Knowledge/power in private governance: the hidden costs of business leadership

Abstract

Private governance has largely been treated as a positive if imperfect check on business power. We argue, however, that this turn to 'business leadership' in mitigating the social and environmental impacts of global production comes with hidden costs. Drawing on Foucauldian insights, we explore how business' privileged position in organising these initiatives reproduces a market logic that limits the possibilities for radical change. We focus on two major initiatives created to tackle social and environmental issues in gold supply chains, led by gold jewellers and miners, respectively. We outline their history and structure before subjecting their publicly released documents to a Foucault-inspired discourse analysis. Our reading moves the private governance and business power literatures forward by revealing discreet but concrete examples of how business shapes preferences and curtails possibilities through subtle incentives and thinly-veiled coercion, disavows complicity in or responsibility for negative impacts of industrial activity, and constructs exit options when engaging with social change agendas, which is always on industry's terms. That these articulations of business power are hidden in plain sight highlights the insidiousness and normalization of its operation. Only through such a rereading of private governance can the hidden nature of business power be revealed and countered.

Keywords
Knowledge/power, governmentality, private governance, business leadership

Introduction

The advent of global supply chains have created new opportunities for business to externalize costs and thwart regulatory efforts by outsourcing activities and engaging in regulatory arbitrage. Despite a growing recognition of the social and ecological perils of globalized production, people have remained hopeful that solutions to these issues would be found. Many of these hopes have been hung on the promises of corporate social responsibility (CSR), industry self-regulation, and various forms of 'private', 'transnational', and 'multi-stakeholder' governance initiatives (Caroll, 1999, Vogel, 2008, Mena & Palazzo, 2012). But despite this initial excitement, across all metrics, things seem to be getting worse. Global inequality is increasing (World Inequality Report, 2018), we are on the verge of a climate catastrophe (IPCC 2018), and forced labour, human trafficking, and modern slavery are on the rise (Rioux,, LeBaron, & Verovšek, 2019).

It is therefore increasingly accepted, among scholars at least, that these private governance initiatives are not working (LeBaron & Lister, 2015; LeBaron, Lister, & Dauvergne, 2017; van der Ven, Rothacker, & Cashore, 2018). But despite these findings, many – scholars, policymakers, and activists alike – still consider the lack of progress on these issues and, specifically, the lack of effectiveness of CSR and private governance, as happening *in spite* of these efforts. Here we argue that it is, in fact, *because* of these efforts, which collude (consciously or not) to expand the domain of business influence, ensuring that any attempt to rein-in the destructive forces of the market are either so narrowly defined so as not to impinge on business interests, or so precisely defined as to forward them, and the parameters within which solution are sought effectively preclude the dramatic changes necessary to achieve robust social and ecological sustainability. Contributing to the literatures on CSR, private governance, and the governance of global supply/value chains, we build upon existing critical analyses, but deepen them by applying Foucauldian insights on the diffuse and insidious nature of power.

We operationalize these insights through a Foucault-inspired, discourse analysis, using NVIVO to parse through the publically released documents of two major private governance initiatives in the gold supply chain, one led by the Responsible Jewellery Council (RJC) and the other by the World Gold Council (WGC). In doing so, we present concrete examples of how the industry increasingly adopts the language of civil society, while steeping this in the logics and vocabulary of the market and setting the terms under which they participate, thereby expanding business power and business logics into the domain of the social. Our cases clearly show how industry has become the ultimate arbiter of what constitutes 'responsible' business practice. CSR and the norms underpinning its practice are simultaneously narrowly defined and indexed in accordance with business interests. Relatedly, our analysis suggests that these 'business interests' should not be thought of as simply driven by a profit motive -- though this may be the case in individual instances, and profit is certainly not 'sacrificed' at the altar of social responsibility. Instead, our wider perspective shows business interests are best thought of as the expansion of its domain of influence. As evinced by the rapidly proliferating CSR ventures, adopting the norms of 'responsible' or 'ethical' business now has a cachet in business and policy circles, while business acts to retain the levers behind it (Jamali and Keshishian, 2009). Overall, we argue that the rise in popularity of private governance initiatives is a potent component of changing global authority structures for the smooth functioning of the neoliberal economy. Foucault's understanding of power as productive and fluid can help us understand the dynamic and multidimensional nature of business power, but crucially can also open up space for counterhegemonic voices or resistance. This was the case when it came to indigenous resistance to mining activities in Tambogrande, Peru, for example, and can also be seen in Britain's recent decision to ban, or at least put a halt to fracking.[1] Whether we see these as instances of subjugated knowledges overthrowing dominant practices or as momentary expressions of radical change that will ultimately be co-opted in business' agenda, it is worth recognising that power is not totalising and always contains within it some space for resistance. One of the key ways this space may be pried upon is by recognising the ways in which business reinvents and reinscribes its authority by different means.

In order to demonstrate our core point vis-à-vis the widening scope of business power through the seemingly unlikely mechanisms of private governance, the paper unfolds as follows: First, we review the literature on 'private' governance and business power in global supply chains. Second, we contrast these perspectives with a Foucauldian understanding of business power in which power is understood as much more diffuse and protean. Third, we discuss our case selection, data collection, and method of analysis. Fourth, we present and discuss revelatory findings from the WGC and the RJC to illustrate our argument. Fifth and finally, we conclude with a discussion of our contribution and the implications of our analysis for future research.

