of externalities inherent to human activities, have to be developed to ensure the sustainability of sophisticated systems of exchange. That said, it is clear that these four complementary market infrastructures are characterized by quite contrasting incentives to build consistent solutions, as well as having significantly different impacts. From the first to the fourth, the diversity of stakeholders impacted by the performance of the related organizational and institutional arrangements grows. The institutions allowing for the performance of exchange and collective action mainly benefit stakeholders involved in the market, while the environment concerns all human beings on the planet, as well as the earth's ecosystem. Also, the alignment of interests among stakeholders is greater when considering the reduction of transaction costs than when considering the concrete definition of conditions of sustainable development since, in the second case, the divergence of preferences might clearly be strongly impacted by cultural values. The difficulties in converging toward a consistent/integrated order are, thus, increasing as one moves from the first type of infrastructure to the fourth. This is clearly demonstrated in the contributions discussing the issue of international negotiations, especially in those by Bernard Hoekman, and Carsten Herman-Pillath or Howard Davies and Maria Zhivitskaya.

## Impersonalization of Exchange and Commoditization of Goods and Services

As pointed out in the vast Institutional and Organizational Economics (IOE) literature, collective action and exchange on a large scale require the development of a set of institutions permitting the coordination of individual actions among anonymous agents. Property rights systems, contract law, and conflict settlement mechanisms

allow, first, the securing of individual contributions and investments. Moreover, the development of quality standards permits the transformation of heterogeneous goods into commodities, that might then be subject to standardized contractual arrangements, generic dispute resolution mechanisms, and common shipping, insurance and credit conditions, which combinations have a radical impact on the level of transaction costs, maximizing the potential benefits of the social and international division of labor. As pointed out in this handbook and elsewhere (e.g., Brousseau and Glachant, 2014), the micro-foundations of markets have always been the result of a combination of public and private initiatives, the dynamics of which are made more complex in the international context due to incompatibilities among public orders, often magnified by competition and the divergence of interests among their sponsors.

One of the significant outcomes of the contributions to this book is to highlight the dynamic generated by the commoditization of goods and services, thanks to the development of quality and contractual standards. This allows for the inclusion of less sophisticated participants in the system of exchange, but then calls for more regulation and standardization of exchange conditions to protect them, hence initiating a loop of proliferation of standards and regulations extending the reach of market exchange. In the context of transnational economic activities, the gradient of private ordering to manage this protection of the less sophisticated participants is higher than in the domestic context, due to the difficulty of reaching agreement among sovereign bodies, especially when they have contrasting preferences and policy priorities. As pointed out by John Humphrey and Jérôme Sgard in particular, these mechanisms are provided by the market participants since they are interested in the extension of the scope and size of market exchange, that result in a deeper division of labor that might benefit all.

Obviously, an important aspect of market organization is the management of competition to trigger the elimination of undue returns and an openness to innovation. Jean-Michel Glachant and Lucila de Almeida analyze how this is done in the E.U. context, while Kim Christian Priemel and William Kovacic consider a broader context. All these contributions highlight the extent to which levelling the playing field is a much more challenging task than simply managing a "competition policy," or articulating antitrust policies across jurisdictions. First, rights (of entry, of access, etc.) should be granted to competitors, especially the new entrants, to allow them to sue incumbent firms or public authorities who might have an interest in protecting the latter. Second, governments might have to harmonize policies - in terms of industry

support (“state aid”) or infrastructure development - to really guarantee that common infrastructures have sufficient capacity and are fairly accessible to all competitors.

Another outcome of the contributions to this book might be qualified as the “ladder of arrangements”.<sup>2</sup> Transaction costs are decreasing and competition is increasing as transnational transactions are no longer organized on a bilateral/inter-individual basis by contracts, and by intermediaries, to become intermediated by (longstanding) organizations; the next and final step being when they are institutionalized by generic rules and enforcement devices. Climbing this ladder is an outcome of the competitive process among traders, intermediaries and public authorities. The development of leveled markets allows a large set of stakeholders to be involved in transnational exchange, which induces the development of regulations to protect the less experienced actors. Climbing the ladder comes with a greater degree of public ordering in the governance of exchanges.

### Intertemporal Arbitrage and Risk Pooling

The second critical infrastructure of a market economy lies in the financial and insurance system which allows economic agents to manage intertemporal arbitrage and risk pooling. These infrastructures have long been explored by scholars in finance and economic history. One of the reasons for this is that the enforcement of debt contracts, the availability of credit and of insurance mechanisms and, more generally, the performances of financial markets, are not only essential to the development of trade, but are also issues around which the friction between market discipline and national sovereignty is crucial. Governments often balance between their short-term interest, and their long-term credibility when reneging on paying their debts or bailing out some financial operators. The latter are also often schizophrenic: they draw benefits from well performing markets, while developing sophisticated strategies to avoid bearing the costs of market discipline is a way to increase market share and profitability. As a result, financial markets are always subject to potential systemic crises due to the interdependencies among agents associated with incentives to escape market discipline, resulting in panic, collapse of pyramids of debts, bankruptcies, etc.

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<sup>2</sup> By reference to the famous “ladder of investments” concept relied upon in telecommunication networks regulation and proposed by Martin Cave (2006).

The contributions to this handbook stress financial regulation stakeholders' lack of incentives for to fix the systemic risk issue. One of the reasons is that alternative regulatory frameworks (which include self-regulation by the profession) impact, not the overall level of risk, but rather its distribution among stakeholders. The aggregated level of risk per se is highly dependent on financial technologies, which are very difficult to regulate because of the ease of designing new financial vehicles which bypass regulations. Hence, alternative regulations impact the ability to absorb risks, and the media of transmission, and the mechanisms of recovery, more than suppress risk. As a consequence, (local and national) regulators have strong incentives to divert risk toward other, foreign markets and players, just as financial operators do. Moreover, since the various (public and private) rulers in charge of regulating financial operations are also concerned about the attractiveness of their market in a domain where relocating assets is relatively quick and easy, they have few incentives to impose overly harsh regulations. This explains the recurrence of crises and the persistence of financial fragility and risks.

### Knowledge Genesis and Circulation

The third critical infrastructure of any economy, which is less often analyzed in depth by market exchange analysts, is that allowing for the creation, exchange and operation of information and knowledge. Of course, it has long been recognized that information is a key ingredient for coordination, that knowledge is an essential factor of growth, and that both are sources of power. However, their embodiment in human capital, in technical support or in organizations (whether corporations, bureaucracies or academic institutions) makes them more a subject for specialists of human capital, economics of innovation, or organizational economics than for scholars focusing on institutions, international relations, or governance. Nevertheless, the contributions to this handbook analyze the critical aspect of these infrastructures for the dynamic of global ordering. They also point out the variety of these information/knowledge infrastructures that are embodied in technology (and, nowadays, the Internet), in organizational arrangements (especially structured along the value chains), and in institutional settings (by establishing property rights or commons/epistemic communities).

The most salient manifestation of this crucial aspect lies, of course, in the development of the global info-structure built around the Internet, the specific technical characteristics of which ignore most of the preexisting boundaries across space,

nations, sectors, and organizations. The recent development of big data technologies, combined with machine learning and artificial intelligence, certainly reinforce this idea that the info-structure supporting the circulation of knowledge and information is a key vector of ordering. Technology means allowing self-sustainable ordering since the "code" becomes the "law" and make compliance automatic. (cf. chapters by Niva Elkin-Koren and Maayan Perel and Eric Brousseau.) Those orders no longer need to be supported by public rulers (which is one of the promises carried out by blockchain technologies). Digital platforms and algorithms may organize exchange and collective action on a broad scale and at low cost, maximizing the benefits of the global division of labor, the spillovers in matters of innovation, and the speed of its distribution to users.

