GOVERNANCE
IN AREAS OF LIMITED STATEHOOD

How Much Statehood Does it Take – And What For?

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Abstract

This paper explores how much statehood it takes to make governance with/out the state work. The first part discusses the relationship between governance, state, and statehood. The distinction between governance as structure and governance as process allows us to disentangle state and statehood. The second part of the paper explores the different functions statehood has for governance. While there may be functional equivalents to the shadow of hierarchy, there is more to statehood than the threat of hierarchically imposed regulation. Effective and legitimate governance may require at least some (external) form of consolidated statehood. The final part of the paper discusses varieties of statehood, arguing that the challenge for areas of limited statehood is not the lack of exclusivity of statehood but the need for an order of shared and divided statehood. The paper concludes by considering the dark sides of statehood, cautioning against building states without strengthening the rule of law and democracy.

Zusammenfassung

Das Papier diskutiert, wie viel Staatlichkeit es braucht, damit Governance mit sowie ohne Staat funktionieren kann. Im ersten Teil wird der Zusammenhang zwischen Governance, Staat und Staatlichkeit thematisiert. Der zweite Teil des Papiers untersucht die unterschiedlichen Funktionen von Staatlichkeit für Governance. Während es durchaus funktionale Äquivalente zum Schatten der Hierarchie gibt, besteht Staatlichkeit aus mehr als der Fähigkeit, einseitig kollektiv verbindliche Regelungen zu festzulegen und durchzusetzen. Effektives und legitimes Regieren verlangt deshalb zumindest eine (externe) Form von konsolidierter Staatlichkeit. Im letzten Teil werden unterschiedliche Formen von Staatlichkeit vorgestellt. Dabei wird klar, dass die Herausforderung für Räume begrenzter Staatlichkeit nicht im Mangel an Exklusivität, sondern im Bedarf an einer Ordnung für geteilte Staatlichkeit besteht. Das Papier schließt mit einer Betrachtung der Schattenseiten von (ungebundener) Staatlichkeit und warnt vor einem einseitigen ‚State-Building', das nicht gleichzeitig Demokratie und Rechtsstaatlichkeit stärkt.

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1. Introduction

The concept of governance has enjoyed quite a career, not least because it allows scholars to conceive of politics beyond the state. In the 1970s, literature in comparative policy and politics showed that corporate self-regulation and public-private co-regulation could help the state increase the effective and legitimate provision of governance services (e.g. in public health, the environment, or technical standard setting; cf. Mayntz/Scharpf 1995a; Kooiman 1993; Leibfried/Zürn 2005). 20 years later, students of international relations came to a similar conclusion discussing possibilities of "governance without government" (Rosenau/Czempiel 1992).

While there seems to be an increasing demand for governance with/out the state both within and beyond the state, its promise to compensate for state weakness or state failure appears to rest on two major premises. On the one hand, the state has to possess sufficient capacities in terms of both resources and autonomy to cast a credible shadow of hierarchy, giving non-state actors an incentive to cooperate and allaying state actors' fear of being captured. On the other hand, these state capacities must not be too strong, in order to provide an incentive for state actors to seek cooperation with non-state actors. In other words, what is required to make governance with/out the state work is a medium shadow of hierarchy (cf. Börzel 2007; Börzel 2010).

Rather than decline or extinction, we find a transformation of the state retaining a key role as a "governance broker" (Herrschaftsmanager, Genschel/Zangl 2008), "coordinator" (Mayntz 2004: 75), or "shadow of hierarchy" (Scharpf 1997; cf. Rhodes 1996; Jessop 1998). In order to fulfill these roles, a state requires statehood, i.e. the capacity to make and enforce collectively binding rules, with the monopoly on force as the ultima ratio of its coercive power. Statehood provides state actors with a unique resource or "institutional competence" (Schuppert 2010: 17) to solve societal problems, such as the provision of security and order, the (re)allocation of values or the safeguarding of economic stability. "Governance needs government" (Schuppert 2010: 128). The (shadow of) statehood is not only important for the effective provision of common goods but also for its legitimacy (Sonderforschungsbereich 700 2009: 5).

