

**THE POTENTIAL OF CONTRACTING IN GLOBAL AGRI-FOOD
GOVERNANCE**

THE POTENTIAL OF CONTRACTING IN GLOBAL AGRI-FOOD GOVERNANCE:
THE PURSUIT OF PUBLIC INTERESTS THROUGH PRIVATE CONTRACTS

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**TITLE: THE POTENTIAL OF CONTRACTING IN GLOBAL AGRI-FOOD
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CONTRACTS**

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LAY ABSTRACT

This dissertation examines the potential of private contracts to increase the sustainable and ethical production and consumption of food. It argues that contracts are more capable of regulating over important issues that are of common concern than they are given credit for. It also argues that commercial contracts have particular features that make them well-suited to regulating long-distance relationships that span the borders of countries and include a variety of different stakeholders. This is noteworthy, because the regulation of long-distance relationships is becoming both more common and important in the world today. To demonstrate my arguments, the dissertation uses data taken from interviews with pineapple farmers and exporting companies in Ghana who produce pineapple for supermarkets in Europe. It also draws on interviews from public regulators in the European Commission, and international organizations, as well as lawyers, academics and private standard-setting bodies in agriculture such as GlobalGAP.

ABSTRACT

This dissertation contends that to appropriately address important cross-border problems and pursue public interest(s) in an increasingly globalized world, we must deal directly with the more complex, networked, interdependent and hybrid governance forms which have grown increasingly common alongside globalization. Consequently this, dissertation examines the largely unexplored possibility of commercial contracts to act as a governance tool capable of improving the ethical quality and effectiveness of global agri-food governance to address critical challenges in that sector. These include those associated with food safety, ecological sustainability and biodiversity, gender equality, access to food, poor working conditions, inequality as well as issues of representation and inclusion in decision-making.

To do so, the dissertation advances a novel conceptual framework of commercial contracting that opens up space to explore and identify features of contracting which enable it to go beyond private interests to also address public ones. To demonstrate this, the dissertation utilizes empirics from my case study, which is grounded in the transnational pineapple value chain between Ghana and Western Europe.

This dissertation makes four key contributions to knowledge. First, it has developed a novel and generalizable conceptual framework of contractual governance through which activists and policymakers can address critical global agri-food governance challenges. It has also advanced practical options to do so. Second, this dissertation has important implications for global and private agri-food governance literatures, which have ignored the commercial contract and the influential role that it plays in the governance of food. Third, this thesis contributes to a body of existing literature indicating that “private” governance arrangements may be more capable than many often given them credit for in governing in democratically legitimate ways over issue areas of broad public interest. Finally, this thesis contributes empirical data in a field and area of study which is notoriously opaque and inaccessible.

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LIST OF ABBREVIATIONS

B2B—Business-to-Business
B2C—Business-to-Consumer
BRC— British Retail Consortium
CSO—Civil Society Organization
EG—Experimentalist Governance
EU—European Union
FAO—Food and Agriculture Organization
FBO—Farmer-Based Organization
FSSC—Food Safety System Certification
IIED—International Institute for Environment and Development
IISD—International Institute for Sustainable Development
ITC—International Trade Centre
IWMI—International Water Management Institute
FOB—Free on Board
FRT—Food Regime Theory
GAP—Good Agricultural Practice
GDP—Gross Domestic Product
GHGs—Green-house Gas Emissions
GMO—Genetically Modified Organism
GPE—Global Political Economy
GPN—Global Production Network
GVC— Global Value Chain
IFS—International Featured Standards
ILO—International Labour Organization
IO— International Organization
ISO—International Standard Organization
LEAF—Linking Environment and Farming
MOFA- Ministry of Food and Agriculture
MSI—Multi-Stakeholder Initiative
NIE—New Institutional Economics
NGO— Non-Governmental Organization
OECD—Organization for Economic Cooperation and Development
PA—Private Authority
SDG—Sustainable Development Goals
SMETA—Sedex Members Ethical Trade Audit
TNC-Transnational Corporation
TPR— Transnational Private Regulation
TRSS—Transnational Regulatory Standard-Setting Scheme
UAE—United Arab Emirates
UK—United Kingdom
UNCITRAL—United Nations Commission on International Trade Law
UNCTAD— United Nations Conference on Trade and Development

UNIDROIT—United Nations Institute for the Unification of Private Law

USDA— United States Department of Agriculture

USD—United States Dollar

WB—World Bank

WHO—World Health Organization

WTO—World Trade Organization

DECLARATION OF ACADEMIC ACHIEVEMENT

This project is solely the work of the author, and the contents of this thesis are not the result of any collaboration. Any mistakes herein are solely those of the author.

Chapter 1- Globalization, Global Governance and Private Authority

“Without a concerted effort to press forward our understanding of the complexities of global governance, the way that authority and power are exercised, and the ideational and material aspects of global organization, we risk not only misunderstanding the world around us but also underestimating our capacity to make meaningful adjustments to that order.” (Weiss & Wilkinson, 2014, 211).

This thesis examines the possibility of commercial contracts to act as a governance tool capable of improving the ethical quality and effectiveness of global agri-food governance to operate in the public’s interest(s). It adopts a constructivist definition of the “public” iterated by Best & Gheciu (2014, 48) who define “the public” broadly as those “goods, actors, or processes that are recognized by the community in which they are carried out as being of common concern.” Such a definition is one that emphasizes that who and what is considered “public” is a matter of communal interpretation and, therefore, always performative and continuously subject to change.¹

Further, it understands governance to mean that which is “concerned with conducting the public’s business through the authoritative allocation of resources... through an instituted process of control and coordination with other actors” whereby Actor “A” is able to will actor “B” to follow A, and B voluntarily complies (Kahler and Lake, 2004: 409).” A key component of such a definition of governance is that it recognizes that both traditionally “public” actors such as the state, and IOs, as well as “private” actors, including NGOs, civil society more broadly, epistemic and moral communities, transnational corporations, and even criminal organizations are capable of governing over the public’s business and in their interest (Andonova et al., 2009, 55)

Finally, to govern *in the public’s interest(s)* refers to a process of governance that is broadly representative, participatory, accountable and transparent to those affected and whose governance outcomes related to public issues are sustainable into the future (Lewis, 2006; Porter 2016).

The thesis is empirically grounded in the transnational agricultural value chain for pineapple between Ghana and Western Europe. Thus, its insights, although more widely applicable to global and private governance audiences, are especially relevant to social scientists interested in exploring how we may be able to address pressing governance challenges present in the global agri-food sector in innovative and new ways. These include challenges that are associated with issues such as food safety, ecological sustainability and biodiversity, gender equality, access to food, poor working conditions, inequality as well as issues of representation and inclusion in decision-making. My dissertation seeks to build on global governance literatures that recognize the increasingly

¹ This is not to say however, that the meaning of concepts do not become deeply embedded within the fabric of societies in a relatively static manner for significant periods of time, as was the case in relation to an understanding of the public as synonymous with the democratic nation-state throughout much of the 20th century.

complex, networked, informal, non-hierarchical, and transnational nature of many contemporary governance arrangements, as well as the substantial role that non-state actors play in shaping these alongside traditional state actors (Keck & Sikkink 1999; Cutler, Haufler & Porter, 1999; Cashore, 2002; Rosenau, 2007).

This dispersion of political authority to non-state actors as well as the growing complexity of contemporary governance has been approached from both pessimistic and optimistic perspectives within global governance literatures. For example, critics of these developments have highlighted how the increasingly informal, technical, private, and transnational nature of many new networked governance arrangements can make them undemocratic, unaccountable, interest-driven, corruptible and opaque to stakeholders and broader publics who are impacted by them (Gill, 1998). This can occur, for example, in situations where public actors delegate their regulatory authority away to narrowly accountable self-governing private professional associations, or when transnational corporations leverage their significant material resources to push their preferred regulatory preferences in areas such as labour standards or the environment, that have broad public implications for a much larger number of transnational stakeholders involved in their global production networks (Haufler, 2018).

Alternatively, proponents have pointed towards the potential for improved effectiveness, flexibility, transparency, inclusion and responsiveness that networked forms of governance may offer at the transnational level, especially given the growing speed and complexity of our contemporary world (Abbott & Snidal, 2009; Sabel & Zeitlin, 2010).

In either case, this dissertation contends that if we are going to appropriately address important cross-border problems and pursue public interest(s) in an increasingly globalized world, we must deal directly with these more complex, networked, interdependent and hybrid governance forms rather than revert back to methodologically nationalistic approaches centered primarily on states, international organizations, formal law and international treaties (Porter, 2016, 13).

In this vein, contemporary global governance scholars have repeatedly emphasized the importance of paying close attention to the increasingly dispersed and polycentric sources of private, moral, and technical authority in global governance that operate in addition to and interact with traditional state-based public political authority and international law (Black, 2008; Cutler, Haufler & Porter, 1999; Gill, 1998; Porter, 2005; Rosenau, 2007). Remarkably, however, much less attention has been paid to the possibilities associated with private law and commercial contracts to improve governance outcomes across a wide range of areas of the Global Political Economy, but in particular, with respect to agriculture.

In the few cases where scholars have explored the implications of private law and commercial contracts for global governance challenges more generally, they have done so

primarily from critical perspectives.² These approaches are ones that seek to break with common descriptions of private law and commercial contracting as “apolitical,” “neutral” and disconnected from broader public policy objectives in order to draw attention to the increasingly “public,” political, and power laden influence private law now has at the global level (Calliess & Zumbansen, 2010; Carusso, 2006; Cutler, 2003, 2013, 2018; Cutler & Dietz, 2017; Zumbansen, 2014). Certainly, these approaches offer highly poignant and valid critiques as well as important insights into the evolving interrelationship between private law, globalization, governance, power, and authority in transnational spaces. Yet in my own view, they do not engage productively in theorizing how an emerging and dynamic system of private contractual governance might be used in somewhat subversive ways to the collective benefit of humanity as well as transnational stakeholders often impacted but unable to meaningfully shape the conditions of their participation within private transnational governance systems.

This dissertation seeks to contribute to this gap in the literature in two ways. First, from a practical perspective, it seeks to develop policy relevant suggestions to improve governance outcomes in the global agri-food sector through the use of commercial contracts. In this respect, my research is enactive and not purely an academic pursuit. It has a normative and political purpose, which is to grapple with the unjust, unsustainable and unhealthy elements of global agri-food systems and to think about how these can be altered to be made more just, healthy and sustainable (Campbell, 2016).

In order to do so, the significant yet under-appreciated regulatory character of contractual governance must be made legible. This will allow us to better understand the impactful role that these instruments play in global agri-food governance, their shortcomings, and what might be required to develop them into more effective instruments capable of addressing important global agri-food governance challenges.

Second, I want to bring global governance literatures into closer conversation with an emerging transnational legal literature that is interested in understanding at both a theoretical and practical level private law’s growing role in contributing to and addressing major cross-border challenges (Zumbansen, 2010; 2014). In the past, there have been productive exchanges between traditional International Relations and International Law scholars focusing mainly on states, international courts, public international law and treaty-making (Keohane 1997; Slaughter, Tulumello & Wood, 1998). However, I argue

² The work of Fabrizio Cafaggi and Paul Verbruggen are exceptions to this critical approach and have also paid attention to the role of private contracting in agri-food governance. Indeed, these authors focus on the possibilities of private law and commercial contracting to advance sustainable, just and effective global / transnational governance. However, their analyses differ from my own in that they both pay less attention to the participatory procedural aspects of contracting which is important to my theoretical framework which I outline in Chapter 4. In addition, their emphasis is more focussed on Transnational Private Regulation (TPR) broadly and how TPR is interacting with “public” actors and their approaches to global governance (Cafaggi, 2011, 2013, 2014, Verbruggen, 2013). In this respect, TPR includes a variety of other private governance mechanisms in addition to private law and contracting within its scope such as private voluntary sustainability standards.

that neither mainstream International Relations scholars, nor other global governance scholars have paid sufficient attention to the role of private law, and its use by non-state actors in their analyzes of transnational relations and world politics. By examining the governance role that commercial contracts play in the global agri-food sector, I hope to bring these literatures on global governance and transnational law into closer conversation with one another in an effort to enrich theoretical and empirical debates within global governance scholarship.

The project is situated in what David Coen and Tom Pegram (2018) have called a third generation of global governance scholarship. This generation of scholarship is one that readily acknowledges the complexity and multi-scalar nature of global governance, the value of interdisciplinary approaches to theory-building and problem-solving, as well as the role that micro-level instruments of governance and individual agency can have on governance outcomes in spite of macro-level structures and the influence that these structural conditions have in conditioning behaviour and limiting options. The project also draws inspiration from a sociolegal literature which is frequently preoccupied normatively with questions of fairness and justice and theorizing around developments which are in flux, emergent, and which have a potential which has not yet arrived (Cafaggi, 2011, Caffagi & Pistor, 2015).

Such an approach deviates from a positivist social scientific research model which relies on hypothesis testing against empirical evidence. However, alternative approaches similar to the one I am utilizing in this dissertation are also widely recognized within the social sciences. In this respect, the approach taken in this thesis is somewhat similar to the approach taken by Braithwaite & Drahos's (2000) *Global Business Regulation*, which explores the possibility of best practices in business and competition policy and strategizes how activists can use these in an emancipatory way to work towards environmental and social justice. Their model as well as the one which will be advanced in this thesis are similar in the way in which both advocate for the use of governance instruments by activists which have solely been viewed as matters of concern for business. They are also similar in the way in which they utilize empirics speculatively as examples that are designed to inspire and to be built upon, rather than as conclusive proof of a hypothesis. Finally, this project is similar to the approach of Braithwaite & Drahos in its focus on specific instruments of governance as well as the agency of individuals to utilize these instruments, which are often private, in order to advance public interests.

1.1 Food for Thought: The Production and Transnational Passage of Ghanaian Pineapple

In 2017, approximately 24,000 tonnes of pineapple were grown primarily from the Akuapim South District in the Eastern region and the Awutu Senya District in the Central region of Ghana through an export industry inclusive of several hundred smallholder farmers and around a dozen larger plantations of several hundred hectares (Interview C3; FAO, 2020). In order to supply pineapples for export, primarily to Western European

markets, smallholders produced through private contract relations with locally and foreign-owned pineapple plantations and exporters who themselves produce through contract relations with European distributors and supermarkets (Interview A1). Throughout the one-year germination period typical of the MD2 pineapple variety that is preferred by European consumers, the process was closely monitored by agronomists employed by pineapple plantations including Gold Coast Fruits, Jei River, HPW and Bomarts (Interview A1; B2: D4). An integral component of the agronomists' activities while in the field were to ensure that pineapples were growing in conformity with a variety of detailed and prescriptive private standards.

At a major joint Swiss-Ghanaian owned pineapple venture of several hundred hectares, a staff of six agronomists and export specialists monitored the production process closely both on-site as well as off-site. In the case of off-site monitoring, agronomists worked with a smallholder cooperative which has a membership of 50 smallhold farmers with less than 2 hectares each (Interview B2; Focus Groups 2). Extension work by agronomists took place to ensure quality, but also in order to report relevant information back to the pineapple venture's private standards department. This department houses several full-time certification compliance officers, all of whom are trained on the main private standards associated with pineapple production in Ghana including the private retailer-led GlobalGAP and civil-society led Fairtrade standards that are required for access to international as well as premium export markets (Interview A1; B2). Both of these standards are onerous and consist of several hundred control points each that relate to, among other things, environmental sustainability, traceability, food safety, and working conditions. In the case of the Fairtrade standard, there are also additional criteria related to the fair and inclusive administration / distribution of trade premiums, the empowerment of women, familial access to basic health and primary education services, maternity leave, the right to freedom of association, collective bargaining, and professional development opportunities for plantation employees (Interview D4, Fairtrade International, 2020a).

When pineapple contracts were approaching maturity, plantation workers and smallholders would spray the pineapple with a mixture of water and ethylene gas in order to induce flowering. Importantly, the safety precautions necessary as well as the equipment required to be worn for this spraying process were outlined in carefully detailed private GlobalGAP and Fairtrade standards manuals. About five days later, the pineapple would be taken from the field and transported by tractor or truck to privately owned packaging houses (Interview B2). The pineapples were then washed, treated with fungicide, placed under a refractometer to test their brix percentage (sugar content) against a desired 14 percent brix rating, waxed for moisture retention, and then placed onto a packaging line that automatically sorted them by weight into boxes of 8, 10, or 12 pineapples. At this stage, any malformed, undersized or discoloured pineapples would be manually discarded. The number, shape and colour of pineapples dropped into each box depended on the particular stipulations of the production contracts made between pineapple exporting companies and transnational food distributors and food retailers they

supplied, inclusive of some of the biggest supermarkets in Europe such as Coop in Switzerland (Interview A1).

Once packaged, the pineapple boxes were labeled as Dole, Fairtrade UK, Max Havelaar (The Swiss Fairtrade member) as well as other labels depending on whom the buyer was. Unique identification barcodes were also generated and attached onto the packaged pineapple boxes. These barcodes belonged to private standards such as GlobalGAP and Fairtrade and had encoded within them detailed information regarding the field plot, plantation or smallholder farm, packaging house, day of harvest, and port of departure for each box of packaged pineapples (Interview B2). In addition to this information, these codes also enabled buyers to track the journey of their pineapples as the boxes travelled along a transportation network from Ghanaian farm to supermarket shelf through the use of GlobalGAP's online traceability database. This database assigns all of GlobalGAP's approximately 200,000 certified producers around the world with unique 13-digit GlobalGAP identification numbers (GlobalGAP, 2020a). As the pineapple boxes travelled through major transportation hubs such as the port at Antwerp, that barcode was scanned uploaded onto GlobalGAP's online database, and tracked by European buyers (GlobalGAP, 2020a).

After being packaged and labeled, boxes were loaded onto pallets of 80 boxes each, placed in a cooling room and gradually chilled to 8 degrees Celsius. Following cooling, the pineapples were loaded onto refrigerated truck and driven to the port town of Tema, where they were stored in Shed 9, a world-class 4000m² refrigerated fruit export warehouse managed through a joint private venture between a local trade association known as the Sea-Freight Pineapple Exporters of Ghana, and a French transnational tropical fruit producer/ distributor with production sites in Ghana called Compagnie Fruitière (Jaeger, 2008). The pineapple was then loaded onto La Compagnie Fruitière's refrigerated fruit cargo vessel which provides bi-weekly Free-on Board,³ insured transport with service to Antwerp, Belgium; Marseille, France; Vado, Italy and Dover, the UK (Gatune, Chapman-Kodam, Korobe, Mulangu, & Rakotoarisa, 2013, 19). In Europe, the pineapple was unloaded and inspected once again by employees of the purchasing supermarkets or distributors for quality before being transported by refrigerated truck to retailers in France, Germany, Italy, Spain, Switzerland and the UK (Gatune, Chapman-Kodam, Korobe, Mulangu, & Rakotoarisa, 2013).

Throughout this process, from Ghanaian field to European table, the pineapple was planted, fertilized, sprayed, harvested, inspected, graded, packaged, stored, refrigerated, transported, traced, distributed, and finally sold through a series of relations organized primarily through a private regulatory regime. Cutler, Haufler & Porter (1999, 13) define

³ Free-on-Board (FOB) is a legal term that specifies at what point respective obligations, costs and risks involved in delivering a good transfer from the seller to the buyer. In the case of Ghana, the seller is expected to pay all of the costs associated with packaging and transportation plus the costs of loading whereas the buyer pays the costs of marine freight, insurance and all costs related to transportation thereafter.

a regime as “an integrated complex of formal and informal institutions that is a source of governance for an economic issue area as a whole.”

This regime consisted of private for-profit actors producing and distributing in conformity with non-state market-driven standards (Cashore, 2002) promulgated by non-state standard-setting bodies whose memberships are composed of private food retailers, agricultural producers, (in the case of GlobalGAP), as well as civil society organizations and experts (in the case of Fairtrade International). These private standards were monitored and enforced through third party auditing performed by private certification companies. They were also monitored and enforced through detailed private contracts which codify the legal obligations and responsibilities of stakeholders to one another throughout the entire value chain from smallholder farm to supermarket shelf. Finally, these contracts were backed by an exceptionally robust system of private arbitration and private courts whose determinations relating to disputes between parties are recognized as legally enforceable in most countries around the world.⁴

1.2 Situating the Project: Global Governance, Private Authority and the Search for Democratic Legitimacy and Enforcement in Transnational Spaces

The private nature of this governance regime might come as a surprise to many who imagine that both the state as well as international organizations (IOs) have a large and direct role in the oversight of agricultural value chains, especially when they involve issues such as labour and environmental oversight, food safety, traceability and so on. Indeed, these are all areas of governance, which are traditionally regulated by states.

In this respect, the story outlined above usefully reflects a series of much broader changes in the nature of governance within an increasingly globalized world, where transnational relations have proliferated, expanded, intensified and increased in velocity over the past few decades (Held, McGrew, Goldblatt, Perraton, 2000). Where Steven Vertovec (2009, 2) defines transnationalism as “sustained cross-border relationships, patterns of exchange, affiliations and social formations,” of *non-state actors* based across national borders, a remarkably dense material infrastructure of transnational, everyday practices has emerged

⁴ My intention here is not to ignore or juxtapose the public against the private as neither operates in isolation from the other. For example, during my research I interviewed employees of GIZ operating in Ghana. GIZ is a public German development agency and has funded smallholder training and certification against the private retailer-led GlobalGAP standard for hundreds of farmers through the Ghanaian Ministry of Food and Agriculture’s (MOFA) Market Oriented Agriculture Programme valued at €33.4 million (Interview J10). Alternatively, several development agencies including the World Bank, the United States’ Millennium Challenge Corporation and the African Regional Development Bank have worked with the Ghanaian MOFA to increase pineapple production through training and support programmes as well as the development of a cold-chain transportation network inclusive of cold-storage rural infrastructure, refrigerated trucks, and a paved road network developed through roughly \$500 million in funding (Interview I9).

in recent decades, of which the production and consumption dynamics of Ghanaian pineapple is just one example.⁵

These types of networked, trans-border relationships are important contributors to a variety of global governance challenges, including climate change and are increasingly important to the conduct of politics and outcomes at multiple scales from the local to the global. For example, activities related to the production and consumption of agriculture are a major source of greenhouse gas emissions (GHGs). A 2018 study conducted by Poore and Nemeck in *Science*, estimated that the entire food supply chain was responsible for the creation of approximately 26 percent of anthropogenic GHGs. Trans-border relationships are also frequently fast-paced, flexible, prone to change, and often do not lend themselves well to traditional state-based forms of bureaucratic command and control problem solving that utilizes “hard” forms of rule-making such as domestic law or international treaties. These latter government arrangements are often restricted territorially, different from place to place, require significant resources, deliberation, consensus and time to develop and create considerable risks for states.

States certainly do continue to come to international agreements and cede a degree of political authority to international organizations to enforce rules and decisions at the international level. However, they are always wary of ceding authority and sovereignty upward given the agency losses that are endogenous to delegation. This can include the potential for IO bureaucrats to act opportunistically when states or principals give up “agency slack” which refers to the degree of discretion IO staff have to pursue policies. Thus, without constant oversight, IOs can be difficult to control. In addition, IO’s may play their principals off against one another and states may find it quite costly to keep IOs focused on pursuing their particular goals and objectives (Hawkins, Lake, Nielson and Tierney, 2006). These insights are similar to those made by Barnett & Finnemore (1999) who suggest that states should be concerned with the “pathological” tendencies of overly bureaucratic IOs to act autonomously in ways that run contrary to the desires of their principals. Partly as a result of these realities, states are increasingly choosing to govern through soft law instruments such as declarations, recommendations, voluntary information sharing, technical expertise, or benchmarking that are more informal, less costly to develop and participate in and also offer states more flexibility for maneuverability (Abbott & Snidal, 2009, 534).

Consequently, over the past few decades, both power and political authority have been shifting away from hierarchical, bounded organizations whether those organizations be private or public, and towards more informal, complex, non-hierarchical, extended, and networked avenues that are inclusive of a widening array of private regulatory actors as well as states and international organizations.⁶ In addition, “softer,” more flexible forms

⁵ For example, at any given moment, a fleet of over 90,000 transcontinental merchant vessels are on the water transporting people, and commodities around the earth. (UNCTAD, 2020)

⁶ See for example Slaughter, A. M. (2004). Disaggregated sovereignty: Towards the public accountability of global government networks. *Government and Opposition*, 39(2), 159-190; and Slaughter, A.M. (2015).

of rule-making that do not depend directly on the political authority of states and their legal enforcement capacities have grown in prominence (Ruggie 2004). In this respect, “Soft” law, or “informal” types of governance are defined by their legally non-binding status on affected parties (Marmor, 2019). Soft law includes regulatory approaches such as voluntary standards, best practices, memoranda of understandings, codes of conduct, and other types of informal rules that can be public, private, or technical in origin. The use of soft law rules has grown tremendously as a regulatory approach to global governance alongside globalization. As Claire Cutler (2013, 729) notes, as a form of governance, soft law offers advantages of being “more flexible, speedier, less public and politically contentious, and less constraining on freedom of action.”⁷

In fact, many “new governance” arrangements rely on private authority and are also at times entirely developed and/or led by private actors (Ruggie, 2014). These include the proliferation of a variety of regulatory tools such as private voluntary standards, private benchmarking, and corporate social responsibility (Abbott, Black, Eberlein, & Meidinger & Wood, 2014; Ponte & Cheyins, 2013; Ruggie, 2004; Weiss & Wilkinson, 2018). In the case of agri-food governance specifically, a significant amount of research has focused on the emergence of voluntary private standards schemes and third-party certification systems which are both ubiquitous as instruments of agri-food governance at the transnational level for many agricultural commodities (Auld, Gulbrandsen & McDermott, 2008; Bartley, 2007; 2011; Bernstein & Cashore, 2007; Bolwig, Riisgaard, Gibbon & Ponte, 2013; Botteril & Daugbjerg, 2015; Busch & Bain, 2004; Cafaggi & Pistor, 2015; Cashore, 2002; Eberlein, Abbott, Black, Meidinger & Wood, 2015; Fouilleux & Loconto, 2017; Fuchs, Kalfagianni & Havinga, 2011; Fuchs & Kalfaggianni, 2010a; Gulbrandsen, 2006; Hatanaka, Bain & Busch, 2005; Kalfagianni, 2015; Konefal, Mascarenhas & Hatanaka, 2005; Locke, Rissing & Pal, 2013; Lytton & McAllister, 2014; Maertens & Swinnen, 2012; Ouma, 2010; Ponte & Cheyins, 2013; Ponte & Gibbon, 2005; Tallontire, Opondo, Nelson, & Martin, 2011). Auld (2014) has described private standards and certification schemes as governance mechanisms that operate in issue-areas traditionally governed by states themselves. In the agri-food sector, this often includes detailed procedural obligations to conform to private governance requirements in areas such as the environment, social, and economic issue areas and even occasionally education and health.

The rapid proliferation of these kinds of “soft” law alternatives to “hard” legal enforcement has received a considerable amount of attention from global governance scholars interested in the subject of private authority focused on defining the phenomenon⁸, outlining the conditions for its emergence, its significance in various

The Paris Approach to Global Governance, *Project Syndicate* retrieved from <https://scholar.princeton.edu/sites/default/files/slaughter/files/projectsyndicate12.28.2015.pdf>;

⁷ For a very recent and significant example of a quasi soft-law approach to global governance, see Anne-Marie Slaughter’s essay (2015) on the “Paris Agreement approach” to global governance.

⁸ Avant and Haufler (2014, 48) have described authority as: “the ability to induce deference in others.” Cutler et al., (1999, 19) argue that private authority has three characteristics: 1) those subject to the rules

domains of international affairs and global governance and the way in which it is interacting with “public” governance systems (Bartley, 2007, 2011, 2018; Cashore, 2002; Cutler et al, 1999; Dingwerth, 2007; Green 2014; Gulbrandsen, 2014; Hall & Bierkstekker, 2002; Risse, 2007).

Moreover, this research has focussed on the pathways, or mechanisms through which private authority is operationalized, transmitted, and sustained, across great distances and multiple jurisdictions (Auld, 2014; Auld, Gulbrandsen & McDermott, 2008; Bartley & Child, 2014; Bartley 2007, 2011; Bütthe & Mattli, 2011; Cafaggi, 2011, 2014; Cutler et al, 1999, Cutler & Dietz, 2017; Lytton & McAllister, 2014; Mattli & Buthe, 2011; Ponte & Gibbon, 2005; Ruggie, 2014). This research has taken place in a variety of areas, including climate change and the environment (Andonova, Betsill & Bulkelley, 2009), global financial stability (Porter & McKeen-Edwards, 2013), food safety (Henson & Reardon, 2005), international security (Avant & Haufler, 2014); and labour conditions (Bartley, 2007, Locke, 2013).