In the early 2000's, reflection on the Internet and its regulation was oriented toward globalization and accessibility of this emergent infrastructure, the openness of which was perceived as a major driver of innovation, but also of globalization, precisely because the technology was eroding state monopolies of information access, while empowering corporations providing on-line services, as well as individual users/citizens and NGOs (e.g. Mayer-Schoenberger, 2001; Keohane and Nye, 1998). Also, the Internet was considered a vector reflecting Western liberal values, such as openness to ideas and discourse, control by citizens and, more generally, democracy (Lewis, 2010). All in all, the Internet was viewed as the perfect vector of the then triumphant process of globalization of the economy. In the 2010's, investors' interest, as well as that of national governments, threatened the open aspect of the Internet, with the rise of all types of gatekeepers associated with the evolution of the network's framework to allow tighter control of the circulation of content, either for economic (property rights) or political (security) reasons. The debates about Internet governance then became clearly focused on these issues. In the early 2020's, the focus is on the potential negative impact the dominant platforms might have on the process of innovation. Indeed, innovation is increasingly driven by access to data, and also by the ability to analyze data, thanks to algorithms. Dominant platforms have access to both, and many stakeholders and experts perceive a danger of control of the process of innovation by these major players which, in addition, have the financial ability to take control of start-up firms (and even large significant competitors) to build ecosystems controlling a vast set of market/industry segments. Regulatory intervention that would facilitate data sharing, such that data will confer value, not only on market leaders but also on their competitors to the benefit of consumers, is

crucial to create more competitive and innovative digital markets (as explored by Geoffrey Parker, Georgios Petropoulos and Marshall Van Alstyne).

Yet, as pointed out by Brian Silverman, a vast amount of knowledge is not codified - and some would argue that it is simply not codifiable - and is, thus, encapsulated in organizational routines, human capital, and equipment. Its circulation and valorization are, as a result, dependent upon many infrastructures other than the digital one or intellectual/industrial property institutions: namely all the institutions shaping the exchanges of sophisticated products, the mobility of labor, the relationships among firms (e.g., trade secret regimes), the control of organizations (corporate law and transnational investments regimes), etc. Since many of the related legal regimes are not harmonized across national boundaries, corporations have traditionally been internalizing the control of the circulation and valorization of knowledge through foreign direct investments, mergers and acquisitions and, sometimes, the development of hybrid forms of alliances.

The fact that corporations are major vectors of information and knowledge circulation is observable in value chains. As pointed out by Johan Swinnen and Rob Kuijpers, while value chains are organized by private interests, the latter understand that their efficiency in the short run and sustainability in the long run rely on the openness of the (technical and organizational) standards that are developed within them. Openness allows for the transfer of knowledge, especially through the training of human capital, and the transmission of organizational routines, both to private and public actors and, thus, pertains to the adoption of common formal and informal institutions supporting the circulation of knowledge and exchange at the international level.

At the same time, in a knowledge-based society, it can be expected that national public authorities will be dedicating increasing efforts to contribute to the global protection of knowledge through the development of more integrated and protective intellectual property regimes. Indeed, this is a de facto condition to access knowledge developed abroad and, as a result, to benefit from levers of development/competitiveness. In turn, this would then stimulate the (private) efforts of codification, hence the commoditization of knowledge.

Many contributions to this book however insist on the development of common spaces aimed at sharing knowledge of market infrastructures and information on market performance. We have already mentioned the initiatives of market organizers, such as transnational corporations, which have an interest in sharing norms and

business methods along value chains. There are also many epistemic communities populated by judges, lawyers, regulators, and executives - organizing exchanges of (best) practices, sharing information about innovative arrangements, and discussing (informally) potential harmonization of norms, behaviors and policies. These dialogues can be very casual, as in the case documented by Emmanuel Lazega, or more formal, but with important thematic variations, as with the many networks of transnational regulatory cooperation compared by Celine Kauffmann. The frequent cooperation such networks manage between academic and practitioner expertise is a way, as pointed out by Andrea Renda (in the case of high-level expert groups organized by the European Commission), to compensate for the absence of strong bureaucracies dedicated to transnational coordination, as well as a short-cut across the many levels of governance (and associated veto players) of transnational governance.

### Societal and Environmental Sustainability

The fourth category of critical institutional infrastructures for the development of transnational economic activities is that encompassing those working for social and environmental sustainability. By social, we refer to the inequalities that may hinder the deepening of the social and global division of labor, if the distribution of efficiency gains, or of costs of transition, are too unequal and result, either in unacceptable inequalities, or in impoverishment of some groups. As demonstrated by the success of various populist movements against globalization - even as protesters often benefited from it in terms of purchasing power, establishing mechanisms and rules guaranteeing fairer distribution is key to the sustainability of the process of transnational economic integration.

The environmental dimension, for its part, is well documented by the now abundant literature on sustainable development: from the work of the International Panel on Climate Change (IPCC) to the publications of several scholars involved in the endeavor of the present handbook, such as Oran Young and Paul Stern. (see also Brousseau, Dedeurwaerdere, Jouvét & Willinger, 2012; Brousseau, Dedeurwaerdere & Siebenhüner, 2012).

It is essential to point out that the nature of the issue does not dictate the form of the institutional arrangements that may manage it. As demonstrated by the contribution of Johan Swinnen and Rob Kuijpers, or Paul Stern, Michael Vandenberg and Jonathan Gilligan, or Oran Young, on the one hand, and those of Yuan Li and Markus Taube or Carsten Herrmann-Pillath, on the other, both private and public ordering

might prove to be effective in dealing with what can be qualified as the negative externalities of market dynamics and economic development. Indeed, not only public rulers but also corporations and private decision makers can be considered by the public, customers, citizens, as accountable for the negative consequences of competition and market exchange, and their reactions are major vectors of discipline. Moreover, alternative organizational arrangements, business models and technologies could prove to be, not only consistent with sustainability, but also efficient as competitive levers. Think, for instance, of the fair-trade or bio labels in the agri-food industries. That said, if voluntary contributions and cooperative arrangements might seem to respond to the lack of a united public authority, the divergent interests among players could lead to favoring short term individual benefits over long-term costs triggered by non-compliance. Nothing guarantees their sustainability in the long run, not even their ability to internalize the most crucial externalities.

This is in line with Tine De Moor's conclusion on the scalability of the institutions for collective actions that have been experienced in various contexts across history. She highlights that the conditions for maintaining cooperation in these types of arrangements are quite demanding and require relative homogeneity and clear interdependencies among stakeholders, conditions that often come with cultural and geographical proximity. Thus, while co-operative forms of organizations to manage the commons might constitute a response to current social, economic, and ecological challenges, it is not certain that they could be scaled-up. They certainly constitute a corrective mechanism and can play a role, as a third governance model, alongside market based and state-based ones, although the potential of the commons as a governance model for global resources is controversial (see for instance the chapter by Oran Young)

## Five Critical Processes of Emergence of Transnational Regimes: From Private to Public Ordering

This brief discussion of the difficulties of settling transnational regimes of governance leads to a discussion of the processes through which they are built. The contributions to this handbook highlight five critical processes ranging from purely private ordering to purely public ordering. Most often trade is initiated by private entrepreneurs who explore paths to benefit from differences in endowment and relative prices across



locations. Once opportunities are recognized, new entrants attempt to imitate the first movers to appropriate some of the returns, all kinds of intermediaries develop solutions to stimulate the growth of trade and appropriate part of the resulting surplus, and rulers interested in the expansion of fiscal revenues and, more generally, in economic benefits, might contribute to the development of the infrastructures supporting trade. This explains the co-existence of several logics of emergence and evolutions of transnational regimes - some drawn from purely interindividual initiatives, while others stem from inter-governmental ones— and also that, in the long run, evolution does occur at various levels. Institutional consolidations might follow the proliferation of decentralized solutions, or decentralized initiatives might unlock conflicts among frozen systems of norms (protecting established interests and socio-political compromises). This also explains why there are several hybridizations between the agreements among individual traders and those among governments. Following the bottom-up logic of our approach, we start by considering private ordering, then various mechanisms of hybridization between private and public ordering, from the most unilateral one to the most multilateral approach, before discussing the various forms of intergovernmental cooperation.