If governance without the state still requires statehood, governance research hardly travels to areas of limited statehood, where states by definition are unable to hierarchically impose collectively binding rules. Moreover, countries in areas of limited statehood appear to be doomed: the more limited their statehood, the greater the need becomes for governance with/out the state in order to compensate for state weakness or state failure, but the less likely it is to emerge. This dilemma or paradox is reinforced if there is indeed a dialectical relationship between the evolution of a strong state and a strong society as it is implicitly assumed or explicitly claimed by the governance literature (cf. Tilly 1975; Mayntz 1993).

Research at the SFB 700 has demonstrated that non-state actors do engage in governance in areas of limited statehood. Transnational companies and non-governmental organizations are key providers of governance services when states are too weak to deliver and cast a shadow of

hierarchy (cf. Risse 2011). There are other ways to induce non-state actors to provide governance services that do not rely on the capacity of a state to cast a credible shadow of hierarchy (cf. Börzel 2010; Börzel/Risse 2010).

The risk of anarchy, the threat of external intervention, the pressures of the international or local community, or efficiency gains and competitive (dis)advantages have been key drivers for the governance contributions of non-state actors in areas of limited statehood. Yet, they all rely on some form of consolidated statehood. Markets do not function without (some) state regulation. It is foreign states or international (a.k.a. interstate) organizations that commit transnational actors to participate in effective governance. And community pressure is most effective when community members can voice and address their claims to state institutions or when international organizations and foreign states take up their claims and exert pressure from above (Brysk 1993; Keck/Sikkink 1998b).

This paper explores how much statehood it takes to make governance with/out the state work. The first part discusses the relationship between governance, state, and statehood. The distinction between governance as structure and governance as process allows us to disentangle state and statehood. The second part of the paper explores the different functions statehood has for governance. While there may be functional equivalents to the shadow of hierarchy, there is more to statehood than the threat of hierarchically imposing regulation. Effective and legitimate governance may require at least some (external) form of consolidated statehood. The final part of the paper discusses varieties of statehood and argues that the challenge for areas of limited statehood is not the lack of exclusivity of statehood but the need for an order of shared and divided statehood. The paper concludes by considering the dark sides of statehood, cautioning against building states without strengthening the rule of law and democracy.

2. Governance, State, and Statehood

This paper adopts the governance definition of the SFB 700 as institutionalized modes of social coordination to produce and implement collectively binding rules, or to provide collective goods. Thus, governance consists of both structures and processes (Scharpf 1997: 97; Mayntz/Scharpf 1995b: 19). Governance in terms of structure relates to the institutions and actor constellations. Here, the literature usually distinguishes between hierarchy, market (competition systems),[1] and networks (negotiation systems).[2] These are ideal types, which differ with regard to the type

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1   In the political science literature, markets are not regarded as governance since they are a "sponta-neous order" (Hayek 1967) that leaves "no place for 'conscious, deliberate and purposeful' efforts to craft formal structures" (Williamson 1996). Yet, market mechanisms can be institutionalized to coordi-nate actors' behavior through competition (cf. Benz 2007). This paper uses the concept of competition systems to describe the institutionalization of market-based modes of political coordination.

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

of actors involved and the degree of coupling between them. Governance as process points to the modes of social coordination by which actors seek to achieve changes in (mutual) behavior. Hierarchical coordination usually takes the form of authoritative decisions (e.g. administrative ordinances, court decisions). Actors must obey. Non-hierarchical coordination, by contrast, is based on voluntary commitment and compliance. Conflicts of interests are solved by negotiations. Voluntary agreement is either achieved by negotiating a compromise and granting mutual concessions (side payments and issue linkage) on the basis of fixed preferences (bargaining), or actors can engage in processes of non-manipulative persuasion (arguing), through which they develop common interests and change their preferences accordingly (Risse 2012).