Private governance, business power, and Foucault

In this section, we define 'private governance' and explain its emergence, offering a brief overview of the literature that has emerged alongside it. Drawing on the critical scholarship focused on the implications of this emergence and normalisation for global authority relations, we build on these perspectives by engaging with the evolving literature on business power. Critiquing existing approaches to understanding the drivers and limits of business power in global governance – approaches that understand civil society and the activists within as a largely countervailing force to mounting business power – we contrast this with Foucault's view of power that enables us to spotlight the reproduction of business power through various means, including through private governance and neoliberal notions of CSR.

Variations of private governance

Over the course of three decades now, non-state actors from business and civil society have been creating so-called 'private governance' initiatives as a strategy to regulate transnational production (Haufler, 2001; Cashore, Auld, & Newsom, 2004). Private governance is the name given to specific manifestations of what James Rosenau (1992) coined 'governance without government', or as Robert Falkner (2003: 72-73) has defined it: '…where the interactions among private actors, or between private actors on the one hand and civil society and state actors on the other, give rise to institutional arrangements that structure and direct actors' behavior in an issue-

[1] See, for example, Harstaad & Floysand 2007 on the former and Ambrose 2019 on the latter.

specific area.' Since the early 1990s, the number of private and hybrid governance arrangements has grown exponentially and appears to be accelerating, especially in the field of sustainability (Abbott & Snidal 2009; Abbott et al. 2016; Schleifer et al. 2019).

- INSERT FIGURE FROM SCHLEIFER ET AL 2019 HERE –

Private governance comes in many forms. When considering the role and power of business, it is useful to distinguish between types where business leads more or less directly. The more directly industry-led initiatives include individual firm CSR initiatives and sector-wide programmes created and maintained by a coalition of industry actors. While these are often seen to lack legitimacy (the popular term 'greenwashing' comes to mind), new innovations in business designed initiatives, including carving out various roles for the right NGOs, have succeeded in blurring distinctions between these and more collaborative, multi-stakeholder initiatives (MSIs) in which business leadership is at least diluted by the meaningful participation of NGOs and other actors in developing criteria and monitoring compliance. The latter include some well-documented sustainability standards and certifications, such as the Forest Stewardship Council (FSC) and Marine Stewardship Council (MSC). But even though many initiatives will involve NGOs, activists, and even sometimes elements of the state, they still tend to appeal to industry needs and expertise while adopting and internalising the language and logic of the market.

Scholarly attention to private governance

Unsurprisingly, this emergence of private regulatory initiatives has led to a sizeable and growing literature on these private governance arrangements (Auld, 2014; Bartley, 2003; Bernstein & Cashore, 2007; Cashore, 2002; Cashore et al., 2004; Pattberg, 2006; Schouten & Glasbergen, 2011). This scholarship has provided a deep understanding of the historical context and factors that have driven their emergence and proliferation. Other questions scholars have sought answers to include why some initiatives are successful (Gudbrandsen 2009) while others fail (Bloomfield & Schleifer 2017), how they gain rule-making authority (Cashore & Bernstein 2007), and the connections between the two (Schouten, Leroy & Glasbergen, 2012). These studies have mostly focused on the ways in which market and non-market factors might impact the uptake and effectiveness of private governance (Bartley, 2010; Cashore, Egan, Auld, & Newsom, 2007; Espach, 2006; Fransen & Burgoon, 2011; Mayer & Gereffi, 2010; Schleifer, 2016a, 2016b).

Within this excellent body of work, some scholars have taken more and others less critical views of private governance and its potential for tackling tough social and ecological issues. But, in general, the consensus seems to have been that these initiatives act as a check – albeit imperfect and often inadequate – on business power. As such, the focus has largely been on increasing the effectiveness of these initiatives, instead of confronting the question of whether business is in fact simply reinforcing its hold on the so-called 'public' sphere through their participation in them. By this we mean business extending its influence beyond the state (of which it has always been implicated), increasingly penetrating the social domain in ways that are severely hindering any movement toward social and ecological sustainability.

But there is, in fact, an additional subset of critical work on private governance that has long focused on the implications of the rise in private governance for global authority relations (Cutler, Haufler, & Porter, 1999; Hall and Biersteker 2002). The argument is basically that the co-constitutive element of this growth in private governance has been a parallel growth and acceptance of private authority in international affairs, which is fundamentally transforming the landscape of the global political economy. In this vein, scholars have conveyed their scepticism toward initiatives that attempt to work within markets to transform practices in a meaningful way (Klooster 2006, 2010; Mutersbaugh, Klooster, Renard, & Taylor, 2005; Taylor, 2005), including how private governance avoids tackling the tough issues and may simply shift concerns to a technical arena (Stringer, 2006, p. 702). LeBaron and Lister (2015: 907) have articulated a similar concern, arguing that these CSR instruments are 'highly politicised, productive forms of power'. Other scholars have mobilized Gramscian frameworks to illustrate the ways in which civil society can be co-opted or even complicit in forwarding this limited 'problem-solving' agenda (Cutler et al., 1999; Ford, 2003; Levy & Egan, 2003; Bloomfield, 2012).[2] Here we are building from these salient critiques and applying an even broader lens, suggesting the shortcomings of CSR and other forms of private governance may in fact be much worse than simply not tackling the tough issues. Private governance, from this perspective, is in fact one of the drivers of continued social and environmental degradation through its role in reinforcing and naturalising the breadth and depth of business power across the social sphere.