All these processes, and their variations, contribute to building transnational regimes characterized by very heterogeneous features, both in terms of dynamics (of emergence and evolution) and in terms of properties. Typically, private regimes are more flexible but also more unstable than more public ones. The latter are less adaptive, and their probability of emergence is lower.

While these various regimes might be stable and, consequently, might be seen as substitutes for each other, they could also be complementary from a diachronic perspective. Indeed, as pointed out, for instance by Emmanuel Lazega, the building of (transnational) institutions can also be considered as a succession of phases in which the first bilateral exchange takes place and allows experience to accumulate that leads, in a second phase, to the diffusion of common pragmatic solutions, which itself leads to their codification in a third phase. In a fourth phase autonomous agencies take responsibility for the implementation and evolution of standards, paving the way for full institutionalization in the system of public ordering of the norms and their enforcement mechanisms that initially spontaneously emerged among private actors. This succession of phases is, however, neither systematic, nor the sole process along which transnational public governance regimes materialize.

## Private Ordering

Private ordering covers a wide spectrum of alternatives, starting from intermediaries drafting contracts and settling related disputes to vertical integration within a single organization, and going through combinations of private standard settings and certification, to enforcement managed by professional associations. The key difference among those alternative forms is whether they implement some form of collective governance, and whether or not a perpetual organization is created, or whether standard settings and enforcement are managed by one wise individual or networks of them. Indeed, the creation of impersonal and long-lasting organizations is key, both to implement the rule of law and to accumulate collective expertise allowing to benefit from significant productivity gains due to innovation, both in production and transaction technologies. (see, respectively Barry Weingast and Jérôme Sgard’s contributions.) In these endeavors, a specific category of players, characterized below as “transaction cost engineers” plays a key role in that they craft solutions, enhance them through a “trial and error” process, and potentially build up the organizations and institutions that back them. This private ordering is never pure. It is organized under the shadow of (local) laws—at least it is supported by (local) rulers—which guarantee the private arrangements. The credibility and stability of local public orders is, consequently, crucial to guarantee the development of trade, associated financial instruments, circulation of knowledge and collective action. Nevertheless, global networks, industry associations or service providers (e.g., digital platforms) are nowadays able to propose transnational coordination regimes which are essentially private.

## Public Endorsement of Private Norms

Public authorities may decide to endorse private norms by making them enforceable. This starts when public courts replace private bodies to settle contractual conflict (which is at the origin of the place-based organization of transnational exchange) and ends when public agencies certify conformity to these private norms, or even make these private norms legally binding. One of the (domestic) examples given in this handbook is the reliance of the U.S. financial regulator on the rating delivered by CRAs in the public regulation of financial markets and banks (in the form of assessment of creditworthiness on the basis of CRAs’ quotation). This practice strengthened the credibility of those ratings in the eyes of many market players at the international level, which imposed constraints on multiple decision makers: financial market regulators,

central bankers, IGOs like the IMF, and governments when it was a question of their debt.

The same occurs under various forms in the realm of international regulation and constitutes another way by which public authorities under pressure from market participants can develop transnational market infrastructures while avoiding complex and lengthy negotiations. Public authorities in developing countries, for instance, can typically endorse norms developed by the private sector on questions of safety standards, quality assessment, contracting practices, etc. As pointed out in the two contributions dedicated to value chains in the agri-food industries, this might go beyond the simple organization of logistical chains, and cover labor relations, for instance. Whether the domestic operators are norm makers or norm takers and, therefore, whether we are considering more developed or less developed countries, the logic of governments' endorsement of private norms is the same: to allow the national economy or the national players to be included in the international division of labor and, consequently, to benefit from access to cheaper highest quality supply, and to guarantee wider market access, enabling productivity gains derived from specialization, and accessing technology and innovation. Of course, this implies economic and social transformations and, therefore, transition costs, and these transformations might threaten the pre-existing equilibria in the economy and society. That said, as pointed out by the contribution of Johan Swinnen and Rob Kuijpers, for instance, the development of a more productive agri-food industry might not exclusively target exportation. Development comes with urbanization and the alignment of value chains on transnational standards allows for the cultivation of efficient (and potentially environmentally friendly) domestic value chains.

Arbitration, that is recourse to private conflict settlement mechanisms, is another hybrid way to build a transnational regime of governance, since arbitration is organized in the shadow of the law. Indeed, in the context of transnational conflicts, either among sovereign bodies, or between a sovereign actor and a private stakeholder (like a creditor), arbitration awards are often likely to result in recognized jurisprudence by state and non-state actors. Sophie Nappert explains why this spurs a call for more transparent and regulated mechanisms of arbitrage, given the frequency of cases and the value of stakes, especially when it is a question of funding the very large physical infrastructures that are required for a more intensive exploitation of resources triggered by the development of transnational trade.

## Unilateral extraterritorial enforcement

Unilateral extraterritorial enforcement of sanctions is another vector of the establishment of an international regime of governance. At first sight, it might seem to signify inadequate public international ordering, usually resulting from the actual ability of a powerful government to impose costly retaliations. As analyzed in the contributions by Alexandre Mallard, Kim Priemel, and Samuel Buell, or Tina Søreide, the process by which it results in the establishment of a governance regime is related to both public and private ordering. Indeed, the ability of a “hegemon” to turn unilateral judicial enforcement into transnational recognized standards depends upon their adoption by private players. The latter may fear sanctions but, above all, they are averse to legal uncertainty. Thus, traders and intermediaries comply with the unilaterally established norms, and pressure their competitors to comply with the same norms to guarantee that competition remains fair. The next step lies in pressure on the governments of countries in which they operate by the corporations having adopted norms of fairness, safety, transparency, social responsibility and the like to guarantee also that competition is not biased to their detriment. Public norms initiated by a powerful nation-state might, as a result, be transposed into the public system of norms of other jurisdictions, through private agents and private ordering initiatives. For sovereign bodies with access to means of pressure, either because of their technical or financial offensive capabilities (e.g., the U.S.), or because of the attractiveness of their domestic market (e.g., the E.U.), this is clearly a way to bypass a costly and lengthy process of international negotiations.

Such a process relies on successful convergence of strategies between public authorities and private corporations. Both have to develop organizational routines and specialized units aimed at overseeing behaviors, preventing misbehaviors and changing culture. Because they want returns from their investment in compliance, corporations support policy initiatives for predictable and consistent law enforcement. Competition oversight, financial oversight, anti-money laundering, and other tools might be mobilized by public authorities to ensure the costs associated with misbehavior outweigh the benefits. Legal protection of whistle blowers and leniency programs can also be developed to stimulate self-reporting by infringers and boost corporate compliance. Several contributors to this handbook document such processes of progressive adoption of norms driven by firms’ (legal) risk aversion. This is also a lever which activist NGOs might deploy, in addition to the threat of harming corporate reputations. Of course, as pointed out by Tina Søreide in her analysis of anti-corruption programs, the virtuous loop of adoption of “efficient and fair” norms

might be undermined by the misalignment of incentives among governments, since those of nations hosting the less efficient competitors might tolerate non-compliance, not speaking of corrupted rulers.