Both critical and non-critical literature from the social sciences as well as human geography have highlighted the centrality of international markets and global value chains as vehicles or mediums through which private actors and soft law increasingly govern, (Cashore, Auld & Newsom, 2004; Haufler, 2018; Mayer & Phillips 2017; Ponte, Bair & Gibbon, 2008; Vogel 2007). A value chain is defined as a sequence of economic activities, starting from input production and then passing through transformation and commercialization processes until reaching the final consumers. This process includes each of the economic agents who add value to these activities (Durr, 2017).

Research has also been interested in exploring the significance of markets, industry structure, knowledge asymmetries and inter-firm relations for governance and distributional outcomes (Clapp & Fuchs, 2009; Gereffi, Humphrey & Sturgeon, 2005; Gibbon & Ponte, 2008). Research has also highlighted the primacy of transnational corporations (TNCs) and industry associations in particular as discursively, structurally and relationally powerful private regulators who wield significant authority and autonomy in contemporary transnational governance (Clapp, 2018; Clapp & Fuchs, 2009; Cafaggi, 2014; Cutler et al., 1999, Cutler, 2003; Fuchs & Kalfagianni, 2010b; Ruggie, 2004; 2018).

Within the context of these profound changes to the nature of governance over the past few decades, researchers have paid close attention to the “input legitimacy” of private regulation, relating to the procedural dimensions of how private governance institutions function, how they are structured and how decisions are made. This body of literature

and decisions being made by private sector actors must accept them as legitimate as the representations of experts and those “in authority”. 2) There should exist a high degree of compliance with the rules and decisions. 3) The private sector actors must be empowered either explicitly or implicitly by governments and international organizations with the right to make decisions for others.

includes research on the accountability of private governance mechanisms to stakeholders (Bartley, 2005; Chan & Pattberg, 2008; Fuchs & Kalfagianni, 2010; Hachez & Wouters, 2011), their participatory nature (Cafaggi & Pistor, 2015; Fuchs, Kalfagianni, & Havinga, 2011; Kalfagianni & Pattberg, 2013) and their transparency (Auld & Gulbrandsen, 2010). Other work has also been interested in understanding the output legitimacy of private forms of regulation through analyses of their effectiveness and performance in relation to the problems they seek to address (Gulbrandsen, 2014; Kalfagianni & Fuchs, 2015; Loconto & Dankers, 2014; Potoski & Prakash, 2005; Van der Ven, 2015).

Much of this work on the input and output legitimacy of private governance arrangements should be understood in relation to a considerable amount of research, especially in global governance literature which has usefully highlighted the threats that democratic illegitimacy and reduced enforceability pose to governance arrangements at the transnational and global level. Indeed, in the absence of a democratically elected, representative and accountable world government capable of making legal determinations and enforcing law, scaling up democratic practices and legal enforcement have proven difficult.

A major challenge confronting global governance scholars, therefore, is this one: if states and international organizations are no longer unilaterally capable of legitimately governing or ensuring regulatory enforcement within an increasingly complex, non-hierarchical yet important sphere of transnational relations where issues with critical social, economic and political ramifications are being determined, what other avenues exist for pursuing the public's interest(s)? Most propositions within the literature that focus on this challenging topic have been ones that explore how traditional public actors such as states and international organizations can effectively leverage the substantial governance capacities of private actors in order to address major global governance challenges (Abbott & Snidal, 2009; Bartley, 2018; Renckens, 2020; Sabel & Zeitlin, 2008).

1.3 Research Questions:

However, this dissertation seeks to explore the under-appreciated possibility of private contracts to act as an avenue through which to pursue the public's interest(s) and address governance challenges in the agri-food sector. It is directed by two broad research questions: 1) what capacity does the medium of private governance through commercial contracting have to pursue the public's interest(s) at the transnational level? 2) How might we pursue private governance through commercial contracting in order to do so?

In pursuing these research questions, this thesis uses the transnational pineapple value chain between Ghana and western Europe as a case study to explore the possibility of commercial contracts to address governance challenges present within the global agri-food system. This case study acts as a useful point of departure in drawing out the political implications of contracting in agri-food and in assessing the possible potential of

transnational commercial contracting to act as a medium of transnational governance in the public's interest(s). In my view, this is both a political and academic project in need of undertaking and this latter area of inquiry into the *potential* of contractual governance is one which has been largely absent from the literature

1.4 The Utilization of “Private” Mechanisms to Achieve “Public” Objectives

This direction of inquiry may seem problematic at face value. Indeed, in political theory, the public / private distinction interpreted narrowly in state / non-state terms is often the foundational starting point for understanding what is considered political, which actors possess political legitimacy, and who wields political authority (Coleman & Porter, 2000; Cutler, 2003). Yet as the discussion of pineapple production in Ghana outlined above illustrates, traditionally “private” actors, wielding private authority within the private sphere of markets are already playing an important public role in global governance. In turn, this “private” sphere of markets and non-state actors has become an important space for problem-solving in the public's interest often independently of direct involvement by traditional “public” actors.

Moreover, “private” governance has proven itself more concerned with and amenable to democratic legitimacy concerns than we are generally willing to give it credit for, while also more effectively managing the complexity and speed of contemporary transnational interactions (Cashore, 2002; Cashore, Auld & Newson, 2004; Bernstein, 2011; Bernstein & Cashore 2007; Porter, 2016).⁹ For example, Bernstein has discussed how non-state actors without a preexisting basis for legitimacy grounded in public authority often face much higher democratic legitimacy demands related to access, participation, transparency, accountability and deliberation than many of their intergovernmental global governance counterparts.

Elizabeth Fortin and Ben Richardson have also commented on this phenomenon. As they note (2013, 144) ,

⁹ This is certainly not always the case, however, and depends on a variety of variables. For example, Dingwerth (2017) has more recently argued that the importance of democratic legitimacy claims to the overall legitimacy of private governance schemes is receding as they have matured, their brands have become more well-known and the standard-setting bodies themselves have become more bureaucratically institutionalized. Similarly, Dingwerth (2017, 18) also highlights the importance of considering particular characteristics of different regulatory fields when drawing conclusions regarding the importance of democratic legitimacy to private governance schemes. As he notes, “all else being equal, democratic legitimization narratives will be strongest where standard-setters operate in issue areas that are not already regulated by states, characterized by a ‘participatory legitimization culture’ and dominated by ‘political’ frames. In contrast, we should expect democratic legitimization narratives to be less central in fields where states already provide a framework regulation, where legitimization cultures are less participatory and where issues are framed mostly in ‘technical’ terms. An example of this latter category would be global financial governance and associations such as the International Swaps and Derivatives Association which is a private business association that plays a major role in governing derivatives markets at a global level.

“whereas public standards-setting bodies derive authority from the democratic mandate of the (inter)governmental institution in which they are embedded, non-state bodies have not had this option...[private standard setting bodies] have thus set themselves higher requirements for inclusiveness, transparency and accountability than their state-based cousins. This has been reflected in governance structures designed to facilitate input from groups in developing countries and/or with smaller budgets, and the open publication of assessment and audit reports carried out on members.”¹⁰

In the case of private contracting in particular, which I expand on in greater detail in Chapters 4 and 5, participation and deliberation over terms, transparency, and accountability between parties to an agreement are all defining best practices. I argue that these elements of contracting provide often marginalized actors with the ability to address agri-food governance issues of critical importance to them even in environments that are frequently defined by stark power imbalances. I also argue that the flexibility of commercial contracting to incorporate a broad array of issues as legally enforceable, paired with the exceptional effectiveness of commercial contracting as a medium of governance are also important features of contracting that should not go unnoticed by activists seeking to improve global governance within the agri-food sector. Indeed, due in large part to the widespread international recognition of foreign arbitral awards by countries around the world, international recognition provides private contracting with a remarkably powerful element of “hard” law enforceability in cases of contractual breach or non-compliance which is chronically lacking in other transnational approaches to governance. Moreover, this legal enforceability of contracting has gone almost completely unnoticed in the literature on global agri-food governance, where the vast majority of research related to private governance has been spent studying the implications of private voluntary standards and third-party certification governance schemes.

1.5 Chapter Summaries

The following section provides a brief summary of each of the remaining chapters following this one:

Chapter 2 re-iterates my research questions, provides some additional context which helps to situate the project and includes “the puzzle” which acted as a catalyst for research into this topic. It then moves on to discuss research methods, and the rationale behind their selection. This section includes discussion on my selection of process-tracing, snowball

¹⁰ Additionally, Peter Gibbon, Stefano Ponte, and Jakob Verstergaard (2011, 2) note that “voluntary, formal standards and standard-setters are said to be in constant need to achieve, maintain and manage legitimacy to exert authority, since they need to convince standard-users to adopt them and “audiences” to see such adoption as something acceptable.”¹⁰

sampling and the selection of my case; the transnational pineapple value chain between Ghana and western Europe. It also lists my data sources, as well as the approach I used to analyze my data. Finally, it discusses the limitations of my research design.

Chapter 3 provides the reader with a high-level overview of the major governance challenges present in the global agri-food sector, as well as some empirical data on the rapid transnationalization of agri-food production and consumption over the past few decades. This introduction to the chapter then sets the stage for the development of a preliminary conceptual framework through which to understand private governance in agri-food. This conceptual framework relies on insights borrowed from four major theoretical literatures which offer different, yet insightful explanations for the rise and also the implications of private governance for agri-food. These literatures include Food Regime Theory, New Institutional Economics, Global Value Chain governance and finally, a body of literature broadly labelled “Private Authority” literature. While I argue that each of these literatures makes important contributions to our understanding of private agri-food governance, the chapter concludes by noting that there remains a complete lack of acknowledgement and attention paid in each of these literatures to the central role that transnational contract law plays in the uptake, effectiveness and enforcement of private agri-food governance.

Chapter 4 outlines the theories I engage with in order to advance my own conceptual approach to private contractual governance. The theories, which are rooted in social constructivism and draw from a literature on transnational legal pluralism are developed in this chapter in order to open up conceptual space to explore the public potential of private agri-food contracting. The second half of Chapter 4 then moves on to discuss the drivers behind the relatively recent, but also rapid proliferation and transformation of contracting into a key regulatory tool within global value chains. Following this, the chapter introduces a number of practical and procedural elements of commercial contracting and explains how these features enable contracting to go beyond private interests to also address public ones. This final section of the chapter focusses primarily on the democratic and deliberative dimensions of contracting, the impressive enforceability of contracting, as well as its regulatory flexibility to internalize place-based differences unique to local actors and circumstances as key features of contracting with potential to be built upon.

Chapter 5 introduces my case study which is focussed on the transnational pineapple value chain between Ghana and western Europe. It uses this case study to assess commercial contracting in practice in relation to the conceptual framework of private contractual governance outlined in Chapter 4. It begins by confirming the ubiquity, but also the novelty of commercial contracting as an instrument of governance within the value chain between Ghana and western Europe. Following this, the chapter goes on to assess and analyze the implications of commercial contracting for stakeholders within the pineapple value chain. In brief, the case study highlights the democratic legitimacy possibilities associated with commercial contracting, particularly for smallholders. It also

highlights the flexibility of contracting to incorporate local concerns and circumstances within contractual terms as well as the effectiveness and “hard law” enforceability of commercial contracting in Ghana. While the presence of these features are encouraging, the case study also highlights the negative consequences associated with the pronounced power imbalance between actors along the value chain in Ghana and how these power imbalances also play out within the terms of the agricultural contracts themselves. The chapter concludes by offering some possible options that could help to reduce the impacts of power imbalances to private contractual governance outcomes within agri-food value chains and orient commercial contracting in ways that make them fairer to parties involved, and more capable of advancing public interests.

Chapter 6 opens by summarizing what a focus on private contractual governance contributes to our understanding of global, private and agri-food governance literatures as well as the four literatures on private governance which I discussed in Chapter 3. Following this, the chapter affirms the potential of private contracting to address global agri-food challenges. It concludes by considering directions for future research that would be helpful in advancing the democratic legitimacy and potential of private commercial contracting to help address critical agri-food governance challenges.

1.6 Conclusion

Historically, states have been viewed as the only legitimate and effective source of governance at both the domestic and international levels. Judgments regarding the quality and effectiveness of governance have consequently centered around the ability of states to foster compliance with agreements, norms or policies. Moreover, political challenges have been mediated primarily through state-centric hierarchic and bounded command-and-control governmental mechanisms inclusive of centralized bureaucracies and “hard” forms of law-making such as legislative acts, as well as international treaty-making, or the creation of formal intergovernmental organizations such as the United Nations, to address collective-action problems. Processes of globalization, however, have contributed to a series of remarkable transformations in governance over the past few decades with important implications for the conduct of politics as well as for how we address increasingly important collective-action problems that may pose existential threats to our species. In particular, transnational spaces and “private” actors have grown increasingly important to governance outcomes across a number of different sectors.

Most propositions within global governance and international relations literatures that focus on this topic have recommended either reverting back to approaches centered on states, IOs, formal law and treaties, or on exploring how “public” state actors can effectively leverage the substantial governance capacities of private actors in order to address global governance challenges more effectively (Abbott & Snidal, 2009; Eberlein, Abbott, Black, Meidinger, & Wood, 2014; Ruggie, 2014; 2018). Yet in privileging a traditional conception of the public that is too closely tied to states and IOs, much of this literature is myopic to other potential opportunities that may exist through which to

pursue and bolster public interest(s) in transnational spaces as political authority continues to disperse in polycentric and overlapping ways, and the boundary between the public and private continues to blur.

This thesis seeks to explore the under-appreciated possibility of commercial contracts to address governance challenges within the agri-food sector that relate to issues such as food safety, ecological sustainability and climate change, poor working conditions, inequality, and issues of representation and inclusion in decision-making involving small-scale farmers. It uses the transnational value chain between Ghana and western Europe as a departure point to do so.

Chapter 2: Methodology and Approach

In this chapter, I will introduce my methodology and approach to my research. The chapter begins by listing the research questions that guide my thesis. It then moves on to provide some additional context for my research questions through a discussion of democratic (il)legitimacy in global governance. Next, the chapter focusses on the qualitative research methods that I utilized for data collection as well as the rationale behind my selection of these methods. I then move on to discuss the approach that I utilized to analyze the data before concluding by detailing the limitations associated with my research design.

2.1 Research Questions

As mentioned in Chapter 1, this thesis is guided by two research questions:

1. What capacity does the medium of private governance through commercial contracting have to pursue the public's interest(s) at the transnational level within the agri-food sector?
2. How might we pursue private governance through commercial contracts in order to do so?

2.2 Contextualizing My Research Questions

A common theme within global governance literature is the “legitimacy” of global and private governance arrangements (Cerny, 1999). Legitimacy, in turn, is most often measured against standards of democratic legitimacy (Held & Maffetone, 2017). Indeed, democratic institutions such as representative legislatures, the rule of law, free and fair elections and the various accountabilities that are enabled through these institutions have become a hallmark of legitimate governance (Porter, 2016). This is because these institutions afford individuals a high level of participation, transparency and deliberation in collective problem-solving (Pierre & Peters, 2005). Together, these procedures contribute to a system of decision-making that is viewed by those affected as more or less accountable, fair and subsequently, legitimate.¹¹ In this respect, where accountability has been defined as having two components (Hale, 2008, 78): “the ability to know what an actor is doing and the ability to make that actor do something else;” democratic government is appealing because of its ability to create the conditions for equality

¹¹ Although this is not to disregard a variety of criticisms leveled against democracy as a tool of governance. These criticisms include the claim that democracy has been a primary imperial and capitalist tool used often to “remak[e] the world to suit the most powerful,” to bring non-conforming states into the global political economy in part by building institutions that are familiar to Western democracies, regardless of local circumstances and norms. It also includes critics who argue that democracy is used far too often in strategic terms as a veil to further consolidate power and privilege in the hands of elites through majoritarian politics that reinforce problematic power imbalances and injustices (Charlesworth, 2017, 39).

between participants in decision-making as well as the conditions for accountability despite the existence of large power differentials between individuals and groups.

A common critique of both global and private governance in this regard, is that these governance arrangements often suffer from a “democratic deficit” which hinders their legitimacy, as well as their ability to meaningfully resolve critical governance challenges. As Porter notes (2016, Ch.13, p.2), changes in governance towards the non-hierarchical, networked and transnational “while allowing faster responses, can undermine traditional forms of democracy, as responsibilities and accountabilities become difficult to trace and implement.” As Porter continues, “when technically complex but consequential decisions are made in informal groupings which meet far away then it is difficult even for concerned citizens to follow what is happening or to hold those decision-makers accountable.” As processes of globalization continue to rupture the close association between territorial space on one hand, and many important societal, economic and political outcomes on the other, democratic governance processes have played a less influential role in governance outcomes beyond the state than they once did (Scholte, 2005). This is not to say that territory does not matter. One should not think of globalization or transnationalism as eradicating a territorially informed understanding of economic, political or social space. It is to say, however, that the primacy of territoriality in shaping these areas of life are now also informed and influenced by global circumstances, or transnational connections of some kind as well, and to a much greater extent than at any other point in history.

As alluded to within the pineapple case outlined in Chapter 1, challenges to democratic governance are numerous at the transnational level. For instance, those critical of private actors point out that unlike the majority of sovereign states, which acquire their legitimate¹² authority through democratic elections, representative legislatures, the rule of law, an independent judiciary, and a number of other “checks and balances” that are designed to create accountability between states and their citizens, private actors are not perceived to have the same obligations to stakeholders affected by their rules or to broader publics. Arguably, these actors are labelled as private specifically in order to contrast them in a dualistic or binary fashion with “public” actors. Thus, the “private” designation of an actor exists in order to emphasize its non-political status, its lack of public accountability and the expectation that it will and should pursue its own individual self-interest so long as it remains within the confines of legal limits laid out by *public* state-based regulators (Braithwaite, 2006, 886-887).

¹² Political legitimacy has been defined as the voluntary acceptance of shared rules and decisions made by an authority for a community in which that community intersubjectively holds the belief that the decisions made by the authority are justified and appropriate (Bernstein, 2011). Legitimacy has been portrayed as the glue that “holds power and authority together (Bernstein, 2011) and is often contrasted with other forms of social control such as coercion or inducement, which involves either the use of force or threat often backed up by material power or different kinds of incentives such as bribes to secure compliance (Bernstein, 2011, 20).

Moreover, the issues that private actors seek to address can often be misaligned with what those individuals affected would find most important. For example, in global agricultural governance, food retailers place regulatory primacy on issues of food safety and price within their value chains, due to the threat of reputational damage to their brands, legal liability in the case of contamination and consumer affordability. Yet these issues may not be the most important to smallholder producers in the Global South who are expected to meet costly private food safety standards in order to gain access to extremely price competitive transnational value chains. These differences are further exacerbated by the “Western” bias of global civil society, which refers to the significant over-representation of more affluent citizens from the Global North who constitute the vast majority of staff working for NGOs that often deliver services and make decisions on behalf of individuals living in the global South.

This critique of legitimacy extends to “public” global governance actors as well, including formal and informal international organizations. For example, Archibugi & Cellini (2017, 65) point out that many international organizations are not nearly democratic enough in their norms and procedures. To illustrate their argument, these authors highlight the undemocratic institutional features of many international bodies including the World Bank, International Monetary Fund, and United Nations Security Council, or the Group of 20, which all purposefully give greater voice and representation to powerful countries and their interests (Coleman & Porter, 2000; Scholte, 2014).

Other problems that have been highlighted with regard to IOs and their democratic legitimacy relate to their technocratic and functional nature and the subsequent difficulties that states or “principals” guided in most instances by democratically representative national legislatures and elected executives have in monitoring and directing their “agent’s” activities. This is problematic not only because it provides IOs with a large degree of “agency slack” or autonomy from their principals, but also because it creates significant hurdles for developing countries who have fewer expertise and resources with which to monitor the IOs in which they hold membership (Scholte, 2005). Additionally, the vast distances that exist between IOs and the people their decisions effect has also been identified as problematic from a participatory perspective (Coleman & Porter, 2000; Hale, 2008; Scholte, 2014).

A common critique of processes of globalization, therefore, is that they foster the construction of undemocratic and unaccountable political spaces where powerful political actors, both “public” and “private,” can more easily dominate over the less powerful (Grant & Keohane, 2005; Held & Maffetone, 2017, 57). Addressing the “democratic” deficits associated with many transnational and global governance arrangements has therefore attracted significant attention as transnational and global spaces have grown increasingly important to a variety of political issues including the right to self-determination, the distribution of resources and the resolution of challenges that pose existential threats to the earth and its inhabitants, such as climate change (Archibugi & Cellini, 2017; Archibugi & Held, 1995; Coleman & Porter, 2000; Hale, 2008).

2.3 Puzzle Leading to Research Questions

As discussed in Chapter 1, a major challenge confronting global governance scholars, therefore, is to identify other avenues to pursue the public's interest(s) at the global level. This is especially true given that states and international organizations are no longer unilaterally capable of legitimately governing or ensuring regulatory enforcement within an increasingly complex, non-hierarchical yet important sphere of transnational relations where issues with critical social, economic and political ramifications are being determined. The research questions guiding this thesis seek to determine the possibility of the commercial contract to act as a medium of transnational governance capable of legitimately addressing different governance challenges present in the agri-food sector.

2.4 Research Methods

My research design relied on the use of process-tracing, a case study, snowball sampling and semi-structured interviews. Process tracing was valuable to me, because of the emphasis that this approach places on understanding the descriptive details of an event or situation. In my case, it was useful in determining the presence or absence of agricultural regulatory contracts as instruments of governance and the role these instruments play in global agri-food governance. In this respect, I employed process-tracing not as a means of testing causal mechanisms, but rather, as a means of careful description in order to identify and describe in, what was in my view, “a novel political and social phenomena (Collier, 2011, 824).” Indeed, my research methods were employed primarily in order to build a careful and detailed description of private agri-food contracts and their operation in the transnational value chain for pineapple between Ghana and western Europe in order to “theory build” (Chapters 3 & 4) and then test aspects of my conceptual framework empirically (Chapter 5).

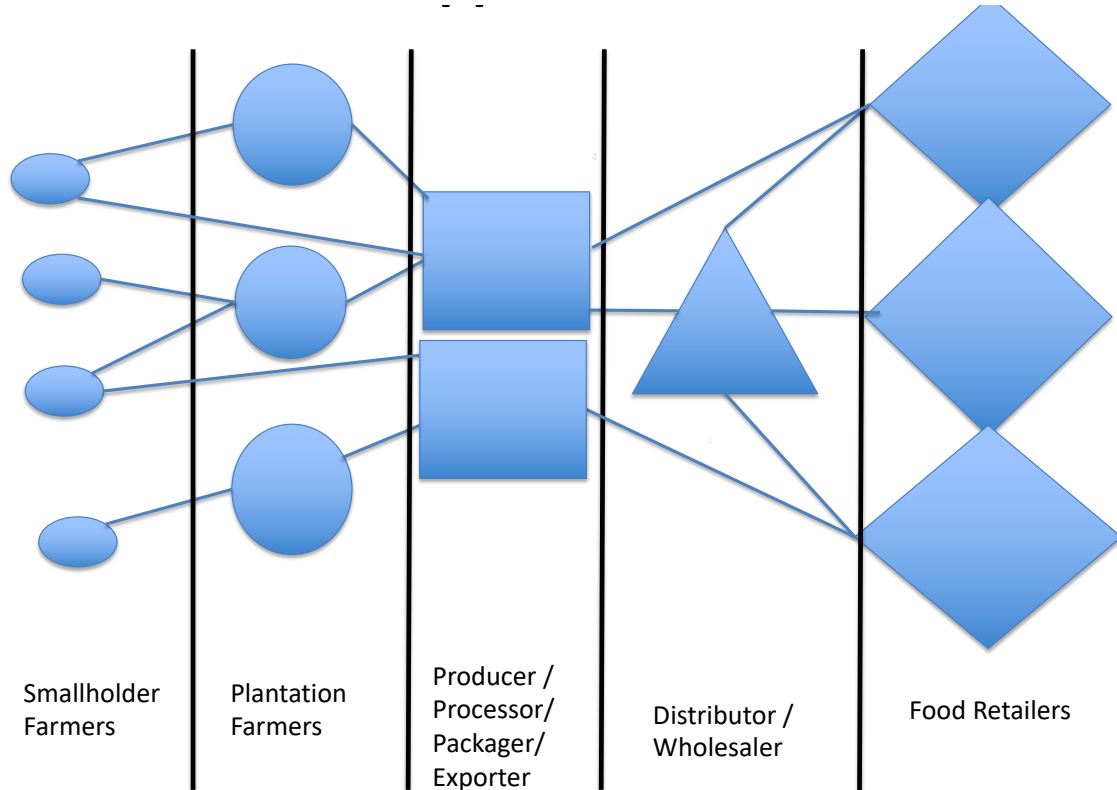
A distinction related to the role of process tracing in my case study which is important to stress is that it I was not seeking to draw conclusions regarding the possibility of contractual governance to address critical governance issues in the agri-food sector based on their *current* utilization by actors in the pineapple value chain. Rather, its focus was on confirming the presence of aspects of contracting which I highlight in my conceptual framework (Chapter 4) as promising avenues for further exploration in the pursuit of more legitimate, effective and publicly-oriented transnational governance in agri-food. These aspects include the participatory, issue-based flexibility, accountability, transparency and enforcement related features of commercial contracting. Process-tracing lent itself well to this pursuit, especially given the opaque nature of private contracting, and the subsequent dearth of information that exists on this topic.

Given the emphasis my research design placed on thick, descriptive analysis, the in-depth case study is often used as a complementary research method to process-tracing (Collier, 2011; Flyvbjerg, 2006; Gerring, 2004; Tracy 2019). For my research, I used the case

study of the transnational pineapple value chain between Ghana and western Europe. I did so for three reasons. First, I wanted to confirm and gain a better understanding of the prevalence of private regulatory contracts as instruments of governance within agri-food. Second, I wanted to use a case study (Chapter 5) in order to assess my conceptual framework, as outlined in Chapters 3 and 4. These are both objectives well suited to the case study (Flyvberg, 2006; Gerring, 2004, 349; Ragin 1997). In addition, the case study was also used because of the type of learning it offers that comes through the testing of theory through real life situations as they unfold in practice (Flyvberg, 2006, 235). Although the value of comparison between theory and empirics are important to me, an objective that I have for this project is to also deeply understand and learn about the phenomena of study. In this regard, Flyvberg (2006, 236-237) notes, a case study, “is quite simply a central element in learning and in the achievement of new insight.”

The transnational value chain between Ghana and western Europe was selected as my case study for a variety of reasons. First, pineapple has been one of the most lucrative agricultural exports from Ghana for quite some time (Whitfield, 2012). When I conducted field interviews in 2016, pineapple exports were estimated at approximately \$US30 million per year, making the commodity Ghana’s fifth most valuable agricultural export (Interview C3). Although the amount of Ghanaian land dedicated to pineapple production fluctuates seasonally based on demand, over 30,000 hectares of farmland in Ghana has been devoted to pineapple production in the recent past (Gatune et al., 2013). Moreover, as alluded to in Chapter 1, the production side of the sector is quite diverse, with approximately 3,000 people working in the sector via smallholder cooperatives, medium estate farms, and larger producer / packaging / multinational export companies (See Figure 1). Thus, governance outcomes in this chain have significant impacts on stakeholders.

Figure 1 : Ghana's Pineapple Value Chain



Source: Author

Second, the transnational structure of the value chain as documented elsewhere in the literature, led me to believe that commercial contracting would be common practice as a means of coordinating the value chain and clarifying roles and responsibilities between transnational stakeholders (Fold, 2008; Fold & Gough, 2008; Jaeger, 2008; Gatune et al., 2013; Ouma et al., 2013; Ouma, 2015; Takane, 2004; Whitfield, 2012). In addition, the North-South directionality of the chain was also important to me, as the literature has shown that private governance arrangements are likely to be more common and play a more impactful governance role in value chains linking consumers in the global North with producers in the global South. This reality can be explained in part by the heightened expectations of consumers in the global North, the reputational and liability concerns of multinational food retailers especially with respect to food safety, and the corporate risks that food retailers assign to sourcing from countries with potentially weak public institutions.¹³

¹³ This rationale was inspired primarily by the New Institutional Economics literature on private governance discussed in Chapter 3.

Third, the transnational value chain for pineapple between Ghana and western Europe is one defined by many of the global agri-food governance challenges outlined throughout this dissertation. For instance, the value chain is characterized by profound economic power asymmetries between food retailers in Europe, and smallholder producers in Ghana at the other end of the chain, each of whom have different priorities related to the distribution of value within the chain, production practices, certification requirements, and so forth. Food security / food sovereignty and gender (in)equality in agriculture are also problems in Ghana, particularly in rural areas (Pepper, 2017; World Food Programme: Ghana, 2020). Finally, environmental problems including chemical run-off and high pesticide residue levels have been identified in the pineapple value chain in Ghana (Interview D4; Interview G7, Donkor et al., 2016).