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

2.1 State vs. Statehood

Distinguishing between governance as a structure and governance as a process helps us delineate state from statehood. The state is a hierarchical structure of political authority. Unlike other structures of political authority, such as empires or city leagues, the state has fixed borders and holds the claim to absolute authority based on the monopoly on force, which institutionalizes a hierarchical relationship between state actors that exercise authority (ruler, government) and all other actors within the state territory (cf. Spruyt 1994). Statehood is a property. Its essence is the ability of the state to enforce collectively binding decisions, ultimately through coercive means guaranteed by the monopoly on the means of violence. Thus, the Western governance literature draws an implicit link between hierarchy and the state. It follows closely from Max Weber's conceptualization of statehood as an institutionalized authority structure with the ability to steer hierarchically (Herrschaftsverband) and to legitimately control the means of violence (Gewaltmonopol, cf. Weber 1921/1980). While no state governs hierarchically all the time, states at least possess the ability to authoritatively make, implement, and enforce central decisions for a collectivity. In other words, states command what Stephen Krasner calls "domestic sovereignty," i.e. "the formal organization of political authority within the state and the ability of public authorities to exercise effective control within the borders of their own polity" (Krasner 1999, 4).

Non-state actors also have the capacity of hierarchical coordination and may monopolize the use of force. However, state actors hold an institutionalized (claim to the) monopoly on force that they must put to use exclusively for the provision of common goods. They have the authority to hierarchically provide common goods or command their provision by others. Thus, state actors do not only command privileged resources for hierarchical coordination ("Herrschafts-ressourcen," Genschel/Zangl 2008: 4). Their public mandate obliges them to act in the public interest and makes them politically accountable and legally liable in case of failure (Scharpf 1991: 630).[3] In other words, what makes state actors special is that they can rely on statehood, i.e. the legitimate monopoly on force and the creation of collectively binding rules, to hierarchi-cally coordinate the provision of common goods. What's more, they have the legal obligation to use their authority of hierarchical coordination to ensure the provision of common goods.

Rather than asking how much state it takes to make governance work, we should rather ask to what extent the effective and legitimate provision of common goods relies on statehood as a particular form of hierarchical coordination that companies, non-governmental organizations, traditional chiefs, or war lords by definition cannot acquire – without turning into state actors. The focus on statehood rather than the state is in line with the governance literature, which emphasizes the "shadow of hierarchy" as a major prerequisite for non-state actors to engage in governance.

2.2 Statehood and the Shadow of Hierarchy

The shadow of hierarchy is generated when state actors credibly threaten the unilateral adop-tion and enforcement of collectively binding rules on the provision of common goods and their unilateral provision, respectively, if non-state actors are not willing to engage in governance. This threat generates major incentives for non-state actors to engage in non-hierarchical co-ordination and self-coordination (cf. Scharpf 1997; Mayntz/Scharpf 1995b). Non-hierarchical coordination entails high transaction costs for the non-state actors involved. Not being institu-tionally committed to the provision of common goods, they are not necessarily inclined to bear such costs. If the policy outcome does not fully correspond to their preferences, it may take the threat of a hierarchically imposed decision in order to tip non-state actors' cost-benefit calcula-tions in favor of a voluntary agreement closer to the common good rather than particularistic self-interests. Moreover, the possibility of hierarchical intervention reduces the incentive for non-state actors to renege on their voluntary commitment. This is particularly true for the self-coordination of non-state actors. Business associations or societal networks rarely have the sufficient sanctioning capacities to deter opportunistic behavior of their members in the

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3 This mandate does not necessarily have to be democratically legitimate. For instance, policy delegation can hold independent regulatory agencies or professional associations accountable to the public inte-rest. Moreover, public actors or governments do not always act in the public interest, nor do they have to be intrinsically motivated to do so. Yet, unlike private actors, they have to justify their actions to the public and face political and legal sanctions and/or a loss of legitimacy.

implementation of voluntary agreements (free-rider problem). Therefore, we hardly ever find societal self-coordination without the involvement of state actors that have the capacity to make and enforce unilateral decisions. Finally, opportunistic behavior by non-state actors is rendered less likely if state actors review the negotiation outcomes and ensure that they correspond to the common good. This is most important if companies, professional associations, pressure groups, or consultancies are involved. Unlike state actors and not-for-profit organizations (e.g. public interest groups), they are not obliged by formal institutions or social norms to pursue the common good.[4]