Also, as demonstrated by two contributions dealing with sovereign debt, by Mark Weidemaier and Bruce Carruthers and Erin Lockwood, unilateral enforcement, especially when it is leveraged by private actors, sometimes with no interest in the public good, such as hedge funds, can raise concerns in terms of both efficiency and fairness. This is also the point made by Alexandre Mallard. Unilateral enforcement, by definition, does not guarantee the rule of law, due process, and a reflexive analysis of the fairness, actual deterrence effects, and social costs and benefits of the sanctions imposed.

### Cooperation Among Agencies

Another way to bypass (formal) negotiations among sovereign actors lies in direct coordination of public regulatory agencies. Such coordination is often in response to a pragmatic need to harmonize practices across jurisdictions, both to reply to a demand by economic agents for simplification (and the resulting decreased costs for them and their customers) and to benefit from the best practices developed by the most competent regulators (due to their experience or their available means). Transnational cooperation among regulators is also often a means for these agencies to cultivate and reinforce their independence vis-à-vis their national government. As documented in the contributions by Céline Kaufman, Andrea Renda, William Kowacik or Jean-Michel Glachant, this cooperation of public regulators is a strong driver of transnational governance, combining soft-law with hard-law instruments. Such cooperation also occurs in matters of financial regulation (e.g., Howard Davies and Maria Zhivitskaya, or Pauline Bourgeon and Jérôme Sgard).

While there is a corporate demand to eliminate unnecessary regulatory divergences and barriers to trade, and while ensuring greater co-ordination of regulatory objectives is an efficient way to address transnational issues, such as those pertaining to systemic risks (financial markets), the environment (air or water pollution), and human health and safety, the range of possible approaches to international regulatory cooperation, with contrasting constraints of implementation and merit, is extensive, as described by Céline Kauffmann, building on the OECD experience in this area. Moreover, as well illustrated by Jean-Michel Glachant's analysis of the building of an integrated electricity market at the European level, there are clear limits to "simple"

cooperation among national regulators. Transnational market integration requires public authorities to implement common rules for all market players. This is a condition both for actually leveling the playing field among competitors and avoiding inconsistencies within the system of rules of the game, because they are designed as a function of common policy objectives (in the case in matter of energy mix, territorial development, social inclusion, societal cohesion, etc.). These limits to cooperation among public agencies might call for intergovernmental negotiations.

### Intergovernmental Negotiations

Intergovernmental negotiations range from the mutual recognition of legal norms and authorities to the building of supra-national orders magnified by the establishment of intergovernmental organizations (IGO), with the adoption of common norms as intermediary/hybrid modes between these two extremes. What does differ among these mechanisms is not only their nature but also their process of development. Agreements among sovereign bodies are difficult to reach, both because of the multiplicity of interlinked policy issues on which agreements have to be established, and because of the heterogeneity of social, political and economic preferences across nation-states. As illustrated by the length and, on many issues, the paralysis, of the rounds of negotiations to reach trade agreement within the GATT, then the WTO, such processes may be doomed to failure, or to very limited results. (cf. Bernard Hoekman.) This is why harmonization can also take place through piecemeal processes of arbitrage and conflict settlement.

In addition, inequalities and heterogeneity among nation-states give birth to alternative processes of harmonization. Indeed, sovereign actors might align their norms by contemplating, first, forming minimal coalitions of similar countries that, thereafter, might share preferences and values and, in addition, consider the benefits of uniting in a context of global competition. This is certainly the driver of many regional or trans-oceanic agreements. On the other hand, smaller and less developed jurisdictions can simply import institutions and norms developed by leading nation-states. Lastly, informal and mutual adjustments can take place across jurisdictions and lead to gradual formalization: international treaties simply endorsing the evolution of practices.

The stronger mechanism of integration is when an IGO is created. However, three papers dedicated to the E.U. experience highlight the extent to which the nature of the IGO matters. Whether it is a simple secretariat (e.g., the U.N. system), a

mechanism of conflict settlement among sovereign states (e.g., the WTO), or an organization benefitting from some delegation of power by governments to actually decide and implement policies (e.g., the E.U.) makes a significant difference. In the latter case, in particular, the rights and obligations of economic agents are directly guaranteed by a supra-national authority. As pointed out by Lucilia de Almeida, who contrasts the E.U. with the WTO, such a supra-national authority is essential to actually level the playing field, since economic players do not have to be dependent upon bargaining among national governments to have their rights - for instance to fair access to a critical infrastructure - actually recognized by other market participants. In this case, the guarantee is brought forward by the existence of a de facto common supreme court on top of each country's judicial system; guaranteeing that national courts comply with a common hierarchy and interpretation of norms, which cannot, and do not need to, be permanently renegotiated by the governments.

That said, Jean-Michel Glachant and Andrea Renda point out that even a "supreme court" is not sufficient to guarantee economic integration. Beyond ex-post enforcement, ex-ante regulation and even governance are necessary. The "single market" policy aimed at guaranteeing a level playing field at the regional level is indeed much more than regulatory harmonization. It calls for the development of federal agencies, and even the progressive development of a federal executive branch. This is exactly what did happen to switch from a monetary union to a common currency. Such an evolution cannot be managed overnight since it entails a significant relinquishing of sovereignty (which is not easily accepted by the national ruling elites or the public). Moreover, it necessitates the building of supra-national governance capabilities. As demonstrated by the history of the European electricity market, it is a process which needs to be managed step-by-step to allow adaptations and capacity building by all stakeholders. The prerequisite is to reduce the diversity of strategic options envisaged by the various stakeholders, to allow them to converge toward a shared vision of the common playing field on which they will interact. The second step is to manage cooperation between the scattered public authorities and the economic agents organizing markets - in the case of the electricity market, respectively, the National Regulatory Authorities and the Transportation Operators (TSOs) - to design the norms and regulatory tools allowing for a single market infrastructure. The third requires actual political integration since a single market needs coordinated planning, public goods provision, and subsidization of key elements in the market infrastructure, beyond the adoption of common regulations. Andrea Renda makes it clear that such a process of economic integration, because it is not limited to one market but covers

many domains, led the E.U. and its member-states to follow various strategies to distribute the allocation of competencies, that reflect both the nature of the policy domain and the balance of political powers among member states and between them and the Commission, and also the need to increasingly involve stakeholders in open governance arrangements. This leads to a richer framework than the traditional binary model, focused on whether to centralize or decentralize regulatory functions between the EU, national and subnational levels. The development of many mechanisms of coordination, which might involve non-state actors, relies on independent agencies, and is based on asymmetric membership in the sense that the different arrangements might include diverse sets of member states with contrasting levels of involvement, which may even complicate the picture.

### Six Categories of Leading Agents

The processes described in the previous sections are initiated, driven and sometimes diverted by six categories of players that may either act alone or coalesce. In the following subsection we present them and briefly discuss their identity, motivations and preferred strategies.

Private entrepreneurs are central in developing solutions to save transaction costs, and the competition among them tends both to erode the rents they are able to appropriate, and to stimulate innovation to generate new opportunities and associated returns. Transnational corporations develop to overcome the market failures that exist at the international level and have incentives to establish the missing markets so as to benefit, then, from larger networks of suppliers or marketing channels. Judges and regulators, that is the public counterparts of private transaction engineers, form epistemic communities and networks of trustees that reinforce their domestic reach, independence and career perspectives by cooperating transnationally. Governments, both politicians and the bureaucratic elites, obviously play a central role, especially by deciding to endorse and to consolidate initiatives taken by the other players quoted above. The citizens, either activists or philanthropists, develop initiatives aimed at challenging the actions of the other players to fill the resulting gaps. On the one hand, international organizations might be considered the products of the efforts, principally of national governments, to establish transnational infrastructure. On the other hand, they are partially independent of their many principals and act as autonomous and active players attempting to form coalitions



comprised of heterogeneous stakeholders aimed at balancing the influence of governments and dominant corporations.

