Informal International Public Policy Making –
A conceptual view from international relations

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1. Introduction

In the past 20 years international cooperation has seen a surge of various types of regulatory schemes beyond the classical intergovernmental approaches. New forms of private and hybrid governance networks have been complementing and at times challenging existing state-to-state dominated models. While private or mixed authority in international cooperation is not new (Hall and Biersteker 2002), the extent, diversity, scope and impact is. While new approaches have mushroomed, intergovernmental policy-making has also undergone change, mostly through increasing reliance on transgovernmental networks representing various domestic public policy areas and from sub-units of the state formerly detached from direct participation in international politics (Slaughter 2004; Andonova et al. 2009). The question this conceptual paper tackles is what the turn towards competing, overlapping or complementing regulatory schemes means for existing transgovernmental networks that operate beyond the formal foreign policy apparatus of the nation-state? The paper focuses on so-called informal international public-policy making (IIPPM) as defined by the New International Law (NIL) project.[1] By public policy we suggest to focus on governance models

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[1] check

where state actors play a prominent role and pursue public policy objectives.[2] The definition of IIPPM in our view, does also allow, albeit to a limited degree, the participation of private actors in the various schemes. However, we exclude new hybrid forms of cooperation among equal partners through two or three-sector collaboration, generally known as public-private partnerships (PPPs) (Elsig and Amalric 2008, Andonova 2010). The notion "informal" captures in our view a more ad hoc-nature and functional forms of cooperation detached from formal rules usually applicable in international organisations (IOs).

While many of emerging transgovernmental networks have been studied prominently in international law (IL) and international relations (IR), the latter discipline has largely redirected its attention away from these types of networks. IR scholars have been attracted by the prospects of private authority, the emergence of conceptual tools to analyse private power, and growing expectations of significant contributions by newer forms of private and hybrid partnerships As a result, IR scholars have to some degree overlooked the changing characters of state-to-state actor cooperation.[3] This stands in contrast to the field of IL which traditionally has been studying international politics and law through governmental lenses giving preference to transgovernmental schemes over those largely dominated by private actors. This bias can be explained by historically-induced expectations that international law (whether hard of soft) is still predominantly the business of governmental actors. Put differently, international cooperation without proper participation of "nations" provides not a promising starting point for traditional IL.[4]

This paper is structured as follows. In section 2 we discuss structural changes that have impacted on the balance of international governance schemes and attempt to locate IIPPMs in a multiple fora perspective. Section 3 offers a taxonomy of IIPPMs defined by two key functions and along the policy cycle. Section 4 reflects on existing IR theories and suggests that existing approaches have not offered sufficient analytical leverage to understand the politics and outcomes of newer forms of IIPPMs. Section 5 offers a framework based on principal-agent theory that could be of more conceptual assistance in addressing IIPPMs. Section 6 maps the balance between principal and agency costs. Section 7 concludes.

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[2] In the IR literature, private regulatory schemes are also understood as forms of governance and can also be defined by their "public" nature seeking to provide for some forms of public goods (see Andonova, Bestill and Bulkeley 2009).

[3] With some exceptions as to regulatory politics in finance and competition…

[4] Some of the earlier work has been surprisingly optimistic, a number of proponents have been recently scaling back the expectations as to the impact and performance of these schemes (Slaugther 2000, Slaugher and Zaring 2006).

2. Structural changes and effects for IIPPM schemes

With globalization accelerating since the early 1990s (and growing demand for addressing various forms of externalities) international governance schemes have undergone substantial change. Yet, what has remained is that the global governance system continues to be characterized by governance without a global government (Rhodes 1996, Rosenau 2000) based on authority as the key instrument for "allocating resources and exercising control and co-ordination (Rhodes 1996: 653)." What has changed in relation to authority is the composition of actors leading to a relative shift or at the very least diversification from a largely state-led to private or hybrid systems of authority (Abbott and Snidal 2009, 2010, Andonova 2010, Ruggie 2003, Reinicke 1999). In addition, policy fields increasingly overlap and interaction between regimes is characterized by fuzzy borders (Dupont and Elsig 2010). Governance as a "purposive act of 'steering' a society or policy" involves more and at times competing networks (Lowndes 2001: 1961). While globalization has provided opportunities for creating new forms of cooperation fuelled by an increase in public awareness of the downsides (as well as the prospects) of globalization, additional factors have contributed to the rise of private actors.[5] These include the emergence of national and international opportunity structures for deliberation and politicization following the end of the Cold War (and ensuing democratization processes), as well as the growing access to low-cost information technology assisting groups in overcoming classical collective action problems (Olson 1965).