Business power and private governance

Critical scholars have demonstrated how industry has deployed self-regulation in order to cover up or stop what they viewed as more egregious incursions in to their territory or those that made bigger dents in their 'power' (Cutler et al., 1999; Lipschutz & Rowe, 2005). But 20 years since this critique has been made, we are in much the same position, or possibly worse off – the remit of business power seems continually expanding. We suggest that mechanisms that seemingly put a halt on business power have actually been complicit in expanding its domain, and the failure in scholarship to recognise this indicates the depths of its normalization.

In 2005, Doris Fuchs, in her seminal paper 'Commanding Heights', recognized that the structural and discursive power of business had been increasing, even when ostensible limits were placed on that power. However, even this otherwise insightful critique of business power falls into the trap of singling out 'bad apples', and its ultimate optimism in the potential of civil society actors to place limits on business power could, in hindsight, be interpreted as somewhat naïve and ultimately misguided. To be specific, the claim that 'the exposure of bad apples in the media, highly visible law suits, as well as the creation of pressure and negative publicity in shareholder meetings have become important tools for NGOs in targeting the legitimacy of business' (2005: 795) does not seem to have borne out in the decade and a half since this critique was written. While corporate 'shame campaigns' (Bloomfield, 2014) have indeed proliferated in the time since, business power has proved to be much more resilient than Fuchs suggested and changes in practices

[2] See also Pasha & Blaney, 1998; Chandhoke, 2002; Dauvergne & LeBaron 2014 for critical perspectives on the role of global civil society and activists in forwarding such market-driven agenda.

stemming from any perceived vulnerability have rarely been observed (Dauvergne, 2017; Bloomfield, 2017). In fact, the recent example of the tobacco industry points to the inverse – scandals, bad publicity, and corporate 'watchdogs' have not made a dent in the industry, as profits remain high and growing (Davies, 2017; Maloney & Chaudhuri, 2017). Hiring and firing decisions may sometimes bear the brunt of these 'exposés', but the structure remains much the same. Thus, in the years since this influential critique was written, we have witnessed *both* the proliferation of private governance *and* the consolidation of business power rather than industry's increased vulnerability as one might have reasonably expected (Bloomfield, 2017). Our aim in this paper is to suggest not that this trend is counter-intuitive but precisely the opposite, that it is co-constitutive – that is the burgeoning of private governance initiatives and the deepening stranglehold of business power are not merely interconnected, but crucially, mutually reinforcing.

Thus, even in one of the more thoughtful pieces on business power, Fuchs has seemingly underestimated the extent and insidiousness of business power and leadership. Drawing on insights from Foucault's work on power/knowledge and neo-liberal governmentality, this paper contends that private governance is encompassed in, and reproduced by, the logics of business power, not least because their own resources, legitimacy, and strength also benefit from these logics. We are aware that Foucault's own writings on power evolve and are sometimes contradictory, and therefore do not seek to impose 'one' reading of Foucauldian thought. Rather, we have preferred to 'mine' his writings while being live to the tensions present both in his work and in the (uneven) operations of business power.

Private governance and governmentality

Recently there has again been an increased interest in governmentality and multi-dimensional understandings of power. For instance, Dallas, Ponte and Sturgeon (2019) show how power works on multiple planes and in ways that are not always immediately evident, through the processes of normalisation, naturalisation, and socialisation. They show how preferences can be construed through disciplinary routines and practices; that preferences are always already socially constructed and mediated. This work is especially important in its advancement of a nuanced definition of power that stresses the diffuse and not-always-immediate intentionality of power, as well as the relations it creates in its wake (Ibid. 666-670). By following a Foucault-inspired, if not quite Foucauldian perspective, it applies a hitherto understudied lens in the literature on global value chains / production networks (GVC/GPN).

Gale Raj-Reichert's work on governmentality is another notable example in the GVC/GPN literature. Zeroing in on the social audit regime, Raj-Reichert draws attention to neoliberal techniques and their saturation into CSR codes and standards in the private sector, in line with Foucault's apprehension of governmentality as the 'conduct of conduct'. As Raj-Reichert demonstrates 'neoliberal techniques are used to lead and control the conduct of individuals indirectly by making subjects responsible for their own governance through self-regulation' (Raj-Reichert, 2013: 25). These important texts go some way in showing the diffused, multi-nodal, and subterranean functioning of power, but do not quite to get to the crux of our concern: to understand power as the ability to 'structure the possible field of action of others' (Foucault, 1984: 428).

Indeed, whilst our own discourse analysis gestures at the increasing demands for 'self-assessment' and self-surveillance by industry and other actors in line with Foucault's idea of governmentality as 'conduct of conduct' or 'action upon action', in this paper we are more interested in the melding together of the 'social' and the 'commercial', or more precisely in business's ability to allow and limit the conditions of possibility for social change, whilst at the same time paying heed to the rhetoric of sustainability, ethics, and responsibility. Business does so by appealing to each of these norms while, in the process, defining their meanings in terms of appropriate action on their part and others. Further, in these subtle but deeply embedded exercises of power, the hierarchy of market priorities are reinforced, even as the drive toward profitability and shareholder value are shrouded in these same social demands. Applying a Foucauldian lens reveals the ways in which business shapes preferences and limits possibilities through subtle incentives and thinly-veiled coercion while simultaneously disavowing any complicity in the negative impacts of industrial activity, in effect leaving an exit option for industry when engaging with a social change agenda, and always engaging on industry's terms.

Foucault and business power
Gleaning insights from Michel Foucault's vast oeuvre of work on power can impel us towards an apprehension of private governance's implication in the production and reproduction of business power. Such an approach lays bare the limitations of private governance and the parameters imposed through increasing business leadership in global governance. It functions as a corrective and a challenge to much of the state of the art scholarship on private governance ventures.

