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CSD water partnerships: Privatization, participation and legitimacy

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ABSTRACT

Public–private partnerships have been presented as an opportunity to improve the input and output legitimacy of global environmental governance, and they were endorsed by intergovernmental agreement at the Johannesburg Summit in 2002. However, their potential to contribute substantially to these aims has also been questioned. For partnerships working in the water sector, the implications of private sector participation for legitimate water governance have been disputed, for example regarding whether public–private partnerships can provide water that is affordable and accessible to all, and whether they provide opportunities for local stakeholder participation. In this article, these discussions are examined with respect to several examples of public–private partnerships registered with the UN Commission on Sustainable Development. The analysis indicates that these partnerships partially address these criticisms, but also have their own shortcomings.

1. Introduction

Public–private partnerships, along with private regulation schemes, market-based governance, networks and similar mechanisms, have been presented as an opportunity to address the pressing problems of global environmental change (Benner et al., 2004, 194-5). However, like many other novel governance mechanisms in this field, they prompt new questions regarding their accountability and legitimacy: what are the sources of legitimacy, what are its implications, and what are the mechanisms for accountability (Biermann et al., 2009; Biermann and Gupta, 2011, this issue)? The Science Plan of the Earth System Governance Project highlights the need to study the accountability and legitimacy of such private and hybrid governance mechanisms not only because they are just as important as their effectiveness, but also because they may influence it (Biermann et al., 2009). Indeed, public–private partnerships have been presented as an opportunity to improve the accountability and legitimacy of global environmental governance, as well as its effectiveness: firstly, they are seen as an opportunity to involve more stakeholders in decision-making and implementation, thus increasing ownership and empowerment, and secondly they are also promoted as tools to effectively implement solutions, for example with respect to Agenda 21 and the Millennium Development Goals (MDGs) (United Nations, 2002). Thus, it comes as no surprise that public–private partnerships were encouraged by intergovernmental agreement at the Johannesburg World Summit on Sustainable Development (WSSD) in 2002. However, they were also criticized as a second-best solution that governments and inter-governmental organizations encourage merely because they did not want to or could not agree on binding agreements, an opportunity for companies to green- or blue-wash their image, and a tool that continues to exclude marginalized groups rather than including them in the partnership process (on these points, see for example Hale and Mauzerall, 2004; Biermann et al., 2007b; Bäckstrand, 2006b).

One area where the discussion about whether or not partnerships are able to address such issues has been most intense is the sector that prompted the greatest number of partnership initiations around the Johannesburg Summit: water. Particularly partnerships involved with the provision of drinking water are often seen as providing either challenges or opportunities for legitimate water governance. Some of the key debates in the broader discussion on global water governance focus on whether private sector involvement and community participation in partnerships can help achieve water provision that is affordable and accessible to all, but also responsive to stakeholder needs (Bakker, 2008; Hall and Lobina, 2006). The drinking water partnerships initiated around the WSSD and registered with the United Nations Commission on Sustainable Development (CSD) in particular are at the core of another argument linking effective water provision to a number of other issues, highlighting that water "is not only the most basic of needs but is also at the center of sustainable development and essential for poverty eradication…Without progress on water, reaching other Millennium Development Goals will be difficult, if not impossible" (United Nations, 2002, 96-7). In other words, partnerships are seen as influencing the input and output legitimacy of water governance. These concepts, proposed by Scharpf (1999), refer to both the acceptance and justification of governance processes (input legitimacy), and its perceived problem-solving effectiveness (output legitimacy).

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This paper examines to what extent the drinking water partnerships initiated after the WSSD deliver on such hopes of legitimate and effective water access. Overall, the potential of public–private partnerships to contribute to these goals has been evaluated critically not only in the case of water partnerships, but also in the broader literature on partnerships. Private sector participation, for example, may lead to efficiency gains but is also often portrayed as lacking output legitimacy for potentially excluding those that cannot afford to pay for the service provided, and ignoring less profitable neighborhoods and regions (Swyngedouw, 2005a,b). In the broader literature on partnerships, authors have also cautioned us to examine if, and under what conditions, private sector involvement can provide a legitimate and effective contribution to development (Kolk et al., 2008; Mukherjee Reed and Reed, 2009). Furthermore, private sector participation is often presented as lacking accountability (as private corporations are accountable to shareholders, rather than constituencies) and less representative and participatory (Bakker, 2008). Considering these criticisms, the aim of this article is to examine the implications of private sector participation in the CSD partnerships for their legitimacy, especially as they also differ in their governance and approaches from many of the 'traditional' examples of public–private partnerships that the literature discusses.

The concept of input legitimacy rests on the idea that recognition of governance processes is affected by their 'fit' with accepted democratic norms (Beisheim and Dingwerth, 2008). Thus, studies of input legitimacy examine issues such as the representation and participation of stakeholders, the exercise of democratic control through accountability and transparency, and/or discursive quality (Dingwerth, 2007; Risse, 2004; Scharpf, 1999). Conversely, output legitimacy, or effectiveness, holds that authority can be justified on the basis of performance (Bernstein, 2005, 9; Scharpf, 1999). This dimension is occasionally emphasized as a source of acceptance for private and hybrid governance mechanisms, which face problems in replicating the input legitimacy mechanisms of the state (partnerships, for example, lack a clearly defined constituency to which they are democratically accountable) (Risse, 2004).