While above factors are well known and studied in quite some depth, IR theory has neglected the relative decline in IIPPM type of transgovernmental networks in comparison to newer types of cooperation schemes involving private authority (Abbott and Snidal 2010). According to some authors, the role of the states (and IOs) themselves seem to have transformed, increasingly carrying out a background function, described as managing, orchestrating, facilitating or steering, departing from a monopolist application of political authority (Abbot and Snidal 2010, Genschel and Zangl 2008; Reinicke 1999). Others have contested the assumption of the decline of the state, however, by pointing to the strong presence of the state, particularly industrialized countries, in vetting, funding and steering of hybrid networks (Andonova 2010; Borzel and Risse 2005) as well as to the ability of power states to manipulate the multiple emerging fora of governance to their advantage.

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[5] In particular the role of civil society organizations (CSOs) stands out.

As a result of the shifting focus on the changing nature of state involvement in private actor dominated schemes or public-private collaborations, IR scholars have neglected how the overall transformation that has taken place has affected transgovernmental governance schemes themselves. While these schemes may have suffered a relative decline vis-à-vis other schemes as the state increasingly engages non-state actors in informal governance, structural factors (and competition with other schemes) have also opened up new opportunities for state actors interacting directly in informal settings bypassing strict oversight by the public. In particular, regulatory experts in policy areas originally detached from direct international cooperation may find themselves more and more in transnational governance networks focused on particular functional areas associated with regulation (Slaughter 2004). Informal transgovernmental mechanisms could also be established by national bureaucracies seeking informal mechanisms to bypass or break various deadlocks in intergovernmental cooperation or to enhance the implementation capacity and regulation-related services where such mechanisms might be absent in a formal intergovernmental treaty or organization. Indeed climate change regulation and governance has been an arena which exemplifies the proliferation of IIPPM practices alongside with largely private and hybrid networks (Andonova et al. 2009) As already suggested, however, the universe of transgovernmental networks and IIPPM schemes has not attracted adequate focused theoretical and empirical analyses in political science beyond studies broadly concerned with the changing nature of transnational governance and the multilateral system.

3. The universe of IIPPM schemes

How do we conceptualize the range of activities falling into the IIPPM category and their relation to more traditional, formal intergovernmental type of public governance? Firstly, we define the transgovernmental networks operating in the IIPPM, following the conceptualization by Keohane and Nye (1971) and later Risse (1995) as cross-border collaborative activities that involve subunits of government which are "not controlled by the central foreign policy organs of governments" (Keohane and Nye (1971). Such networks are thus involved in IIPPM, but typically do not have formal authority to negotiate legally binding agreements. Secondly, we suggest – as for any governance scheme – to focusing on the functions these networks are carrying out and to map these across the policy cycle. Functions can be quite diverse; these may include the "diffusion of information, knowledge and norms,

the pooling and distribution of financial, managerial and technical resources; and (…) the negotiation and establishment of a set of norms, rules, and standards (…) (Andonova et al. 2009: 63)."[6] From above we propose to separate the various tasks in two interlinked public goods alongside the policy cycle. The first public good is objective-setting (these includes general rules, standards and specific obligations) and the second one relates to service provision that is based on existing agreed objectives (e.g., information exchange, technical assistance, capacity building, and implementation). Figure 1 maps intermediate outputs throughout the regulatory cycle and sketched the elements of the two types of public goods. We posit that transgovernmental networks are either more actively engaged in objective-setting or in service provision; few networks will be overseeing all functions along the entire policy cycle. Some networks are only active in one specific point in time (e.g., in agenda-setting or final implementation support).