2.5 Data Collection

In terms of information collection for my case study, I employed snowball sampling to conduct 29 one-on-one semi-structured interviews with individuals involved with the transnational pineapple value chain between Ghana and western Europe as well as with major public and private international regulators involved in global agri-food regulation. I also conducted two focus groups (for a participant list, please see Appendix A). These focus groups and interviews were conducted between June and December of 2016. Snowball sampling is a type of non-probabilistic (non-random) sampling that is extremely versatile (Tansey, 2007, 766). As a method, snowball sampling was invaluable in pursuing a number of my research goals, especially given the opacity associated with conducting research on private contractual relationships. In this respect, a key aspect of snowball sampling is the way in which the method helps you to identify and map the relationships between relevant individuals within a particular area of interest. The focus of snowball sampling is not on generalizing results to a larger population but is instead much more interested in process-tracing, theory-testing, and research exploration (Tansey, 2007; 766).

I began the interview process by reviewing newspaper articles, academic journal publications, and social media platforms including LinkedIn and Twitter in order to develop an initial email list of potential interviewees. Following this, I set up interviews and requested that each of these interviewees suggest additional names. Interviews were held in respondents' offices or their farms and varied in length from between 30 minutes to 1.5 hours. Interviews were semi-structured to permit respondents to answer fully and offer new lines of inquiry, which, given the exploratory nature of my research, was important. Finally, the findings from my interviews were triangulated through the utilization of a standard question template for all interviews, as well as through analysis of information available in published reports, academic journals, and media such as newspaper articles, videos and social media platforms.

To maximize the candor of the interviewees and conform to common procedures for the protection of human subjects, a confidentiality contract was presented to each interviewee

for signature. For those who signed confidentiality agreements, interviewees are identified only by type of organization they are affiliated with. All interviews were conducted either in English or Akan, with the assistance of an interpreter.

2.6 Data Analysis

Interviews were recorded and notes were made immediately following each interview. Interviews were subsequently transcribed and organized according to broad thematic labels. These themes revolved around the *Democratic Legitimacy* of contracting, *Contract Enforcement* and *Regulatory Instruments within the Transnational Value Chain*.

2.7 Limitations

One limitation is the generalizability of this work (Gerring, 2004). A key focus of this project is to assess the impact of a relatively abstract concept- namely “private contractual governance.” This abstract concept has not been broken down and its features have not been sufficiently defined so as to be made testable and falsifiable across other cases. These issues make this study difficult to generalize to a broader number of cases. With that said, this is not a quantitative, positivist study. This thesis is interesting in an emergent system of private contractual governance and drawing on empirical examples as a means of inspiring activists to further advance and build upon the preliminary work outlined here. Such an approach to research is quite different to the standard social-scientific research model that is most often used to make generalizations.

A second limitation is associated with the internal validity of the study, given a focus on non-random sampling and primary interviews. Indeed, humans are prone to exaggeration, falsehoods and mistaken interpretations which, without alternative methods of data collection, can skew results, just as insufficient numbers of interviewees can (Lilleker, 2003; 208). Consequently, the bias and measurement problems associated with this nonrandom research design can invalidate its findings (Goldstein, 2002; 669). In an effort to overcome these issues, my research relies on detailed documentation, and thick description (Collier 2011). Moreover, I have made every effort to interview as many different actor “types” as possible who are involved in this space in order to ensure a diversity of perspectives. I have also paid close attention to secondary literature in order to familiarize myself with the history of this topic, and to identify any possible inaccuracies in my primary interview data.

A third limitation is associated with the incomplete mapping that I was able to do of the transnational pineapple value chain. Due to limitations of time and resources, I was not able to interview two key stakeholder groups- transnational pineapple distributors and food retailers. I was only able to analyze the role of regulatory contracts for pineapple producers, processors and exporters in Ghana.

A fourth limitation was language. I do not speak any of the many languages spoken in Ghana. However, this limitation was overcome through the help of a translator who accompanied me throughout my time conducting interviews in Ghana.

Chapter 3 –The Private Governance of the Global Agri-Food Industry

Over the following two chapters, I seek to develop a theoretical framework of private contractual governance that is capable of effectively advancing public interest(s) in global agri-food governance in an ethical manner. In this chapter, I will draw on four influential theoretical literatures in order to sketch the contours of a preliminary conceptual framework through which to understand private governance in agri-food. This framework will highlight how private governance operates and is structured, its potential to address critical agri-food issues that are in the public's interest(s), but also its potential pitfalls, and what these literatures suggest is required to address those.

The theoretical literatures on private governance which I draw upon in Chapter 3 are eclectic. They include Food Regime Theory (FRT), New Institutional Economics (NIE), Global Value Chain (GVC) governance and a literature which I broadly label "Private Authority" (PA) literature. Importantly, two of these literatures- Food Regime Theory and Global Value Chain governance share a close intellectual history with agri-food studies. Food Regime Theory in particular is a socio-political theory which focusses exclusively on the study of the global agri-food system and its governance. Similarly, GVC governance has also frequently utilized agri-food as a key sector of study to understand the operation of private governance and the role of private actors in governing through value chains.

In addition, I have also chosen to incorporate two additional literatures on New Institutional Economics and "Private Authority." Both of these literatures are less closely associated intellectually with the area of food governance. Nevertheless, I have chosen to incorporate them because of the way in which they have advanced our understanding of the potential of private governance. In particular, NIE provides a convincing theoretical framework through which to understand the emergence of private governance within transnational spaces which usefully underscores its ability to meaningfully address challenges that are in the public's interest(s). Similarly, Private Authority literature also usefully situates and engages with the potential of private governance in a fast-paced and quickly changing globalized world while also contributing to our understanding of how traditional public actors can enhance the public orientation of private governance in transnational spaces. The general theoretical insights developed in these two literatures are valuable and as I hope I have demonstrated below, have explanatory power for private agri-food governance as well.

Based on this discussion of private governance in Chapter 3, I will then move on to demonstrate the value and the unique contributions that a theoretical focus on private contractual governance can add to our understanding of private agri-food governance in Chapter 4. In particular, Chapter 4 pays attention to the enforceability dimensions of contracting, as well as their flexible, participatory, and deliberative qualities. Importantly, each of these aspects of contracting helps to address the short comings of private

governance as they have been identified by the four literatures which I engage with below.

The chapter will begin by highlighting some of the most significant empirical challenges tied to the contemporary governance of food. It will then move on to briefly discuss the rapid transnationalization of agri-food production and consumption over the past few decades, as well as the major role that voluntary private standards have come to play in agri-food governance. Following this, I will advance a preliminary conceptual framework through which to understand private agri-food governance with reference to the four theoretical literatures mentioned above. Despite the useful and informative insights these literatures offer, the chapter will conclude by highlighting some of their shortcomings. Based on this discussion, the value of a theoretical approach focused on private law and commercial agri-food contracting will then be presented in Chapter 4.

3.1 Setting the Stage

Food production and good agricultural governance rarely receive the political attention they deserve given the ecological, economic and health impacts of agri-food systems on the earth's inhabitants. From an ecological perspective, agriculture¹⁴ is the largest single-purpose use of land on the planet occupying nearly a third of the earth's ice-free land area and consuming approximately 70 percent of global fresh water (Brimoh, 2013; Ramankutty, Mehrabi, Waha, Jarvis, Kremen, Herrero, & Rieseberg, 2018). Unsurprisingly, therefore, the ecological mismanagement of agriculture can and already has had catastrophic effects on our planet. Over the last century, agricultural development has reduced the biodiversity of local biomes on a global scale by between 20-30 percent due to loss of habitat, habitat fragmentation, deforestation and the mismanagement / overuse of pesticides and fertilizers (Clapp, 2018).

Agricultural production is also responsible for roughly 30 percent of all deforestation on the planet since 1980 and continues to be the proximate driver of approximately 80 percent of global deforestation each year (Intergovernmental Panel Report on Climate Change, 2015; FAO, 2017). Relatedly, there are significant problems of soil erosion, water depletion, chemical runoff, desertification and green-house gas (GHGs) emissions tied to agriculture that are long-lasting, expensive to mitigate and difficult to reverse (FAO, 2017:). In relation to the emission of GHGs in particular, in 2014, it was estimated that the agricultural sector contributed approximately 22 percent of total GHG emissions (Intergovernmental Panel Report on Climate Change, 2015). An additional 2018 study conducted by Poore & Nemeck in *Science*, estimated that the entire food supply chain was responsible for the creation of approximately 26 percent of anthropogenic GHGs.

Another ecological risk associated with the governance of the agricultural system is its growing vulnerability to disease, as well as resiliency in the face of a considerable loss of

¹⁴ Agriculture refers to cropping activities, livestock and aquaculture (FAO, 2017)

biodiversity. Both of these issues are closely tied to the global standardization and industrialization of agricultural production designed to maximize agricultural yields and profits. In practice, this industrial agricultural model has relied on increasingly large and sophisticated monoculture farming systems that are finely tuned and calibrated to incorporate specific high-yielding GMO seed varieties, and a suite of chemical pesticides and fertilizers. In this respect, it has been estimated that monoculture farming now covers approximately 80% of total farmland on earth (Altieri, 2012). From a resiliency perspective, the problems with this system are twofold. First, monoculture farming significantly increases the susceptibility of crops to eradication from a single pathogen or invasive species. Second, market concentration within the agricultural inputs industry itself has significantly reduced the availability and use of biologically different seeds. For example, Clapp (2018) has shown exceptionally high levels of corporate concentration in several agricultural sectors, including the seed and pesticides sectors, where four firms, DowDuPont, ChemChina, Bayer and BASF control roughly 60 percent and 75 percent of global markets for these products respectively.

Additionally, these problems are being compounded by a widespread dependence on and over-use of chemical pesticides, which are leading to an unprecedented emergence of pesticide resistant pathogens. Indeed, the yearly market value for pesticides, accounting for inflation has increased over 35 times since 1970 and now sits at approximately \$35 billion per year (FAO-IWMI, 2017). Both the Food and Agriculture Organization and the World Health Organization have highlighted this issue as a major cause for concern given the global integration of our food systems, and a warming climate, which are both making the control and containment of these pesticide resistant pathogens much more challenging (FAO-WHO, 2018).¹⁵

In addition to these considerable environmental impacts, there are also exceptionally important economic development issues associated with agriculture. For example, roughly 27 percent of the world's labour force or over one billion people depend directly on agriculture for their livelihoods (ILO, 2020). Of those, nearly 60 percent, live in low-income countries where agriculture remains the primary source of income and most significant driver in local economies for both men and women (ILO, 2020).¹⁶ It has also been recognized that growth in agriculture is two to four times more effective in raising incomes among the poorest around the world compared to other sectors primarily due to the widespread prevalence of poverty in rural areas (World Bank, 2020a)

¹⁵ Addressing the issue of anti-microbial resistance in food production has been identified as a major global risk and priority for the Food and Agriculture Organization. See for example, WHO (2019, April). *No Time to Wait: Securing the Future from Drug Resistant Infections*; and the Summary Report of the FAO Antimicrobial Resistance Working Group on Antimicrobial Resistance and Foods of Plant Origin (2018c). Alternatively, a recent report in *Science* (2018, Aug) suggests that for every degree Celsius of warming, yield losses to insects for major crops including wheat, maize and soy will increase by 10-25 percent. It is estimated that insects already consume 5-20 percent of major grain crops.

¹⁶ In 2019, the World Bank classified a low-income country as any country with a Gross National Income (GNI) of less than US \$1,025 per capita (World Bank, 2020b).

The interrelated issues of food (in)security, food sovereignty, and food self-sufficiency have also risen in prominence quite rapidly over the past few decades as major governance challenges. To define these two concepts further, the most commonly accepted definition of food security emerged over two decades ago at the 1996 World Food Summit (FAO, 2006). It exists when “all people, at all times have physical and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life.”

Alternatively, food sovereignty” is often discussed in tandem with food security and is described by proponents of food sovereignty as a necessary precursor for food security (Patel, 2009). While both food security and food sovereignty are focused on similar objectives, including sufficient, safe and nutritious food that meets one’s dietary needs and food preferences, food sovereignty is much more attentive to issues of political and social control over food systems and the direct democratic right of everyone to substantially engage and contribute to the development of food policy (Patel, 2009).

Critics have often framed issues associated with both food security and food sovereignty as a backlash against economic globalization, corporate concentration in the food system, and the politics of international agricultural trade liberalization (Clapp 2015). In particular, many are skeptical of claims frequently made by international and national policymakers that an international pro-liberalization agenda for food is the most effective and efficient way of achieving global food security and for developing economies to pursue economic development (Clapp, 2017a; Clapp, 2017b). For example, as recently as 2018 the FAO has identified international trade in its yearly *State of Agricultural Commodity Markets 2018* as having a particularly important role to play in contributing towards food security in many countries, especially as climate change continues to unfold (FAO, 2018a). Moreover, as Clapp (2017, 339) has highlighted, trade liberalization in agriculture continues to feature prominently in the policy agendas of major international institutions to achieve global food security and agricultural sustainability. For example, the UN General Assembly’s Sustainable Development Goals for 2030 emphasizes the importance of an open multilateral trading system as a prerequisite to achieving SDG # 2 to end hunger, achieve food security and improve nutrition. Alternatively, the G20’s (2015) *Action Plan on Food Security and Sustainable Food Systems* where the G20 recommitted to the fundamental role of a rules-based multilateral trading system in global food security and to the on-going WTO negotiations with a view to promptly conclude the Doha Development Agenda (Clapp, 2017).

For critics, the veracity of this pro-liberalization agricultural discourse remains difficult to accept in a world mired by widespread hunger and corporate land-grabbing, especially in the Global South. For example, data from the Land-Matrix project, a joint initiative run by a variety of civil society and intergovernmental organizations as well as the University of Bern estimate that since 2000, over 38 million hectares of land have switched hands through transnational land deals, with the majority of these deals occurring after 2006-2007 (Hall, 2011, Land Matrix, 2015). Similarly, a 2010 report from the World Bank put

the number at 45 million hectares grabbed (World Bank, 2010). As a point of reference, 45 million hectares of land is roughly equivalent to the total land area of Spain and larger than Portugal, Greece and the United Kingdom combined. Much of this land has been acquired by transnational corporate producers who McMichael argues are in the process of dispossessing farmers primarily in the Global South (McMichael, 2012).

Additionally. In 2017, the Food and Agriculture Organization (FAO) estimated that approximately 821 million people, or roughly 1 out of every 9 humans on earth were undernourished and experiencing severe food insecurity, meaning that they were enduring a long-term inability to meet their daily minimum caloric consumption requirements (FAO, 2018a). Although the percentage of the global population who are undernourished has gone down over the past two decades, the absolute number of people who are undernourished in the world has remained more static, In 2017, which is the most recent year that data is available, an estimated 820 million people were undernourished. Moreover, both the percentage and absolute number of people undernourished has increased every year since 2014.

The current paradox that economic globalization and pro-trade advocates must address, therefore, is to account for historic levels of international agricultural trade (See Figure 1 below) and corporate concentration alongside exceptionally high and persistent hunger, food insecurity, and smallholder dispossession around the world. The major problem at the root of this widespread global food insecurity and dispossession for those who are critical, is an unequally accessible and western-oriented capitalist global agri-food system, dominated by transnational corporate actors (Fuchs et al, 2009; Fuchs & Kafliaganni, 2010, 9). This system is excellent at producing and providing an abundance of safe, nutritious foodstuffs for those wealthy enough to afford it, but abysmal at providing the same access to safe and nutritious food to the almost one billion people currently living in extreme poverty, who have been dispossessed of their land (Dixon 2009). It is within this context that discussions around the importance of food sovereignty, and more localized autonomy over an increasingly transnational agri-food system are rising in prominence (McMichael, 2008; Patel, 2009).

A fourth key challenge in transnational agri-food governance relates to the interrelated issues of food quality, food safety and food authenticity. Indeed, securing safe, good quality, unadulterated food has grown more difficult as the agri-food system has gradually shifted away from local production and consumption at the domestic level, to become increasingly transnational and globally integrated over the past several decades. This trend can be captured in part by the growth in the value of global agricultural exports, which increased from US\$433 billion in 2000 to US\$1.34 trillion in 2012, or by 209 percent in just 12 years (FAOSTAT, 2020). Similarly, a 2007 United States Department of Agriculture (USDA) study cataloguing the types of food that the United States imports from various countries is also demonstrative of an agri-food system that is growing increasingly global and transnational. In 2006, the United States imported 330 types of fresh and processed vegetables from 109 different countries. An additional 90

countries exported spices to the United States, and 120 others exported fruit and nuts (Zach et al., 2012, 155).

The logistics of this agri-food system are made possible in large part through complex supply-chain linkages that incorporate a number of different stakeholders including producers, traders, transporters, importers, processors, distributors, third-party logistics managers and suppliers, as well as retailers from a number of different countries in order to produce an end-product that will be sold to consumers (Zach et al., 2012). While such a system has allowed for unprecedented access to a diversity of foodstuffs for an increasingly large proportion of the world's consumers all-year round, a growing body of empirical evidence suggests that the frequency and severity of foodborne contaminations are rising in tandem with the growing complexity and transnationalization of the agri-food system (Marks, 2015; Saprong, 2014). For instance, according to the U.S. Centers for Disease Control and Prevention, the number of outbreaks attributable to imports rose in recent years, and in 2009-2010, nearly half of all food outbreaks were associated with imported food. In addition, in 2011, it was estimated that one in six Americans (47.8 million people) got sick, 127,836 were hospitalized, and 3037 died from foodborne diseases (Center for Disease Control, 2020). In 2015 it was estimated that the annual economic impact of foodborne illness to be \$93 billion annually in the United States (Scharff, 2015).

Food adulteration, which is often linked to food safety and food quality issues is also a serious problem in transnational agri-food value chains. For example, in the fish sector, a recent FAO review (2018b,vii) has highlighted, that on average, 20 percent of all fish in the retail and catering sectors are mislabeled. Unsurprisingly, these authenticity issues can have important food safety implications, compromise consumer health and reduce the nutritious quality of food. Given these very serious issues related to safety, quality and authenticity, product traceability in agri-food has become another major governance challenge and priority (Muirhead & Porter, 2019)

3.2 The Rise of Private Standard-Setting Bodies and Third-Party Certification

These disparate governance challenges, relating to 1) the ecological impacts of food production and consumption, and the resiliency of our current global agri-food systems, 2) the importance of agriculture as a source of livelihood around the world, 3) major food insecurity and inaccessibility and 4) food safety, quality and authenticity are some of the most pressing governance challenges related to food production and consumption. Certainly, as they are addressed in the years ahead, states at both the domestic level and via international venues such as the Group of 20, the World Trade Organization, the Codex Alimentarius, the World Food Programme, the United Nations General Assembly and the Food and Agriculture Organization will play important governance roles in responding to them. Yet as should be clear by now, these global governance challenges will also be significantly affected by “private” regulatory solutions enacted by traditionally “private” actors within transnational value chains.

In fact, this is already the case and nowhere is it more pronounced in agri-food than with respect to the rise of private standard-setting bodies and third-party certification systems over the past few decades (Hatanaka, Bain & Busch, 2005).¹⁷ Important to understanding private standard-setting bodies is to recognize that they themselves are not generally involved in the regulatory process. Often, private standard-setting bodies are assumed to perform the role of the third-party auditor as well as standard-setter, meaning that they would set the standard, certify their membership against it, and monitor compliance with it. However, this is frequently not the case. In order to enhance the legitimacy of voluntary private standard-setting, the certification, monitoring and auditing processes associated with a standard are contracted out by standard-setting bodies to professional third-party certification companies, which is said to minimize bias and conflict of interest in the oversight of the standard within the value chain. This process is different than first party (self-governance), second party (company's paid consultant) or fourth-party (government regulator) regulation (Bain & Hatanaka, 2010). It should also be noted that the neutrality of independent auditing organizations in relation to standard setters has been questioned within the literature, based in particular on the conflict of interest that auditors have in maximizing a client base for increased profit vs. their professional duty to audit rigorously (Lytton & McAllister, 2014).

These mechanisms have become tremendously influential sources of private agri-food governance as the sector itself has grown increasingly transnationally integrated and organized within corporate dominated global value chains (Hatanaka, Bain & Busch, 2005; Konefal, Mascarenhas & Hatanaka, 2005; Tallontire, Opondo, Nelson, Martin, 2011).¹⁸ In turn, regulatory functions typically determined and enforced by public actors, such as food safety requirements, social conditions in the workplace, and environmental regulations are increasingly being provided within transnational spaces by non-state actors such as civil society organizations (CSOs), transnational corporations (TNCs) and large industry associations who govern through the use of private standards (Botterill & Daugbjerg, 2015; Clarke, 2010).

Today, private standards cover the entire range of agri-food production, including agriculture, livestock and aquaculture (Lernoud et al., 2017). In total, the International Trade Centre, a joint agency of the World Trade Organization and the United Nations, identifies 134 private standards operating within the global agri-food sector regulating every step of the production process from farm to plate (Lernoud et al., 2017). The scope and range of private standards are impressive in this respect, affecting tens of millions of workers and hectares of farmland every year, and amounting to billions of dollars in certified sales.

¹⁷ The International Standard Organization, the world's largest non-governmental standard-setting body defines a standard as "a document, established by consensus and approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context. (ISO, 2020)

¹⁸ See Figures 1 and 2 below for an indication of the transnationalization of food production and consumption around the world over the past few decades

Private standard-setting bodies themselves can often be categorized between two distinct models. The first type of private standard is known as a “business-to-business” (B2B) standard. The organizational forms of B2B standards are unique in a couple of ways. First, B2B standards are industry led initiatives with very strict membership requirements, where membership, in this case confers the ability on members to shape the evolution of the standards being promulgated. This idea of membership is quite different than certification against the standard in question, which generally confers no, or far more limited options to participate in the standard’s development. In this respect, these types of standard-setting bodies do not include the state or civil society stakeholders such as consumers, financial actors or other NGOs as members, nor do they involve these groups in decision-making processes. Second, B2B standards, as the name suggests, do not depend on branding, labelling or consumer recognition / uptake for their adoption and success.

Generally speaking, B2B standards in the agri-food sector are most focused on enhancing food safety within the mainstream market as a pro-active measure to protect themselves against consumer backlash, food recalls, lawsuits and liability more generally (Djama, Fouilleux & Vagneron, 2011, 184). Indeed, beginning in the 1990s, domestic laws in the Global North such as the UK began to delegate responsibility for food quality to food retailers. Thus, many of the B2B standard-setting bodies in existence today were created during that time in order to harmonize standards and facilitate trade, but also, in Bain, Deaton & Busch’s (2005, 75) words, to “allow retailers to impose their own enhanced food safety requirements in order to avoid legal issues, and reputational damage within their value chains.” As time has progressed, many B2B agri-food standard-setting bodies have expanded their regulatory scope and now also set modest environmental and labour standards for their products as well.

A private B2B standard which plays a significant regulatory role in the agri-food sector, as well as my own case study, which I discuss more in Chapter 5 is the GlobalGAP standard. GlobalGAP is the largest B2B private agri-food standard-setting body in the world. It was founded in 1997 by 11 British and Dutch food retailers as a non-profit organization, but has grown massively over the past 20 years. In 2019, its membership included most of the world’s largest food retailers and producers, such as Carrefour, Wal-Mart, McDonalds, Metro, Sainsbury’s and Wegmans on the retailer side, and Dole, Del Monte, McCain, and Driscolls on the producer side (GlobalGAP, 2020b).

The GlobalGAP standard covers a range of agricultural products, including fruits, vegetables, flowers, ornamentals, aquaculture, livestock and animal feed (GlobalGAP, 2015a). The GlobalGAP standard itself is a “best practices” standard that includes 218 “control” points specifying best practice production standards relating to either labour conditions, worker or animal welfare, environmental sustainability, traceability and documentation, or food safety (GlobalGAP, 2015b). These control points are divided into three separate categories: ‘major must (87),’ ‘minor must (113),’ and ‘recommendation (18).’ In order to become certified, producers must meet all 87 major musts, 95 percent of

the 113 minor musts and demonstrate action towards the 18 recommendations. Generally, the recommendations and minor musts apply to labour standards or environmental regulation, whereas the majority of major and minor musts deal with food safety, traceability and documentation control points (GlobalGAP, 2015b). In fact, together traceability, documentation, and food safety standards make up 163 of the 218 of control points.

As of 2019, GlobalGAP had over 200,000 certified producers that sourced certified agricultural products from 135 different countries and covered 3.55 million hectares of land. As a point of reference, this is a land area slightly larger than the Netherlands (GlobalGAP, 2020; Willer et al., 2019). In addition, the GlobalGAP-regulated food market amounts to billions of dollars each year, as it is not uncommon for GlobalGAP member retailers to make up over 80 percent of total food sales volume in their countries of origin (Dannenberg & Nduru, 2013, 49)

Although B2B standards are technically “voluntary,” an important point to note when understanding their governance power and their widespread adoption and success in recent years is that certification against these standards is often essential for access to international markets. Indeed, the concentration of food sales within markets has provided transnational producers and supermarkets in many countries with *de facto* control over access to international markets. Thus, although there are no underlying legal requirements to participate in B2B systems, these standard-setting bodies, which often include the largest food retailers and producers on their executive boards, often act as gatekeepers for producers and other stakeholders to gain entry into international markets, particularly those that provide food to the global North.

A second type of private standard model is the business-to-consumer model (B2C). B2C standard-setting bodies differ from B2B standards in a couple of ways. First, B2C standards are often founded by environmental and social NGOs or producer associations and are much more motivated by ethical and sustainability issues than their B2B counterparts. Consequently, their focus is often on ethical issues such as the inclusion of marginalized stakeholders within decision-making as well as issues such as fair trade and organic production (Ponte & Cheyins, 2013). Relatedly, B2C standards, as their names suggest, rely on branding and labelling as a means of communicating information about the ethical, and / or sustainable qualities of their products to consumers. In this respect, B2C standard-setting bodies are highly reliant on consumer recognition for the adoption and success of their standards.

Second, as mentioned above, B2C standard-setting bodies are generally much more inclusive in terms of their membership and more democratic in terms of their decision-making processes when compared to B2B private standard-setting bodies. In this respect, most B2C standards are organized as multi-stakeholder initiatives (MSI), which seek to involve a wide range of stakeholders along the value chain, often including retailers, investors, producers, suppliers, NGOs and expert representatives such as academics. Most

do not, however, provide membership to states (Djama et al., 2011). Similar to B2B standards, the transmission of B2C private standards also occurs through market relations. Indeed, food retailers, who, as mentioned above, often act as the “gatekeepers” to international markets, remain sensitive to consumer preferences, opportunities for market differentiation, as well as to the pressures put on them by civil society more broadly. Consequently, supermarkets themselves have actively sought out and incorporated B2C standards within their global value chains (Arnold & Hasse, 2015; Vogel, 2008).

A major B2C standard-setting body which plays an important role in agri-food governance, as well as my own case study, which I discuss in Chapter 5, is the Fairtrade International standard. Fair Trade standard-setting bodies were established primarily by non-governmental organizations which emerged in the late 1980s and early 1990s at the national level in countries such as Switzerland and the Netherlands. In 1997, these different national fair trade branches were brought under the umbrella of a single organization called the Fairtrade Labelling Organization, also known as Fairtrade International (Arnold, 2014). As alluded to above, the Fairtrade standard originated as a means to create more just and fairer trading relationships between progressive consumers in the global North and producers (both smallholders and farm labourers) in the global South. Its executive membership is made up of producers, retailers, non-governmental organizations, and agricultural experts (often academics) (Fairtrade International 2020b).