### Merchants and Intermediaries

Merchants and all kinds of intermediaries, among which are lawyers, bankers and quality certifiers (such as rating agencies), have strong incentives to provide services simplifying and reducing the costs of transactions. Indeed, they can, consequently, extract returns from trade. Since the various functions related to logistics, finance, quality control, contracting, (etc.) can benefit from economies of scale and scope, they have incentives to create attractive and efficient “marketplaces” which, in addition, boost network externalities and enhance dealing opportunities for market players. Obviously, the leadership in managing these alliances among “transaction cost engineers”<sup>3</sup> is key since it allows for control of the distribution of the returns extracted from trade.

Competition among these transaction cost engineers, and the professions involved, and among the marketplaces is the vector triggering efficiency and benevolence. Historically, competition among cities was central, and national governments had strong incentives to support their trading cities since the latter benefitted from the returns extracted from trade, and the externalities it raised. Currently, while exchange is no longer place-based, national governments still have strong incentives to make their jurisdiction attractive, and to support the marketplaces developed by their nationals. This explains, for instance, why private arbitration is not only accepted, but also supported by public orders which consider arbitration awards legally binding. Private standards and certification can also be recognized by the courts. This makes law-making bodies (from parliaments to courts) very sensitive to the preferences of merchants and other intermediaries, who themselves have to consider the needs of traders (and, among other things, their preference for transnational homogeneity of quality assessment, contractual standards, norms of exchange, conflict settlement procedures, financial instruments, etc.). Thus, commercial intermediaries and

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<sup>3</sup> Robert Gilson (1984) defined as “transaction costs engineers” the many law-making actors who design contracts, build pathways or construct exchange platforms. Here we extend this notion beyond the legal profession, also considering contractual and organizational arrangements by merchants, entrepreneurs building platforms, engineers forging technical solutions, etc.

transaction engineers are forceful agents both of homogenization of legal norms, and innovation in trading techniques.

Contemporary digital platforms and online intermediaries contribute to increase this capability of imposing private standards because enforcement need no longer be backed by public authorities. It is implemented in privately owned facilities which, thanks to distributed computing, are no longer anchored in any one jurisdiction. It is embedded in the proprietary code and in the algorithms operated by these intermediaries. While digital platforms may fear lawsuits and legal liability, their operations are increasingly difficult to control by regulators, which have problems accessing the relevant information, and mastering the knowledge, to check the legality of decisions and processes operated by these private intermediaries. Walter Mattli and Miles Kellerman insist on the lack of investments in IT capabilities by financial regulators and on their failures to coordinate to share relevant information. Since, in addition, digital platforms are likely to benefit from dominant positions (cf., Geoffrey Parker, Georgios Petropoulos and Marshall Van Alstyne), they are able to develop and implement, upfront and globally, rules, conflict resolution mechanisms and enforcement that are cheap and immediate since they are operated automatically. Yet this raises the issue of whether the fundamental protections provided by the rule of law might be guaranteed. Niva Elkin-Koren and Maayan Perel point out that this is doubtful because of the uncertainties shaping the accountability of platforms, magnified by technical barriers to transparency and users' limited algorithmic literacy. At the same time, the competition among platforms and the threat of public scrutiny of their operations in reaction to the dissatisfaction of citizens or disadvantaged businesses could be a strong disciplining vector. The impact of digital technologies on the future of governance, whether they will allow the emergence of private orders totally emancipated from public ordering, whether these orders will be global or regional, and whether it will lead to a unified or fragmented regime across activities, remain a set of very open questions today. Nonetheless, on-line operators should be major actors in the evolution of transnational governance in the near future, and the outcome of the current evolution will strongly depend upon the ability of public authorities to deal with two interwoven issues: the dominance of some players, which has a double aspect of monopoly power and supra-national capability, and their ability to bypass legal constraints.

## Corporations

Industrial corporations also play an essential role in the building and dynamics of transnational governance regimes. Of course, they seek guaranteed access to the resources they need and to their markets, ensuring the efficiency and security of their operations, and in the most productive way possible because of the competitive pressure they face. In the absence of well-ordered and reliable international regimes, they always have the option to internalize transactions and operations, but this comes with organizational costs, rigidities and risks, not to mention capital mobilization. This is the fundamental reason why they have strong incentives to rely upon, and if necessary, to contribute to, the building of collective governance mechanisms, allowing them to secure contractual relationships and to support market development, hence their fundamental role in the proliferations of standards, both technological and organizational. Also, they have incentives to adopt policies in line with the preferences of their consumers and of the public in the countries in which they operate, to minimize risks of reputation that might have a double-edged effect since, in addition to the impact on sales or in terms of regulatory pressure, reputation losses could be costly on financial markets. The aggregated behaviors of individuals, consumers, and workers might have a higher immediate impact than the action of courts and, moreover, that of multilateral organizations, which requires long delays and large amounts of evidence to decide deterring sentences. Consequently, corporations are increasingly concerned with compliance with social and environmental norms and might promote their development, as well as the emergence of independent certification bodies. As pointed out by Paul Stern and Michael Vandenberg, a wide set of norms dealing with the organization of exchange, the exploitation of this knowledge, risks and intertemporal arbitrage, and the sustainability of the economy, is crucial because they are powerful players enjoying a wide array of possible actions, both internally and externally, in influencing their business partners, competitors and public authorities. In addition, corporations benefit from information and expertise to identify issues and measure actual stakes which might contribute to selecting the most relevant targets and methods to address them.

Whatever the categories of the norms that industrial corporations would like to rely upon to manage their transnational operations, they prefer homogeneity across national boundaries. Hence their interest in private norms, but also in public ones that have a reasonable probability of being widely adopted. The fact that the standards established by the E.U. accommodate by design a great deal of national preferences,

makes them, for instance, very attractive for industrial corporations, whatever their country of origin. Of course, the norms of the dominant economy at the global level are also attractive, and corporations have an interest in the success of initiatives like the transatlantic agreement between the E.U. and the U.S. Within each nation-state, the industrial corporations engaged in knowledge intensive businesses characterized by high, fixed costs - i.e., those firms that are, de facto, competing on a global scale - lobby their national governments to benefit from public norms aligned with those of the dominant economies, and to recognize private global norms.

Corporations are not only promoters of voluntary norms, but they also play an active role in the enforcement by their competitors of (public and private) norms. Some norms and technical standards might save costs or offer a competitive advantage (e.g., energy saving technologies, or mechanisms guaranteeing a superior quality in a value chain) but, for the vast majority of norms, compliance might be costly. Corporations might rely on their privileged access to information and on their technical expertise to identify infringers and denounce them to authorities, professional communities, or the public. Collusion on the matter is obviously always an option, and the effectiveness of competition is crucial. From that perspective, the globalization of the economy tends to make the cartels of the past less sustainable. Also, for a long time, technical and organizational standardization relied upon transnational networks and business associations that were organized by industry, which facilitated the convergence of interests as regards the question of complying or not with most stringent standards. The fact that now standardization is increasingly based on value chains made of very heterogeneous, though interdependent, players is another driver of the corporate enforcement of norms.