The provision for the first public good (objective-setting) can be further sub-divided into three separate stages. An initial important step in any political system is agenda-setting (e.g., Bachrach and Baratz 1962). Some IIPPMs, such as the Major Economies Forum in the climate change arena, for example, might prove influential in this stage where it is decided which forum will be playing an important role, which ideas and principles to be followed and which actors to be invited to participate. Second, the long lasting process of elaborating rules, standards or the like follows. Whereas the agenda might have been set elsewhere, some transnational governance networks may play a driving role towards designing new or modified objectives. We posit that during this process actors are largely cognizant about distributional effects of their activities and negotiation behaviour is largely driven by the degree of politicization of an issue-area. The third stage is about reaching agreement on how to provide for compliance (either through soft law or hard law instruments; sticks or carrots) with agreed objectives. We anticipate that these types of functions are less likely to be embedded in transgovernmental networks due to their limited legal authority in international policy making.

The second type of public good (any type of service provision) we argue is related to the implementation of some objectives that have been set by internal or external schemes (e.g., agreed within IOs, clubs (e.g. G20, G7) or other IIPPMs). Here we suggest differentiating as well three stages. In a first stage, a certain IIPPMs is delegated a mandate to carry out particular implementation functions. Contracts defining the objectives and role of

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[6] See also Risse-Kappen 1995. These tasks could be further divided in three functional categories defined as public purposes; these include "information sharing; capacity building and implementation: and rule-making (Andonova et al. 2009: 63).

parties are by definition incomplete and by giving authority to IIPPMs to assist or manage implementation, there is room for discretion. As actors might disagree on the exact reading of their mandates, there is first a process starting related to the interpretation of the exact scope of activity.[7] Second, a deliberation process sets in how to best carry out the service provision (e.g., financing, technical assistance, projects, etc) to meet the defined objectives. Some instruments might be defined in more contract contracts, others still need agreement. Third, the micro-implementation stage sets in (the actual provision of a service) with the possibility of further delegating tasks within the IIPPMs or to third actors.

Figure 1: IIPPMs alongside the policy cycle

Policy Cycle
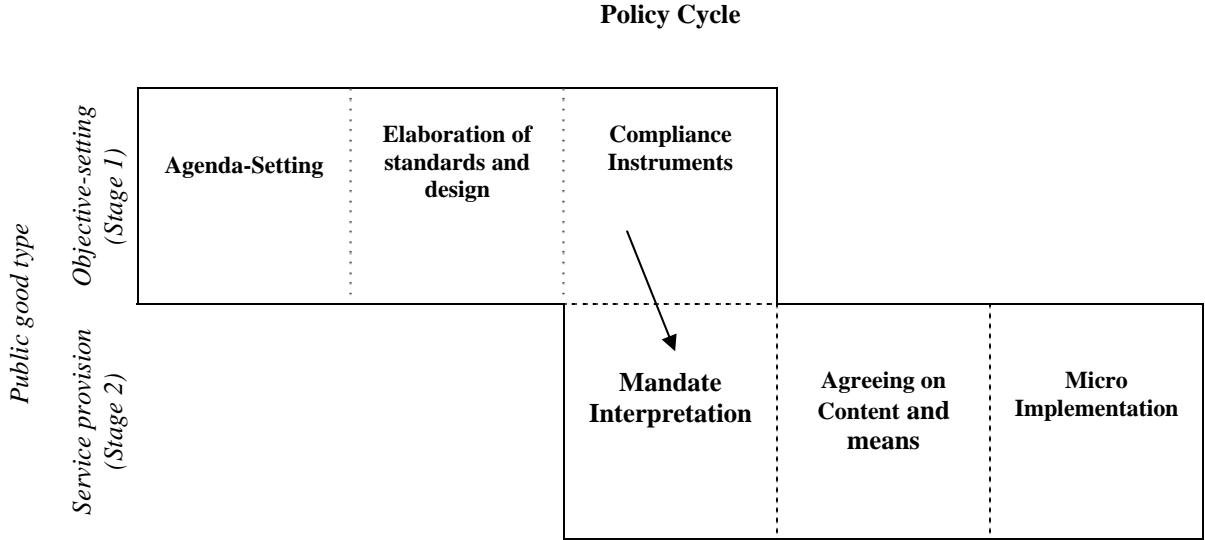
4. Theoretical frames in IR