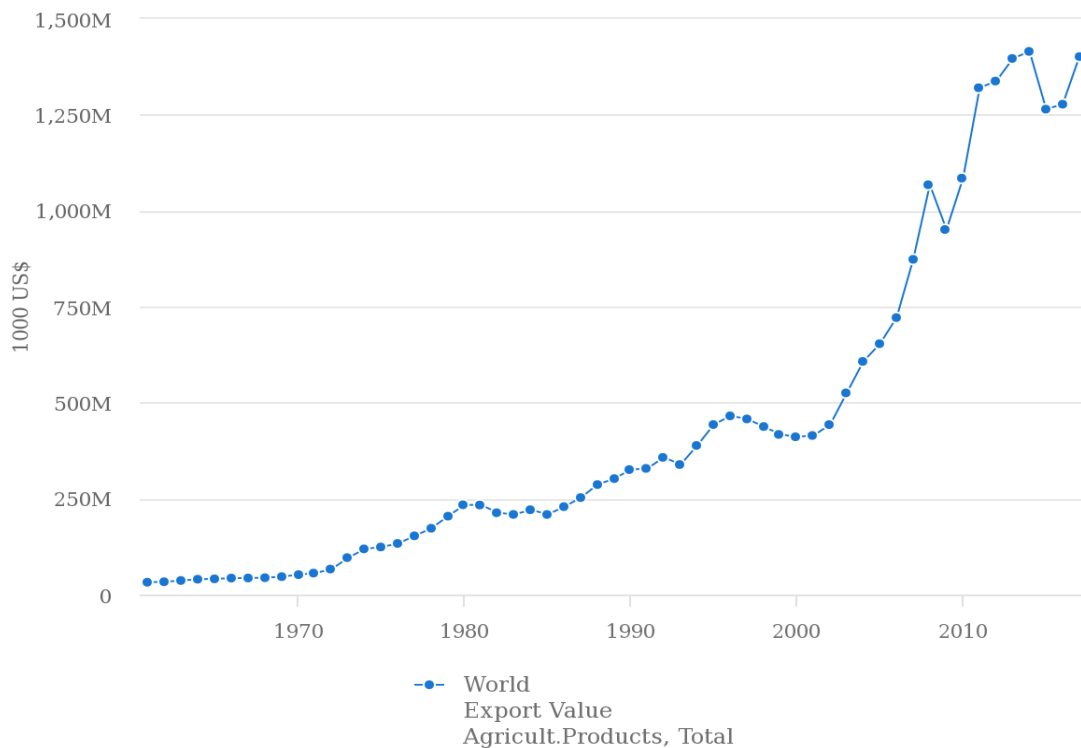
The standard accomplishes its objective of fairer trade by securing a “price premium” as well as “price minimum” for small-scale producers and agricultural workers. The price minimum, which is an established price floor that a Fairtrade certified commodity cannot fall below is designed to ensure sustainable production in value chains, even in cases when market prices fall. Alternatively, the price premium is a guaranteed additional amount of a Fairtrade certified commodity that goes directly to benefit farmers, agricultural workers and their communities through the allocation of the premium through participatory decision-making (Loconto, Silva-Casteneda, Arnold & Jimenez, 2019). This premium can be spent on collective investments directly back into the smallholder or worker organization that is Fairtrade certified. Producers and agricultural workers can also spend their premium on training, certification costs, education for themselves and their families as well as on infrastructure projects.

In addition to the price minimum and price premium, the Fairtrade standard also stipulates control points designed to ensure environmental sustainability, labour rights and proper wages. The Fairtrade International standard covers primarily fruits and tropical fruits in particular such as pineapple, banana, and cocoa, as well as vegetables, tea, coffee, nuts, honey, spices and herbs (Fairtrade International 2020a). The standard represents more than 1.7 million farmers and workers in 75 different countries around the world. It also generated approximately \$US147 million in premiums to farmers and agricultural workers in FY2014-2015 and covers approximately 2.6 million hectares of farmland around the world (Willer et al., 2019; Loconto, Silva-Casteneda, Arnold & Jimenez, 2019).

3.3 The Transnationalization of Food Production and Consumption

Notably, the central role that voluntary private standards and private forms of governance play in addressing agri-food challenges is likely to continue as the agri-food sector itself grows in its transnational orientation. Indeed, between 1974 and 2004, the change in the average percentage of total agricultural production grown for export each year nearly doubled from 10 percent of total agricultural in 1974 to 19 percent in 2004 (Anderson, 2010). While this *relative* increase in the proportion of food grown for export vs. consumed domestically may not seem enormous, it should be interpreted alongside the *absolute* growth in value of international agricultural trade which takes into account the growth in the global population as well. As illustrated in Figure 1, the magnitude of the structural shift underway within the agri-food sector is more easily evident using this metric. For example, the value of agricultural trade has increased approximately 125 times over the past 50 years, from 15 billion USD in 1963, to nearly 1.4 trillion USD in 2017.

Figure 2 Growth in World Agricultural Exports: 1961-2017



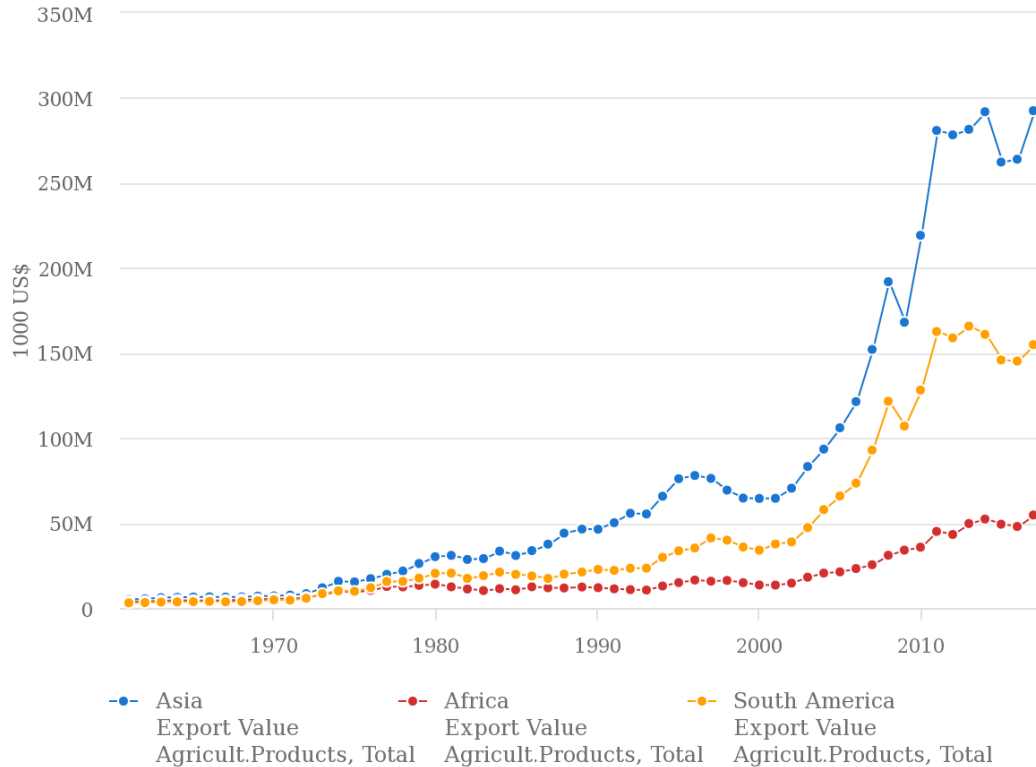
Source: FAOSTAT (Jun 07, 2020)

*All values in Figure 1 are in current \$US dollars and do not account for inflation

Where Figure 1 shows the rapid increase in global agricultural trade, Figure 2 illustrates the rapidly rising value of agricultural exports in different regions of the Global South.

This trend is important to highlight because an argument that is sometimes made is that the transnationalization of the agri-food system is over-stated (Weis 2007). It is suggested that the majority of agricultural trade is concentrated among a few staple crops and livestock groups (wheat, maize, rice soybean, poultry and pork), as well as a few primary exporters (The United States, Canada, Australia, the EU, Russia, Brazil, and Argentina) and importers (China, the EU, Japan, and the United States) (Weis, 2007). Yet this is increasingly not the case. For instance, the majority of high-value export production, including fruits, vegetables, nuts, and cut flowers, have grown enormously over the last few decades and are shifting to developing regions in tandem with globalization. As Maertens and Swinnen (2015, 6) note, “in Latin-America and the Caribbean, high-value exports, which include fruits, vegetables, dairy and meat products has increased from 6.4 billion US\$ in 1980 to 56.6 billion USD in 2010; in South & Southeast Asia, high-value exports increased from 5.2 billion USD to 57.2 billion USD over the same time period; and in Africa, from 2.4 billion US\$ to 10.6 billion USD.” While the massive growth in agricultural trade highlighted above is impressive, what is important to emphasize through these statistics is the growing significance of the transnational sphere for governance, both related to the growing conditions of agricultural products themselves, but also for all of the stakeholders involved in the value chain from farm to plate.

Figure 3 Growth in Value of Agricultural Exports from Africa, Asia and South America: 1961-2017



Source: FAOSTAT (Jun 07, 2020)

*All values in Figure 2 are in current \$US dollars and do not account for inflation

This chapter began by discussing some of the major governance challenges currently unfolding within an increasingly transnationally integrated and privately regulated system of food production and consumption. It then moved on to outline the important role that private agri-food standards are playing in addressing these challenges. Chapter 3 now turns to a review and critical assessment of four very different literatures. Each of these literatures has contributed to our understanding of the rise of private authority, but also speak quite convincingly in different ways as to the capacity of private authority to address major governance challenges associated with food. The following section begins with a discussion of Food Regime Theory. It will then move on to discuss New Institutional Economics and Global Value Chain governance and Private Authority literature before concluding with an overarching assessment of the four literatures.

3.4 Food Regime Theory and the Private Governance of Food

Food Regime Theory is an important critical global political economy theory of agriculture and capitalism that usefully places the concept of power and the historical project of capitalist accumulation at the centre of its analysis. As Philip McMichael notes (2005, 276), a food regimes approach “constitute[s] a lens on broader relations in the

political history of capital,” that links differing historical periods, or structures of global agricultural production and consumption relations directly to transformations in capitalism and capitalist accumulation (Friedmann & McMichael, 1989).

A key assumption which informs the work of many food regime scholars borrows from Marx’s concept of dialectical materialism. Many food regime scholars thus believe that woven into the capitalist production of agriculture are unsustainable and inherently contradictory tensions which lead to repetitive cycles of accumulation (thesis or the emergence of a food regime), crisis (antithesis or a transition period between regimes marked by unpredictability, contestation and experimentation) and re-invention (synthesis or a new food regime) which stabilizes around different sets of political, economic and social relationships that become normalized and temporarily endure in order to (re-) facilitate the process of accumulation within different geographies, historical periods and contexts (Friedmann, 2009).

The theory was first articulated by Harriet Friedmann (1982) but collaboratively expanded upon with the help of Phillip McMichael in a co-authored seminal article entitled “Agriculture and the State System.” written in 1989. In that article, Friedmann & McMichael made a compelling argument backed by meticulous empirical evidence and research to argue that *global* food relations have historically been and remain far more structured and interconnected than generally acknowledged. At the time, the predominant view among mainstream development scholars and government officials was that agriculture and its management were national or local enterprises that were thus understood in a siloed manner. In addition, Rostow’s linear theory of development which outlined a prescriptive five stage path leading all countries from agricultural subsistence to industrialization and development dominated national agricultural policy circles. This view was highly problematic for food regime scholars such as Friedmann & McMichael because it served to obscure the clear global linkages and broader global context within which food relations had historically developed.

Friedmann & McMichael’s agricultural systems approach was developed through the conceptual development of the regimes concept which they borrowed from International Relations literature (Krasner 1983). As noted already, Cutler et al., (1999) have defined a regime as “an integrated complex of formal and informal institutions that is a source of governance for an economic issue area as a whole.” Friedmann (2003, 30) has defined a *food* regime along similar lines as “a rule-governed structure of production and consumption of food on a world scale.” Implicit in this definition of food regimes is the idea that there are common ideological or discursive aspects to a regime, which will be shared among those involved in the regime to some extent, and that tensions between competing interests have come to a stable equilibrium (Friedmann, 2009). What the food regimes literature suggests, therefore, is that it is possible to discuss a *global* agri-food system and that it is also possible to identify specific rules, norms and institutions which structure that system, as well as how that system is governed. Food Regime scholars generally identify three regimes in the recent history of capitalism and agriculture since

1870. Each of these regimes have been organized around qualitatively distinct and historically specific institutions, norms and rules. While states, and especially hegemonic states such as the United Kingdom and the United States wielded significant political authority to shape the rules of the first “settler-colonial” (1870-1914) and second “mercantile-industrial” (1947-1973) food regimes, corporations have become central political actors wielding significant political authority in the current “neoliberal” “corporate” or “corporate-environmental” food regime (1980s-).¹⁹

According to Food Regime scholars, what are the rules, norms and institutions that shape our current “neoliberal” food regime? For McMichael (2016, 1), our current “food regime is one which has “institutionalize[ed] a hegemonic relationship whereby states serve capital.” In concrete terms, this has entailed a *political* process of state-led liberalization, privatization and de-regulation / re-regulation through domestic policy, as well as regional and international institutions such as the World Trade Organization, the International Monetary Fund, and the World Bank, the North American Free Trade Agreement, or the Association of Southeast Asian Nations Free Trade Area. In turn, over the past few decades “public” actors such as the WTO have been quite effective in “institutionalizing the norms of the free market” in part by getting its 164 member-states to sign on to the WTO Agreement on Agriculture (1995), the Technical Barriers to Trade Agreement (1995) and the Agreement on the Application of Sanitary and Phytosanitary Measures (1995) which have gradually opened up agricultural markets to foreign investment primarily by transnational corporations, lowered agricultural tariffs and diminished domestic agricultural subsidies.²⁰ Other important international agreements shaping *global* food relations include the Trade-Related Aspects of Intellectual Property Rights (1995) and the Agreement on Trade-Related Investment Measures (1995) as well as an assortment of other multilateral and bilateral agreements made between states. In general, these agreements have focused on increasing capital mobility and enhancing private investor protections for transnational corporations investing in foreign countries.

These state-led neoliberal developments have facilitated the emergence of a much more transnationally oriented and globalized agri-food system, organized less at the national level by states and to a much greater degree through the networked, standardized, just-in-time, transnational value chains controlled by oligopolistic transnational corporations who have been busy consolidating market control through a series of mergers and acquisitions (Otero, 2012). For example, Clapp has shown exceptionally high levels of corporate concentration in several agricultural sectors, including the seed and pesticides sectors, where four firms, DowDuPont, ChemChina, Bayer and BASF control roughly 60 percent

¹⁹ Although there is internal debate within the food regime literature as to whether we have clearly entered into a “third” corporate (McMichael, 2005) or corporate-environmental food regime (Friedmann, 2005) or remain within a transition period between a second and third food regime (Pritchard, 2009), in all of these cases, non-state actors and corporations have both been identified as much more important agri-food governance actors within food regime scholarship in recent decades.

²⁰ The average tariff on agriculture products fell from 41.5 percent in 2001 to 18.1 percent in 2013 (Bureau, Guimbard & Jean, 2017).

and 75 percent of global markets for these products respectively (Clapp, 2018). Alternatively, it is not uncommon for 4-5 retailers to account for over 50 percent of domestic food sales in most countries in the global North (Sexton & Xia, 2018). In addition, the aggregate value of global food industry mergers and acquisitions, between 2005 and 2007 doubled each year to reach a total of US\$200 billion. This trend shows signs of accelerating as in 2009, 64,000 mergers occurred and a total of US\$3.6 trillion changed hands. (ETC Group, 2011)

In this increasingly networked agri-food system, Food Regime scholars focus closely on the implications of the increasing regulatory power of corporations, but especially food retailers (supermarkets) which Burch and Lawrence (2005, 1) have characterized as “masters of the food system.” This is primarily due to the monopsony relationships retailers hold over suppliers within their value chains, as well as their privileged and monopolistic access to consumers (Clapp & Fuchs, 2009; Isakson, 2014).

Food Regime scholars have been very interested in assessing and understanding the implications of these changes for the ecological, economic, and social governance of food. Moreover, although they differ in degree, all FRT scholars are united in their pessimism regarding the potential of corporations to lead in the sustainable and just governance of the global agri-food system (Burch & Lawrence, 2005, 2009; Campbell, 2009; Friedmann, 2005, 2009, 2016; McMichael, 2005, 2009ab, 2012, 2013a, 2016; Otero, 2012).

The concerns of Food Regime scholars are significant and diverse and driven by what is at root a Marxist critique of capitalism. For example, McMichael has highlighted how accumulation by dispossession and land grabbing have both accelerated within the corporate food regime as the mobility of capital has produced the conditions for corporate access to new lands, people and opportunities for profit which he calls a “land grab express” (McMichael 2013b, 118). In turn, rural communities have been dislocated and farmer agency and control over their lives has been disrupted as “new” agricultural frontiers, particularly in the global South have been incorporated into corporate global value chains. These conditions have led to the large-scale dispossession of small-scale peasant agriculture, which has simultaneously created a reserve force of wage agricultural labour (McMichael, 2009). Moreover, it has also led to the conversion of local agricultural land towards the production of biofuels, or boutique non-staple crops for consumption by Northern consumers rather than production of staple crops for local consumption (McMichael, 2005). Problematically, as highlighted at the beginning of this chapter, for McMichael, these trends have contributed to problems of food dependency, food insecurity, widespread undernourishment and food crises in the global South.

Relatedly, both Campbell (2009) and Friedmann (2005, 2009) have demonstrated the ecologically destructive power of increasingly “distaniciated” and socially “disembedded” for-profit food relations which have intensified considerably during the corporate food regime. Many of these ecological problems are driven by a profit-maximizing agro-

industrial model of monocrop production that prioritizes high yields, often through the application of environmentally harmful chemicals and the adoption of ecologically damaging land management practices that lead to soil erosion or chemical runoff and decrease the resiliency of our food systems. Yet these practices are enabled and continue to occur in part because the consequences (or externalities) of these production practices have become disembedded through vast transnational distances from the consumption of the food being produced (Campbell, 2009).

Food regime scholars have effectively demonstrated many of the problems that are associated with the increasing governance power that for-profit private actors hold within the global agri-food system. As McMichael has noted (2009a, 287) corporate domination has driven the conversion of the whole of the global South into a “world farm,” undermining local variance, agricultural biodiversity and environmental sustainability at the same time. In this respect, the governance issues raised by FRT are valid and concerning. Yet a common critique levelled against FRT is that the macro-level orientation of the approach often serves to overemphasize the integration, centralization, and uniformity of the system. Consequently, critics argue that FRT has a tendency to devalue or under-appreciate the individual agency of actors to make changes from within the system (Goodman & Watts, 1994).

As a result, FRT scholars have very rarely asked questions about the broader potential of private authority to resolve important agri-food governance issues. In turn, the literature does not make any real attempts to answer how an exceptionally influential and effective system of global private governance like commercial contracting could be subverted for the public good.²¹ In addition, even if for-profit private authority is incapable of resolving global agri-food challenges at the transnational level, the macro-level orientation of FRT analysis means that considerations of how power is actually exercised and sustained by actors (ie. via commercial contracts) over long distances remains somewhat amorphous and under-explored conceptually within the literature (Goguen, Muirhead & Porter 2018). Finally, because of the literature’s overly structural and macro-orientation, it pays very little attention to the possible opportunities for change that are situated at the meso or micro levels. This includes those associated with instruments such as commercial contracting.

It is no surprise then that food regime scholars have very little to say about the use of private law or commercial contracts, let alone the possibilities which may be associated with them to address any of the ethical, environmental, social, or economic issues which this literature accurately and convincingly identifies as problematic.

²¹ There are a few exceptions to this case, including Campbell (2009), who seeks to better understand the implications of third-party standard setting bodies such as GlobalGAP for the global governance of food.

3.5 New Institutional Economics, Transaction Costs and the Private Governance of Food

As the FRT literature demonstrates, there are many reasons to be skeptical about the rise of private governance and its ability to meaningfully address issues that are in the broad public interest. This is especially true given that for-profit transnational corporations are the most important non-state actors within an increasingly global agri-food governance landscape. To state the obvious, conflicts of interest abound when it comes to private, and especially for-profit private entities self-regulating over issues that are of common concern to all, such as labour standards or the environment (Fuchs et al., 2009; Fuchs & Kalfagianni, 2010; Kalfagianni & Fuchs, 2010). Often, meaningful regulation over these issues raises the cost of production, which of course runs in contrast to a corporations' motive for profit and responsibility to shareholders (Bain, 2010, 180). Skepticism is further compounded by the associated erosion of democratic control involved in ceding political authority to special interest groups and other private actors to address global governance challenges within private governance systems designed in one way or another to advance private interests.

Despite this, New Institutional Economics provides a useful frame through which to understand and think about how issues that are in the broader public interest can be meaningfully addressed through private governance, particularly at the transnational level. As a field, New Institutional Economics was borne out of work first popularized by R.H Coase in his 1937 article, "The Nature of the Firm." Following this, NIE was expanded upon most prominently by Oliver Williamson and Douglass North during the latter half of the 20th century. As the name suggests, at the centre of work on New Institutional Economics is the importance of paying attention to both formal and informal institutions in understanding the establishment, function and efficiency of markets.

As North (1991, 97) explained in his seminal article on institutions, and their role in the formation, function and efficiency of markets "institutions are the humanly devised constraints that structure political, economic and social interaction. They consist of both informal constraints (sanctions, taboos, customs, traditions and codes of conduct) and formal rules (constitutions, laws, property rights). Throughout history, institutions have been devised by human beings to create order and reduce uncertainty in exchange." This institutionally constructed depiction of a market is in contrast to that unrestricted free-market that is most often used as the conceptual frame. This latter "free-market" frame is one that depicts markets operating through spontaneous arms-length bargaining interactions and broader abstract forces of competition often referred to as Adam Smith's "invisible hand." (Porter, 2016).

Rather, NIE scholars argue that markets rarely operate through these spontaneous, arms-length interactions. As Ronit & Schneider (1999, 259) explain, NIE theorists suggest that "market relations presuppose a complex array of institutions designed to promote ethical foundations of economic behaviour, restrict opportunism, provide measurement and

quality standards and create rules and norms for regulating contractual performance.” All of these issues, if left unaddressed, can lead to market failure. It is easy to understand, in this respect how harmonized quality standards would be important for market actors to ensure product authenticity as well as consistency. Similarly, it is also clear to see how formal institutions such as laws and courts would be necessary for markets to function efficiently given their ability to clarify and enforce ownership rights or to penalize the bad behaviour of market actors in instances of fraud or breach of contract.

Based on this institutional understanding of markets, NIE scholars theorize that all market exchanges are affected to some degree by three different types of “transaction costs.” In this respect, transaction costs refer to the ability of institutions to reduce the costs involved in contracting for and carrying out market exchanges (Cutler et al., 1999, 338).²² These three costs include 1) the transaction costs associated with information and uncertainty; 2) the transaction costs associated with negotiation; 3) the transaction costs related to enforcement (Cutler et al., 1999). All three of these transaction costs are common in market exchanges and are central to their impediment. Within this framework, institutions are theorized as coordination mechanisms which emerge as functional and instrumental tools designed by both traditionally public and private actors in order to reduce the uncertainty and costs associated with transacting.

Critically, NIE literature contextualizes the emergence of private governance as a functional necessity for market efficiency in an increasingly globalized world defined by transnational production and consumption relationships. The narrative which subsequently flows from NIE scholarship, is therefore, in part, a narrative of state ineffectiveness at the transnational level. Given the widespread demand for institutionalization at this level, private actors have stepped in to develop these institutions, inclusive of “soft law” governance mechanisms such as private standard setting bodies, third-party certification systems and private arbitration firms, as well as “hard law” mechanisms such as private commercial contracts because they are efficient at reducing market transaction costs as the disjuncture between transnational markets / production relationships and state regulation has grown in stature (Haufler, 2018).

The purported efficiencies of private governance manifest in a few different ways. First, the territorial constitution of state sovereignty makes states generally ill-suited to

²² The transaction costs approach was originally used to explain the organizational form of firms within markets based on the degree of complexity and / or the degree of opportunism involved in a production process for a particular good or service. Through this transaction costs approach, Williamson (1975) demonstrated the institutional advantages and efficiencies conferred upon hierarchically organized firms vs. horizontal arms-length bargaining in particular cases. As Williamson demonstrated, in situations where knowledge is difficult to transmit or when a firm is particularly susceptible to opportunism or dependent on outside actors, there are significant institutional advantages to corporate hierarchies and vertical coordination when measured against the transaction costs of exchange involved if transactions occurred horizontally through arm’s length bargaining arrangements (Porter, 2016). Alternatively, North (1991) was more focused on the historic role of different institutional developments in reducing the transaction costs of exchange.

managing geographically dispersed transnational relations. Both public oversight and judicial review are unavailable to states at the transnational level and in turn, they are less effective in setting, monitoring and enforcing consistent rules, which, as NIE scholars have demonstrated, are essential for the function and efficiency of transnational markets (Cafaggi, 2011; Cutler et al., 1999; Lin, 2014).

Similarly, the limitations of state power to extend its regulatory preferences into the transnational sphere would not be a problem if all states adopted identical legislation. However, another difficulty leading to an emergence of private institutions stems from regulatory fragmentation resulting from divergent state legislation both on the rules that are set within a sector but also how each state approaches legal remedy if rules are violated (Cafaggi, 2011; 2012). Thus, private institutions such as standards, third-party certification and contracts have emerged to help harmonize rules, as well as their application across transnational spaces.

From a different perspective, private institutions have emerged even in cases where states have managed to coordinate internationally in a given issue area. In the case of labour protection for instance, the International Labour Organization lists 8 core Conventions that have been ratified and adopted into national legislation by 186 countries. Yet a theme which has become apparent through highly publicized cases of labour abuse, especially in areas of production such as agriculture or textiles, is that states themselves have differing institutional capacities as well as willingness to monitor or enforce agreed upon rules (Bolle, 2014). Thus, as globalization continues to increase our interconnectedness, private market institutions have also emerged in response to the weaknesses or unwillingness of states to ensure compliance with international standards they have agreed upon (Cafaggi, 2012).

In a similar vein, private arrangements may exist to fill a governance vacuum in cases where states cannot come to agreement as well. In this respect, powerful states may choose to delegate to private actors if it serves their interests, or alternatively, private authority may be allowed to develop in spaces where power politics and competition do not allow states to come to agreements (Green & Coglán, 2013; Rogers & Dauvergne, 2016). This is often a critical challenge for international organizations where consensus is often required for decision-making, and interests commonly diverge.

Indeed, in the case of agriculture, private standards have been put on the agenda of the Sanitary and Phytosanitary committee of the World Trade Organization since 2005, when St. Vincent and the Grenadines first made the case that these standards were acting as non-tariff barriers to trade (Committee on Sanitary and Phytosanitary Measures, 2014). Yet a major reason that no progress has been made on this topic relates to the interests of powerful states in this space. European and North American countries have been vocal in their aversion to regulating private standard-setting bodies and have consistently forestalled committee discussions on these governance arrangements within International Organizations including the WTO, Food and Agricultural Organization, the United

Nations Conference on Trade and Development and the UN's Codex Alimentarius (Committee on Sanitary and Phytosanitary Measures, 2014; Interview F6).

According to a Senior Standards officer I interviewed at the Codex Alimentarius Secretariat which is the primary international organization involved in establishing food safety standards for internationally traded agricultural products, this issue of political conflict between states has an impact on the kinds of regulatory issues they can pursue. While he told me that the technical committees of the Codex will agree on 95-98 percent of the regulatory issues, they work on together for food safety standards, there are some which are much more challenging to address, and which the Codex often avoids. As he explained to me:

When we talk about pineapple standards or something, there is basically no disagreement as the issue isn't that contentious and it is about food safety and science. The problem comes when there is an issue like hormones, or GMOs, or biotechnology, they are not really food safety issues- they are much more about what certain countries think about animal welfare, about ethics about economics about big business about Monsanto-. Obviously Monsanto is not popular in Europe, their citizens tell their governments we don't want any of this shit, and so Europe won't agree to that and basically you get trading blocks that will oppose those kinds of issues ostensibly because there are food safety issues and concerns but really it is about political concerns and consumer concerns that aren't really founded in science or food safety. It is about perceptions and misconceptions and what have you...For us at the Secretariat, we try more and more to guide the member states to not go into areas that will be sensitive and where we won't find agreement and member states understand that too. If someone proposes setting a standard for a veterinary drug- if it is something that we know isn't used globally we suggest to our members, don't go there and work where we think we have a chance of agreeing (Interview F6).

As one can see, in part through this quote, private governance arrangements may be allowed to develop, and even actively encouraged in cases where regulation is required, but states cannot come to agreement.

The emergence of private institutions is also explained based on the view that states are disadvantaged by virtue of the hierarchical, and / or consensus-based style of government they have traditionally relied upon to govern both domestically, and internationally. The criticism here is that broad-based public government solutions are often "unworkable, too slow, or outmoded" in regulating what is a complex, technical, flexible and rapidly changing transnational environment (Fortin & Weir, 2015). As Coglianese et al., (2009, 13) note, "the sheer volume, heterogeneity and changing nature of products that pass through global value chains make it virtually impossible for government to regulate products through more conventional means." In short, contemporary transnational relations are too demanding for public, top-down, consensus-based governance solutions.