Indeed, most analyses of private governance in the field of international political economy have failed to adequately account for the insidious and increasingly subtle nature of business power. For example, Doris Fuchs shows how business power has been solidifying its grip across three dimensions: instrumental, structural, and discursive power. While we agree that business power percolates and continues to diversify in important ways, a Foucauldian understanding of power would have us take some exception to the parcelisation of power in this way. Fuchs herself acknowledges that her definition of 'structural' in this regard is distinct from that of Michel Foucault, in that, for her, structural power derives from 'material socio-economic structures and networks', whereas Foucauldian approaches centre 'normative structures and institutional fabric of social systems.' However, a tension between her work and more 'critical' approaches to business power remain. In the first instance, the use of the word 'normative' is telling, especially in its construal as oppositional to 'material'. The dissolution of the boundary between the discursive and the material was at the heart of Foucault's thought and is crucial to a sustained inquiry into business power's circulation and expansion. In the second instance, it detracts from Foucault's more fluid (and admittedly rather capacious) definition of power as a 'set of actions upon other actions', or alternatively 'an ensemble of actions which induce others and follow from one another'. This is important, because, as we show, this set of actions upon actions captures the logics of private governance within business power. It is worth quoting Foucault in full here to make our point:

> Let us come back to the definition of the exercise of power as a way in which certain actions may structure the field of other possible actions.

> What, therefore, would be proper to a relationship of power is that it be a mode of action upon actions. That is to say, power relations are rooted deep in the social nexus, not reconstituted "above" society as a supplementary structure whose radical effacement one could perhaps dream of. In any case, to live in society is to live in such a way that action upon other actions is possible-and in fact ongoing. A society without power relations can only be an abstraction. […] The exercise of power is not a naked fact, an institutional right, nor is it a structure which holds out or is smashed: it is elaborated, transformed, organized; it endows itself with processes which are more or less adjusted to the situation. (Foucault, 1982: 791)

In the realm of business power we see the materialisation of the processes, which are more or less adjusted to the situation, largely consensual, and rooted deep in the social nexus through private governance. These are not oppositional forces, but mechanisms internal to those logics that enable the smooth functioning of business power. Analogous to David Humphries contention, in his evaluation of forest certification schemes, that contrary to the mainstream narrative, 'neoliberalism depends on a strong state, one that introduces market-based disciplines to new areas and creates political space that can be occupied by private sector businesses' (Humphries, 2009: 315), private governance likewise is an expression of business power that, by articulating relatively small demands that mimic more substantial levers on business power, actually end up bringing regulation that is more palatable to industry within its fold. This then displaces the need for more radical forms of resistance and checks on business power. In a similar vein, Morgan Brigg analyses the micro-credit movement in Bangladesh to show how the rise of NGOs partaking in micro-credit is not emancipatory for poor Bangladeshi women, as is often contended, but rather suggests a 'basis for the emergence of initiatives and practices that increase the penetration of power into the social body of the Third World' (Brigg, 2001: 233). Our research into the gold industry suggests similar dynamics are at play; businesses have been instrumental in creating and continue to shore up the very practices that seem to hinder their preponderance through policy and government ventures.

Methods: case selection, data collection, and analysis

We chose the gold industry as our illustrative case as it boasts an array of private governance initiatives addressing social and ecological governance challenges at both the upstream (i.e. extraction) and downstream (i.e. retail) ends of the supply chain. Yet, as Auld, Betsill, and VanDeveer (2018: 446) have shown, relatively little attention has been paid to transnational governance in the minerals and mining sector in general to date. Further, the limited research that has been done has focused almost exclusively on the Extractive Industries Transparency Initiative (EITI), individual firm CSR, and the 'conflict minerals' issue (Ibid. 447). Auld et al. (2018) go on to note that the literature, particularly that focused on conflict minerals, has been largely fixated on 'supply chain management', 'material flows traceability', and 'illicit trading'. In other words, the literature has remained rather functional in scope, which quite seamlessly leads to calls for transnational or private governance as the practical and rational response to these issues.[3]

In this respect, the literature mirrors the initiatives in practice and vice versa; a focus on industrial complexity has led to technical – as opposed to political – solutions. The implication is that these solutions require the participation of affected actors (e.g. industry) to provide the necessary information, experiment with possible solutions, and build capacity in an informal manner (i.e. as opposed to being formally regulated). And this, in effect, leads to industry taking a lead role in defining and managing the problem. As Auld et al. (2018: 446) have noted, '[this] institutionalizes particular understandings about what is to be governed, by whom, and how, potentially crowding out civil-society-led efforts to challenge broader issues such as consumption.

Our aim is to move this literature forward by looking at subtle but concrete manifestations of this institutionalization in industry communications to illustrate the hidden costs of 'business leadership'. The data comes from the collected documents of two initiatives focused on gold, one at either end of the supply chain. These documents are publicly available and on file with the authors. In 2019, we collected minutes from meetings, progress reports, press releases, presentations, and similarly official documents dating back to 2011. While the collection strategy needed not be exhaustive, we wanted a broad selection of communications with the respective industry initiatives as the source. We then subjected these documents to a critical interrogation informed by a Foucauldian framework.