Before outlining our framework of analysis to capture the nature and role (and potential performance) of IIPPMs, we briefly review key theoretical approaches and map different expectations from the three grand schools of IR. The liberal (institutionalist) school has provided theoretical explanations as to the function of international institutions since the late 1970s. Institutions and issue-specific international regimes have been viewed as important

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[7] This stage will be less important if the same IIPMS that is mandated to provide for implementations has been responsible for standard-setting as well. The interpretation room is smaller in this case.

mechanisms overcoming cooperation problems by providing information, transparency, lowering transaction costs, and tackling compliance problems to allow and sustain cooperation (Krasner 1983; Keohane 1984). While early work seemed to suggest to focus on intergovernmental transmission belts, more recent liberal research programmes such as the rational design of international institutions and the effects of legalization (Koremenos et al. 2001, Goldstein et al. 2000) have largely neglected the micro-processes in international governance schemes. The focus of that literature has been furthermore decidedly intergovernmental although the concept of international regimes did include a broader conceptualizations of regimes consisting of formal as well as informal rules, norms, and decision-making procedures (Krasner 1983). As already indicated the current scholarship have paid more attention to networks as mechanism of governance in parallel to international regimes, with greater emphasis on prominent private actor participation and fewer studies focusing on transngovernmental networks and their interplay with regimes (see, however, Slaughter 2004 on the embeddedness of networks in formal IOs and governmental organizations).

If we turn to realism, there are two strands of realist thinking as to the role of international institutions. One group of realists would see any transgovernmental network as serving the interests of leading powers. National bureaucrats meeting within the international setting are mainly concerned with representing national interests. Therefore, outcomes from IIPPM reflect the interests of the US and EU (Drezner 2007). When big powers fail to agree and various voices are visible, the outcome will be dead-lock with the result that dominant actors will engage in forum-shopping. Another strand of realism considers agencies beyond the nation states as lacking any autonomous impact on outcomes (Downs, Rocke and Barsoom 1996). If these schemes lack implementation power, any cooperation is modest at best.

Social-constructivists see these networks mainly as norm-setters and arenas of norm-diffusion (Finnemore and Sikkink 1998). They attribute real agency to them. Governance networks will undergo various types of socialization processes. Checkel (2007) for instance sees three sequential steps to achieve full socialization. First, actors' initial positions are characterised by rational calculation (logic of consequences). Over time endogenous change sets in. In a 2nd stage, the rational logic is replaced by cognitive role playing. In the 3rd stage, the logic of appropriateness drives processes allowing for normative suasion. Various factors impact on the speed of this process (and the likelihood of achieving full socialization); these include prior held attitudes towards cooperation (and global public goods) by participating actors, the intensity and rate of interaction, the degree of autonomy from Ministries (and

interest groups) at home. Other social-constructivist work suggests that like any international bureaucrat, actors within IIPPMs are tempted to use their legal, moral and technical expertise for pursuing their interests, leading sometimes to pathological behaviour and undesired outcome (Barnett and Finnemore 2004.). While realists might have overestimated the structural power of states, the social-constructivist schools might have relied too heavily on agency autonomy.