Nevertheless, as pointed out by Ronan Palan, corporations, and especially the most powerful transnational ones, can escape norms by combining three strategies: their ability to bargain with (public and private) authorities; the risk they carry for the system which makes them structurally immune - think of the many "too big to fail" players in finance but also in other industries due to their impact on employment or national sovereignty -, and lastly their ability to arbitrate, pitting one legal system against another. The resulting race to the bottom is, however, not actually observed in all domains, even in the financial sector where players benefit from many exit options. That being said, large corporations tend to prefer self-regulation to public regulation, resulting in regulatory inconsistencies and incompleteness and or course to potential "window dressing".

## Regulators and Judges

Partly because national governments need to tie their hands to reinforce the credibility of their commitments (both toward other governments and toward traders and investors), partly because the rise of the rule of law comes with a greater division of power relying on independent enforcers, judges and regulators are playing a central and increasing role in economic regulation and in transnational governance. The independence of the judiciary has long been a central point of attention for private parties seeking credible means to guarantee their property rights and their contracts. From the late twentieth century on, an increasing number of economic activities have been regulated worldwide by independent regulatory agencies; initially inspired by the U.S. tradition dating back from the late 19<sup>th</sup> century (Balleisen, 2015).

Judges and regulators have in common the fact that, once appointed, they are not subjected to the electoral cycle. They are driven by career concerns, leading them to develop their personal reputations for expertise and impartiality; of course, with variations across national traditions,<sup>4</sup> and they belong to social networks policing their members and generating an ethos of service in what is considered the general interest. Several contributions to this handbook, in particular, those by Samuel Buell and by Emmanuel Lazega, focus upon the micro-sociology of judges and regulators, since it is key to understanding how they settle conflicts and implement rules by generating precedents. Indeed, the beliefs and incentives of these independent authorities are key because this is the basis on which they interpret contractual agreements and rules.<sup>5</sup> Moreover, regulators (in particular) tend to benefit from discretion because, as private arbitrators, they are endowed with the duty of considering the impact of their rulings on the wealth generated, on the incentives of stakeholders, and on the performance of the economy, beyond the specific case at issue. To do so, they may

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<sup>4</sup> The development of independent regulatory agencies dates back to the late 19<sup>th</sup> century in the United States. The model was extended to Germany and Japan after WWII in a tit for tat exchange with the U.S. that supported economic recovery in exchange for oversight of the large firms in these two countries to avoid the re-emergence of military-industrial complexes. However, the actual adoption of this economic governance model by the rest of the world is clearly a characteristic of the second globalization era initiated in the 1990's. The building of the E.U. single market required disentangling the role of the government as a shareholder in major players in liberalized industries from its role of regulator of the industry and of market competition. Also, the G8 (now G7) and the OECD pushed for the adoption of this model in most developing and transitional countries to attempt to limit the collusion between the government and the economic elites, and the resulting lock-in effects and economy of returns that is detrimental to investments, innovation and fair distribution and productivity gains.

<sup>5</sup> The contribution by Accominotti & Ugolini highlights the role of ideology and of the beliefs of judges in the case of the emergence of markets. Historically the latter were able to develop in Amsterdam, then London, because the opinion of judges about the negotiability of letters of credit evolved. Indeed, the original contracts among merchants did not evolve. Only changes in the institutional contexts turned these contracts into commodities.

develop both hard and soft legal tools. The networks they are involved in play a central role in shaping their behaviors.

When it comes to transnational governance, the role played by the cooperation among national regulators, and the networks they establish, formal or informal, needs to be highlighted. Transnational networks allow them to reinforce their ability to regulate because they share information, and experience (in the form of best practices) and may join their efforts. Cooperation is also an obvious necessity in the case of activities that are “natively” global, such as digital ones. In addition, each national regulator might reinforce its political independence thanks to cooperating with its counterparts, because they act as mutual watchdogs against political influence from their national government which might care about their institutions’ international reputation for effectiveness and independence. These networks are, consequently, strong drivers of harmonization and co-operation across national boundaries.

The micro-sociology of these networks is essential to the understanding of their outcomes and their dynamics, since they do not constitute a multilateral system of negotiation among mandated plenipotentiary representatives of their nation-states. Rather they work largely below the radar of politicians and of the public, among experts, on very technical subjects and drawing upon personal charisma and ties. As well, the skill and means that the various agencies can dedicate to contributing to this co-operation are key in explaining the consensus and norms that are established.<sup>6</sup> In addition, other types of organizations might be involved, such as inter-governmental bodies, professional organizations and all kinds of interest groups. Regulators are, therefore, strong drivers of the interplay between public and private governance at the international level.

The role of these (informal) networks has been magnified recently by the American determination to develop alternatives to the multilateral system inherited from the post-war period, which, combined with the multiplication of nation-states drawing from the independence movements of the 1950’s and 1960’s, led to both a loss of influence and a confrontation with many possibilities of vetoes. Also, the multipolarization of the economy, as exemplified by the rise of an Asia-centric engine of growth and reconsideration of mechanisms of international coordination like Brexit,

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<sup>6</sup> These processes of coordination do not involve homogeneous agencies. In practice, national regulatory authorities have contrasting mandates and means. Some of them are multi-sectorial, others are focused on some industry segments, and the boundaries among industries are established jurisdiction by jurisdiction. Many other contrasts might exist among them.

reinforced the need to benefit from such mechanisms to coordinate policies, especially in a context where major investments in infrastructure have to be managed to tackle the challenges of the disrupting transformations: energetic, digital, mobility, etc.

That said, the interventions of independent judges and regulators are not free of biases. First, even if they benefit from discretion, they have limited mandates and capabilities. This may hinder their ability to address the issues they have to deal with (see for example, Walter Mattli and Miles Kellerman), leading either private players or national governments to step in. Second, their incentives are contradictory since they often have to balance the competitiveness of the national industry (and of the national economy, in general) with the general interest: from the protection of consumers to collective security. This clearly hinders their ability to harmonize their actions across jurisdictions and explains why so many backdoors to escape the constraints of regulations exist at the transnational level.

## National Rulers

Many rationales can explain why national governments might be pro-active in promoting or abiding by transnational mechanisms of governance. The ability of a country to attract traders and investors is an obvious source of wealth, with its derived fiscal revenues, access to technology, and positive effects in terms of human capital and living standards. Politicians and public bureaucracies may, therefore, reinforce both their power and domestic legitimacy. At the same time, it might significantly limit political discretion, eroding the rents that can be derived from it, and also the ability to manage totally “independent” public policies. Indeed, the latter have to be considered by traders and investors as sufficiently “credible” and stable so that they can assess and cover risks on the matter. Generally speaking, the benefits of the international division of labor have triggered a call for more credible national public institutions through the establishment of the rule of law and compliance vis-a-vis contractual commitments, both by governments and by citizens, covering a wide array of “contracts,” formal and informal: from debt to political compromises, including taxation. In other words, beyond the protection of private property rights, institutions guaranteeing the stability of the social contract are also valued by traders and investors. Extractive institutions, because they might raise social discontent and political instability, can be sufficient to attract operators seeking to access raw material only, but do not allow the local economy to participate in global value chains.

In addition, the contributions to the handbook highlight two major points. First, there are strong differences in the incentives and opportunities for governments that can be norm makers and those that are norm takers. Second, political and bureaucratic elites are subject to contradictory incentives, leading them to arbitrate in favor of short-term political benefits to the detriment of the long-term efforts to build credible and efficient institutions.