There is enough empirical evidence to show that the shadow of hierarchy cast by consolidated statehood is key in making non-state actors contribute to governance (Héritier/Rhodes 2010; Héritier/Lehmkuhl 2008; Börzel 2009; Mayntz/Scharpf 1995a). Yet, the focus on the shadow of hierarchy suffers from a serious theoretical shortcoming: it reduces the role of the state to the regulation and enforcement of collectively binding rules for the provision of common goods. While the traditional or 'heroic' state might have been a regulator and enforcer, the modern state has transformed itself into a governance manager (Kooiman 1993; Genschel/Zangl 2008) or governance arena (Kohler-Koch 1996). Rather than hierarchically coordinating or mandating the provision of common goods, state actors seek to involve non-state actors to achieve more effective and legitimate governance (cf. Mayntz 1993; Kooiman 1993; Jessop 1998). Non-state actors help identify relevant problems and contribute to the formulation of adequate policy solutions. Moreover, the more the actors affected by a policy have a say in decision making, the more likely they are to accept the policy outcome implemented, even if their interests may not have been fully accommodated.

The non-hierarchical coordination of non-state actors in the governance process increases the intervention capacity of the state and can be described as the "state-organized unburdening of the state" (Offe 2009: 555, emphasis in the original), which entails its transformation rather than its demise. The role of state actors as governance moderators and managers may rely on their ability to resort to non-hierarchical coordination based on statehood to be effective. But even if it does not, non-hierarchical coordination by the state still requires some capacities, a.k.a. statehood. A lack of administrative, financial, cognitive and human resources not only weakens the credibility of state actors to unilaterally adopt and impose costly policies (shadow of hierarchy). It also prevents them from acting as reliable partners to non-state actors in the provision of common goods and fosters a fear of agency capture, making state actors reluctant to engage with more resourceful actors to begin with (Börzel 2009).

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

Moreover, the state often provides basic governance services, such as infrastructure or security, which are necessary for non-state actors to engage in governance in the first place. Finally, the state is still the major source of legitimacy for governance. In other words, there is more to statehood than casting a shadow of hierarchy.

3. Statehood: What For?

Research at the SFB 700 has shown that non-state actors do engage in governance in areas of limited statehood, where the state is too weak to provide common goods. Even multinational companies, which are considered least likely cases, often engage in the provision of common goods (Börzel/Héritier 2012; Deitelhoff/Wolf 2010; Flohr et al. 2010). They do not only adopt global standards to govern their worldwide business activities (Epstein/Roy 2007; Prakash/Potoski 2006b, Prakash/Potoski 2007), but also voluntarily implement environmental protection standards, provide HIV/AIDS-related services, or agree to use sustainable energy (Flohr et al. 2010). In some instances, they even regulate their own supply chains (Héritier et al. 2009) and seek to foster state regulation by pushing for stricter legislation and helping to strengthen the enforcement capacity of state actors (Vogel/Kagan 2004; Flanagan 2006; Mol 2001; Börzel et al. 2011).

What is less clear, however, is whether governance without the state requires statehood. The literature has identified several functional equivalents to the shadow of hierarchy that provide sufficient incentives for non-state actors to engage in governance (cf. Börzel 2010; Börzel/Risse 2010; Börzel/Héritier 2012).

3.1 Functional Equivalents to the Shadow of Hierarchy

3.1.1 The Shadow of Anarchy

While the state's threat of unilaterally providing a common good serves as a key incentive for non-state actors to get involved, the opposite situation may produce the same effect. If state actors are incapable of adopting and enforcing collectively binding decisions, companies are not confronted with a situation in which they have to weigh the costs of cooperation and voluntary commitment against the possibility of a suboptimal hierarchically imposed policy. Rather, they face the danger of not having a common good at all. If the pursuit of their individual profit depends on the provision of certain common goods and collectively binding rules to produce them, and if the government is not able or willing to provide them, companies have a major incentive to step in. Thus, multinational companies in South Africa have heavily invested in the fight against HIV/AIDS, both at the individual and the associational level (cf. Börzel et al. 2007;

Müller-Debus et al. 2010). In the absence of a functioning public health system including public education on the risks of the pandemic, companies have been stepping in to provide health and education services not only for their workers, but also for the workers' families and the larger communities. The same holds true for transnational public-private partnerships providing multiple governance services in areas of limited statehood (Beisheim et al. 2008). As its antipode, the "shadow of anarchy" may serve as a functional equivalent to the shadow of hierarchy (Mayntz/Scharpf 1995b: 23, Fn. 5; cf. Müller-Debus 2010).