We use a form of Critical Discourse Analysis (CDA) inspired by Foucault. This approach views discourses as institutionally produced forms of power/knowledge, rather than simply a linguistic or semantic mode of evaluating a given text or 'utterances'. We are aware that there is no 'correct' way of 'doing' discourse analysis, which ranges from a reticence from undertaking any 'method' given the plurality of meanings that could be attached to a given script or event, to an *a priori* prescriptive analysis of power that declares political discourse (usually in the form of the 'hegemonic narrative') always already problematic and takes it upon itself to offer strategies of resistance to this discourse. Here we use CDA as a way of exploring the dialectical relationship between the material and the semiotic (Fairclough, 2006). We are particularly interested in the ways through which discourses set and restrict certain 'conditions of possibility', in this case the ways in which business power(/knowledge) has incorporated private governance and regulation to, in effect, prohibit more radical change while placing itself in the driving seat when it comes delineating the dos and don'ts of industry penetration into the public sphere. This sort of discourse analysis is important precisely because it refuses to eschew a normative commitment to a political goal – one that seeks to unveil the workings of an ideologically dominant agenda in this case driven by business elites in the name of private governance.

By using NVIVO to cross-tabulate coded content through a focus on key words – such searches as 'efficiency', 'ethical', 'power', 'interest', and 'responsibility' – we interrogate how private governance ventures have been implicated in this growing

[3] For example, see Berkowitz H, Bucheli M, Dumez H. 2017: 58.

incursion of business power into the public domain of regulation and agenda-setting. The outcome is the re-inscription of business power, but even more perniciously, the tacit acceptance of business and market logics in the public and not-for-profit spheres. The very asymmetries that these ventures seek to overcome are re-entrenched and normalised, which has significant consequences for the future study of business leadership as well as private governance.

Private governance in gold

Mined on every continent (except Antarctica), the gold supply chain impacts all corners of the world and spans multiple sectors. In terms of end-use markets, most gold is destined to become jewellery with significantly smaller proportions destined for electronics and dentistry. But there is also a significant financial market for gold, as organisations from states to hedge funds invest in what is considered a safe asset.. Regardless of where the gold is headed, it passes through extraction, refining, and transportation stages of production where it is mixed with other sources of gold and ultimately ends up in good delivery bars or manufactured into its 'final' product. Gold mining and manufacturing represent a significant source of income for many companies, governments, miners, and mining communities, but the industry also comes with substantial social and environmental risks.

These risks include potentially negative social impacts from the historically rampant corruption and highly unequal distribution of gains within the industry (O'Higgins, 2006), the links between gold extraction and conflict (Rettberg & Ortiz-Riomalo, 2016), and the imposition of mining projects on communities without gaining free, prior, and informed consent (Mahanty & McDermott, 2014). The potential for negative impacts is equally great, including deforestation and the destruction of local landscapes (Malm, 1998), the use of cyanide in large-scale mining and mercury in small-scale mining and the related risks to the ecosystem these substances pose, and the related issues associated with the irresponsible closure of mine sites and the propensity for accidental toxic spills and tailings dam collapses that have become synonymous with the industry.

Activists spurred the creation of private governance as a response to these issues by exerting pressure on the industry, both directly and indirectly. While activists have been relatively successful in raising awareness of the issues associated with gold mining, such as 'conflict gold' spearheaded by organisations like the Enough Project, or 'dirty gold' and the No Dirty Gold campaign launched by Earthworks, based on past experience in mining and other extractive industries, there was not much evidence that either of these would be capable of changing mining practices directly. But they did at least manage to coax industry into a response of some kind.

For example, at the extractive end, activists did enough to raise the profile of the conflict gold issue to spark the creation of Section 1502 of the Dodd Frank Act, which raised the spectre of 'hard' (i.e. legislative) regulation extending their responsibility to their supply chains. This, in turn, created a huge incentive for industry to formulate a response through their industry organization, the WGC. On the consumer end, Earthworks targeted the branded companies in the largest consumer market for gold products, the gold jewellers. Aware of their vulnerability to such tactics, and informed by their past experience with 'blood diamonds', jewellers joined forces with their industry organization and some key suppliers to create a private governance initiative of their own. In sum, the activists were effective in spurring a response, but business appears to have been successful in dictating the precise nature of this response.

Starting with the upstream end of the supply chain, we find the WGC's 'Conflict-Free Gold Standard' (CFGS), which is a straightforward example of an industry-led scheme. The WGC is an industry association that promotes gold mining and investment, representing the interests of 26 of the largest gold mining companies in the world who dominate the upstream end of the supply chain. Faced with the shared reputational risk associated with 'conflict minerals', and threatened with impending regulation in the US, the WGC developed an industry-wide code of conduct for its members.

While the CFGS has explicitly been designed by industry and is run by industry, it has achieved significant cross-sectoral support and been endorsed by a number of NGO's and governments, including Global Witness and the UK's Department for International Development (WGC, 2014). This was by design. The architects of the standard knew they would need to achieve at least a modicum of legitimacy among external stakeholders if the standard were to be of use to its members (Bickham, 2017). According to the WGC, the CFGS 'was developed through an intensive consultation process involving governments, civil society and supply chain participants' and effectively 'operationalises' the OECD's Due Diligence Guidance for Responsible Supply Chains for Minerals from Conflict-Affected and High-Risk Areas (WGC, 2019).

Notwithstanding the elaborate process, the WGC CFGS has also been the target of significant criticism, including not actually tackling the problem of conflict gold itself. Despite its seeming success in protecting its members from reputational damage and providing its members with guidance on the issue, the standard does not benefit the small-scale miners that make up the vast majority of those effected, it does not tackle root causes of conflict, which are largely distributional, nor does it enfranchise already marginalized small-scale miners (Valerio, 2011). Additionally, the application of the CFGS is not monitored or audited by the WGC, citing a potential conflict of interest if it were to act as certifier of its own members (Bickham, 2017). But the result of this is that data collected and assessed in the audit process is controlled by the companies and not shared (Sturman et al., 2018). In sum, the industry was able to respond quickly to the reputational threat posed by concerns over the role of gold mining in fueling conflict through its established channels of communication and practice (i.e. an industry group) and the result has been a new standard designed to meet industry needs – albeit aligned with international benchmarks.