5. Principal-Agency and new IIPPM

Addressing some of the limits of standard IR theory, we suggest analysing IIPPM within a principal-agent (PA) framework. A focus on key PA relations helps overcome the myopic views of social-constructivist and realist theories by combining structure and agency more aptly in one model (where external and internal sources of behaviour meet). While social-constructivism seems to overemphasize run-away agents, realism puts too much attention onto big powers' control not allowing any meaningful autonomy within these networks to emerge. In PA theory, the structure is mainly represented by the principals, a set of governmental actors that are responsible for overall foreign policy of a state. Depending on the location along the chain of delegation that seems pertinent for explaining outcomes, we might focus on Ministries, national parliaments, or voters (in democratic systems) as key principals. If we treat IIPPMs as agents with delegated authority by subunits of the state, the most influential principals are those most directly linked via the delegation chain to the final agents (e.g., executive agencies/Minister ③) (see figure 2). The agents are those mandated to represent the principals in an informal transgovernmental setting (IIPPM:④). There are two distinct logics: First, individual PA relations between national Ministries and their representatives in the IIPPM. These can vary depending on the informal and formal oversight mechanisms (individual mandates and control tools) in place. Second, Ministers may from time to time gather as a collective principal (e.g. in the context of the Basel Committee) and renew mandates to the IIPPM or accept and control outcomes produced by IIPPM's. The influence by parliaments (②) and by the ultimate principals (voters ①) can be rather limited given the long delegation chain and strong informal processes (Grant and Keohane 2004), although Slaughter 2004 has argued that the embeddedness in and thus close oversight by executive agencies of transngovernmental networks in effect nests the IIPPM practices directly in the system of domestic accountability down the chain of democratic delegation. This would be only the case, however, if parliaments invite or require national bureaucrats to

report on the IIPPM activities they have established. The limited reporting requirements in an informal network context can make transgovernmental networks in effect far detached from voters in democratic system and few political parties would use the work of IIPPMs as an important election campaign topic. Such networks could, in fact, be also interpreted as mechanisms national executive agencies use to increase their agency autonomy vis-à-vis its domestic principals (Moravscik). Further empirical work along the lines suggested by the project might shed important light on the debate regarding the extent to which transgovernmental networks are invested with delegated authority, the nature of that authority and activation of mechanism of control and democratic accountability.

Figure 2: Delegation Chain
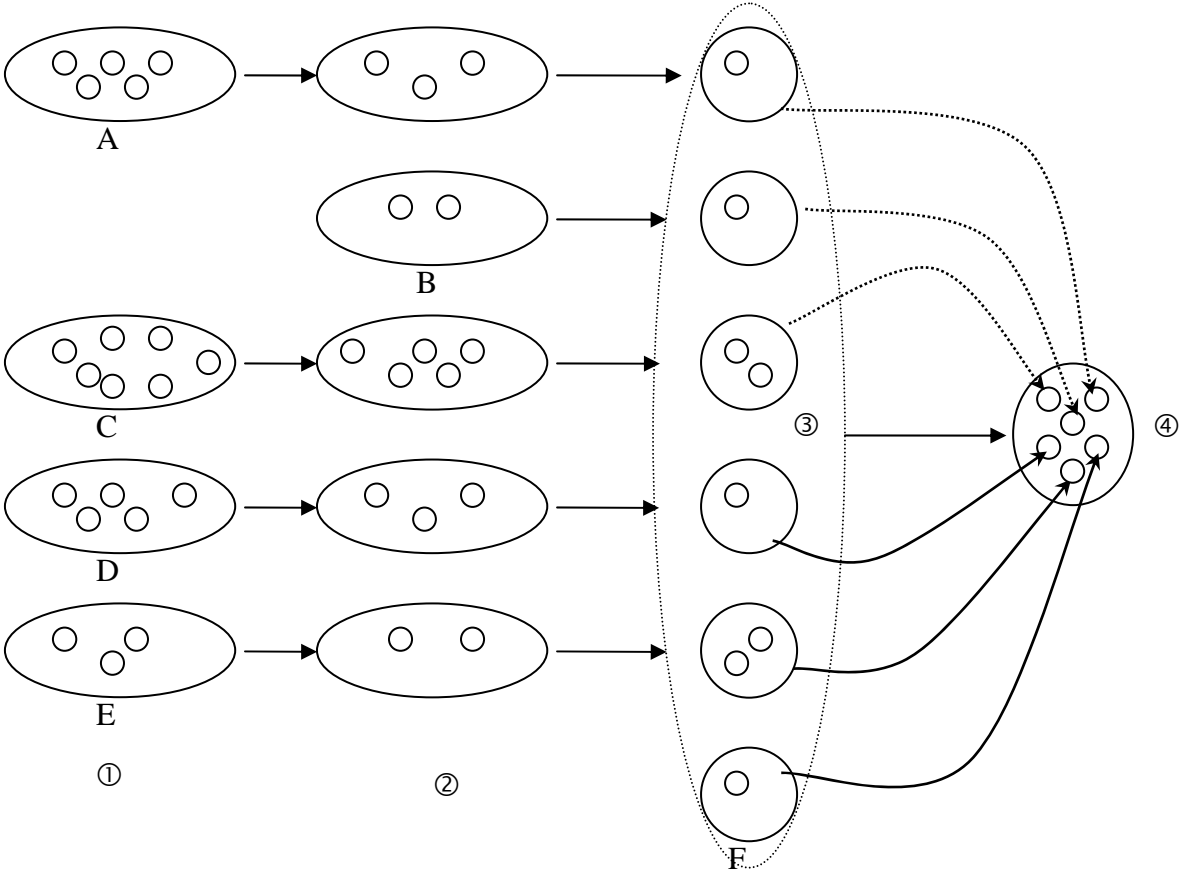
Notes: ① voters in democratic countries A, C, D, E; ② parliaments or national assemblies (A-E); ③ government with specialized Ministries (A-F); ④ IIPPM as the ultimate agent.