3.1.2 The External Shadow of Hierarchy

While the shadow of anarchy provides one substitute for the shadow of hierarchy, the latter can also be generated externally. International organizations and foreign governments can commit non-governmental actors to the common good.

First, external actors directly exercise domestic sovereignty including a monopoly on the means of violence and the enforcement of decisions authoritatively in modern protectorates from Bosnia to Afghanistan. These are areas of limited statehood where states have lost their "Westphalian" sovereignty or where it is severely circumscribed. The jury is still out whether foreign actors can exercise sustainable and effective governance under these circumstances (for conflicting views see e.g. Paris 2004; Fearon/Laitin 2004; Zisk Marten 2004; Schneckener 2010). Moreover, the emerging international norm of the "responsibility to protect" can be invoked if a state is either not willing or not able to provide even a minimum degree of governance. As a result, the international community has at least the legal right to intervene and provide governance if everything else fails.

Second, under international law, NGOs, companies, and local actors can be obliged to comply with standards of good governance in areas of limited statehood (Ladwig/Rudolf 2010). The legal principle of agency of necessity (negotiorum gestio, see Bühring/Hüfken 2008) implies that one actor replaces another who is unable to take the necessary action. Third actors who then provide governance are obligated by the same rules as the state government that is no longer capable of living up to international standards. In other words, standards of international law hold non-state actors accountable to providing governance under conditions of limited statehood. Whether this results in effective and sustainable governance, however, is an altogether different question.

Finally, national governments of the (consolidated and democratic) states where multinational companies and transnational NGOs have their headquarters may also force non-state actors to contribute to governance in areas of limited statehood. In this particular case, home country laws are in place and enforceable, requiring non-state actors such as companies to comply with

standards of good governance or other regulations (e.g. environmental laws) irrespective of where they invest or act.

3.1.3 The Shadow of the (Socially Embedded) Market

Not only can NGOs mobilize international organizations (IOs) and foreign governments to make companies engage in the provision of common goods, but they can also launch international campaigns directly naming and shaming companies into complying with their commitments. This can be particularly harmful to the reputation of companies that have a brand name to protect and whose products target markets in (consolidated and democratic) states where consumers care about the provision of common goods (cf. Hönke et al. 2008; Müller-Debus et al. 2010). When it proves to be more profitable, companies enforce regulatory standards down their supply chain (Héritier et al. 2009) or lobby governments to adopt stricter standards to keep competitors out (Börzel et al. 2011). In a similar vein, the extractive industry in Africa has made joint ventures with Chinese mining companies conditioned upon the respect for certain social standards (cf. Hackenesch 2009). Environmental, social, and human rights norms have started to creep into the core business of many companies (see e.g. Prakash 2000; Prakash/ Potoski 2006a; Prakash/Potoski 2007). What is now being called "corporate social responsibility" actually means that firms are increasingly obliged to integrate environmental and human rights norms into their production, management, and general business practices (including risk management), even though their compliance record still varies enormously. Reputational concerns about socially accepted behavior induce firms to take norms more seriously. Norm compliance can then turn into a strategic advantage in competitive markets, leading to a "race to the top" with regard to regulatory standards (Börzel/Héritier 2012).

3.1.4 The Shadow of the (Traditional) Community

Social norms are not only institutionalized at the international level or in areas of consolidated statehood. Traditional communities also have standards of human rights, even if they do not always fully conform to the global regimes. While African governments often do not care whether Chinese companies operating within their territory comply with human rights standards, local communities do (cf. Hackenesch 2009). Likewise, companies may be embedded in local communities defined by clan structures or business activities that share certain standards of appropriate behavior and may include the respect for (certain) human rights. South African mining companies, for instance, are subject to considerable peer pressure since one rotten apple can spoil the reputation of the entire sector, decreasing share value on the international stock markets (cf. Hönke 2008).