At the downstream end of the supply chain, the most prominent private governance standard is the RJC's Chain-of-Custody (CoC) standard. Similar to the WGC CFGS, the RJC CoC began as an industry standard and, depending on whom you ask, either remains industry-led or is evolving into a true MSI.

Facing reputational threats from industry practices and activist action, a group of 14 jewellery companies, industry associations, and mining companies came together to collectively protect the reputation of the industry. In the words of the President of Jewelers of America, a powerful industry group and RJC founding member:

> We wanted to confront issues in a proactive way. We in the luxury goods sector have to work very hard at holding the public's trust because even though the things we sell are very desirable, they are, after all, not essential commodities for life… So we said, "Listen, before we've got fires burning all around us, let's sit down and try to sort this thing out" (Patterson, 2006).

The RJC is unabashedly an industry-led initiative, even while the name clearly mimics those of well-known MSIs in other industries, such as the Forest Stewardship Council (FSC) and Marine Stewardship Council (MSC). In the words of the RJC's CEO:

> It is purely a multi-sector organisation. A product stewardship group is how we view ourselves. It has much more in common with a trade association than with any other entity. It membership is made up of companies and individuals who are participants in the gold and diamond jewellery supply chain, and our governance is by those members (reproduced in Choyt, 2009).

The founding members felt they needed to act fast and had the resources to do so. Again, in the words of the CEO when responding to a question about why the RJC did not opt for a multi-stakeholder model:

> Well, [the founding companies] decided they wanted to get this thing done and deliver a product to market and they decided that the best governance model was a product stewardship model that was structured as a trade association (reproduced in Choyt, 2009).

Once established, the RJC began the process of further legitimising the organisation and its standards. It invited select NGOs to participate, joined the ISEAL alliance in 2011, which is a membership organisation for such standards – a certifier of certifications, if you will – and has developed the CoC certification in 2012, which is auditable by third parties. But the critiques have continued.

The critiques levelled against the organisation are largely still based on this carefully limited stakeholder engagement where NGOs are invited to participate, but have no real power of influence (Earthworks, 2013; Choyt, 2018). According to a recent report by Human Rights Watch:

> The RJC consults civil society and other actors and includes civil society representatives on its standard-setting committee, but is essentially an industry body. Its decision-making bodies do not include consumer groups, representatives of mining communities (for example, organizations addressing land rights or environmental harms), trade unions or miners' associations, or human rights NGOs (Human Rights Watch, 2018).

In sum, the RJC seems to have been successful in providing reputational protection and guidance to its members and the industry as a whole, quickly growing its membership base to over 1000 companies from all along the supply chain. But it continues to be accused of being no more than an industry association, including handpicked stakeholders in limited roles to bolster its legitimacy, leaving aside tough issues like free, prior, and informed consent of indigenous people, banning operations in conflict zones, or requiring respect for workers' right to unionize. Members also have no obligation to publicly disclose the results of RJC audits and, allegedly, these audits rely on company-provided information when undertaken. In short, industry has defined the rules, compliance with these rules remains voluntary, participants and issues are carefully chosen, information is secured and, in the process, industry interests are re-entrenched while business leadership in regulation is naturalized.

Illustrative findings

Justified through appeals to the 'complexity' of the industry and citing problems like 'traceability' issues associated with gold and 'illicit' or 'illegal' mining and trading, industry has taken a lead in the response, which has resulted in treating the political issues associated with gold mining as technical or supply chain management problems to be solved. In effect, business has been able to propose market-friendly solutions, leaving the industry largely unchallenged and, as we have suggested, even empowered through the process. By framing problems as predominantly managerial and thus demanding highly technical expertise given the complexity of supply chains, the political nature of business' inroads into the 'social' sphere has been elided. This recourse to the language of complexity can be found throughout our collected documents. For example, using NVIVO, between 2017 and 2019 we found this argument – with explicit reference to 'complexity' – made no less than 14 times in RJC minutes.

Business leadership means the parameters for solutions will always align with perceived business interests. For example, many of the RJC's recommendations and minutes make an appeal to industry for 'socially progressive' outcomes such as increased energy efficiency and responsible mining through explicitly invoking the profit motive and increased consumer demand. For instance, on June 2019, the RJC encourages industry actors to try and reduce energy consumption along these lines:

> Once you have identified the opportunities for reducing consumption or increasing efficiency, prioritise these according to cost, savings and certainty […] Note that as a general rule, you should implement initiatives that generate a positive financial return.[4]

There are other instances when ethical issues pertaining to the organization are discussed with a business case invoked to justify its stance. For example, earlier in 2017 the minutes state:

[4] [Internals\\RJC CoC\\Other Official Documents\\RJC_COP-Guidance-V1.1-June-2019]

> The RJC MoU with DMCC was discussed. Recent efforts from DMCC to address some of the historical issues managing responsible sourcing have been a driver in RJC's closer relationship with them. A committee member commented that engaging with DMCC could expose the RJC to reputational risks and recommended caution.[5]

We can safely gather from the above, that the DMCC – an acronym for the Dubai Multi Commodity Centre – has a 'close relationship' with the RJC. The DMCC has courted controversy through its allegedly insufficient and unethical sourcing practices. For example, according to Human Rights Watch, the Dubai gold supply chain is implicated in child labour by continuing to source gold from sites where the practice is commonplace (Kippenberg, 2016). In addition, the *Guardian* (Bowers and Garside, 2014; Doward, 2018) and the BBC (Verity, 2014) have reported on 'serious breaches of rules' including sourcing gold from conflict zones and 'money laundering'. Instead of any accountability process, it appears that the result was a change in the way the audits were conducted. Despite these reported violations, the RJC seems concerned only with the 'reputational damage' this close relationship would cause them, making a clear business case for exercising 'caution', rather than displaying even a modicum of social concern and ethical responsibility.