IIPPMs differ across various PA parameters. Therefore, in order to analyze the role and influence of the group of agents, we need to focus on the nature of the contract, the mandate given to IIPPMs, control tools held by principals to influencing evolving politics and finally the preferences and strategies of agents given the constraints by contract design and principals' vigilance. Only when we understand preferences and the effect of control instruments in given PA relations, is it possible to assess the conditions under which IIPPMs significantly impact on performance (see also Elsig 2010). Let us briefly review four steps of PA analysis:

First, who are the principals, what are their interests and why do they delegate? The tackling of these questions is important to explain individual and collective contracts between principals and agents. What is the nature of the task that is being delegated? The PA literature offers various reasons for delegation (Pollack 1997, Majone 2001, Hawkins et al. 2006). The objective of the contract therefore creates different types of agents. In our context this could be agenda-setting agents, negotiation agents, or implementation agents. Under this rubric it would be important to consider to what extent, if at all, different transgovernmental networks involve delegated authority and creation of agents at all. As Hawkins et al. 2006 have pointed out even formal intergovernmental cooperation can involve more, less, or no delegation to an agent (in their case a formal IO). It would be therefore important to what extent and through what mechanisms IIPPM arrangements involve delegation to transgovernmental networks as agents.

Second, why and how do principals control? Delegation is naturally accompanied by control tools, some more explicit than others. These include ex ante tools (screening an agent, appointment procedures), on the spot tools (regular reporting requirements), and ex post instruments (acceptance of outcomes, re-appointment, firing). Depending on the nature of the task delegated, the compositional effects of control tools vary. An implementation agent will receive relatively substantial autonomy, therefore the selection process and the writing of the mandate appear more important than ex post or on the spot control. A negotiation agent will face more on the spot control through reporting based on repeated interaction (at locus control) and ex post control through acceptance of outcomes or frequent re-appointment mechanisms.

Figure 3: Agency discretion and the nature of the task
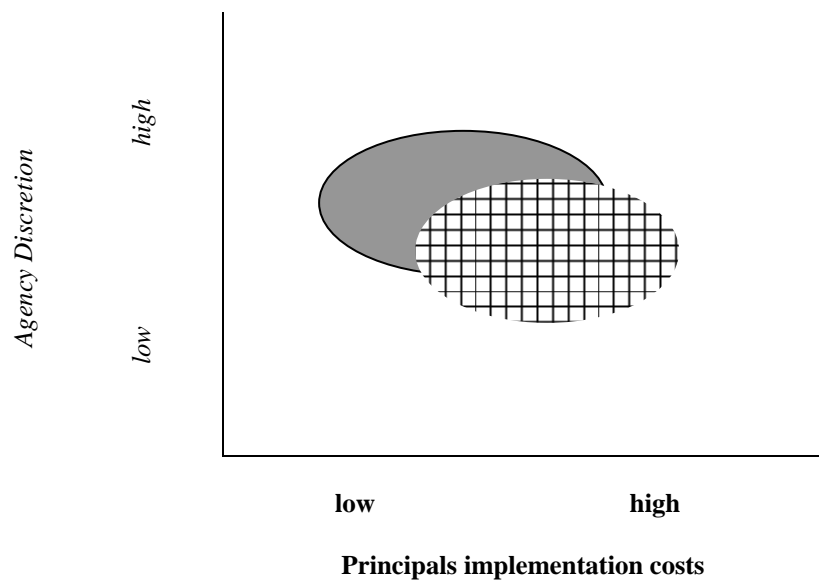
Notes: Services provision (shaded in grey); objective-setting (large grid)