In these cases, local communities do not provide a shadow of hierarchy, but they expect non-state actors – companies and NGOs alike – to comply with local governance norms and contrib-

ute to the provision of collective goods, particularly when the central state institutions are too weak (or too corrupt) to govern. Non-compliance can quickly become costly for the non-state actors, particularly when the multi-level nature of governance in areas of limited statehood comes into play. In many cases, local communities are well connected to transnational advocacy networks of NGOs and international organizations and can link up with global civil society (for these mechanisms see Keck/Sikkink 1998a). The indigenous peoples of Nigeria's Niger Delta linked up with the transnational human rights and environmental communities to denounce the behavior of the Shell Company, which had both ruined the environment and violated the human rights of local communities. As a result of these campaigns, Shell today is a different company that has fully embraced the norms of "corporate social responsibility," even though compliance with these norms in the Niger Delta is still disputed (Zimmer 2010). This example shows how the norms of local communities and the social embeddedness of markets can work together to force non-state actors to contribute to governance in areas of limited statehood.

The literature provides ample evidence for the existence of functional equivalents to the shadow of hierarchy cast by governments drawing on consolidated statehood. Yet, they still appear to rely on some forms of consolidated statehood.

While the shadow of anarchy is defined by the absence of a state, the external shadow of hierarchy still requires consolidated statehood, e.g. in the home country of a multinational corporation. Since the shadow of anarchy provides crucial incentives for companies to engage in governance while the external shadow of hierarchy makes them honor their commitment, the two functional equivalents may complement and actually reinforce each other. In this case then, the multi-level nature of governance in areas of limited statehood provides a functional equivalent to consolidated statehood's ability to cast a shadow of hierarchy. This does not require a coercive intrusion into a state's "Westphalian" sovereignty (Krasner 2004), which usually meets with stiff resistance, especially in weak and fragile states. Rather, the international community and/or Western consolidated states use their shadow of hierarchy to make non-state actors such as firms and NGOs engage in governance and provide public services in areas of limited statehood. In some cases, these actors rather than external states or international organizations even exercise legitimate authority (Herrschaft) in the absence of a state able to exert effective control (Koehler/Zürcher 2007).

The shadow of the market can put the non-provision of common goods at a significant competitive dis¬advantage; yet, such economic incentives depend on the social embeddedness of markets, in which the demand of consumers is also influenced by moral obligations. They are particularly effective on multinational corporations that have a "brand name" to protect and that cater to high end markets in (consolidated and democratic) states where consumers care about the provision of common goods (see above).

The shadow of the community, finally, is most effective if the claims of local actors resonate with norms legalized by international institutions and are picked up by foreign states or inter-

national organizations, which in turn exert pressure on non-state actors from above (Brysk 1993; Keck/Sikkink 1998b).

Overall, the various shadows do not only mix – they also all require some form of consolidated statehood to deploy their effects in areas of limited statehood. The good news is, however, that external statehood is sufficient. Thus, it is the multi-level nature of governance, linking areas of consolidated and limited statehood, which provides a functional equivalent to the shadow of hierarchy that areas of limited statehood are often unable to generate. While governance configurations may differ, they most likely involve actors that rely – directly or indirectly – on consolidated statehood (Beisheim et al. 2011b; Risse 2012). External governments use their consolidated statehood to set and enforce (inter)national norms and rules for non-state actors operating in areas of limited statehood. Likewise, their regulations provide for domestic markets where the demand of consumers for CSR translates into competitive (dis)advantages for transnational companies. But can multilevel governance compensate for lacking statehood when it comes to the other functions of the state in providing governance?

3.2 Statehood and Its Functions

3.2.1 Internalizing Negative Externalities vs. Providing Common Goods

The shadow of hierarchy relates to the role of the state as regulator and enforcer. Facing the threat of the state hierarchically setting and enforcing collectively binding rules, non-state actors voluntarily commit themselves to self-regulation or engage in co-regulation with state actors. Such regulation, however, tends to target negative externalities in the production of private goods rather than the provision of common goods itself. True, states may delegate the provision of governance services to non-state actors. Yet, providing common goods (e.g. building and running an HIV/AIDS clinic) is usually far more costly than internalizing negative externalities (e.g. reducing environmental pollution). Moreover, while companies increasingly accept the necessity to reduce harmful effects of their economic activities, they are at best willing to help state actors build the capacity to provide common goods (Deitelhoff/Wolf 2010). Likewise, the privatization of public services (e.g. in the provision of drinking water) is often not considered legitimate by the public. Next to high costs and low acceptance, the direct provision of common goods also requires significant capacities, particularly if they are complex. A vaccination campaign is less demanding than fighting HIV/AIDS (Schäferhoff 2011). There is a reason why the provision of public goods is still seen as a core task of the state (Grimm 1996; Leibfried/Zürn 2005). Statehood entails both the normative obligations and the necessary capacities.