In global agricultural governance, a useful illustration of this point can be found by comparing the amount of time taken for the United Nations Codex Alimentarius, which is the principle international organization responsible for setting international food safety standards for trade, and GlobalGAP, which is the world's largest private business-to-business food safety standard setting body to revise their food safety standards. Although the Codex is just one example, it took the institution roughly 15 years to work through and introduce food safety changes that were proposed by an internal review panel on food safety from 2002. This reality was re-affirmed to me during my interview with a senior food safety standards officer at Codex Alimentarius Secretariat. As they noted in discussions about the food safety standard setting process at Codex: “a technical committee, which is composed of government members assisted by technical experts will generally work on a draft standard for approximately three years. Sometimes if it is really simple, a standard revision might take a year. On average, the development of a standard from start to adoption by the Commission takes 5 years (Interview F6).”²³

In part, the length of time required to implement the changes was due to the requirement to reach consensus among over 180 different member states who make up the membership of the Codex.²⁴ As the Senior Standards officer I interviewed from Codex explained, “For a standard to be adopted, we need consensus- if we don't get consensus and not everyone agrees, nothing will go forward to the Commission.”

In that same 15 year time-period, GlobalGAP went through five major revisions of its food safety standard, which were designed and then re-designed to respond to a series of fast-changing and continuously evolving food safety concerns identified as important by GlobalGAP membership and expert technical working groups which operate year-round within the GlobalGAP organization (Interview M13; Henson & Humphrey, 2009). This point around speed of action was re-affirmed to me during an interview I conducted with a senior member of the British Retailer Consortium (BRC). The British Retail Consortium includes all of the major supermarkets in The UK as members. In total, it has over 5000 members and associate members, who collectively conduct over \$US 224 billion in sales in 2019 and employ over 1.5 million people. The BRC focusses primarily on food safety and quality issues as well as food traceability through the supply chain (BRC, 2020)

²³ Although this position that privately developed solutions are more efficient, or faster than public ones can be explained in part by the trade-offs that exist between substantive participation / inclusiveness in decision-making on one hand and the speed of decision-making on the other. Arguably, it is the more frequent preoccupation and higher valuation of participation within “public” governance institutions that often causes them to be less efficient. When private governance arrangements provide for enhanced participation within their governance frameworks, they will likely also take longer, on average, to develop and modify their regulations, directives or standards.

²⁴ Although one critique of this perspective is that corporate lobbyists have done much to stall and prevent the development of strong and far-reaching standards within the Codex (See for example Fuchs & Kalfagianni, 2010, 12)

As they explained to me:

consumer expectation works so much quicker than government regulation does. At the BRC, we run a general election every single day with our member's consumers. They are our electorate. We listen to what is on their minds and we respond to those concerns because this is where market opportunity lies, and also what we need to do to protect our member's brand reputation. We listen to what is on consumer's minds in food issues, whether those be sustainability or ethical issues, and we respond to those concerns through the market immediately. We work on these kinds of issues much quicker than [the U.K.] government does (Interview L12).

To summarize, the rationale for private institutional developments in areas of broad public interest at the transnational level within NIE scholarship should be clear. In situations where state or international regulation is slow, inflexible, ineffective, and qualitatively different from place to place, market actors will face much higher transaction costs and uncertainty both of which they have an interest in reducing. As Pattberg notes, (2005, 593), “By providing a forum for deliberation and conflict resolution, by producing and disseminating valuable knowledge and information, by providing opportunities for organizational learning, and by securing independent verification of norm compliance, private institutions effectively provide an *institutionalized* response to intertwined environmental, social, and economic problems [emphasis added].” As Pattberg continues (593), this can serve as a “functional equivalent of international governance” in a way that “might provide collective goods, reduce transaction costs, and decrease uncertainty” in a way similar to traditionally public government at the domestic level.

An example of this type of private institution would be the GlobalGAP standard on food safety. Its main governance objective is to reduce informational asymmetries between buyers and sellers related to food safety, as well as to monitor and discipline non-conforming producers on issues surrounding their production processes. In short, the GlobalGAP standard is designed to reduce transaction costs that would otherwise impede the transnational exchange of agriculture in the absence of effective “public” institutions. From a broader public interest perspective, the GlobalGAP standard also reduces the likelihood that the public will consume contaminated, adulterated and unsafe food, which can cause terrible and long-lasting health repercussions as well as death. While this is just one example, there are many other instances like this one, where private governance and institutions designed by for-profit actors to smooth the operation of markets at the transnational level also advance broader public interests with respect to environmental impacts, food safety, labour conditions and so on (Fagotto, 2014).²⁵

²⁵ From an alternative perspective, there is a literature on the benefits of Club Goods, as well as the threat of civil society led visibility campaigns, which also encourage for-profit actors to act in ways that would broadly be considered to be in the public's interest. See for example, A Prakash & M Potoski (2005). Green

Despite the contributions made by NIE scholarship to our understanding of private governance, as the FRT literature discussed above reveals, NIE does not deal well with the concept of power within its theoretical framework. In reducing the majority of institutional developments within markets to “efficiency enhancing,” there is a rational choice assumption that permeates the literature that humans and firms are always seeking to be economical and efficient and market institutions will develop in order to foster these objectives (Groenwegen, Kerstholt & Nagelkerke, 1995).²⁶

Relatedly, market failures and inefficiencies are accounted for by the bounded rationality of decision-makers and incomplete access to information (Williamson, 1987). Moreover, when power is directly addressed as an impediment to market efficiency in this literature, it is done in a relatively limited way, using quantifiable proxies such as a firm’s market share or buying power (Baudry & Chassagnon, 2019), while entirely ignoring other less tangible forms of power that, for example, surround the production and dissemination of knowledge, which has become an invaluable theoretical framework through which to understand and analyze global governance outcomes as well as private agricultural governance (Gibbon & Ponte, 2008; Rose & Miller, 1992).

In this respect, there is a circularity to the NIE framework wherein institutional emergence and change are nearly always desirable because they would not have materialized were they not market-enhancing (Groenwegen, Kerstholt & Nagelkerke, 1995). An obvious problem with this approach is that it largely erases the role of power as a means of accounting for institutional emergence and change in markets. For example, a competing narrative regarding the emergence of the private GlobalGAP standard-setting body is that it is a governance instrument supported by powerful countries and created by the largest and most powerful transnational corporations to foster relations of domination and subordination, and to pass along the costs of food safety regulation within their value chains onto actors further upstream (Fuchs & Kafagianni, 2010, 13; Muirhead, 2020). Similarly, there is ample evidence from other industries that even when private for profit actors agree that there is indeed a governance gap, as well as a need for global rules, there is often intense competition between transnational corporations and business associations around who will define the character and content of those rules and how they will be implemented. In many of these cases, what emerges as dominant cannot be understood exclusively from an efficiency perspective (Haufler, 2018; Buthe & Mattli, 2011).

Partly, the point of the discussion on New Institutional Economics was, therefore, not to broadly label public governance as ineffective, and private governance as superior at the transnational level. Rather, it was to address skepticism around the more commonly held notion that private for-profit actors are always incapable of wielding private authority at

clubs and voluntary governance: ISO 14001 and firms' regulatory compliance. *American Journal of Political Science*, 49(2): 235-248.

²⁶ Although both Williamson (2000) and North (1994) did begin to look more closely at the concept of power, and the way in which it could sustain inefficient institutions as well as retard efficient institutional changes from occurring within markets.

the transnational level to govern in the broader public interest and alternatively, that public approaches are always superior in pursuing these public objectives.

3.6 Global Value Chains and Private Agricultural Governance

The discussion thus far has elaborated on two approaches that contextualize the emergence of “private” food governance very differently. The NIE approach accounts for the rise of private governance by using a functional market enhancing explanation, whereas the FRT literature focusses much more on power and the manner in which private systems of governance further the interests and the domination of transnational corporations over other actors within a neoliberal food regime. The following section will introduce a third major approach to conceptualizing the private governance of food that is grounded in the work of an interdisciplinary and heterogeneous group of scholars who have variously contributed over the last quarter century to an analytical framework known as the Global Value Chains (GVC) approach.

The body of work which falls under the GVC umbrella is quite ontologically diverse. It includes mainstream structural (Gereffi, Humphrey & Sturgeon, 2005) as well as critical approaches that are grounded in GPE scholarship (Mayer & Phillips, 2017; Phillips, 2017), as well as post-structural (Nelson & Tallontire, 2014) Foucaultian inspired approaches (Gibbon & Ponte, 2008; Ponte & Gibbon, 2005; Ponte & Cheyns, 2013). Researchers have conducted research in a number of industries including manufacturing of automobiles (Sturgeon, Van Biesebroeck, & Gereffi, 2008; Sturgeon, Memedovic, Van Biesebroeck, & Gereffi, 2009), bicycles (Galvin & Morkel, 2001; Gereffi, Humphrey & Sturgeon, 2005), and electronics (Sturgeon & Kawakami, 2010; Vind & Fold, 2007), the production of textiles and apparel (Bair & Gereffi, 2001; Gereffi & Frederick, 2010), as well as horticulture (Barrientos, 2013; Barrientos, Dolan & Tallontire 2003; Dolan & Humphrey, 2000; Lee, Gereffi & Beauvais, 2012) including coffee and tea (Neilson & Pritchard, 2009), fresh fruits and vegetables (Gibbon, 2003), aquaculture (Tran, Bailey, Wilson, & Phillips, 2013; Ponte & Cheyns, 2013; Ponte, Kelling, Jespersen & Kruijssen, 2014), and finally services including tourism (Christian, Fernandez-Stark, Ahmed & Gereffi, 2011), and knowledge outsourcing (Gereffi & Fernandez-Stark, 2010).

As the following paragraphs will reveal, GVC is excellent at accommodating both the “power” based perspectives to governance highlighted by the FRT literature while simultaneously acknowledging the “functional” efficiency-enhancing insights derived from NIE scholarship. Despite large differences in perspective between authors within the literature on GVCs, academics in this area of research share an analytical focus on similar structures, locations, level of analysis and actors. Namely, scholars take as analytically important the *structure* of value chains as they are linked across *global* or *transnational* spaces, in order to analyze the governance of a range of rapidly globalizing industries at the meso-level, as well as to analyze the behaviour and dynamics of *firms* and especially “lead firms” in “vertically” coordinating production through global value chains.

More recently, GVC scholars have also started paying more attention to the external influence of *state* and other *non-state actors* such as NGOs and standard-setting bodies on chain governance (Dallas, Ponte & Sturgeon, 2019; Horner, 2017; Mayer & Phillips, 2017). This latter category is often labelled either as the broader “institutional setting” or “horizontal” dimensions of governance within GVC literature. Together these are considered to be the least theoretically and empirically developed areas in the field and importantly, also includes the role of commercial contracts (Bair, 2005, 159).²⁷ Incorporating these variables into their analyzes, GVC scholars are interested in understanding and mapping the full range or “chain” of activities involved in bringing a product or service to market as well as the way that “value” is created and distributed between actors along the chain (Gibbon, Bair & Ponte, 2008, 331). The term “value” is used purposefully in this respect, in order to encourage policy-makers and researchers to pay careful attention to the significant, yet often underappreciated way in which different forms of labour are centrally linked to global economic production and service processes (Bair, 2009; Barrientos, Gereffi & Rossi, 2011; Ponte & Sturgeon, 2014). As Sturgeon, one of the earliest theoreticians of value chain governance (2008, 10) emphasizes, the term “value” was strategically inserted because of the way it “focused attention on the main source of economic development: the application of human effort, often amplified by machines, to generate returns on invested capital.” The insights generated through GVC analysis have in turn been used by scholars, as well as national and international policy-makers in order to identify possible strategies or opportunities for disadvantaged workers, firms and countries to “move up the chain (Barrientos, Gereffi & Rossi, 2011; Jespersen, Kelling, Ponte & Kruijssen, 2014).”

The intellectual origins of the GVC approach are found in Gary Gereffi’s path-breaking conceptual work on Global Commodity Chains developed during the 1990s²⁸ (Gereffi &

²⁷ The relatively exclusive focus on private actors and transnational firms in particular within the GVC literature has been one of the main defining features between it, and a parallel approach known as the Global Production Network (GPN) approach. This latter approach also focusses on global or transnational value chains, specific industries, their structure and the role of private actors, but pays more attention to the spatial dimensions of chains and how they are socially and institutionally embedded within different local contexts (Bair, 2009, 4; Barrientos, Gereffi & Rossi, 2011, 321). As Henderson et al., (2002, 444-445) argue, GPN scholars adopt a “network” rather than a “chain” metaphor to interrogate global production because in their view, the chain metaphor is too linear and simplistic to explain the complex, dynamic and interactional nature of production networks, as well as the importance of embedded and path dependent local social dynamics and institutions that are involved in the reproduction of knowledge, capital and labour—all fundamental aspects of production processes.

²⁸ However, the concept of a “commodity chain” was first developed by Immanuel Wallerstein and Terrence Hopkins in a journal article published in 1977 and later defined by them (1986, 159) as “the network of labour and production processes whose end result is a finished commodity.” For world-systems theorists, a commodity chain offers a useful location to critically explore the world economy and the global system of capitalism in its totality beyond state borders (Bair, 2005, 157). Alternatively, although Gereffi and his co-collaborators involved in developing the GCC concept recognize the conceptual value of thinking about production processes as being linked within dispersed and fragmented global networks that can be dominated and leveraged by rent-seeking lead firms and powerful corporations, they are generally much more optimistic about the potential of GVCs to facilitate economic development, employment

Korzeniewicz, 1994; Gereffi, 1999). This approach offered a novel conceptual framework through which to explain a complex series of interrelated transformations underway at that time associated with development policy, global production, and international trade. A major difference between FRT and GVC approaches, in this respect, is that GVC scholars generally place less emphasis than food regime scholars do on intentional *political* decisions that have led us to our current situation, and more emphasis on the transformational power of new transportation and communication technologies and their impacts on global production relationships.

Regardless, according to GVC scholars, both neoliberal and technological developments in tandem had a number of important structural consequences, which have profoundly altered global production and economic organization (Sturgeon, 2009, 5; Gereffi & Korzeniewicz, 1994). First, in terms of development policy, the creation of the World Trade Organization in 1995 limited the ability of states to set tariffs and to regulate their domestic economies. In turn, many states in both the Global North and the Global South either embraced or felt obligated to integrate themselves into an increasingly interconnected global economy in order to take advantage of emerging economic opportunities there to remain competitive (Bair, 2009, 161-162).

Second, in relation to production, the loosening of international capital controls beginning in the early 1970s as well as new communications technologies contributed to exceptional growth in private foreign direct investment. This in turn led to the vertical disintegration of the firm, as well as the physical fragmentation and functional dispersion of the production process around the globe within networked chains and the coordination of these chains by “lead firms” or transnational corporations (Gereffi, Humphrey & Sturgeon, 2005).

Third, in terms of international trade, they related to a shift from trade in final goods and services towards the trade of intermediate goods and services between buyers and suppliers linked to one another within complex and fragmented transnational structures which we now label global value chains. For example, in 2011, global trade in intermediate products accounted for 55 percent of all trade in goods and services, up from 40 percent in 1975 (Eurostat, 2019). In this respect, GVC scholarship has contributed to a more nuanced conceptualization of networked forms of economic organization which occupy a middle ground between arm’s-length market transactions on one end of a theoretical spectrum of economic organization, with the hierarchical, vertically integrated

creation, and poverty alleviation (Gereffi, Humphrey, Kaplinsky, & Sturgeon, 2001). In this respect, Gereffi’s global commodity chain approach, as well as its more recent intellectual successor—the GVC approach explicitly or implicitly reject what world system’s theorists have labelled the “development illusion,” of commodity chains. For Arrighi (1990, 16) and other critical GPE scholars, development is not designed to bring the world’s poor out of poverty or improve their social condition, but rather “development” is a neo-Gramscian euphemism used to maintain the purposeful “relational processes of exploitation and relational processes of exclusion that presuppose the continually reproduced poverty of the majority of the world population.”

firm on the other end of that spectrum. Importantly, these two forms of economic organization are most often the ones identified within the transaction cost economics literature outlined above as possible organizational forms of transnational production that are common in situations that involve large geographic distances. This is despite growing empirical evidence as exemplified by GVC scholarship, that networked forms of economic organization coordinated by lead firms are now common in many global sectors including agriculture (Gereffi, Humphrey & Sturgeon, 2005, 80-83).

Since Gereffi began to lay the intellectual foundations of the GVC approach in his 1994 article on Global Commodity Chains, it has grown considerably more prominent both empirically, as a mode of production, as well as in scholarly and policy-oriented circles. As Phillips (2017, 431) has noted, today, “virtually all of the major international organizations focused on economic development have picked up and actively deploy, in different ways, the concept and language of GVCs, in parallel with national governments across the developing world.”

And this growing attention is not without good cause. As a reference point, in 1970, exports of goods and services made up 13.6 percent of world GDP. In 2018, these exports accounted for 31 percent of world GDP (World Bank, 2020c) of which roughly 80 percent is now carried out within TNC controlled global value chains (UNCTAD, 2013). In other words, the value of contemporary trade flowing through TNC controlled GVCs is equivalent to roughly 47 percent of World GDP, or about \$USD 37 trillion. To conceptualize this data differently, a recent ILO report estimates that one out of every five jobs on the planet is associated with a GVC (ILO, 2015). With respect to the agri-food sector in particular, the FAO has noted that internal procedures and standards passed down through GVCs by transnational retailers “may play a far greater role in determining volumes and conditions of trade transactions than government trade policy does” (FAO, 2015, 8). Collectively, these arresting figures have led some to argue that we are currently living in a “GVC world (Mayer, Phillips, & Posthuma, 2017)” wherein these networked economic structures have become the “world economy’s backbone and central nervous system (Cattaneo, Gereffi & Staritz, 2010, 7).”

In the preceding paragraphs, I sketched the basic analytical variables that are of interest to GVC scholars, the utility of the approach in understanding and explaining complex transformations related to an increasingly fragmented and functionally dispersed global production process, and the staggering growth of GVCs as the dominant mode of economic organization over the past quarter century. However, I have not yet outlined the contributions made by GVC scholarship to our understanding of agri-food governance in a globalizing world. In this vein, GVC scholars have advanced our understanding of governance by highlighting the importance of paying attention to “value chain structure” and the role of powerful “lead firms,” as variables that significantly impact the governance of cross-border problems and distributional outcomes within the global political economy (Gibbon, Bair & Ponte, 2008; Philips, 2016, Ponte & Gibbon, 2005). In a seminal article written in 2005, Gereffi, Humphrey & Sturgeon significantly advanced

GVC scholarship in this direction through their development of a typology of five different “ideal” governance possibilities within value chains that are primarily dependent on the specific networked relationships or inter-firm “linkages” that exist between suppliers and lead firms within global industries.

Drawing heavily on transaction cost economics, production networks and business literatures, the authors identified three key variables with values that could be either “high” or “low” that would influence their five “ideal” governance possibilities in GVCs. According to Ponte & Sturgeon (2014, 203), these three criteria include “the complexity of information exchanged between value chain tasks; the codifiability of that information within standards or through other means and; the capabilities resident in the supply base relative to the requirements of the transaction. As Ponte & Sturgeon continue (2014, 203):

from this comparison, Gereffi, Humphrey and Sturgeon identified five generic ways in which firms set up and govern linkages in value chains (1) simple market linkages, governed by price where the cost of switching is low for both lead firms and suppliers; (2) modular linkages, where complex information regarding the transaction is codified and often digitized by lead firms before being passed to highly competent suppliers, governed by standards; (3) relational linkages, where tacit information is exchanged between lead firms and suppliers with unique or at least difficult-to-replicate capabilities, leading to mutual dependence; (4) captive linkages, where less competent suppliers are provided with detailed instructions by very dominant lead firms. Suppliers are dependent on lead firms buying power; and (5) vertical linkages within the same firm, governed by management hierarchy.

Importantly, these five different governance typologies are associated with different levels of power asymmetry between lead firms and their suppliers and these asymmetries in turn have significant implications for how these chains are governed. In market-based scenarios, chains are governed primarily through price and lead firms are able to exert very little governance influence over suppliers. Alternatively, as you move toward the captive and hierarchy end of the governance spectrum where the buying power of lead firms is more concentrated, lead firms are able to wield significantly more governance power. In Ponte & Gibbon’s (2005, 5) words, this allows them “to set, measure and enforce the parameters under which others in the chain operate” and enables them to control the price, the distribution of value, and other conditions, such as the social or environmental criteria under which they expect others within the chain to produce. It is precisely here in the distribution of value and the governance of social and environmental criteria where contracts could be a useful regulatory tool.

Critical approaches:

This stylistic, structural theory of value chain governance proposed by Gereffi, Humphrey & Sturgeon has provoked a great deal of internal debate within the GVC literature (Gibbon, Bair & Ponte, 2008; Phillips, 2017; Philipps & Mayer, 2017; Ponte & Gibbon,

2005). Critics have taken issue with three points in particular. First, they point out that Gereffi et al.'s. (2005) governance model places too much emphasis on linking governance outcomes to structural conditions whose implications for actors within global value chains are already, therefore, pre-determined. For example, Gibbon, Bair & Ponte (2008, 323) argue that such an approach problematically de-emphasizes the individual agency of actors within value chains, as well as the “intentional, strategic action” of lead firms in driving value chains in particular directions. This criticism, of an overly structural and deterministic GVC governance typology may seem familiar, as it is the same one levelled against FRT scholarship as well. In the view of many critics, the governance typology advanced by Gereffi et al., is one that has lost touch with the more critical and Marxist world system theory origins of GVC scholarship and is at risk of perpetuating a functionalist neoliberal development agenda which is, at its core, fundamentally premised on an unequal international division of labour and exploitation (Bair, 2005; Phillips, 2017, 431).

Second and relatedly, critics take issue with how much credence Gereffi et al. (2005) give to insights drawn from NIE transaction cost literatures in their theoretical framework and the subsequent implications this framework then has in theorizing about power relationships in value chains. In particular, Gibbon, Bair & Ponte (2008) suggest that Gereffi et al.'s (2005) framework is too narrow in its outlook in linking the micro-level development of inter-firm relationships and chain governance primarily to questions of economic efficiency in the face of problems of asset specificity and transacting that are present in global industries. These are issues of competition and efficiency which largely serve to evacuate the role of power from the equation. As Gibbon, Bair & Ponte (2008, 327) note “such a theory of GVC governance suggests that power is a contingent property of only certain types of inter-firm coordination” which manifests between lead firms and suppliers primarily at the “captive” and “hierarchy” end of Gereffi et al.'s (2005) model. Relatedly, their approach also suggests that these organizational forms are natural responses to particular types of efficiency challenges, and additionally, that as one moves from hierarchy towards market forms of value chain governance, the degree of power that lead firms are capable of exercising within value chains decreases.

Critically, Ponte & Gibbon (2005) and Gibbon & Ponte (2008) as well as others contend that Gereffi et al.'s (2005) approach to value chain governance vastly under-estimates the broader discursive, normative and institutional dimensions which all contribute to the power of lead firms within value chains as well as their ability to exercise governance over them. In this respect, “buyer power” is not the only form of power that exists, or that can be wielded by lead firms within value chains. As Ponte & Gibbon (2005, 3) argue, “leadership in GVCs does not depend only on economic attributes (levels of concentration, market share), but also on the diffusion of dominant normative paradigms that provide legitimacy for the mechanisms used to exert leadership.” From this perspective, chain structure does not necessarily tell us a great deal about governance, and especially the capabilities of lead firms to govern within them. Rather, it is more

informative in indicating *how* lead firms choose to exercise their leadership and power (Ponte & Gibbon, 2005, 20).

This perspective has been labelled the “governance as normalizing” approach within the GVC literature. It has focussed on explaining governance outcomes through reference to post-structuralist and post-positivist constructivist approaches that draw on Foucault’s concept of governmentality (Gibbon & Ponte, 2008), expert knowledge (Ponte & Cheyns, 2013) convention theory (Ponte & Gibbon, 2005) and the normative influence of quality standards as tools of governance in order to articulate how lead firms govern chains “at a distance,” even in settings where inter-firm power asymmetries are markedly less pronounced (Blowfield & Dolan, 2008; Ponte & Gibbon, 2005; Nelson & Tallontire, 2014). As Ponte & Gibbon note (2005, 3) “If economic actors are able to embed complex information about quality in standards, labels, certification and codification procedures, they may still be able to operate with more ‘hands-off’ forms of co-ordination closer to arm’s length relations.” In this respect, the authors underline that quality issues have become central to understanding the politics of governance within value chains and that the ability to control the qualification of production has become a key source of power for lead firms (Ponte & Gibbon, 2005, 18), enabling them to shape the functional division of labour (frequently in detrimental ways) within their chains and to play an important role in broader global governance challenges, especially as quality standards have begun to address ethical and ecological issues associated with production (Nelson & Tallontire, 2014).

A final critique of Gereffi et al’s (2005) “economic efficiency” approach to GVC governance that is compatible with, but different from Ponte & Gibbon’s (2005) “governance as normalizing” approach stems from a critical global political economy perspective. This GPE approach seeks to re-insert the centrality of politics as a factor in understanding both the construction of GVCs, as well as their implications for sustainable outcomes and global governance challenges more generally (Mayer, Phillips & Posthuma, 2017; Philipps, 2016, 2017). It also seeks to integrate GVC and global governance literatures, given the increasingly evident role that private authority wielded within GVCs have on global governance outcomes, as well as the political capacity that traditional public actors such as states and international organizations have in shaping value chains. In many ways the arguments within this approach overlap with corporate FRT literature but are more broadly applicable to production relationships in many different global industries, in addition to agriculture.

By adopting a more concerted focus on the politics of Global Value Chains, this GPE approach to GVC governance suggests that GVCs are not, as they are often portrayed within the literature, neutral economic structures (Sturgeon, 2008). That narrative of neutrality is one that suggests that GVCs can be utilized by policymakers in economic and socially progressive ways to improve the conditions of workers and reduce unemployment in their countries. A key assertion within this critical branch of GPE GVC scholarship, however, is that inequality, poor working conditions, precarious

employment, ecologically irresponsible production relationships and enormous power imbalances between corporate and other non-state actors are no mistake. As Phillips (2017, 431) notes, these defining features of GVCs are not a “‘bug in the system’ of a GVC world; rather, they are the foundational dynamics of a global economy organized in this manner.”

Critically, this GPE-GVC scholarship also emphasizes the historical political choices that have been made primarily by powerful states and international organizations which collectively have enabled, sustained and shaped GVCs over the past few decades. As Mayer, Phillips & Posthuma note (2017, 130), these dynamics become clear once one shifts their understanding of GVC governance away from private actors and lead firms within chains, to the “politics of the much broader constellation of governance institutions, both public and private, that undergird GVCs.” For example, Meyer & Phillips (2017) highlight the centrality of the power and agency of states to create a GVC world, pointing to a widespread international regulatory tolerance for industry concentration / mergers and acquisitions among states, increasingly slack national competition policy, a very restrictive and non-interventionary system of international trade law anchored through the World Trade Organization, as well as strong investor-state dispute systems and an international emphasis on capital mobility as problematic (Meyer & Phillips, 2017).

Adding to this line of argumentation, Clapp has discussed how in a recent OECD report on public interest considerations in merger decisions, “the majority of OECD Member country competition authorities are not responsible for applying public interest considerations in reviewing mergers; the task is left to sector regulators or government departments.” As Clapp (2018, 25) continues, “the report goes on to note that evaluating mergers based on competition criteria versus public interest criteria could lead to different results and warns that those countries that consider public interest issues should be wary of the “risks to the certainty and predictability of their merger control system” (OECD 2017, 4 quoted in Clapp, 2018) As evidence, Clapp (2018, 25) concludes by noting, “there are 24 Mega-Mergers on the menu [across the OECD], but nothing in the merger enforcement guidelines of the US, Canada, or the EU indicat[ate] that the potential environmental impact of corporate concentration is even considered in the vetting process.”

3.7 Private Authority Literatures

A final body of literature to be reviewed here is a literature which I refer to as “Private Authority” literature.²⁹ This body of work is one that acknowledges the profound transformations to governance that have occurred over the past few decades and is

²⁹ For a detailed review of this literature, see Grabs, Auld & Cashore (2020). Private regulation, public policy, and the perils of adverse ontological selection. *Regulation and Governance*, doi:10.1111/rego.12354

subsequently focused on exploring how traditional public actors such as states and international organizations can effectively leverage the substantial governance capacities of private actors in order to address major global governance challenges (Ruggie, 2014). For example, Abbott & Snidal (2009, 510) have described a nascent governance system they label “transnational new governance” wherein they propose states and international organizations are beginning to, and should play a facilitative “orchestrating” role in enrolling, supporting, coordinating, convening, legitimating, publicizing, supervising, ratifying, and negotiating with transnational private and public actors in an effort to orchestrate decentralized, often overlapping, and competing transnational regulatory standard-setting schemes (TRSS) within a given issue area (Abbott & Snidal, 2009, 527).³⁰

States and international organizations also occasionally play a “directive” orchestrating role where they directly leverage their power and political authority to establish baseline operational parameters for private schemes subject to their jurisdiction. States are able to do so when they incorporate specific private standards into public government procurement policies, or by treating private standards preferentially within domestic legislation such as when the Dutch government recently legislatively benchmarked their public food safety standards for agricultural imports on those of the private industry led GlobalGAP standard. At the international level, financial IOs such as the World Bank can tie financial aid to conformity with private voluntary sustainability standards.