Third, what defines agent autonomy by design? As mentioned above, key constraining features for agent autonomy are the clarity of the mandate, the selection process (e.g., screening) where principals attempt to choose agents close to their preferences and an array of oversight mechanisms; these include credible signals to agents that they should work-to-the-rule and should not follow other incentives that eventually lead to agency slippage or shirking. We posit that agent autonomy differs for to the two types of IIPPM public goods that are provided. Agents in objective-setting are generally more constrained than agents in service provision, leading more wiggle room to the latter (see figure 3). We posit that overall perceived distributional costs in objective-setting loom larger for principals than costs related to the implementation of pre-established norms and standards.

Fourth, how do agents behave given above described constraints? Under what conditions do agents use "autonomy"? Agents meeting in an informal setting will engage in forms of behavior that could depart from original expectations of principals. Based on the existing empirical literature (mainly the PA literature and social-constructivism) it is fair to assume that with less control, less politicization, more convergence of interests (towards a common cause), less hierarchical debates and more and intensive meetings over a longer period of time, the agents aggregated positions will over time be increasingly buffered from principals' signals (Checkel, 2007). The potential divergence between agents' actions and

principals' intensions, however, does not automatically incur societal costs, as long as agents follow the long term objective to provide for public goods.

6. Principal Costs, Agency Costs and Performance

PA is useful in particular in highlighting the costs (e.g. agency or principal costs) that emerge throughout the policy cycle. How do we define the two types of suboptimal outcomes which are rooted in inadequacies in design and behaviour? First, principal costs develop as a result to inadequate delegation (at the beginning of the cycle). This hinders the agent to perform in a way to adequately tackle the cooperation issue at hand. Thompson has highlighted three types of principal costs related to delegation (2006): These include providing too few resources to carry out tasks (*principal shirking*), absence of consensus and ambiguous mandates (*principal drift*) and finally opportunistic behavior by principals attempting to capture the agent. (*principal subversion*).[8]

The literature usually differentiates various types of agency slack, some creating more costs than others, e.g. agency shirking or agency slippage. The former is related to minimizing agents' efforts while the latter is a clear departure from principals' mandate (see Hawkins et al. 2006: 8). Slippage is more likely to produce agency costs. These develop when agents follow their own particular interests (as a result of little oversight) which in turn negatively affect overall performance.[9]

We posit that for any IIPPM there exists a societal optimum where performance is highest when principal or agency costs are controlled for. As mapped in figure 4, we suggest a non-linear relationship between agency discretion and performance output. We differentiate two distinct paths for objective-setting and for service provisions. We suggest that performance is generally more volatile in service provision. A reason for this is that principals generally are paying more attention to the setting of norms, rules and standards and leave agents in service provision more autonomy from the start. Therefore, less constrained agents can more easily engage in mutual cooperation to focus on aggregate gains for those involved. Given more autonomy, these networks are also more likely to be suffering from agency costs the longer the PA relation exists and the more agents have been able to buffer from principals over time. In objective-setting we witness stronger concerns by principals early on which

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[8] Gutner (2005) suggests costs (witnessed in bad performance) as a result of conflicting tasks that are being delegated to the agent which she calls "antinomic delegation".
[9] If agency interests and the societal long-term interests overlap, than this does not pose a problem.

inhibits sufficient delegation which leads to principal costs (some IIPPMs never achieve the optimum and agency costs do not materialize). Figure 4 provides an overview.