Our empirical evidence seems to suggest that only in the shadow of anarchy are non-state actors willing to heavily invest in the provision of common goods. If the state is not capable of protecting the health of its workers or of ensuring the security of people's property, companies

start building medical facilities and employing security forces (Börzel/Héritier 2012; Hönke 2009). The other shadows may simply not be strong enough to turn companies into providers of public health or security. Other non-state actors may have the motivation but often lack the capacity to act in the first place. What the shadow of the market and the community may do, however, is improve the quality of the collective goods once non-state actors have made the choice to provide them. Quality control is another important function attributed to the shadow of hierarchy: supervising the inclusiveness, sustainability, and potential negative externalities of non-state governance contributions. Companies, warlords, or tribes tend to provide club rather than public goods. Moreover, their governance contributions may produce significant negative externalities, when the security of a company negatively affects the security and human rights of local communities (Hönke/Thomas 2012). While this is less of an issue for non-governmental organizations and public-private partnerships, these actors also face problems of sustainability, particularly with regard to complex tasks such as the fight against HIV/AIDS.

If states are so weak that they delegate or leave the provision of common goods to non-state actors, they can hardly be expected to resume or take on responsibility in cases of non-state failure. Yet, naming and shaming by NGOs and local communities, combined with pressure by international organizations and foreign states, can significantly increase the (reputational) costs of reneging on a commitment to engage in governance in areas of limited statehood.

3.2.2 Providing Common Goods

Non-state actors are more likely to internalize negative externalities in the production of private goods than provide common goods. But their governance contributions may require the provision of some (basic) common goods, such as political stability and security, from the beginning (Beisheim et al. 2011b). While companies are often unwilling to invest in conflict zones, non-governmental organizations require a minimum of security for their workers and basic infrastructure for them to move around (cf. Schäferhoff 2011). In principle, such governance services do not have to come from state actors in areas of limited statehood, which almost by definition lack the capacity to provide them. Yet, even if external actors are willing to fill in, they usually involve consolidated states either participating in UN missions or sending their own troops – we have yet to see the delegation of military interventions to private security companies, which would still operate under the shadow of hierarchy of the international community. The same is true for other common goods, such as the rule of law. In addition to subscribing to international institutions, weak states have started to lock in domestic reforms in regional institutions (Pevehouse 2005) and set up regional courts to ensure the legal certainty that many companies require to do business in areas of limited statehood (Alter 2012). Yet, to be credible, regional organizations have to include at least some member states with sufficient statehood to enforce regional norms and rules (Nigeria in ECOWAS, South Africa in SADC).

Warlords are an interesting case of non-state actors who acquired statehood. In some areas of Afghanistan, for instance, they have managed to establish a monopoly on the means of violence and possess significant capacities to set and enforce collectively binding rules. The same is true for the Taliban (Koehler 2012). What these actors often lack, however, is legitimacy, both external and internal.

3.2.3 Providing Legitimacy

Non-state actors can certainly substitute the capacity to set and enforce collectively binding rules, and, at times, even establish a monopoly over the means of violence in a given territory. Whether they use these properties to provide common goods, however, is a different question. More often than not, warlords, clan chiefs, and local strong men appear to abuse their statehood in order to consolidate their power and increase their private wealth. Even if they do provide effective governance, the question of legitimacy remains. It would go beyond the scope of this paper to discuss the normative criteria that these non-state actors must meet in order to claim legitimacy (Jacob et al. 2012). When it comes to empirical legitimacy, i.e. social acceptance, the beneficiaries of governance services provided by non-state actors still seem to expect the state to take over, at least in the long run (Sonderforschungsbereich 700 2009: 5; Beisheim et al. 2011b). This coincides with the mind-set of many non-state actors, who are happy to help build the governance capacities of states but have no intention of substituting for them (Deitelhoff/Wolf 2010). Likewise, the international community engages in state-building in order to strengthen the capacity of state actors to provide common goods (Brozus 2007).