In order to more effectively regulate transnationally in the public’s interest(s), Abbott & Snidal (2013) propose scaling up components of Ayres & Braithwaite’s (1992) concept of responsive regulation. Of particular importance is the adoption of their notion of escalated enforcement within a responsive regulatory pyramid. The central idea is that most governance challenges can be creatively, effectively, and efficiently resolved through decentralized self-regulation on the part of private actors, given their proximity to the governance problems at hand as well as their expertise and knowledge of the industry. This approach holds so long as private actors are appropriately incentivized by state agencies (Braithwaite, 2011, 480) which can include rewarding or actively supporting private actors for various reasons, such as when they exceed established regulatory targets for instance (Braithwaite, 2011, 480). However, when constructive, cooperative problem-solving attempts fail between public and private actors, public regulators must have sufficient capacity to move up a pyramid of sanctions. This begins with “soft” alternatives

³⁰ This “orchestration” approach is both descriptive and normative and is one of the most influential approaches to global governance that has emerged in recent years. It has inspired a burgeoning literature. See for example, Abbott, D. (2017). Orchestrating experimentation in non-state environmental commitments. *Environmental Politics*, Vol. 26(4), 738-763; Hale, D., & Rogers, C. (2014). Orchestration and transnational climate governance. *Review of International Organization*, Vol 9, 59-82; Henriksen, L., & Ponte, S. (2018). Public orchestration, social networks, and transnational environmental governance: Lessons from the aviation industry. *Regulation & Governance*, Vol 12, 23-45; Pegram, T. (2015). Global human rights governance and orchestration: national human rights institutions and intermediaries. *European Journal of International Relations*, Vol. 21(3), 595-620.

such as dialogue, educational efforts, and shaming at the base of the pyramid before proceeding to increasingly intrusive and “hard” punitive legal remedies as private actors refuse or abuse the self-regulation system (Abbott & Snidal, 2013, 96; Braithwaite, 2011, 482). In theory, the threat of the “benign big gun” at the top of the escalation pyramid is so severe that it will induce voluntary compliance by firms at the lowest levels of the pyramid (Abbott & Snidal, 2013, 100).

For Abbott & Snidal (2013), the difficulty of scaling up elements of responsive regulation to the transnational level is that states and IOs do not have the same legal capacity to follow through on the top end of the escalation pyramid and, therefore, do not have the “threat of the benign big gun” operating in the background. Nor do IOs generally have direct political authority to delegate regulatory responsibility to private actors at the transnational level. However, they nevertheless argue that states and IOs still have options to orchestrate TRSS, albeit weaker ones than in domestic settings. Most significantly, they propose that IOs can and should orchestrate governance by enrolling like-minded and suitable TRSSs who have access to on-the-ground knowledge and monitoring capacities *as regulatory intermediaries*. This can enable IOs and states to extend their regulatory reach and to more effectively target and penalize regulatory defectors within an environment where relationships are geographically dispersed and access to information is scarce. Critically, these IO / state-intermediary relationships are mutually beneficial; intermediaries can gain legitimacy, as well as material support and political authority by collaborating with IOs and states, and IOs / states can gain modest leverage over the intermediaries actions, policy priorities as well as access to its information, and monitoring capacities in order to more effectively target regulatory defectors and pursue public interests (Abbott & Snidal, 2013, 107; Abbott, Genschel, Snidal & Zangle, 2016).

Similarly, others like Verbruggen (2013) have analyzed the potential of public legal interventions at the enforcement level to enhance the legitimacy and effectiveness of private regulation, presumably in the public’s interest.³¹ In particular, Verbruggen analyzes the structural conditions required for public (state-based) legal systems to be scaled up to the transnational level in order to play a role from the “shadows of hierarchy” as a “regulatory gorilla in the closet” vis-à-vis private transnational schemes in food safety and advertising. Here, the “shadows of hierarchy” is a term used to refer to the threat of public regulation as a means of incentivizing effective private self-regulation. Others, such as Risse (2011) have explored how governing through the shadows of hierarchy can be scaled up to the transnational level in areas of limited statehood, while Bäckstrand (2008) has analyzed the implications of governing through the shadow of hierarchy for transnational climate governance. Finally, Henriksen & Ponte (2018, 27) have more recently attempted to merge a more direct “shadows of hierarchy” approach with Abbott & Snidal’s indirect facilitative orchestration perspective in the realm of

³¹ Verbruggen never explicitly states that he believes states should regulate from the shadows of hierarchy in the public’s interest, however, there is a strong normative undercurrent throughout the paper which implicitly implies better governance will result from public legal oversight of private regulatory regimes.

transnational environmental governance in an effort to improve environmental governance outcomes.

A notable exception to these approaches to governance outlined above, which all seek to advance a stronger role for traditional public actors at the transnational level, is one on experimentalist governance (EG). This approach, first developed by Sabel & Zeitlin (2008; 2010; 2012) and expanded upon by Overdevest & Zeitlin (2014; 2018) does not look towards traditional public actors to improve transnational governance through the “shadow of hierarchy” or a benign “big gun,” at the top of an escalation pyramid or facilitative public orchestration through the incorporation of private, like-minded intermediaries. As Eckert & Borzel (2012, 373) note in discussing the concept, “in structural terms, EG privileges “non-hierarchical steering” where “experimentalist or networked decision making is legitimated [. . .] by forms of dynamic accountability that reject the principal-agent distinction.”

Overdevest & Zeitlin (2018, 65-66) define EG as

A recursive process of provisional goal-setting and revision, based on learning from review of implementation experience in different settings. In its most developed form, experimentalism involves a multi-level governance architecture, whose elements are linked in an iterative cycle. First, open-ended framework goals (like “sustainable forests” or “legal timber”) and metrics for gauging their advancement are established in consultation with relevant stakeholders by some combination of “central” and “local” units (each of which can be public, private, or hybrid). Local units are then given substantial discretion to pursue these common goals in ways adapted to their own specific contexts. But in exchange for such autonomy, these units must report regularly on their performance, and participate in mutual monitoring, joint evaluation, and peer review. When they do not make good progress according to agreed indicators, the local units are expected to show that they are taking appropriate corrective measures, informed by the experience of their peers. Finally, the goals, metrics, and procedures themselves are periodically revised in response to the problems and possibilities revealed by the review process, and the cycle repeats.

Sabel, Overdevest & Zeitlin position EG as an alternative form of transnational governance to other “new governance” approaches such as the ones outlined above largely by contrasting them with EG’s collaborative, non-hierarchical and interactive approach to problem-solving which integrates public, hybrid and private actors and breaks with the principal-agent dichotomy. In this respect, traditional hierarchical dynamics between public and private actors are less visibly at play and also less critical for good governance outcomes.

An important point to highlight, however, is that most experimentalist architectures are underpinned by “*penalty default*’ mechanisms,” which Overdevest and Zeitlin (2018,

66) describe as “measures designed to induce reluctant parties to cooperate in joint exploration and problem-solving, underpinned by threat of penalty.” While the authors note that penalty default mechanisms can be developed by either public or private actors, in practice, these mechanisms have only been developed by state-actors. For example, in their most empirically rich and detailed investigation of EG, Overdevest & Zeitlin (2014; 2018) have focussed on the emerging transnational regime for sustainable forest governance. Critically, the architecture of this emerging EG regime is predicated on the public authority of the European Union (EU) which ensures the cooperation of reluctant parties through threat of Union-wide sanctions on forestry imports. This penalty default mechanism, in turn, acts as the primary enforcement mechanism. A criticism levelled against experimentalist governance then, is that in practice the effectiveness of EG nevertheless remains dependent on the coercive power of “traditional” public actors such as the EU despite considerable and highly innovative differences in the way actors within EG architectures procedurally engage in experimental problem-solving and governance together with one another (Eckert & Börzel, 2012, 373-374).

Underpinning these literatures on “orchestration,” “regulation from the shadows of hierarchy,” and “responsive regulation” is the normative position that states and international organizations, as traditionally “public” actors need to do more in order to actively direct private authority. This is because they are more legitimate and will subsequently act in the broader public interest.³² For instance, Abbott & Snidal (2009, 511) argue that IOs and states should orchestrate the transnational sphere specifically because they will “significantly enhance the legitimacy and global public interest orientation of non-binding voluntary regulatory standard-setting by private actors.” Similarly, Philipp & Meyer (2017, 136) argue that private authority (what they label outsourced governance) will never, on its own, be sufficient in addressing global governance challenges. Alternatively, as “the architects of the global system, states retain significant power to shape it in ways that remedy this situation.” What is needed, therefore, according to Philipp & Meyer, (2017, 148), is a ‘new politics’ that, “re-engages the state in the pursuit of more equitable and sustainable development.” In a manner that is very similar to the critical GPE-GVC literature outlined above, the rationale for these arguments is that public intervention on the part of state actors can facilitate a “race to the top,” rather than a “race to the bottom” and this will subsequently improve the effectiveness and accountability of private actors, resulting in better governance in the public’s interest(s). This phenomenon, whereby traditional public actors are assumed to act in the public interest is what Overdevest and Zeitlin, (2014, 33) describe as the “taken-for-granted legitimacy of public authorities.”

Certainly, the dynamic insights offered within private authority literature on how private governance arrangements might be leveraged by traditional public actors in the public’s

³² Or in the case of Experimentalist Governance that “public” state actors are required from a practical perspective in order to provide the “penalty default mechanisms” that are essential to operationalizing EG effectively. This penalty default mechanism is quite similar conceptually to both the “benign big gun” as well as the “shadow of hierarchy” found in the other transnational governance literatures discussed above.

interests within an increasingly polycentric and transnational world are innovative and useful. Consequently, it is not my intention here to argue that these are not anything but important and fruitful avenues of inquiry through which to pursue global governance challenges. However, this thesis does take issue with these approaches on two levels:

First, the readiness of the PA literature to assume that traditional public actors will seek to problem-solve in the public's interest at the transnational level, or even that they will consistently do so in ways superior to private actors is problematic. For instance, state actors are often limited by domestic considerations as transnational relations have proliferated and governance challenges have become increasingly global. A government's responsibility to prioritize what they believe to be the interests of their own citizens at the domestic level including national stability and economic growth is often prioritized, even if this negatively impacts the welfare of those abroad and exacerbates serious collective-action problems (Abbott & Snidal, 2009). This scenario is most evident in climate governance where states have had a very difficult time coming to a global political consensus within intergovernmental institutions to the collective detriment of both current and future generations. Simultaneously, a variety of private non-state actors have emerged in "bottom-up" efforts to address climate change governance in light of state impotence (Hale & Rogers, 2014). In addition, as discussed in the NIE section above, many public actors are inadequate regulators due either to insufficient capability or willingness to regulate, monitor or enforce rules, even if they exist (Abbott & Snidal, 2009, 538).

Relatedly, it is important to remember that states and IOs have been the primary political architects of our contemporary era, which is defined in part by the material power of private non-state actors and especially for-profit corporations.³³ States have played a key facilitative role in advancing global neoliberal policies designed to integrate global markets through capital mobilization, strong private and intellectual property protection, investor rights, and a series of policies aimed at liberalizing, deregulating and privatizing domestic economies (Mayer & Phillips, 2017, 140-141). Collectively, these developments do much to inform the overwhelmingly economic course that the process of globalization has taken over the past several decades, and they are also a central cause in explaining the relative rise and power of private authority visible today. Thus, to consistently view the public and the private in opposition to one another, with the gains of one juxtaposed against the losses of the other is to misunderstand the recent historical interrelationship between public and private actors in global governance. In this respect, states and especially powerful states such as the United States, as well as IOs, and especially powerful IOs such as the World Bank, International Monetary Fund, and World Trade

³³ Although it is important to recognize that neoliberal globalization has not been authored by all states equally. It has been most forcefully advocated both bilaterally between states and multilaterally through IOs by powerful states, in part to advance the interests of their transnational firms and financial institutions (Coleman & Porter, 2000, 382).

Organization are the primary political and institutional transmission belts through which private authority, and private power have both expanded (Philipp & Meyer, 2017, 138).

Second, in privileging a conception of the public that is too closely tied to traditional public actors such as states and IOs, much of this literature is myopic to other potential opportunities that may exist through which to pursue and bolster the public's interest(s) as political authority continues to disperse in polycentric and overlapping ways and the traditional boundaries separating the public from the private continue to blur.

3.8 Conclusions

As discussed at the outset of this chapter, private governance in food matters tremendously to several important global governance challenges that relate to the ecological well-being and sustainability of the planet, to the economic livelihood of billions, and to the nearly one billion people who remain hungry and food insecure.

All four literatures reviewed in this chapter offer important insights into the kind of role that private governance plays in food production and consumption. NIE literature is excellent at demonstrating the functional efficiencies to be reaped through private governance systems in relation to traditional public ones, especially at the transnational level. This literature is theoretically interesting, as it reverses common expectations regarding the potential of traditionally public vs. private actors to govern in the public's interest. In this respect, it explains how private transnational actors develop private governance systems to regulate over issue areas that historically have been the responsibility of governments, and how this might occur via transmission through the marketplace—a quintessentially private institution.

Yet as both FRT and critical GVC scholarship reveal, this functional account of private agri-food governance also obscures the role of power as an explanatory variable that has important implications for the quality and ethical nature of the private governance of food. Transnational corporations are also clearly using private systems of governance not for efficiency purposes nor to enhance the ethical quality of their value chains, but rather instrumentally in order to enhance their power and profit relative to others and to dominate within their respective sectors.

In my view, scholars within these different fields have focused too closely on these functional and power-based accounts independently of one another, to the overall detriment of advancing food governance at the transnational level in a way that meaningfully addresses issues of broad public interest. For example, FRT is excellent at linking the structural power of transnational corporations, as well as their self-interested and power-seeking motivations to a number of very concerning governance consequences. Yet this perspective is overly deterministic in the way that it accounts for actor motivations, and consequently, too dismissive of the potential of private governance to address global agri-food challenges. Such an outlook is particularly problematic given

the growing speed, complexity and transnational orientation of contemporary production within global value chains.

Alternatively, the GVC and PA literatures are much better situated both methodologically and theoretically to understand the potential and enhance the effectiveness of private agri-food governance. These literatures are more sensitive to functional explanations that account for the emergence of GVCs and private governance, and many authors within the field have remained focused in quite nuanced ways on the concept of power, the different forms it takes and the variables which influence how and when it is used by actors.

Yet even within these two literatures, as well as the others, there remains a complete and utter lack of acknowledgement or attention paid to the central role that transnational contract law plays in the uptake, effectiveness and enforcement of private agri-food governance. In turn, this blindness becomes problematic not only because it obscures an integral transnational institution of private authority, but also because it prevents those seeking to address major governance challenges and issues of participation and fairness present in the global agri-food system from exploring possibilities associated with commercial contracting.

Chapter 4 - Private Contractual Governance – A Conceptual Framework

In the following chapter I will advance my theoretical approach to private contractual governance and will illustrate the possibility that contracts could have to act as a tool to address significant global agri-food governance challenges. These include challenges related to the ecological sustainability and resiliency of transnational agricultural value chains, the equitable allocation of economic value between actors, gender equality within agricultural value chains, and the human right to sufficient, safe, and culturally appropriate food. It also includes challenges associated with the democratic participation and substantive involvement of often marginalized and excluded governance actors within transnational agri-food spaces such as smallholder farmers, who frequently struggle to meaningfully shape the conditions of their own participation within transnational value-chains.

In order to do so, I will begin this chapter by briefly summarizing a few of the major insights that emerged from the literatures reviewed in the previous chapter in order to clearly distinguish the contributions that I hope to make through my own theoretical approach. Following this, I will proceed to develop my theoretical framework for private contractual governance. Through my framework, I seek to incorporate constructivist literatures on transnational law and legal pluralism and bring them into conversation with the private global governance literatures I have discussed in Chapters 1, 2 and 3. By bringing these literatures into dialogue with one another, I hope to contribute to our conceptualization of democratic legitimacy and enforcement at the global level as well as to our understanding of how governance may be operationalized within transnational agri-food value chains to address critical governance challenges related to agri-food.

4.1 The Current State of Affairs: Global Agri-food Governance via Markets, Lead Firms and Soft Law

Our understanding of how transformations in governance have unfolded at the global level and within the agri-food sector over the past few decades has been powerfully shaped by the contributions made within the four literatures reviewed in Chapter 3. Notably, these four literatures have usefully directed our attention towards common spaces, actors, methods of governance and also either explicitly or implicitly identified a common governance challenge.

In terms of spatial location, each of the four literatures reviewed direct our attention towards the importance of the marketplace within transnational space as a major transmission belt of contemporary governance where issues that are in the broad public interest are increasingly being addressed. In terms of actors, all four literatures reviewed highlight the centrality of for-profit transnational corporations, also labelled as “lead firms” within the GVC literature as dominant governance actors who wield significant political authority to govern within these spaces. In addition, these transnational spaces

are depicted as being quite vertically organized, where governance is transmitted in a top-down manner, introduced first by lead firms and then adopted by other stakeholders within the value chain. This is not to say that other actors, including NGOs and states do not influence the rules that govern value chains. They do so frequently. For example, in their meta-analysis of social movement activism against sweatshop labour in global value chains, Bartley and Child (2014) found that firm size and structural power had a universal and linear relationship to social movement pressure, making lead firms the primary targets of social activism.³⁴ However, lead firms have come to occupy a critical position as “gatekeepers” with considerable authority to shape the governance of value chains within transnational spaces.

In terms of instruments or methods of governance, all four literatures emphasize the use of soft law mechanisms such as private standard-setting and third party auditing as key vehicles of transnational governance. These “soft” approaches to governance are increasingly relied upon by both traditionally public and private actors due in part to the speed and complexity of contemporary transnational relations, as well as the difficulties associated with securing widespread democratic cooperation, and “hard” legal enforcement of rules between states at the international level.

Finally, the four literatures reviewed in Chapter 3 also each highlight the problematic nature of excessive corporate economic power within global value chains and its potential to distort and impede the public nature of global/ agri-food governance. At the root of this problem either directly or indirectly acknowledged is the power that economic concentration affords corporations to govern in unaccountable and self-interested ways. This, in turn, often forecloses the ability of broader publics and other stakeholders to participate in the formation of rules and governance systems in ways that would advance public interests.³⁵

In order to address this issue, the literatures highlight different solutions that are less and more transformational in nature. For example, as the literature on private authority argues, IOs and states should play a more active role in orchestrating this transnational sphere of private actors in various ways, including “facilitatively” or through the “shadows of hierarchy” in order to “significantly enhance the legitimacy and global public interest orientation of non-binding voluntary regulatory standard-setting by private actors (Abbott & Snidal, 2009, 510; Verbruggen, 2013).” This approach dovetails well with that of GPE-GVC literature as well, where again, authors stress the facilitative, regulatory and distributive policy decisions of powerful states and international

³⁴ See also Gulbrandsen, (2006). “Creating markets for eco-labelling: are consumers insignificant?” for a review of environmental NGO and state efforts to influence the development and uptake by lead firms of ecological standards in the fisheries and forestry sectors.

³⁵ The New Institutional Economics literature does not explore questions of power or democratic legitimacy in detail. However, corporate concentration and monopoly power in markets are specifically identified as problematic in that literature because they contribute to market failure and the maintenance of inefficient market institutions.

organizations as enabling, sustaining and shaping GVCs over the past few decades (Alford & Phillips, 2018). Thus, as Mayer, Philipps and Posthuma (2017, 148) note, what is needed is a new politics that “re-engages the state in the pursuit of more equitable and sustainable development.”

Alternatively, the “governance as normalizing” GVC literature has explored the role that civil society and NGOs can play within the sphere of private agri-food governance. For example, Ponte & Cheynes (2013) have paid attention to the conditions under which more participatory, accountable and sustainable civil-society led multi-stakeholder standard-setting initiatives, which sometimes also include “public” state actors may be taken up within markets by lead firms and then disseminated within value chains to improve the public quality of agri-food governance.³⁶

In a more radical departure from the status quo, FRT scholars have studied the potential of non-hierarchical, cosmopolitan-linked alternative food networks such as La Via Campesina, which operate outside of the neoliberal corporate-industrial food system altogether. In the view of many FRT scholars, these kinds of transnational networks offer a possible transformative solution to the challenges that are present in the current global agri-food system. Although these food networks differ in the publicly-oriented governance objectives they seek to address, they nevertheless generally share a common commitment to democratic participation, gender equality, social empowerment and ecologically sustainable, culturally-appropriate small-scale and biodiverse farming practices (Patel, 2009 Friedmann, 2005, McMichael, 2008).

Notably, however, none of these literatures have paid attention to the important role that contracts currently play in governing within transnational space, or in their possible capacity to advance public priorities there.

4.2 The Potential of Commercial Contracts as Mechanisms of Global Agri-food Governance

In fact, the role of the commercial contract and private law more broadly are either missing or undertheorized within the literatures on global and private agri-food governance. There are at least two explanations for this state of affairs. First, as Cutler & Dietz (2017) note, there is a double blindness in mainstream International Relations (constructivism, (neo)/realism and (neo)/liberalism) and international law (legal positivism) approaches to the study of non-state actors and their contractual practices. Thus, despite an increasingly nuanced appreciation of the complexity of global

³⁶ This is in spite of the fact that Ponte & Cheynes (2013) remain quite skeptical of the potential of these multi-stakeholder initiatives overall. Instead, the “governance as normalizing” literature borrows insights from post-modern / post-structuralist scholars such as Michel Foucault in order to highlight the centrality of expert discourses, knowledge production and quality standards as important “technologies of government” through which powerful for-profit transnational corporations discreetly extend and sustain their regulatory preferences across extensive and diffuse transnational value chains.

governance and global law-making, these two bodies of literature remain state-centric to a degree where they have been unable to capture the important transformations in transnational private legal governance that have occurred over recent decades (Beck, 1996). In turn, the growing ubiquity of contracts within the GPE, and the disembedding of transnational private law from its historical roots in the nation state are phenomena that remain largely unexplored.

Second, the liberal foundations of commercial contracting and private law have also played a role in the under-appreciation of contracting as a source of public governance. As Claire Cutler (2003, 55) notes:

as a legal theory, liberal-inspired contract law embodies and reproduces the separation of the spheres, associating the private sphere with neutral and objective processes of resource allocation and the public sphere with contentious and political processes of resource distribution. Liberalism deems the private sphere to operate according to neutral principles. It does not question the rightness or propriety of dividing international life into spheres of sovereign authority but presents itself as a neutral and objective system. Liberal legality provides no awareness of the political and moral nature of its hidden substantive commitments. Contract law is endowed with objective foundations and has the appearance of being self-contained, apolitical, and inexorable as it regulates transactions amongst market participants who are presumed to be of equal bargaining power. Its role is to facilitate exchange, ensuring procedural fairness, but it does not inquire into the substantive fairness of a transaction (Cutler, 2003, 55).

Consequently, as Carusso (2006, 19) summarizes:

in global settings more often than in domestic circles, private law is defined as a source of utterly non-political arguments and, therefore, as a bulwark of legitimacy for any decision-making body both inside and outside the nation-state.... In its horizontal and apolitical dimension, private law can produce unassailable arguments and can change the nature of any dispute from hotly ideological to seemingly neutral and objective.

In these ways, the commercial contract is understood to be an instrument that is quintessentially private, and thus, non-political.

As a result, when contracts are mentioned in a transnational context, they are much more commonly discussed within business and economic literatures as tools of transnational corporate commerce used to coordinate economic relationships and reduce transaction costs between private actors. In the few cases where scholars have explored the implications of private law and commercial contracts for global governance challenges more generally, they have done so primarily from critical perspectives. These approaches

are ones that seek to break with common descriptions of private law and contracting as “apolitical,” “neutral” and disconnected from broader public policy objectives in order to draw attention to the increasingly “public,” political, and power laden influence private law now has at the global level (Calliess & Zumbansen, 2010; Carusso, 2006; Cutler, 2003, 2013, 2018; Cutler & Dietz, 2017; Zumbansen, 2014).

In the following section, I will explore the possibility for commercial contracting to be utilized in ways that help to advance the public interest and participatory orientation of global agri-food governance. To do so, I will begin with a discussion on social constructivism and legal pluralism, which together form the base of my theoretical framework. This section seeks to answer questions including: What is law? How should it be conceptualized? and who is capable of making it? Although these abstract inquiries may seem too far removed from the main objectives of this dissertation, they are important to address precisely because they influence how we understand the creation of law and its purpose, and consequently, its potential to address serious contemporary agri-food and global governance challenges.

Following that discussion, I will proceed to identify the possible opportunities associated with transnational commercial contracting in global agri-food governance to address the serious agri-food governance challenges that have been highlighted throughout this dissertation. Specifically, I will focus on the opportunities associated with leveraging the “hard law” aspects of commercial contracting, rather than the “soft law” mechanisms that other literatures have predominantly focused on.

In addition, I will focus on the participatory, deliberative, and accountability aspects involved in contracting in order to highlight opportunities which exist upstream, at the other end of agricultural value chains for often marginalized actors to exercise their agency to directly participate in and shape value chain governance from the bottom-up. Again, this is in contrast to other literatures reviewed, which typically focus attention on lead firms and the top-down transmission of governance within global value chains through adoption and diffusion by lead firms.

Finally, I will highlight the exceptional flexibility and adaptability of contracting in local settings to include and make legally binding upon parties a broad range of issues. This adaptability should not go under-appreciated in a world of both public and private governance that is increasingly defined by globally-oriented systems of standardization that are often in tension with local contexts and ignore place-based differences that exist between similar stakeholders.

4.3 The Social Construction and Legally Pluralistic Transformation of Law in a Globalizing World

My approach is grounded in a constructivist theoretical perspective that emphasizes not whether actors are traditionally situated within the public or private realms to which we

often unconsciously ascribe particular sets of practices and characteristics, but rather, how broader publics inter-subjectively view a given system of governance and its ability to pursue and achieve objectives that they believe to be in their interest. This approach is one that suggests who and what is considered “public” or “private” is a matter of communal interpretation, performative, as well as dynamic and subject to change. In this respect, it is an approach that allows us to reconceptualize how we may address important cross-border problems and pursue public interest(s) in an increasingly globalized world, while simultaneously dealing directly with more complex, interdependent and often “private” forms of governance, such as legal contracts. I theorize that if appropriately leveraged, the geographic scope, informed consent requirements, issue-based flexibility and transnational enforceability of commercial contracts offer governance opportunities to pursue public interests in agriculture in a globalized world that more traditional state-based approaches can no longer unilaterally provide.

Indeed, the accountability, transparency, enforcement, issue-based flexibility and participatory features of contracting are particularly important given the network-oriented transnational relationships which have grown increasingly common alongside globalization. Certainly, these horizontal, networked and flexible arrangements between actors are well suited to the fast-paced and complex environments within which they frequently operate. Yet importantly, these very same features also often make it difficult to hold actors accountable for the decisions they make, to ensure transparency, or to foster participation in decision-making to all those who have been impacted by that decision-making process (Porter, 2016). Consequently, the ability of contracting to ensure these qualities is critical for marginalized and other actors to use contracts as a means to ensure a fairer distribution of value, and to pursue non-commercial pursuits such as environmental sustainability, gender equality, or food security. This chapter discusses the potential of private contracting in relation to these qualities in greater detail further below.

My theoretical approach is also grounded in a legally pluralistic transnational legal literature which understands law as a sociologically flexible instrument that is always in a continuously interactive and dynamic relationship with changes occurring in society, politics, culture, and socio-economic conditions. This theoretical approach to understanding law rejects a common claim that others, such as legal positivists make, which is that the legitimacy as well as the monopoly to create, alter and enforce law are firmly embedded within the nation-state.