Likewise, notwithstanding the difficulty in defining the 'ethical', most appeals to 'ethics' and 'responsibility' are shrouded in the language of profitability and consumer demand, making ethics more attractive to industry actors. For example, an RJC impact report from 2014 urges actors to embrace 'change' in both the trade show business and jewellery business to align with changing patterns of consumption. Analysing consumer preference for responsibly sourced jewellery, this is viewed as an 'opportunity' for the market. The report states:

> The jewellery sector is currently under pressure to respond to stakeholder demands for corporate social responsibility (CSR) and ethical sourcing. In response they are searching for workable solutions that can help tackle the harms and risks linked to aspects of the industry's operations. Organisations such as the Responsible Jewellery Council are part of the answer, offering third party certification as a route to signal implementation of CSR standards. Global jewellery buyers – industry and consumer – need meaningful signals that they can trust if they are to be reassured of the ethical integrity of their purchases. Increasingly bound up in trust building are demands from buyers for transparency and traceability, including mechanisms that will enable customers across the global jewellery industry to access the right information to make responsible choices.[6]

Whilst this is seemingly benign, and perhaps even commendable, if we align ourselves with Foucault's understanding of power in modes of neoliberal governance, we see the increasing 'freedom' for subjects to act (customers to choose ethical

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[5] [Internals\\RJC CoC\\MoMs and Summary Notes\\17-18-October-2017-Summary-Notes-RJC-Standards-Committee]

[6] [Internals\\RJC CoC\\Progress and Impact Reports\\RJC-Impacts-Report 2014]

products) but also the ways in this 'choice' is moulded by industry and adjacent actors. 'Meaningful signals' can be read as thinly-coded ways of shaping preferences, subtly coercive but never overtly repressive. This is the fundamental paradox of power in neoliberal governmentality that Foucault identifies: as power becomes less restrictive, less corporeal, it also becomes more intense, saturating the field of actions, and possible actions (Foucault, 2008, p. 12; and Read, 2009, p.29). In this schema, power ultimately aims to become nothing less than 'common-sense'.

This operation of power is also evinced in the manner in which the RJC (in the same report) propounds the building of coalitions especially with indigenous communities directly affected by mining activities. Industry is advised:

> In most cases, building broad-based support requires a good understanding of the affected group's interests and development aspirations and a mutual trust that the mining activities will benefit, not harm, these groups. This, in practice, means ensuring robust assessment and effective engagement.[7]

Robust assessment and effective engagement here become buzzwords to get indigenous groups 'on side'. Once again, we see the subtle manipulation of 'interest' and 'desire' chiming with Foucault's precept of neoliberal governmentality: power/knowledge 'channels flows of interest and desire by making desirable activities inexpensive and undesirable activities costly' and operates on these very 'interests, desires and aspirations' (Read, 2009, p. 28-29) blurring the lines between what individuals and communities may want and what they are made to (in indirect ways) want.

Nonetheless, when it is too difficult or cumbersome to invest in manufacturing the interest, desire and aspirations of individuals and groups, industry often resorts to old-fashioned muscle-flexing and/or removal from culpability. In the recorded minutes of a World Gold Council Steering Committee meeting held in July 2012 the Chair emphasises 'the importance of serving the interests of member companies rather than seeking to make rules for the whole gold supply chains.' He acknowledges that formalising the ASM gold sector in the Democratic Republic of Congo was a challenge, but ultimately claims:

> [I]t is beyond the power or remit of the World Gold Council or its members to devise solutions. The industry should play its part, but devising means by which large-scale gold miners could demonstrate that their gold was free from the taint of funding conflict should not create the expectation that the formal gold sector would take responsibility for cleaning up the ASM-sector when this was a responsibility of national governments with the support of international institutions.[8]

[7] As reproduced in Bickham, 2014, p. 45.
[8] Ibid., p. 45.

Thus industry has at its behest a 'get-out' clause, and can disavow complicity in or responsibility for issue areas when it suits it.

Lest the above be misread as exceptional, we see similar logics of distancing and disavowal in the very mandate of the RJC. Its mission statement and self-description read as follows:

> The Responsible Jewellery Council (RJC) is a sustainability standards and certification initiative for the jewellery supply chain, unique in that organisations at every step in the value chain (from mine to retail) participates. RJC Membership is open to any business, large or small, operating anywhere in the world, which is active in diamonds, gold or platinum group metals jewellery supply chain. All members commit to becoming certified against the RJC Code of Practices, our standard for *responsible* business practices, within 2 years of joining. The standards requires policies and procedures to be implemented by Members to address the most important issues across the jewellery supply chain such as business *ethics*, human rights, labour rights and working conditions, *responsible* sourcing, environment and health and safety. RJC's voluntary Chain-of-Custody (CoC) standard, complements the Code of Practice, and is designed to build a platform for growth in responsible sourcing, enabling certification of fully traceable supply chains of responsibly mined and sourced precious metals. It serves also to connect responsible businesses along the supply chain, and enables members to make claims about the provenance of their jewellery materials. We strive to be the recognised standards and certification organisation for supply chain integrity and sustainability in the global fine jewellery and watch industry. Our vision is a *responsible* world-wide supply chain that promotes trust in the global fine jewellery and watch industry.[9]

This almost tautological repetition of 'responsible' and 'ethical' without the setting of any firm standards in terms of, for instance, the reduction in child labour, minimum safety conditions set for workers, or specific goals for carbon reduction show a built-in expediency, where standards and commitments are open to interpretation, crucially by the RJC, and always in line with the gold industry itself. This is just another example of the ways in which business leadership in private governance initiatives has allowed industry ample opportunity to construct a social change agenda on industry's terms with 'exit options' intact.