4. Governance without Statehood?

4.1 Varieties of Statehood

The paper has argued that governance without the state can work but may still require statehood. This is not necessarily a contradiction since statehood is a property not confined to states, as the historical examples of the ancient Roman Empire and the medieval Franconian and German Empires show. The difference between these examples and the Westphalian state lies in the openness of their territorial borders. Moreover, the emperor's statehood was not exclusive, but rather divided and shared with subordinate rulers, feudal tenants, and the church, which all engaged in governance. In this respect, they resemble the modern state, which shares its statehood with international (UN, WTO), regional (EU, ECOWAS), and subnational organizations (regions, provinces, federal states) on the one hand, and non-state actors (independent regulatory agencies, chambers, associations) on the other (Chayes/Chayes 1995; Leibfried/Zürn 2005; Beisheim et al. 2011a). With the modern state voluntarily delegating parts of its Westphalian and

domestic sovereignty to non-state actors, it only retains exclusive international sovereignty. So do areas of limited statehood, although here the statehood is contested by rather than shared with other actors. Thus, their problem is not that they lack exclusive statehood –the Westphalian state is clearly the odd one out. What is missing is an institutionalized, uncontested "distribution of labor" between state and non-state actors in the provision of common goods. Since statehood is limited, state actors can neither hierarchically impose an order of divided and shared rule, nor can they settle conflicts and contestation (Beisheim et al. 2011a). Instead, they are circumvented (Schäferhoff 2011) or challenged (Koehler/Wilke 2011; Koehler 2012). To what extent external actors can provide such "meta governance" (Peters 2010) – without resorting to consolidated statehood – remains an open question.

4.2 The Dark Sides of Statehood

While some sort of (external) statehood might be required to make governance in areas of limited statehood work, statehood as the capacity for a particular form of non-hierarchical coordination is not superior per se to other modes of governance. Fritz Scharpf has convincingly argued that in principle, hierarchy is superior to negotiation and competition systems due to its capacity to solve distributional conflicts (Scharpf 1997; cf. Schuppert 2010: 14-32). At the same time, he has also shown that the performance of different forms of governance, including hierarchy, depends on certain scope conditions, which are only seldom fully met. This may explain why we usually find configurations of different actors and modes rather than ideal types. It should also caution us against idealizing or prioritizing statehood over other forms of hierarchical and non-hierarchical governance. Afghanistan is a clear example of state and non-state actors abusing their respective statehood. Unrestrained statehood is prone to despotism. It is the rule of law and democracy which have tamed the Leviathan. The D2 project of the SFB 700, "Companies and Governance in Sub-Saharan Africa," therefore asks to what extent the participation of companies in governance and the quality of their governance contributions depend not only on the degree of limitation but also the restraint (through legal structures and checks on power) of statehood.[5] The failure of the EU to support democratic forces in the Arab world is a clear example of how building up statehood without strengthening the rule of law and democracy is likely to result in bad rather than good governance (Börzel/van Hüllen 2011). Statehood is at best a necessary but certainly not a sufficient condition for effective and legitimate governance.

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[5] http://www.sfb-governance.de/en/teilprojekte/projektbereich_d/d2/index.html, last access March 5, 2012.

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Research Framework of the Research Center (SFB) 700

Governance has become a central theme in social science research. The Research Center (SFB) 700 *Governance in Areas of Limited Statehood* investigates governance in areas of limited statehood, i.e. developing countries, failing and failed states, as well as, in historical perspective, different types of colonies. How and under what conditions can governance deliver legitimate authority, security, and welfare, and what problems are likely to emerge? Operating since 2006 and financed by the German Research Foundation (DFG), the Research Center involves the Freie Universität Berlin, the University of Potsdam, the European University Institute, the Hertie School of Governance, the German Institute for International and Security Affairs (SWP), and the Social Science Research Center Berlin (WZB).

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