A point often brought up in the legal literature, especially by legal positivists who conceptualize the creation of law as the sole prerogative of the state, is that its monopoly on the creation of law is rooted historically in the evolution of the state, as well as in law’s reflexive or recursive nature to look back in time when seeking guidance in the present³⁷ (Amstutz, 2008; 470; Cassese, 2005; Michaels and Jansen, 2007). Specifically,

³⁷ Although this recursive element is certainly found more powerfully in states with common law systems. Legal precedence is extremely important in international law as well, where Article 38 of the International

one of the primary powers endowed in the nation state, from the treaty of Westphalia in 1648 onwards, was a monarch's, and then later a representative government's (in most countries) monopoly on the legitimate use of force within the territorial boundaries of the state. While this agreement was initially certainly a sophisticated way to institutionalize and crystalize power relations between the sovereign, or ruling class and others, it also resulted in the institutional monopolization by the state of lawful coercion (Cassese, 2005; 5). In particular, the legal use of force became the prerogative of the ruling class alone. Law and the state have a very close historical relationship in this respect. As the nation-state evolved from monarchy to parliamentary democracy and regulation became more complex, the state began to use its sovereign power (as the sole actor capable of making law, determining law and enforcing law) in order to legitimize a hierarchical state based legal system (Michaels and Jansen, 2007; 28-31). Thus, the seeds of the modern legal system were planted, through the state's use of its legal authority in the interest of the whole community (Cassese, 2005; 5).³⁸

Two important points to note in this respect is that law for legal positivists is both a human construct and shares a very close relationship with the concept of state sovereignty and more recently, democratic legitimacy as well. With respect to democratic legitimacy, in theory at least, the creation and enforcement of law is indirectly a community project, whereby parliaments constitutionalize as law the legislation, policies and regulations which are valued by the societies they represent.

However, as others have noted, such a perspective represents an ahistorical view. For example, Michaels and Jansen complicate our understanding of law when they note that the concept of private law dates back at least to the Roman Empire and Roman law (Michaels and Jansen, 2007; 13). From a conceptual standpoint, the development of Roman law is particularly interesting, as it was both comprehensive and "publicly" articulated and enforced by the Roman Empire and various actors within the empire before there was any such thing as a state, at least as understood in the modern context. Even more interesting, this Roman law was largely informed by private legal "experts" such as priests and later jurists and lawyers who devoted their lives to the development of law (Michaels and Jansen 2007; 14). There are examples of other pseudo-legal entities in history as well, such as the semi-private, semi-state trading companies of the 17th century which operated with sovereign-like powers (Pauwelyn et al. 2014; 744).

Court of Justice identifies what international sources of law are recognized. In addition to conventions (treaties) it includes as sources, the general principles of law recognized by civilized nations, judicial decisions and the teachings of the most highly qualified publicists of the various nations as a subsidiary means for the determination of rules of law and finally customary law, which is entirely based on precedence.

³⁸ The generalized perspective offered here is quite broad, and I do acknowledge the different relationships that exist between the state and law both geographically, and historically. See for example Ralf Michaels and Nils Jansen (2006). "Private Law Beyond the State: Europeanization, Globalization, Privatization," *The American Journal of Comparative Law*, Vol. 54, 843-890, which focuses especially on the differences between the German and American systems.

Also interesting is the *Lex Mercatoria*, which governed long distance (relatively speaking) commercial relations between traders operating in a legally pluralistic world dating as far back as the 12th or 13th centuries (Michaels and Jansen, 2007; 22; Stone-Sweet, 2006; 629). The purpose of the medieval *Lex Mercatoria* was to help merchants resolve disputes while escaping the legal costs of conflict between themselves and local courts operating under the different rules and customs of feudal lords, guilds, or the Church (Stone-Sweet, 2006; 629). Even without the enforcement power of the state, the effectiveness of the medieval *Lex Mercatoria* was significant due to the reputational consequences that stemmed from merchant courts. The function of these courts was to document trade disputes, which would then be used by merchants to ostracise guilty offenders from the broader business community (Michaels and Jansen, 2007; 22).

As one can see, law has been a continuously changing tool of governance throughout history, utilized, often functionally by different actors for different purposes at different historical junctures. In this respect, law's legitimacy is not, as some legal positivists would argue inseparably and statically tied to the state. Calliess and Zumbansen (2010, 38) have commented on the conceptual evolution of law towards legal pluralism as “the shift from an understanding of law as functioning in a relatively coherent community, that is guaranteed and stabilized by a centralized political framework (the state), towards a vision of law under 'post-modern' conditions, under which law's aspired unity is as fragmented as that of society.”

In re-imagining law at the transnational level, scholars have advanced a legally pluralistic conception of law wherein it is growing increasingly fragmented within functionally differentiated and specialized regimes (commercial law, environmental law, human rights law, administrative law, constitutional law etc.) that are issue specific, non-hierarchical, but which are also in competition with one another. In a world without a global sovereign to order and elaborate on evolving interrelationships emerging between different transnational communities, law has become a central means of communication, conflict (resolution), and source of power, used by different groups to affect outcomes in increasingly dense and politically significant transnational spaces (Calliess & Zumbansen, 2010). By no means is this emerging transnational legal space clearly defined, well-ordered or universally recognized by legal communities in the same way. Rather, as Zumbansen & Bhatt note (2018, 13), “it is a discursive realm” where “normative tensions between competing and conflicting claims and interpretations as they emerge in different localities around the world increasingly resonate or collide with those surfacing elsewhere.” For example, human rights and environmental communities are frequently in conflict with the agendas of transnational corporations who may abuse local labour or environmental laws in pursuit of greater profits. It is increasingly common for these different communities to draw on differentiated sources of public and private law (such as contracts) operating at multiple scales, from the local to the global in order to resolve disputes.

As Zumbansen continues (2014, 21) “Somewhat counter-intuitively, then, rather than

stabilizing normative expectations as law has historically done at the domestic level, law at the global level becomes a broker, a mediator and translator of competing, intersecting bodies of knowledge. One consequence of this reorientation is law's turn to an openness of goals, as its primary function is no longer defined...as one to bring about desired (normative) results, but to open up, to facilitate, institutionalize and consolidate learning opportunities. Seen through this lens, the primary task for law is to reflexively facilitate the mediation of and between possibly very diverse and complex societal rationalities.”

Framed in this way, law is better understood at the transnational level, not as a rational, predictable and unchanging set of rules, but rather, as a fragmented and dynamic realm of contention that is being interpreted and functionally utilized in different ways by less and more powerful actors to pursue different objectives. In my view, this transnational, legally pluralistic interpretation of law is not only accurate, but the dynamism ascribed to law within this framework affords me the space to make concrete suggestions on how to influence commercial contracting in order to pursue public interest(s) within the agri-food sector at the transnational level.

4.4 Why Private Contracts?

This sociologically dynamic depiction of law at the transnational level developed in the preceding section is quite visible in the rapid transformation of commercial contracting over the past few decades. Indeed, commercial contracts have become ubiquitous as an instrument used by private actors to clarify their responsibilities and obligations to one another as global agricultural trade has proliferated over the past few decades within non-hierarchical, networked, and transnational value chains.

Unfortunately, exact data on the proliferation of contract farming globally, regionally, nationally, and by commodity is notoriously difficult to obtain (Bellamare & Bloem, 2018). However, there is empirical evidence that contract farming has proliferated significantly over the past few decades (Maerten & Swinnen, 2015). For example, In the United States, contract farming has risen as a percentage of the value of U.S agricultural production from 11 percent in 1969 to 39 percent in 2011 (MacDonald 2015). It is also widely acknowledged within the economics literature on agriculture that contract farming has grown rapidly alongside the vertical coordination of agriculture within transnational value chains (Maertens & Swinnen, 2015). In my own fieldwork in Ghana where I interviewed two cooperatives that represented approximately 100 smallholder farmers involved in the pineapple value chain between Ghana and Western Europe, 70 percent of smallholder produce was grown via contracts with larger estate farms and transnational exporters.

Speaking about the prevalence of regulatory commercial contracting more generally, Verbruggen (2014, 86) has noted, “a study that is particularly revealing of the actual magnitude of the use of commercial contracts as regulatory instruments to implement and enforce safety, social and sustainability standards in transnational supply chains is the

empirical study by Vandenberg. While assessing the environmental policies and statements of the top ten firms in eight different sectors (either by US or by global sales), he finds that more than half of the firms in his sample (n= 74) impose environmental requirements on their domestic and foreign suppliers via supply contracts. These firms represent 78 per cent of the total sales of the top firms in the sectors studied.”

Moreover, as consumers, NGOs, and states have become increasingly cognizant and concerned with the sustainability, quality and ethical aspects of many industries and transnational production relationships, commercial contracts have been used with increasing regularity not only to set the terms of exchange for a product but also to address social and environmental externalities involved in that product’s production. For example, many contemporary agricultural commercial contracts now address not only the traditional issues many intuitively associate with them, such as the price, shape, size and colour of a product, but they also increasingly make reference to an expansive array of private and public standards (Cafaggi, 2013). These include private standards such as the business-oriented GlobalGAP standard and the civil society led Fairtrade standard, as well as the International Labour Organizations’ fundamental Conventions on labour rights (Interview B2 & E5; Cafaggi, 2013; Verbruggen, 2016). Commercial contracts embed these standards within their contractual agreements as legally enforceable conditions in an effort to regulate working conditions within value chains, and also to demonstrate ethical and environmental production to consumers (Verbruggen, 2013).

Consequently, as noted in an FAO report on contract farming, (2018, 9) “supermarkets have begun to favour procurement practices that favour centralized purchasing, specialized and dedicated wholesalers, preferred supplier systems and private quality standards. Ensuring that sufficient supply that fulfils private standards is available, might be very challenging in spot markets. To ensure availability of sufficient quantities of specific quality products, value chains increasingly use contract farming.”

Commenting on these changes to contracting practices, a corporate lawyer I interviewed who works for a transnational law firm involved in the agri-food sector told me that “contracts in the 1980s were basically like a handshake. Over the years, the contracts have gotten longer and longer and more detailed that’s the nature of business in this century... Food contracts in particular are getting more and more complex. Purchasers at retailer level, they’re more and more particular about what they want. The conditions and terms need to be very clear and they’re in the contract (Interview E5).” Traditionally, these types of regulatory issues found in private standards and commercial contacts have been viewed as being much more of a public responsibility, to be regulated directly by states through their legislatures and regulatory agencies.

Simultaneous to this expansion in the use and regulatory reach of commercial contracts, there has also been a massive uptake and expansion in their adjudication through a system of private arbitration or litigation within “specialized” private law courts located primarily in the Global North (Stone-Sweet, 2006; Whytock, 2010). With respect to

private arbitration specifically, clauses are increasingly included within transnational commercial contracts that will identify specific specialized private arbitration law firms who both parties select as their source of arbitration in the case of a dispute. Within the terms of commercial contracts, both parties also accept the outcome of private arbitration as legally binding (Interview E5).

According to Whytock (2010, 2-3) arbitration has four defining characteristics: “First, the arbitrator is a private actor selected by the disputants themselves, or in accordance with a procedure agreed in advance by the disputants. Often, there are several arbitrators. Second, arbitration is consensual. An arbitrator cannot resolve a dispute unless the disputants have agreed to have the arbitrator resolve that dispute. Third, in arbitration, the disputants are for the most part free to choose the procedural and substantive rules governing the dispute resolution process. Fourth, the arbitrator’s final decision—called an “award”—is binding on the disputants. When the claimant prevails, the award typically takes the form of an order that the respondent pays a certain sum of money to the claimant.”

Arbitration differs from litigation in that in arbitration, the arbitrator is a private actor, whereas in litigation, the third-party actor is a state judge. Similarly, while arbitration is a consensual act between commercial actors, litigation is a non-consensual adversarial one. Finally, in contrast to arbitration, where the parties involved can choose the procedural and substantive rules governing the dispute resolution process, in litigation it is private state law which governs the dispute resolution process. Both arbitration and litigation are legally binding on the parties (Whytock, 2010, 4).

Private dispute resolution, sometimes referred to as the *New Lex Mercatoria* or “Law Merchant” has become a central component of this emerging transnational legal system, which operates in no small part through a growing number of specialized arbitration law firms whose lawyers provide alternative dispute resolution to commercial actors who have agreed to arbitrations as a legally binding and enforceable alternative to litigation (Stone-Sweet, 2006; Whytock 2010). In its entirety this private arbitration system has been described as a “self-reflexive” and “closed circuit” body of law that operates and continues to evolve apart from the nation-state (Teubner, 1997).³⁹ Taken collectively, the growing impact of private law on outcomes that are in the public interest are much more evident when one considers the ubiquity of regulatory commercial contracts as a source of governance, the expanding regulatory role of contracts themselves, as well as the private system of arbitration, backed by international treaties that have emerged to adjudicate over regulatory commercial contracts. Indeed, as Carusso (2006, 24) notes

³⁹ Although it is important to note that the *New Lex Mercatoria* borrows extensively from the verdicts and legal interpretations of domestic private law courts. In addition, the enforceability of private arbitration in cases of non-compliance is ultimately dependent on acknowledgement of these arbitral awards by states whose court systems can also enforce rulings following an actors’ refusal to acknowledge a private arbitration verdict (Calliess, 2001; Teubner, 1996; Whytock, 2007). Thus, this private system is dependent on and borrows from “public” systems of rulemaking and enforcement.

private arbitration in tandem with a comprehensive system of international arbitral treaty-making provides the “post-national institution” of private contractual governance “the enforcement tools necessary to its establishment as binding law.”

The discussion on commercial contracts presented to this point has focused on contextualizing the emergence and drivers of private transnational contractual governance that have led to its growing regulatory role. However, it has only indirectly identified why private contractual governance might have potential as a medium through which to pursue the public’s interest(s).

The Possibility of Private Agri-food Contracts

As alluded to above, one area of possibility lies in the effectiveness of commercial contracting as a system of private governance. Contracts are geographically flexible legal instruments capable of operating with great impact and effectiveness across vast distances and the political borders of states. In addition, private actors themselves are drawn to contracts because their contents are considered confidential to the parties involved which can be important in limiting reputational damage. Simultaneously, they are also flexible instruments whose terms can easily be adapted to suit the needs of the parties involved, whatever those may be. Moreover, the interactive, consensual-based nature of contracting itself also generally means that resolution will be faster and cheaper than if it had occurred through litigation within an adversarial domestic court. Finally, regardless of whether arbitration or litigation is selected as the method of dispute-resolution, perhaps the most significant appeal for the parties involved in contracting is the exceptionally strong transnational public-private enforcement apparatus that is associated with commercial contracting (Whytock, 2010).

Indeed, the robustness of this system in its entirety is impressive. Not only are contracts flexible regulatory instruments in their own right, but their enforceability at the transnational level through arbitration and domestic private law courts is also very real (Whytock 2010). The awards which emerge out of commercial arbitration if ignored by the offending party are also recognized by states through a variety of international commercial arbitration treaties, the most important of which is the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (also referred to as the New York Convention).

As quoted in Whytock, (2010, 9) “the [New York] Convention “provides what amounts to a universal constitutional charter for the international arbitral process, whose sweeping terms have enabled both national courts and arbitral tribunals to develop durable, effective means for enforcing international arbitration agreements and arbitral awards. As of 2019, 156 member-states were signatories to the Convention providing near global

coverage of enforcement for arbitral awards.⁴⁰ In addition, even when a state is not signatory to the New York Convention, state enforcement of private arbitration also generally exists within the domestic law of many countries around the world (Whytock, 2010).

Moreover, Porter and Ronit (2015- 427-430) discuss some of the Courts of Arbitration involved in resolving commercial disputes. These include the Inter-national Chamber of Commerce's Paris-based International Court of Arbitration (the ICC Court), the London Court of International Arbitration (LCIA) and the American Arbitration Association's (AAA) International Rules of Arbitration. As Porter and Ronit (428) note, “in effect, there is a market for arbitration services and firms may choose from among a variety of procedures.

This aspect of commercial contracting related to enforcement effectively provides parties with an avenue to “harden” a variety of regulatory instruments which are currently understood within both global and agri-food literatures to be “soft.”⁴¹ For example, although private agricultural standards such as the GlobalGAP standard are understood to be “voluntary” it is becoming increasingly common to incorporate these standards into commercial contracts as legally binding, giving rise to the possibility of judicial enforcement. As Cafaggi (2012, 88-89) notes, “contracting parties may address violations of these standards, as signaled by certifiers, to courts based on the concept of breach of contract or express warranty. Importantly, as mentioned in Chapter 3, this “enforceability” deficit is often acknowledged by global governance scholars as both a common feature but also a critical shortcoming of governance instruments designed to operate at the global /transnational level (Abbott and Snidal, 2009).

A second area of potential associated with contractual governance relates to the ability of contracts to ensure the direct and substantive participation of the parties involved. As discussed in Chapters 1 and 2, substantive participation is viewed as an essential, (albeit frequently lacking in transnational spaces) aspect of legitimate governance because it affords individuals a high level of participation, transparency and deliberation in collective problem-solving over issues which affect them (Pierre & Peters, 2005). Together, substantively participatory governance arrangements contribute to a system of decision-making that those affected will be much more likely to view as more or less accountable, fair, and subsequently, legitimate. As Hilary Charlesworth (2017, 40) notes, one condition “to enhance accountability and diminish the potential for arbitrary exercise of political power is that of participation: the idea that all members of a polity are ‘considered both author of the laws and subject to them.’” Indeed, Jan Aarte Scholte

⁴⁰ See UN member state signatory status of UNCITRAL at: https://uncitral.un.org/sites/uncitral.un.org/files/overview-status-table_0.pdf)

⁴¹ As discussed briefly in Chapter 1, Soft law includes regulatory approaches such as voluntary standards, best practices, memoranda of understandings, codes of conduct, and other types of informal rules that can be public, private, or technical in origin. The use of soft law rules has grown tremendously as a regulatory approach to global governance alongside globalization.

(2011, 4) has gone so far as to say that securing democratic accountability in global governance is one of the core challenges “for anyone concerned with obtaining decent human lives for all in the twenty first century.”

The participatory, deliberative and accountability aspects of contracting in the global agri-food sector should not go unnoticed, Indeed, in global agri-food governance, a common critique of private standards, and especially B2B private standard setting bodies is that they provide stakeholders with only superficial avenues for participation and accountability (Fuchs & Clapp, 2009). In fact, this lack of participation in B2B private standard setting has been identified as one of the key ways in which powerful actors unilaterally and self-interestedly advance their governance preferences within agricultural value chains in pseudo-legitimate ways (Tallontire et al., 2014).

For example, with respect to the B2B GlobalGAP standard, there are no smallholders on the board which is responsible for the development and adoption of standards and is composed exclusively of multimillion (or billion) dollar food retailer and producer representatives. Public input for GlobalGAP standards is obtained through periodic online and public notice comment sessions in areas that have been pre-determined by the board and working committees, which further limits the scope of discussion (GlobalGAP, 2020c; Hachez & Wouters, 2011; Nelson & Tallontire, 2014). In other words, it is only the registered members (retailers and producers/suppliers), and not the public at large or other important stakeholders such as smallholders that have real participatory access to shape the GlobalGAP standard. Accountability mechanisms are consequently similarly underdeveloped, often limited to the responsiveness and interests of consumers frequently located thousands of kilometers away from the farms from which their food was produced (Nelson & Tallontire, 2014). This in itself can be problematic, as Hachez and Wouters (2011, 708) explain:

“Accountability relying on elusive consumer market control and reactivity is hardly a guarantee that the governing entity’s activities and decisions will be in line with the general interest widely understood. Market mechanisms are hampered by serious information asymmetries and run the risk of being highly inaccurate. They also depend on the responsiveness of consumer (or investor) audiences to issues of general interest extending beyond the simple act of consuming. It is argued that markets are able to enforce social and environmental values, but this is only true to some extent, arguably limited when consumer and other public concerns do not closely coincide.”

Indeed, consumption through impersonal markets is not an environment well-suited to cultivating a cosmopolitan political identity which carries with it responsibilities and obligations to a global community (Tanaka & Ransom, 2007).

Similarly, as discussed in Chapter 2, critics have also pointed to issues of participation that are associated with “public” global governance systems as well. These include the

purposeful design of some international groups and organizations to give greater participatory weight in decision-making to powerful countries over weaker ones, the distance between international organizations and the problems they are seeking to address, and the significant technical expertise that is required for countries to participate effectively in decision making at the international level.

Alternatively, what opportunities do private contracts offer related to participation and accountability? Foremost, contracts provide those who are involved with the right to participate and deliberate over contractual terms often referred to as “offer and acceptance.” One of the most basic legal requirements for a commercial contract to be considered binding, in this respect, is the existence of free and informed consent to terms or a “meeting of the minds” over terms following a process of deliberation (Cafaggi & Pistor, 2015; Fraser, 2009).

These procedural dimensions of commercial contracts allow for an ethical concept that Nancy Fraser (2009, 24) labels the “all-affected principle.” As she describes, this principle holds that “all those affected by a given social structure or institution have moral standing as subjects of justice in relation to it.” It is also similar to Inge Kaul’s “equivalence principle,” (Best & Gheciu, 2014) as well as the all-inclusiveness principle advanced by David Held (2006, 170). Indeed, what is common to these various normative approaches to decision-making is the idea that nobody should be subjected to a regulatory regime without the freedom to determine its nature.

Theoretically, contracts have the potential to provide one avenue to this right to equal participation. This has become particularly important at the transnational level which is increasingly important in affecting distributional outcomes for those involved. Contracts can provide a framework to ensure that those who are most often marginalized and whose voices remain unheard, especially at the global level are heard. They can also provide mutual accountability between parties through the possibility of legal enforcement or recourse in cases of breach.

One final area of potential associated with contracting relates to the issue-based flexibility of contracting itself as a vehicle of governance. Certainly, the participatory aspects of contracting described above are important, given their potential to incorporate the interests and priorities of often marginalized actors into decision-making. Yet it should be noted that this is not a panacea to governance challenges that exist in the agri-food sector. For example, there is no reason to believe that actors such as smallholder farmers will always operate in the broader public’s interests. In this respect, contractual terms relating to the prevention of environmental degradation may not be valued by smallholders concerned about the costs associated with such terms.

Fortunately, contracting as a medium of governance is useful in addressing these other challenges because of their flexibility to incorporate all kinds of interests into their contractual terms. As will be illustrated in further detail in my Chapter 5 case study,

agricultural contracts are more than capable of incorporating a variety of different interests, through, for instance, reference to private standards such as the GlobalGAP within their contractual terms. Because many private standards implicitly or explicitly make reference to international and domestic laws, and the obligation of producers to comply with those laws, contracts by reference internalize various aspects of international and national labour law, environmental law, human rights law and contract law as legally binding upon the parties involved.⁴²

Certainly, contracts and private arbitration have been used most frequently in a one-directional manner by food retailers to pass on risk and legal liability to smallholders and other actors upstream who are often left with a “take-it or-leave it” option within highly asymmetrical value chains (Cafaggi & Pistor, 2015, 99). Indeed, presented in a more political light, some argue that in a legally pluralistic world, the development and use of contract law has been overwhelmingly appropriated by powerful retailers in the Global North in order to “legitimately” impose a particular agricultural production model on farmers in the Global South while using their market power as leverage in order to force parties to accept unfair terms (Cafaggi, 2012, 29; Campbell, 2005). Specifically, with respect to production, global agricultural supply chains have often been criticized for their tendency to send risks and the higher costs associated with risk reduction downstream to agricultural producers who are often in developing countries (Cafaggi, 2012, 30). Thus, the rapid proliferation of contracting as a method of governance is certainly tied to the appeal that contracting holds for powerful actors.

However, this does not diminish the fact that contracts themselves are merely vehicles of governance that can be utilized by all actors, including states, international organizations, agricultural cooperatives, unions, environmental, and social NGOs to pursue public interests and overcome global agri-food governance challenges. Within socially constructed and legally pluralistic transnational agri-food spaces, it is entirely possible, for example, to include “biodiversity,” “food sovereignty,” “gender equality” or “fair trade” clauses into the terms of agricultural contracts as legally binding. What has been missing, however, is a widespread recognition on behalf of scholars and agri-food stakeholders that contracts themselves are extraordinarily effective, but also political instruments of global agri-food governance with the attributes necessary to address important issues of global agri-food governance. This realization is a starting point then, that can lead to the development of proposals and strategies to incorporate democratic legitimacy and other “public oriented” considerations into commercial contracts. Altering the use of contracting in this direction will certainly not be easy, given the highly

⁴² Below are some examples of compliance criteria in the list of control points relating to post-harvest treatments for the GlobalGAP standard: “All the plant protection products applied are officially and currently *authorized and permitted by the appropriate governmental organization in the country of application*. Where no official registration scheme exists, refer to the GlobalGAP. guideline (annex CB 4) on this subject and FAO International Code of Conduct on the Distribution and Use of Pesticides. Refer also to Annex CB 4 for cases where producer takes part in legal field trials for approval of PPP by the local government’ (GLOBALGAP, 2011) cited from Bernard and Bonnaud, (2014, 232).

asymmetrical distribution of power within the global agri-food system in favour of food retailers and transnational corporations. Nevertheless, exploring how activists can utilize contracts to make progress in these directions is something that I argue is in need of further research and exploration.

Chapter 5 will explore this possibility associated with commercial contracting with reference to my case study, which explores the role of commercial contracting in regulating the production and export of pineapple through the transnational value chain between Ghana and Western Europe. In order to do so, my case study will demonstrate the presence, effectiveness, enforceability and capability of commercial contracting to reflect more than just the interests of powerful buyers. In addition, the case study will discuss a number of shortcomings associated with the way contracts are currently being utilized to regulate the pineapple value chain in Ghana. Based on this analysis, the chapter concludes by suggesting options to further the use of contracting to advance “public oriented” interests in commercial contracts and reduce power imbalances between actors within the value chain.

Chapter 5 - Ghana's Transnational Pineapple Value Chain – A Case Study

Chapter 4 developed a conceptual framework through which to understand why and how contracts could act as a tool to address significant global agri-food governance challenges. In particular, this conceptual framework outlined features of contracting relating to its growing ubiquity and regulatory character, as well as its effectiveness, enforceability, participatory nature, and issue-based flexibility to incorporate the regulatory interests of multiple actors as important, unique and promising. Such a focus on contracting helps to re-orient ones' analytic focus in overcoming common agri-food governance challenges away from lead firms at the top of the value chain, and towards farmers and other often marginalized actors involved in contractual negotiations at the other end of the chain.

Chapter 5 will discuss this potential in greater detail through empirical reference to my case study. Specifically, it will use the transnational value chain for Ghana in order to assess the presence of these various features of contracting outlined in the preceding paragraph. An important distinction to make in this respect, is that my case study is most interested in demonstrating the presence of these features, rather than how they are currently being utilized. Based on the insights derived from this case study of contract farming in Ghana, the chapter will then move on to consider some options that could prove useful in improving the public-orientation of commercial contracting as a medium of agri-food governance.

5.1 Commercial Contracting in Ghana's Transnational Pineapple Value Chain

In November of 2016, I conducted exploratory research to confirm the presence and assess the impact of regulatory commercial contracts within the pineapple value chain linking Ghana to western Europe (primarily France, but also Germany, Switzerland, Italy, the Netherlands and the United Kingdom) (Interview A1; B2; C3; D4; K11). During my time in Ghana, I interviewed smallholder cooperatives, medium and large farm operations, and a few multinational pineapple producer / packaging / export companies, some of whom had direct market access to major European supermarkets such as Migros and Co-op (Interview A1)⁴³

In total, I conducted 20 interviews in the eastern and central regions of Ghana directly surrounding Greater Accra with a number of pineapple stakeholders. These included representatives from two farmer-based organizations (FBOs). Each FBO had approximately 50 smallholder members involved in producing pineapple for export through outcropping arrangements. I also interviewed stakeholders from HPW, Bomarts Farms Limited, Peelco Fruits Limited, Sam Valley Farms, Blue Skies Limited, and Gold Coast Fruits Ltd. These are some of the largest producer / packager / processors / exporters of pineapple in Ghana. They operate pineapple plantations of between 400 and

⁴³ Names and quote attributions have been anonymized to protect the confidentiality of my interviewees.

2000 hectares in size, and collectively employ approximately 3,000 labourers (see Table 1).