This admixture of impunity, stated upfront, with the increasing power to mould tastes as well as resorting to an arsenal of social responsibility rhetoric, has given industry tremendous sway over the ways in which it conducts its affairs. The result is a much bigger ambit of action, rather than a hemming in by social norms as is often claimed to be the case. The fact that these organisations have made all the minutes of their meetings publicly available is the greatest expression of its normalisation: business

[9] [Internals\\RJC CoC\\MoMs and Summary Notes\\25-Nov-2016-Summary-Notes-RJC-Standards-Committee-Teleconference]. Italics added by authors.

does not need to flout convention because it sets it, with its power hidden in plain sight.

Discussion and conclusion

This brief history and analysis of the aforementioned initiatives in the global gold supply chain illustrate two broader notions. First, scholars have noticed the growth of business power in the global political economy, but our examples demonstrate that most scholars have not gone far enough to fully understand it. Second, when thinking of the benefits of CSR and private regulation, our analysis offers a glimpse of the ways in which these initiatives and their supporters – intentionally or not – further business power rather than (de)limit it.

Our cases show the ways through which business leadership impacts the perceived possibilities for change and, thus, the eventual outcomes in any given policy issue. Industry is able to take control of the political process due to their financial, organisational, and informational resources, driving change on industry's terms. It should be clear to all that the advantages that allow for business leadership are further reinforced through business leadership. Not only is industry positioned to continue to collect and control information – furthering the need to appeal to industry 'expertise' – but they also play a lead role in defining the very norms and criteria by which they are judged. Through the acceptance of these terms and the adoption of the vocabulary of the market, the subtly coercive nature of business power is reproduced and the need for business leadership is further enshrined. Thus, although these new regulations appear to be taking new and innovative forms, viewed through a knowledge/power lens, they are simply a continuation and consolidation of business power by other means.

This paper has shown how business power has continued to widen its scope and scale, through the very mechanisms that have been put in place to keep it in check. Conducting a discourse analysis that is sensitive to utterances and resonances, and with the help of NVIVO to spotlight illustrative examples, we have argued that private governance has enabled this permeation of business power. This is because the relationship between business power and private governance is ultimately mutually beneficial – any radical alternative would undermine the cohesion of the late capitalist system, of which businesses, NGOs, and the state are all beneficiaries. Foucault's insights into the ways in which power works through discourses that discipline and contain, as much as they signify and subjectivize, are crucial in this regard. Indeed, the very internalisation of business logics and vocabularies in the government and third-sectors, are an indication of the ways in which business sets the terms of reference not just for its own operations, but also of the systems and strategies that are put in place seemingly to halt the growth of business power. These strategies sometimes function to obscure the on-going valences of business power – making it ever more difficult to combat it. By demonstrating this imbrication of public regulation and business power, we hope that future research into the invidious effects of the power of industry to set the terms of references, takes into account the ways in which business power has mobilized private governance to further its reach in an ironic, but nonetheless predictable outcome, when analysed from a Foucauldian perspective. We also hope that by naming and offering a granular analysis of business power's encroachment into the social realm, there is a concerted effort to find strategies to resist and counteract some of business' worst excesses.

From a critical perspective, the creation of non-state regulations is a vital component of changing global authority structures for the smooth functioning of the neoliberal economy. Foucault's understanding of power as productive and fluid helps us understand the dynamic and multidimensional nature of business power, laying bare the sometimes elusive ways in which business interests not just encroach but increasingly constitute the social. But applying this lens also opens up space for counterhegemonic voices. Resistance to business power can only be found in recognizing the ways in which business constantly reinvents and reinscribes its authority by different means and challenging the restrictions it imposes.

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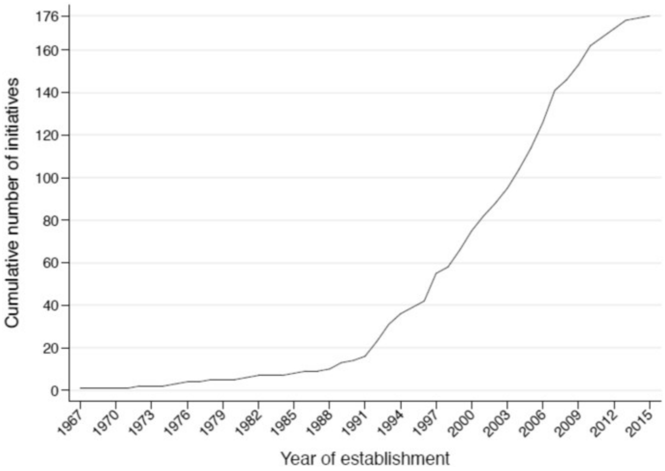
Figures



Source: Schleifer et al. 2019