Figure 4: The performance optimum and PA costs
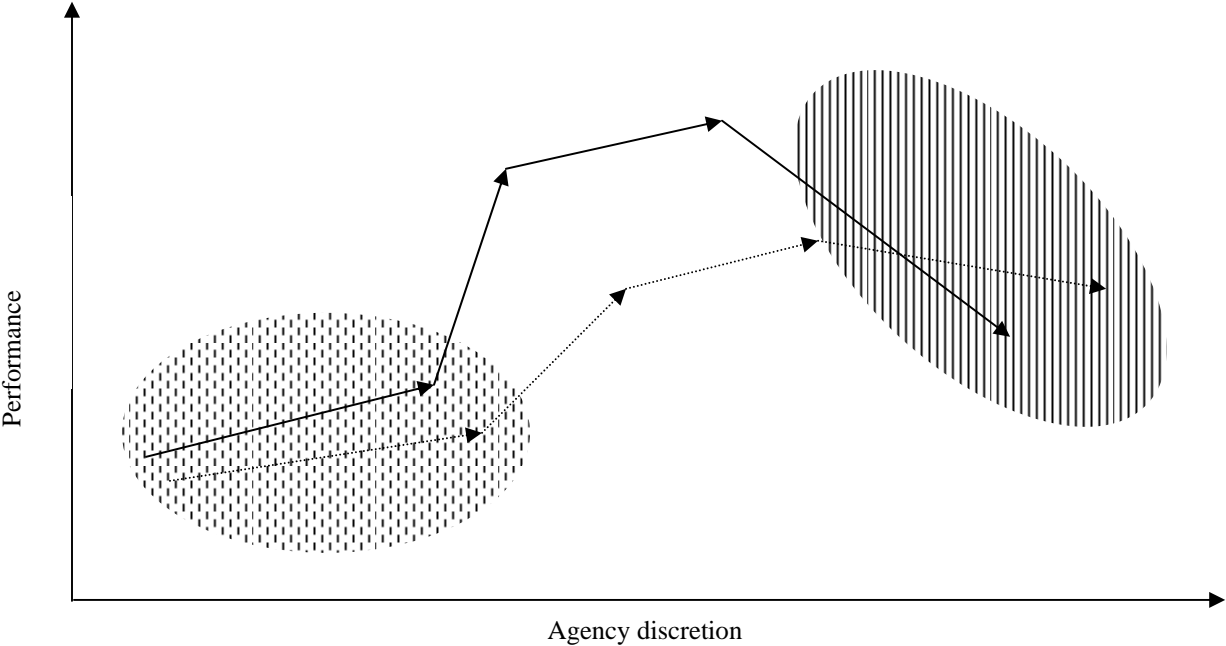
For any type of IIPPM it is important to assess the PA relationship between Ministries (individual principals) and their delegated representatives (individual agents). In addition, there is need to focus on the effects of the existence of Ministries (with potentially diverging interests) acting collectively (collective principals). Finally, on the agency side we need to focus on dynamic effects within IIPPMs that develop common understandings and rules for interest aggregation. Therefore, after the study of individual PA relations the focus should turn to the inner life of the IIPPMs and assess how interaction, convergence of ideas, etc. can contribute to overall good or bad performance (given benchmarks defined ex ante), see Gutner and Thompson (2010). This can assist in assessing the conditions under which IIPMS might degenerate following material interest of agents. Yet, we posit that in most cases IIPMS are characterised by sufficient principal oversight (and they might be more likely hampered by principal costs than agency costs).

7. Conclusion

In this conceptual paper, we have tried to approach IIPPMs with tools developed in PA theory. The final issue, we like to emphasize are compositional effects on IIPPMs performance. The more active private parties are in the setting of standards or the provision of services (either within the same IIPPMs scheme) or in competing schemes, we need to adjust the analysis by taking the relations with these so-called third parties into account (see also Hawkins et al. 2006). In this sense the literature has often looked at agencies interacting with third parties to find common grounds and mutual support. What has been less analysed is that also principals work with third parties to control agents. Therefore, third parties in such a trilateral exchange become an important additional actor to be studied in its effects on the existing PA relationship.

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