As pointed out above, the initial globalization was characterized by a place-based system of trade and finance anchored in the imperial power of Great Britain, and to a lesser extent in some alternatives, such as France. The second globalization is different in nature since it is based on governance harmonization among nation-states; either by public or private governance mechanisms. Many nation-states embraced the movement of globalization of the economy and made the choice to abide by the de jure or de facto standards resulting from private and public initiatives to govern transnational markets, resulting in institutional harmonization. Also, since World War II, the U.S. government has promoted the development of transnational markets as a tool of pacification and as a way of exercising its hegemony. This led, in particular, in the integration of (Western) Europe and (then) China into a free market system, resulting in a multilayered system of governance. Indeed, in the first place, the U.S. hegemon incited the ruined nations to import its own system of norms of governance; see, in particular, the contribution by Kim Christian Priemel, who highlights, in addition, that this exportation of norms was also aimed at rebalancing the power between the U.S. government and large corporations, both U.S. based transnational corporations and large foreign firms, such as German or Japanese industrial corporations. The latter industries benefited from the induced institutional changes and from access to U.S. capital and technology to develop attractive markets, innovative industries, and powerful financial systems. Moreover, to incite adhesion by foreign governments, the U.S. had to accept more political multilateralism. Today, Europe and China, in particular, are able to contribute, as second rank players, to the governance of the global economy. On the other end, several regional powers, such as Russia or Turkey, are attempting to form alliances to become second-rank hegemonies. The economic sustainability of such endeavors is, however, in question, since none of these players have the market size, the economic dynamics or the capability to innovate that would make them attractive counterparts for other national economies, especially as compared to the U.S., China, or even the E.U.

Indeed, the present landscape of international relations is clearly dominated by three players. First is the U.S. government which is able to exercise a dominant influence



through its ability to impose extraterritorial sanctions. This is largely due to the persistent central position of the U.S. dollar in the international monetary system (cf. Pauline Bourgeon and Jérôme Sgard), combined with the development of a global system of financial surveillance (cf. Grégoire Malard), which makes American political and legal decisions enforceable by any organization performing any kind of operation with a U.S. based entity or relying on the American currency. Of course, this is also backed by additional means of enforcement on the Internet (see Niva Elkin-Koren and Maayan Perel or Eric Brousseau) and, naturally, by the military capability of the U.S. Second comes Europe, which derives its own power of influence from the attractiveness of its markets, leading many economic players to comply with European standards. In addition, since European standards are developed through a multilateral and open process, involving a great number of (local and national) governments, corporations and civic forces, they have the advantage of accommodating a wide set of constraints and preferences, while ensuring a high level of “quality” regarding criteria such as protection of consumers or of the environment, social cohesion, etc. This makes them quite attractive for many non-European governments which can import them, without bearing a significant cost in terms of sovereignty. Third comes China. As pointed out in Yuan Li and Markus Taube’s chapter, its imperial strategy is not only linked to an obvious long-term goal of recovering the central historical position of China in the world system, but is also a consequence of the need to rebalance the Chinese political and economic equilibria that were challenged by the economic boom from the 1990’s. The latter resulted in social and territorial inequalities, and inconsistencies between the traditional and the modern segments of the economy, that incited present day China to lever its financial capabilities, and promises of further development of its internal market, to rebalance the international system of economic governance in its favor. Becoming less dependent on bilateral trade with the U.S. is crucial for China to reconcile its need for international openness (to ensure development) with its domestic political and social unity.

While nations can have clear long-term interests, politicians might have incentives that are not aligned with the former. Howard Davies and Maria Zhivitskaya, for instance, highlight how combined pressures of public opinion and industry tend to promote solutions that could be either inefficient (e.g., fragmenting markets and increasing transaction costs) or ineffective (reducing the ability to control global risks). Craig Pirrong makes the same point, in particular by pointing out that, in case of crisis, the political imperative to act quickly, rather than after sober deliberation, tends to lead to a misunderstanding of the performance of the economic system (in his case of the

financial system) and to promote solutions that might be ineffective because of institutional path-dependency. Indeed, an efficient response would require legal and institutional reforms that are time-consuming and difficult to pass. As a result, there is a mismatch between the organization of governance and the nature and scope of the risks.

More generally, flaws in public intervention, especially in the context of crises, that are at the same time favorable in terms of political opportunity to launch institutional reforms, are driven by two main factors. First, biases in democratic/political governance in the context of media-cracies, at least the strong influence of the media (including social media), lead politicians to be seen to act, rather than to actually be effective and efficient. Second, interest groups tend to magnify forum shopping by traders and investors to undermine public ordering will. Both elements result in the implementation of partial institutional and legal responses to crises, and in the long run, in the persistence of mismatches within the system of economic governance that cannot be rectified because of resistance to change by stakeholders and of institutional inertia once the crisis is over. On the contrary, the absence of consistency or of effectiveness of existing regulations might justify their progressive erosion over time: since they are imperfect, they are no longer strongly supported by the public, and specific interests lobby governments to weaken them. (Please see Ronan Palan.)

## Citizens

Active citizens -whether activists generally backed by nongovernmental organizations, celebrities riding on their fame, or philanthropists playing with their fortunes - are also significant participants contributing to the establishment of governance mechanisms. Their influence derives from the fragmented system of authority characterizing global governance. Because they are not spurred by self-interest - even if they are obviously motivated by their preference for what they consider to be the public good, and by their self-esteem or the social recognition they can derive - they enjoy some legitimacy and have some ability to re-unite and coordinate the action of the multiple and diverse authorities characterizing polycentric governance systems. Moreover, they can intervene across national boundaries while governments are limited in their ability either to manage bilateral relationships (raising conflicts of sovereignty), or to operate through multilateralism (due to the difficulty of reaching agreement, and the resulting bureaucratization of many intergovernmental organizations).

The contribution by Jeremy Youde, who highlights how philanthropists are essential in the provision of global health service, is enlightening on this point. He points out, in particular, that beyond the means they are able to provide, successful entrepreneurs import elements of corporate culture, specifically agile decision making driven by pragmatism, into public goods provision or into governance mechanisms. Another important dimension lies in the fact that active citizens can operate in the politico-social realm, while confronting many political constraints. Notably, they can intervene within sovereign jurisdiction, while other sovereign bodies cannot.

Of course, not all active citizens play by the same rules. Clearly, philanthropists and celebrities are oriented toward effectiveness and efficiency,<sup>7</sup> while NGOs are ideologically driven. That said, NGOs are also often important providers of expertise, especially backing intergovernmental organizations in their discussions with corporations and governments (markedly with respect to the environment, the protection of human rights, and digital issues).

In matter of economic governance, Citizens' initiatives are essentially focusing on institutional infrastructures aimed at ensuring social and environmental sustainability, and, to a lesser extent, contributing to the circulation of knowledge. In any case, their initiatives can flourish only in areas in which public governance is absent or weak. Moreover, non-democratic governments tend to strongly limit the reach of these players that threaten their power. Lastly, nothing guarantees that the beliefs of activists are in line with collective preferences, and they are not considered accountable for the consequences of the initiatives they undertake. This is a source of weakness since their legitimacy is often contested.

More generally, in the absence of public governance mechanisms, cooperative forms of organizations can be built by citizens to deal with market failures and correct the undesired consequences of intense competition. Nonetheless, their ability to govern on a global scale (even on targeted issues) is in question. Networks of local or national Institutions for Collective Action (ICAs) could play a role. At the same time, Tine de Moor shows that most ICAs tend to become standard market players (beyond their boundaries), rather than attempt to develop a third, cooperative, governance model. In other words, from the viewpoint of citizens, they tend to be a specific vector of insertion in the (international) market-based division of labor, rather than the matrix of an alternative organization of society and of the economy, even if this is a vocal

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<sup>7</sup> Of course, we are not speaking of those celebrities advertising their generosity and concern for the public good, without actually acting.

ideology nowadays. Rather, they tend to constitute a bridge between public and market-based ordering.