The paper is structured as follows: in the next section, the relevant discussions on private sector involvement and issues such as stakeholder participation in the water sector are outlined. It identifies several aspects of input and output legitimacy that have received particular attention with respect to private sector involvement in the water sector. Firstly, with respect to output legitimacy the focus will be on contributing to the drinking water issues identified as urgent in UN documents, in particular "to halve, by 2015, the proportion of the population without sustainable access to safe drinking-water and sanitation" (Target 7.C, Millennium Development Goals). Secondly, with respect to input legitimacy, the key focus is on participation. After a short overview of the CSD water partnerships, key arguments on input and output legitimacy are examined in more detail with respect to three partnerships, using evaluations, self-reports, project descriptions and other available data available to provide more insights on their activities. The limited number of cases means that there is little room for generalizations about CSD water partnerships. However, the cases do provide an indication regarding the (lacking) convincingness of some competing claims frequently made about public–private partnerships in the water sector.

2. Debates on Privatization and Participation in the Water Sector

2.1. Private Sector Participation in Water Governance

In recent years, a shift from binding regulation and governmental action to market-driven, private, voluntary or flexible initiatives addressing various issues in global environmental governance has often been pointed out (Benner et al., 2004; Cashore, 2002; Lederer, 2011-this issue). In the context of water governance, "the legitimation of such market mechanisms has…made private sector participation in the water supply and sanitation sector more acceptable" (Finger, 2005, 276), however, it has been equally controversial, facing legitimacy crises and public rejection (Hall et al., 2005; Swyngedouw, 2005a).

Of course, private sector involvement in water services can take many different forms, for example depending on the level of involvement of private and public actors in ownership, operation and investment. Some examples are service contracts, leasing, build–operate–transfer, and complete privatization (Finger and Allouche, 2002, 31; Prasad, 2006). The lines are furthermore blurred by the existence of public water companies that are commercialized, and examples of private sector involvement occurring without liberalization, de-regulation or commercialization (Bakker, 2003, 331). The WSSD water partnerships are similarly diverse in the extent and type of private involvement. However, perhaps because of the explicit framing of WSSD partnerships as tools to mobilize stakeholder participation, their activities and governance processes are in some ways also different from other examples of private sector involvement.

The debate on private sector involvement in water services is often framed as a conflict between the efficiency gains of treating water as an economic good, and ensuring water access for the poor (Bakker, 2007; Casey et al., 2006). Those favoring private sector involvement point out improvements in management, increases infrastructure investment, incentives for water conservation in addition to increased efficiency (Bakker, 2007, 423; Casey et al., 2006). Furthermore, profitable water pricing may not contradict equitable access, as "higher water rates allow utilities to extend services to those currently not served and those currently forced to purchase water from vendors at very high prices" (Rogers et al., 2002, 2). These arguments thus focus on the output legitimacy side, highlighting that private sector involvement can overcome issues of state failure, water scarcity and lacking finances.

While increasing private sector involvement in the water sector was a response to challenges to the legitimacy of public water providers (Bakker, 2003, 331), this trend has also been challenged. Firstly, as outlined earlier, private sector involvement may imply price increases with possible repercussions for water access for marginalized groups (Houghton, 2002, 796; Robbins, 2003). However, water provision tends to lack competition (duplicate water supply networks, for example, are not feasible) (Seppälä et al., 2001, 43), therefore the efficiency gains and lower prices that can make water affordable may not materialize.

Secondly, a focus on commercial viability may encourage public–private partnerships to predominantly implement in stable, high-income urban areas, while less profitable poor or rural areas are avoided (Hall and Lobina, 2006, 5; Swyngedouw, 2005a, 95), leaving water provision there to NGOs or the state (Finger, 2005, 296). This argument not only challenges the claim that private involvement can help combat water-related poverty, as such cherry-picking of the most profitable areas could furthermore undermine the ability of state actors to establish financially sustainable water services (ibid, 297).

Thirdly, accountability to local affected communities may be limited. Business partners are accountable to their shareholders, while they are not perceived as democratically accountable to the communities where they implement (Hall and Lobina, 2006, 3-6; Steffek, 2010, 48). In this perspective the input legitimacy of water governance involving private actors is incomplete, as companies are only responsive to some, but not all stakeholders.

This line of argumentation consequently represents an anti-privatization stance, and hesitance about private sector involvement in water and sanitation services (Bakker, 2007, 423; Swyngedouw, 2005b). However, while experiences in several countries illustrate that private, commercially oriented water services can be difficult to reconcile with affordable access for all in both rural and urban, industrial and industrializing country settings (Bakker, 2007; Casey et al., 2006; Otero et al., 2009), other examples demonstrate that it can