## International Organizations

The history of international organizations dates back to the globalization of the late 19th century. In order to create international markets and foster industrial change, international unions were created. These public international unions already fulfilled the tasks related to the creation of the market, such as the interconnection of telecommunication and transportation infrastructure (e.g., ITU, 1865), the protection of intellectual property (e.g., WIPO, 1883), and the reduction of tariffs (e.g., the International Union for the Publication of Custom Tariffs in 1890). They also addressed potential conflicts, for example, through the International Labor Office (ILO) created in 1919. Finally, they carried out secondary tasks such as the management of interstate conflicts or the prohibition of the slave trade.

The failure of this system of international governance in the interwar period, as well as the leadership the U.S. inherited from its role during WWII, reshaped the whole system of global governance in favor of the club of winners under American leadership. Instead of the loosely institutionalized international unions of the 19th century that depended on European networked political elites, the U.N. system emerged around strong secretariats and with the support of the dominant state power of the time. A significant number of specialized agencies fostered the internationalization of markets in the second half of the 20th century (Cox, 1981; Ruggie, 1982).

On one hand, the collapse of the U.S.S.R. and of the bilateral equilibrium of the Cold War marked the triumph of the multilateral model of global organization, illustrated by the creation of the World Trade Organization. On the other hand, the proliferation of nation-states inherited from decolonization and from the collapse of the Soviet empire, resulted in paralysis of the U.N. system, undermining its credibility, and triggering strategies to bypass IGOs or create alternatives to them. These strategies weakened most multilateral organizations. At the same time, they gained autonomy vis-à-vis their principals, and they developed strategies to survive and grow; becoming at least semi-autonomous agents in the global governance arena. Schemeil (2012, 2013) identifies the strategies followed by most IGOs (see also Hooghe et al., 2019). They have been working to have their mandates enlarged to issues visible for the public opinion. They have been forming coalitions and have been co-operating

on shared responsibilities (resulting from the extension of their mandates). Also, they have been recognizing the legitimacy of other actors of global governance, especially NGOs, considering them partners on a quasi-equal footing, relying on their expertise and their ability to operate on the ground. Along the same lines, they managed to develop direct relationships with public agencies or local authorities, in an attempt to bypass diplomatic circuits. All in all, IGOs attempted to lever their autonomy and further their legitimacy by forming coalitions with all kinds of partners, which in turn benefitted from the recognition by these international organizations to reinforce their own autonomy and legitimacy vis-à-vis national governments. In a way, IGOs have been becoming catalysts of the rebalancing of power between nation-state governments, and infra-national levels of governments, non-state actors, as well as various forms of international organizations and coalitions. This has also had a strong impact on decision making within IGOs, with the persistence of bureaucratic and diplomatic mechanisms, and the development of more autonomous and agile circuits formed on a cooperative basis with networks of various types of partners. This strategy explains the increasing spread of transnational public-private partnerships (Schaferhoff, et. al., 2009; Borzel and Risse, 2005). While very specific in each case, these partnerships coordinate across the UN system and play light support roles including agenda setting, knowledge sharing, forum providing, and convening stakeholders or experts (Levinson and Marzouki, 2016). Paul Stern and Michael Vandenberg or Oran Young describe how these mechanisms might perform. That said, the mobilization of experts and stakeholders is not occurring solely in the context of the U.N. system. Andrea Renda points out how the E.U. is organizing high level experts' groups and public consultations to be able to design and propose policies. Such mechanisms are not only a way to compensate for its weak bureaucratic capabilities, but also a lever to balance the legitimacy of member states in being able to grasp (and represent) the geography of interests, including the collective one.

This trend legitimated the rise of new forms of organizations, like the ICANN, a private body bringing together on an equal footing the stakeholders of the Internet—service providers, users, the community of software developers and governments—and playing a central role in its governance. This type of semi-privatized organization has been described as a transnational private authority, since they have membership beyond states and perform public functions at the global level (Cutler et al., 1999; Hall and Berserker 2002; Graz and Nölke, 2008). These “multistakeholder” organizations derive their legitimacy from their ability to gather together a wide range of expertise and stakeholders to provide concrete solutions (such as technical standards) which are

voluntarily implemented by their members. They tend to be low-profile, claiming that they provide practical solutions responding to users' needs. However, as analyzed by Car (2015), they are promoting a governance model very much echoing the liberal model of collective governance, based on opting-in by free and independent individuals, which might ignore the external effects on individuals and communities not involved in the process. Moreover, analysts of their actual way of performing reveal that they might be captured by some powerful governments, organizations, or coalitions. These debates are analyzed in detail by Eric Brousseau.

All in all, international organizations should no longer be considered simple outcomes of negotiations among sovereign governments. They have become (partially) independent players, able to mobilize heterogeneous coalitions of state and non-state actors involved in new forms of collaborative policymaking organized around de-ossified processes. Beyond their will to survive the crisis of the multilateral system, their strategy is also a response to the necessity to manage the interlinking of issues/policies over which national governments want to maintain exclusive control, severely restricting the authority of each individual IGO. Moreover, their co-operative strategy is also a way to bridge the various powers across the polycentric international governance system. In turn, this allows national governments to consider different strategies in a logic of forum shopping. In each of the eco-systems organized around these international organizations, governments can decide either to play a pro-active role (voice) or to simply remain norm takers (loyalty). They can also exit, either to leave preexisting organizations, or not to join emerging ones. This provides them with a very flexible capability to navigate global ordering, and results in a proliferation of networks of partnerships and forums.

## Documenting a Complex Ecosystem to Manage It

Our bird's-eye view of the institutions of international economic governance leaves us with a vision of something that looks like a rain forest, rather than a French garden, or even an English one. An ongoing process of creative destruction of organizations and institutions is at play, a multiplicity of actors is involved, and several processes of evolutions co-exist and interact. Of course, grand theories would simplify the understanding of this complex ecosystem and could help to establish a framework of what could be an ideal/optimal system of global (economic) governance. At the same time, before building such a theory, in-depth investigations are necessary to describe, as an ecological scientist would do, the various organisms, their environment and how

they interact with each other and their environment. This is the only way to really understand what is feasible.

Indeed, through this brief introduction to this volume, we might have pointed out that it is very unlikely that the global economic system is governable, even by a proliferation of interacting legal norms and mechanisms of mutual adjustment and collective decision making. What might be seen, at first sight, as a disappointing perspective, remains a very crucial approach. Instead of desperately looking for optimal institutional design, organizational strategies, and contractual arrangements, we should rather consider local, workable, and pragmatic solutions implemented in a progressive, piecemeal dynamic. It suggests also that social scientists should embrace a biological approach to governance, which would focus on such concerns as legal pluralism, polycentrism, and evolutionism...and which would help to rethink normative criteria. From this perspective, the contributions of Horatia Muir-Watt, Paul Schiff Berman, or Carsten Herrmann-Pillath are stimulating.

The rich material provided by the author of this handbook, both in the form of documented case studies and positive analyses of the processes structuring the world economy and its governance, is intended to be a contribution to the study of these structures and their dynamics. We do hope the reader will learn as much as we did while assembling this collection of essays.

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## Appendix:

# Table of Content of the Oxford Handbook of Institutions of International Economic Governance and Market Regulation edited by

Eric Brousseau (University Paris Dauphine - PSL University), Jean-Michel Glachant (European University Institute) and Jérôme Sgard (Sciences-Po Paris)

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*Eric Brousseau & Jean-Michel Glachant | University Paris-Dauphine - PSL & European University Institute:*

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**Postscript**

*Eric Brousseau & Jean-Michel Glachant | University Paris Dauphine-PSL &  
European University Institute:*

Institutions of International Economic Governance: dynamics and Challenges





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