Table 1 Company Profiles of Major Pineapple Production/ Processors / Exporters Interviewed

Name	Ownership	Staff	Size (Ha)	Operations	Private Standards	Markets
Peelco Fruits Ltd.	German	100 +	-	Producer Processor Exporter	GlobalGAP IFS	Global
HPW	Swiss / Ghanaian	1400	2000	Producer Processor Packager Exporter	GlobalGAP Fairtrade IFS BRC	France, Germany Switzerland, Morocco
Gold Coast Fruits	Ghanaian/ German	170	600	Producer Packager Exporter	GlobalGAP Fairtrade Carbon Trust	Switzerland, France Netherlands, Morocco UAE
Sam Valley Farms Ltd.	Italian	300	850	Producer	GlobalGAP Fairtrade IFS	France, Switzerland U.K., Netherlands Dubai
Bomarts Farms Ltd.	Ghanaian / Swiss	400 +	1600	Producer Processor Packager Exporter	GlobalGAP Fairtrade IFS USDA Organic	Netherlands, Italy, U.K, Switzerland
Blue Skies Ltd.	British	2400	-	Producer Processor Exporter	GlobalGAP LEAF Fairtrade BRC SMETA FSSC 22000	UK, France, Netherlands, Switzerland, UAE, Egypt, Denmark, Italy, South Africa

5.2 Assessing the Presence and Impact of Private Contractual Governance within the transnational Pineapple Value Chain

In terms of assessing the regulatory impact of contracting along the value chain, all of the larger producers / exporters I spoke with chose not to divulge the specific details related to their contracts, as well as their negotiating process for contracting. However, all six of the large plantation producer /export companies interviewed, did acknowledge that they

had regulatory contracts with their buyers that included food retailers such as Migros and Co-op, as well as other large multi-national pineapple producers such as Dole (Interview A1; B2; D4) In particular, one of the interviewees I spoke with at a larger multinational producer / exporting company in Ghana acknowledged that they had contracts with multinational buyers in Europe that referenced the private GlobalGAP standard (Interview A1). These producers /exporters also had similar contracts with their smallholder suppliers. The reticence of these larger producer / exporters certainly makes an assessment of the governance impact of contracting more difficult. With that said, the smallholder farmers interviewed were more willing to discuss both the process of contracting as well as the specific details associated with their contracts.

One of the major findings of my case study is that regulatory contracts are ubiquitous within the pineapple value chain between smallholders and their buyers. For example, in a contract between a smallholder cooperative and a larger producer / exporter that was shared with me, there is a section devoted to “quality requirements,” which makes reference to the buyer’s production manual for pineapples as well as the private B2B GlobalGAP standard and EU regulations (See Figure 1). The farmer cooperatives interviewed said that 100 percent of their pineapple production grown for export was sold through these kinds of regulatory contracts either to larger producers or directly to exporters in Ghana (Focus Group 1 and 2).

Furthermore, the presence of private arrangements such as contracts existed in what many of interviewees perceived to be a vacuum of “public” Ghanaian government involvement in this transnational agri-food space.⁴⁴ For example, when commenting on the gap between public and private influence over their production processes, one major pineapple processor / exporting representative explained to me that “we have an agronomy team and different people on that agronomy team who are trained on Fairtrade or GlobalGAP... At last count- we ha[d] 12 agronomists and their job is to work with our farmers, to help them reach the standards, to train, to do the job of the extension officer- to carry out pre-harvest inspections- to make sure the fruit before harvest will be good enough- they are there to do that. We help with the certification as well. That is why you

⁴⁴ My intention here is not to ignore or juxtapose the public against the private as neither operates in isolation from the other. For example, GIZ is a public German development agency has funded smallholder training and certification against the private retailer-led GlobalGAP standard for hundreds of farmers through the Ghanaian Ministry of Food and Agriculture’s (MOFA) Market Oriented Agriculture Programme (Interview 19). Alternatively, several development agencies including the World Bank, the United States’ Millennium Challenge Corporation and the African Regional Development Bank have worked with the Ghanaian MOFA to increase pineapple production through training and support programmes as well as the development of a cold-chain transportation network inclusive of cold-storage rural infrastructure, refrigerated trucks, and a paved road network developed through roughly \$500 million in funding (Interview 19). However, many of the farmers I spoke with had not been trained on the GlobalGAP standard, nor had MOFA paid for their GlobalGAP certification / associated infrastructure costs. Government support was described as underfunded, especially in relation to extension services and everyday support outside of large infrastructure spending.

see private standards offices on farms... You won't see an office with anyone trained on government standards- I don't think there are any. The government are supposed to have extension services- but as far as I can tell I haven't ever seen anyone (Interview K11).” Smallholder pineapple farmers had a similar view. As one interviewee told me, “We are very happy with [our buyer]. They employ about 1500 people in our community, both men and women... We don't have any trust for the government at all. The help never comes from the government. On Farmers day in Ghana, instead of sending us farming supports to celebrate, the government sent us all alcohol, because they assume we're all alcoholics.”

As a brief aside, the presence of the private GlobalGAP standard explicitly referenced within contracts is quite significant from both practical and theoretical perspectives. From a practical perspective, the GlobalGAP standard is an exceptionally onerous and prescriptive regulatory standard that requires producers to conform to specified process-oriented growing practices throughout the production process from farm to plate.

From a theoretical perspective, in the vast majority of explanations regarding the effectiveness or influence of private standards in the agri-food sector, the marketplace and / or the material power of food retailers act as the primary explanatory factors. In particular, a common position is that food retailers have assumed oligopolistic power within the agri-food sector (Clapp & Fuchs, 2009, Busch & Bain, 2004). In turn, their cooperative control of international markets ensures that if retailers make private standards a prerequisite for market access, then those private standards become a *de facto* requirement in the majority of international agri-food markets (Busch & Bain, 2004).

Moreover, it is often noted that these standards are non-legally binding, and that compliance is not an issue of legality in this respect. Rather, violators instead face harsh market penalties as a consequence of non-compliance. As Busch & Bain (2004, 332) note, “private regulation relies on the market for its enforcement. Put differently, commodities that do not meet the private standards are not bought or are bought at sharply discounted prices. Thus, not meeting the private standards is often tantamount to bankruptcy.” Market-based explanations are similarly important for GVC scholarship, which pays careful attention to the structure of value chains, and the market relations between actors within them. Again, mainstream GVC scholarship emphasizes retailer concentration as the primary explanation for a proliferation of private standards as regulatory mechanisms. In doing so, they outline the “buyer-drivenness” of agri-food value chains in particular, which they note are coordinated through “lead firms” (food retailers in the case of the agri-food sector), and emphasize the way in which the economic asymmetries within this value chain typology lead to “captive” structural relationships between powerful lead firms, and weaker suppliers (Gereffi, Humphrey & Sturgeon, 2005).

Without a doubt, the material power of food retailers and the economic structure of value-chains are important variables in the expansion of private governance. As I noted in

Chapter 3, roughly 80 percent of global trade that occurs within the GPE is linked to the global production networks of transnational corporations (UNCTAD, 2013). Yet evidently, these market-based literatures also miss much that is important. The value-chain literature pays attention to factors such as chain structure, leads firms, and the buyer driven nature of the chain, but misses the role that contractual agreements play in clearly and precisely defining stakeholder obligations to one another within it. In a similar vein, the literature on private standards emphasizes the economic and “non-legal” nature of compliance yet miss the way private standards are enhanced by insertion within *legally binding* contractual agreements.

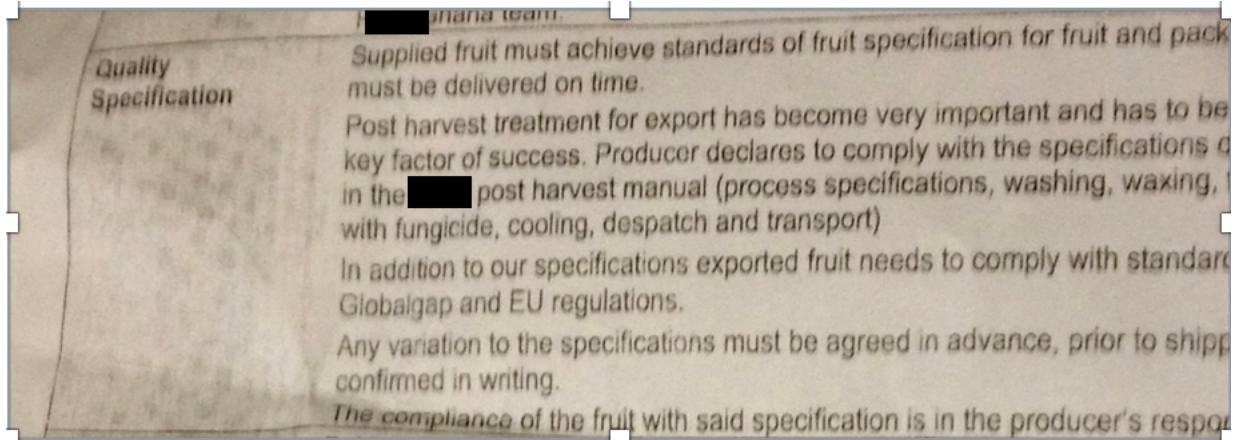
In Ghana, this legal requirement to conform to GlobalGAP production processes was not insignificant in terms of how it impacted farmer behaviour. For example, conformity with the GlobalGAP standard was reinforced for smallholders through a contractual clause that required the producer to “welcome members of the buyer’s organization onto the farm and to meet whenever it is needed.”⁴⁵ Moreover, the contract also stipulates that “compliance of the fruit with said specifications is the producer’s responsibility.”⁴⁶ When I inquired about these clauses, interviewees at the FBO expanded on their significance, telling me that standards officers operating in a farm extension service capacity, but employed by the larger plantation producers or pineapple exporters they were contracting with would visit their farms frequently to ensure compliance against the quality standards referenced in their contract. As one interviewee told me “An agronomist comes every 2 weeks from [our buyer] to check in on our growing practices– if you don’t follow the process exactly for pesticides then it will show up in their testing. So we follow the processes exactly (Focus Group Interview 1).”

Another major finding from my field research is that these regulatory contracts are relatively recent governance tools that had been introduced by buyers only in the past few years in Ghana. As one member of one of the FBO’s I interviewed explained “we have been working with [name of buyer] in this way since 2010... [before that], we had oral agreements with [name of buyer] or no agreement at all...we would sell to them on the open market (Focus Group Interview 2). This novelty of private contractual governance could be one of the explanations for the lack of scrutiny generated within the literature to date despite their clear influence in governing the chain.

⁴⁵ Smallholder regulatory contract. On file with author

⁴⁶ Ibid

Figure 4 The Quality Specifications of a Pineapple Contract between a Smallholder Cooperative and a Larger Buyer



In terms of the process used to reach agreement, several farmers had interesting comments. As I mentioned in Chapter 4, a major area of potential for contracting lies in its procedural inclusivity to foster substantive participation, and deliberation over the terms of the contract. Deliberation in particular is important, as it suggests an active and responsive back-and-forth form of participation between parties. This is critical because a major criticism of private and global governance arrangements is that they often fall short on standards of democratic legitimacy (this critique is leveled against most private B2B agri-food standards as well).⁴⁷ Notably, in law, an important procedural aspect of contracting when a buyer enters into an agreement with a producer is to ensure that sufficient time is given so that the producer can properly consider and seek advice over terms (FAO-IISD, 2018, 5). This approach to contracting was consistent with the process as it was described to me by smallholders in Ghana. As one farmer explained, “Currently we are in negotiations with [name of buyer]. We have been given documentation and we are studying it together through the cooperative. We have yet to enter into an agreement (Focus Group Interview 2).”

Furthermore, there was also evidence of a back and forth exchange over terms in Ghana between smallholders and their buyer indicative of mutual consent expressed through an offer and acceptance. For example, one FBO described their request to revise a contract with their buyer in order to be able to sell the pineapple to another buyer after a certain date (Focus Group Interview 2). As FBO members explained to me, a common condition of a contract is for the buyer to have exclusivity over the product. This is because buyers often agree to pay to rent the land, and buy the inputs, including pineapple suckers, mulch, pesticides, fertilizers and so on required to grow the pineapple. As a result, the buyer has invested a significant amount of resources into the development of the product, and hence has a clear interest in rights over the end product. Yet sometimes the buyer is

⁴⁷ See Chapter 4, supra 18

unable to retrieve their product. In these cases, one FBO explained “after a certain time, [our buyer] must buy it or if they don’t, we now have a right to sell after the enforcement date. If we do sell the pineapple after the enforcement date, the buyer doesn’t have any right to claim it (Focus Group Interview 2).”

Similarly, one of the smallholder associations I spoke with explained to me that just recently, they had managed to insert a contractual term that required their buyer to pay the transportation costs of delivering all Fairtrade contracted pineapple from their farm, to the packaging / exporting site (Focus Group Interview 1). However, as they mentioned, unfortunately, Fairtrade contracted pineapple only accounted for 30 percent of their contract with their buyer, and they were unable to secure transportation costs for the other 70 percent of their product which is destined for conventional markets. As one interviewee explained to me “this is our top priority right now because in order to get a delivery to [our buyer] it on average costs the cooperative 350 Cedis (\$60 USD) per truck, which we cannot afford (Focus Group Interview 1).”

The FBOs also highlighted several areas where the buyer refused to enter into negotiations with them. These included revisions to the agreed upon price for pineapples in cases where the costs of pesticides sold on international markets increased, or when the Ghanaian cedi depreciated significantly in value in relation to the Euro (Focus Group Interview 1). As one interviewee told me, “once a contract is set, the price cannot be changed, even if the costs of pesticides and the value of the Euro goes up and there is a need for an increase in our price. Even when we complain that the increase is too much [the buyer] won’t change the price upwards (Focus Group Interview 1).” One of the FBOs I spoke with told me that this is an issue that they would bring up with their buyer again, once they go to renew their contract, which was 12 months in duration (Focus Group Interview 2). Another issue that members from the cooperative highlighted revolved around the minimum price for pineapple. In particular, the cooperative wished to establish a “minimum” Fairtrade price point for conventional pineapple, even in cases when conventional pineapple dipped below that price on the open market (Focus Group Interview 2). Once again, the buyer was not open to negotiation on this point.

The issue-based flexibility of commercial contracting to incorporate a variety of different regulatory issues and actor preferences as legally binding within a single contract was also impressive and easily visible in Ghana. For example, a farming contract between a smallholder farming cooperative and an exporting company in Ghana made reference to EU food safety regulations, the B2B GlobalGAP standard, the B2C Fairtrade standard and an additional production manual developed by the local exporting company. Also noteworthy, despite their “private” origins, both the GlobalGAP and the Fairtrade standard make reference to and expected compliance against local laws and international Conventions related to labour and worker rights outlined by the International Labour Organization.

Finally, with respect to enforcement or dispute resolution, the cooperatives that I spoke with informed me that both they and the buyer had never utilized the enforcement clause within their contracts. However, with that said, Verbruggen (2016, 11) notes, in commenting on the legal enforceability of private standards referenced in contracts, “scholars that have analyzed the practice of such incorporation do not consider contract law to impose strict barriers that prevent private regulatory standards from gaining binding effect when they are expressly included in the contract proper or in its auxiliary documents.” Thus, assuming that parties have the legal capacity to contract, provide free and informed consent, and responsibilities for the buyer and the seller have clearly been laid out and understood, (cause and consideration), private standards can become what Beckers (2015, 40) describes as a “legally binding express term of the contract.”

This position related to the enforceability of agricultural contracting was quite similar to that of Prof. Samuel Manteaw, who is a contract law expert, lawyer and professor at the University of Ghana who holds a Master of Law in Transnational Business Practice. As he explained in an interview, “Generally in the law of contracts, whatever agreement you have, the provisions of that agreement must honour the terms that indicate the responsibilities, obligations duties and benefits of the parties. Those terms carry legal weight.”

With that said, Prof. Manteaw stressed that the legal framework in Ghana requires that courts weigh a variety of different factors before determination in a contract dispute. For example, Prof. Manteaw highlighted that a GlobalGAP certified pineapple would probably qualify as an “uncertain good” as defined by Ghana’s Sale of Goods Act. As he explains, “In the case of uncertain goods, where it is not entirely clear what exact qualities you are hoping your good needs to have or how to measure them, what is important then is that the fundamental requirements of the pineapple substantially correspond to the terms of the agreement.” In this case, you must look at the substantial correspondence to the contract. If something is different from the contract but it is trivial, then the best you can secure is damages, but not repudiation of the good as a whole.”

Moreover, Prof. Manteaw also noted that the supplier’s awareness of requirements as well as expertise would also be considered when assessing the enforceability of a contract. As he explains “If you are a dealer in a particular good, and you deal in those goods, you sell pineapples, plant pineapples, you are supposed to know much about them. If there is any defect as to the quality or the fitness of the purpose, then you will be saddled with the responsibility. However, if the regulations referenced in GlobalGAP may not necessarily be known to the producer, and assuming that those parties are uneducated on those rules or it has not come up in technical training and they have not complied and are in breach....then it may be a less clear cut answer.”

5.3 Implications of Contractual Governance in Ghana

In working through the implications of contractual governance in Ghana, a useful lens to adopt is to consider the distributional costs associated with agricultural contracting, and how these costs fall within the value chain. A point that immediately becomes visible when adopting this approach is that contracts in Ghana are important instruments in helping to push the costs associated with various social, environmental and food safety risks present in transnational production up the value chain to those who are least able to bear those costs (Cutler & Dietz, 2017). As discussed above, this is indirectly the result of private standards and especially private B2B standards which get transmitted throughout the value chain from the retailer to the producer at the other end. Unfortunately, these standards are often prohibitively expensive for producers. Indeed, an important issue with the GlobalGAP standard is that it is too expensive to meet for many producers (Brown, 2005, 143; Graffam et al., 2007; Ouma, 2010, 199).

Although there have not been many empirical studies estimating the exact costs for smallholder farmers in the Global South, data does exist. For example, the International Institute for the Environment and Development (IIED) conducted an empirical case study on the costs of GlobalGAP certification on smallholders in the primary agricultural export industries of Kenya, Zambia, and Uganda following the introduction of GlobalGAP standards to many African markets in the early 2000s. They found that the average maintenance costs of certification exceeded half of a smallholders' yearly income in all three countries (IIED 2008, 11). In Ghana, GlobalGAP group certification renewal cost each FBO approximately \$US 3,700.

To renew the Fairtrade International standard group certification was another \$US 1,600. For reference, members of the FBOs earned a yearly income of approximately \$US 1,100 and each FBO as a collective has approximately 50 members (Focus Group Interviews 1 & 2). This means that the costs of certification alone represented just less than 10 percent of a cooperative's income and this is without considering any of the other reoccurring costs of either standard that is associated with soil, water, and product testing. As one smallholder interviewee told me, "one of our biggest challenges is meeting the GlobalGAP standards for toilets, chemical shops, tubs to store and mix our chemicals with water. The standard helps us and it helps consumers. We want it, but it's the costs associated with it that we cannot bear. If there was more support for these costs, it would be fine, but there aren't really any (Focus Group Interview 1)."

This perspective on the costs associated with standards was also echoed by a "standards officer" employed by one of the larger producer/export companies I spoke with. As he explained, "Water quality is becoming more important in the GlobalGAP standard. They want better irrigation for fruits and vegetables, and they want to know whether the water has salmonella or e-coli. All of these things are put into the standard. This means the frequency of water analysis needs to increase. It needs to be done for our dams. It needs to be done twice a year. At least once a year it needs to be done for our irrigation water

and twice for drinking water for workers. Depending on your enterprise the cost is absolutely massive. To get certified on the GlobalGAP standard as a bigger farm we have to do Maximum Residue Level testing, water testing, conduct medical examinations for our workers, we have to provide a packhouse, a resting place and lockers for the workers, changing rooms, chemical and fertilizer storage, a general store, toilets. It also cost my company 12,000 euros for my training. There are paper costs too. About 90% of certification is all about records. There are 6 or 7 risk assessment pieces, that goes with the training. These are individual modules that you need to be trained on. Every single module requires training. We need more money to provide these things (Interview A1).”

Reflecting on this state of affairs, it is inequitable and unfair that smallholders and producers often in the global South bear the most significant costs for sustainability, food safety and ethical concerns as those are reflected in private standards, such as the GlobalGAP and Fairtrade standard. The way that these concerns are developed and expressed in standards originate primarily from relatively affluent consumers, civil society groups and food retailers in the global North concerned about reputation and legal liability. These concerns are then transmitted abroad in part, through food retailer control of international markets, and in part through contractual obligations that food retailers have included within their contractual terms with suppliers. Importantly, food retailers themselves, who play perhaps the most important role in determining and introducing private standards into value chains do not pay the costs associated with compliance. Instead, they pass them up the chain.

From a power-based distributional perspective, it is also significant to note that suppliers almost never impose obligations on buyers within agri-food value chains, and this is especially true of those larger producers directly supplying to food retailers. As Verbruggen (2016, 12) notes, “a first common feature is that the contract imposes an obligation on the seller of the goods or services to meet the standards. Only rarely does the contract impose such an obligation on the buyer, such as a retailer or large brand-name corporation. Instead, buyers are granted a right to perform audits and inspections in order to assess compliance with the contractual obligations.” Indeed, as the GVC literature reviewed in Chapter 3 suggests, the very structure of many global value chains, with food retailers acting as lead firms at the head of the chain create oligopolistic positions which enable them to harness global asymmetries of market power in order to transmit their preferences along the length of the value chain and offload risk onto supplier firms and producers further upstream (Phillips, 2016, 596). If we accept Barnett and Duvall’s (2005, 39) definition of power as “the production, in and through social relations, of effects that shape the capacities of actors to determine their circumstances and fate,” and Harold Lasswell’s famous definition of politics as “who gets what, when, where, and how” (Lasswell, 1936 quoted in Cutler & Dietz, 2017, 10), then the practice of governing through contracts in Ghana clearly both reveals and reinforces an asymmetrical distribution of power within agricultural GVCs. In addition, this has clear political consequences for the stakeholders involved in the process, as well as broader publics.

In this respect, many important rules of the game are self-interestedly pre-determined by powerful actors, and then transmitted to smallholders and other stakeholders through contractual instruments. These other stakeholders are then required to comply without substantial ability to alter these rules. As one employee of a major pineapple exporter in Ghana told me, “we are actually quite critical of the agenda of many private standard setters. Quite often the standards are designed to protect the reputation of the brand/retailers. They are not necessarily in the best interest of the supplier / farmer. They are not necessarily interested in enabling development- it’s not proactive, its reactive and defensive to make sure something bad doesn’t come out in the press. We do tend to be quite cynical of private standards, because what they are designed to do and how they don’t serve the interests of small-scale growers (Interview K11).”

Commenting on the implications of the GlobalGAP standard on global farming practices and stakeholders, Nelson & Tallontire draw a similar conclusion. As they note (2014, 489):

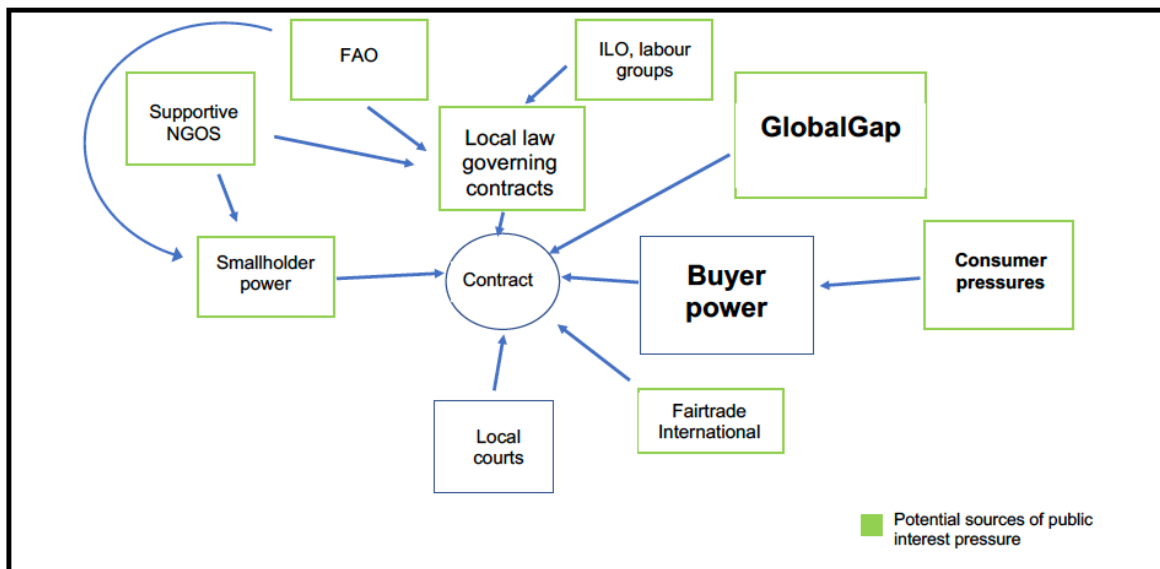
“the Global Sourcing narrative proponents (i.e., retailers and governments) have placed food safety as a top priority with well-monitored food safety standards outlining good agricultural practices that manage risk being critical to effective value chain operation.” The widespread uptake [of GlobalGAP] has effectively narrowed the framing of sustainability and ethical concerns in value chains, potentially excluding broader interpretations of “good” agricultural practice, and social and environmental issues. The narrow framing of environmental sustainability concerns as primarily food safety related (excluding waste management beyond safe use and disposal of chemicals, water use, biodiversity conservation) and as a purely scientific-technical issue (Bain et al. 2010) means smallholder participation in standard setting is not possible or relevant in the eyes of the retailers (Tallontire et al. 2013). Rural communities are not in the frame of vision at all.”

Despite these clear inequities associated with contracting, all of the smallholders who I spoke with still much preferred this relatively novel production arrangement (Focus Group Interviews 1 & 2). As one smallholder explained, “The contract model is better. There aren’t enough developed markets and the price fluctuates too much on the open market. When you go to the open market, sometimes you will only get 40 percent of the value of the pineapple. When we sell through contract, even if there are too many pineapples on the market, [our buyer] will still pay us the full agreed upon value for the pineapple (Focus Group Interview 2).” Other farmers also explained that they enjoyed having agronomists and extension officers come to their farms to train them on good agricultural practices which was a condition of contracts. As one farmer told me, “one of the opportunities of contract farming is that [our buyer] will come and show me how to produce quality pineapple safely (Focus Group Interview 1).” Finally, another smallholder told me, “the form of a contract, the price you get, the predictability and

security of a guaranteed market and payment for our products is ideal. We deliver our products, and one to two weeks later, we always get paid (Focus Group Interview 2).”

Private contractual governance is ubiquitous along the pineapple value chain between stakeholders and plays a significant regulatory role along the value chain in Ghana. From a functional / efficiency-based perspective, contractual governance certainly reduced transaction costs of all kinds, and nimbly helped to link stakeholders in the pineapple value chain across great physical distances. However, as the case study reveals, it is currently less developed in Ghana as an instrument utilized to address enduring issues related to global agri-food governance. These include issue such as the fair distribution of value within the chain, gender equality, food security, and other critical global agri-food governance challenges (Cutler & Dietz, 2017). For a visualization of the major power relations involved in shaping the character of commercial agri-food contracts in Ghana, please see Figure 1 below:

Figure 5 Assemblage of Power Relations Shaping the Character of Agri-food Contracts in Ghana’s Transnational Value Chain



5.4 Addressing the Gaps in Private Contractual Governance

The Ghana case study revealed some critical short-comings associated with private contractual governance, related in particular to the current utilization of contracts as instruments capable of addressing global agri-food governance challenges. For example, power asymmetries between actors within the value chain were clearly embedded in the terms of pineapple contracts as reflected through the presence of certification against the retailer led B2B GlobalGAP. This standard is exceptionally onerous, and the costs are

borne primarily by producers and smallholders. Furthermore, these actors have been essentially excluded from the development of the standard.

Interestingly, and also potentially indicative of the role of power and its influence over governance outcomes, the civil society led B2C Fairtrade standard, which does provide producers with price floors and premiums for their products (even if marginal) and is more inclusive than the GlobalGAP standard with respect to standard development was included less often as a contractual term. Whereas the B2B GlobalGAP standard was present in 100 percent of pineapple contracts destined for export, the B2C civil society led Fairtrade standard accounted for about 30 percent of pineapple production contracts (Focus Group 1)

Despite these real challenges, the case study also confirmed the presence of all of the features related to commercial contracting outlined in Chapter 4, which could be built upon and explored further, both from democratic legitimacy and public interest perspectives. For example, the case study confirmed that regulatory contracts are both somewhat novel governance instruments in Ghana's pineapple value chain, but also increasingly ubiquitous and impactful on actor behaviour. Moreover, there was some indication that stakeholders, including smallholders were able to shape the conditions of their participation within the value chain, in ways that reflected their particular circumstances and local concerns. This is in spite of the transnational orientation of the chain and the highly asymmetrical power imbalances between actors within it. This point was demonstrated through the successful negotiations by smallholders over some contractual terms that were of particular interest to them as discussed above.

In addition, the issue-based flexibility of contracting to incorporate a wide variety of both “public” and “private” regulatory requirements as binding and legally enforceable was also very evident in smallholder contracts with exporting companies. As noted above, these contracts made reference to the regulatory preferences of a number of different public and private governance stakeholders involved in governing agri-food. These ranged from the preferences of smallholders, to food retailers (in the form of the B2B GlobalGAP standard) to civil society (in the form of the B2C Fairtrade standard) to national labour and environmental regulators (as referenced through private standards) to regional EU food safety regulators, and to international organizations such as the International Labour Organization, whose conventions regarding forced labour, freedom of association, organization and collective bargaining, equal remuneration, discrimination, minimum age, and the worst forms of child labour are all referenced in both the GlobalGAP and Fairtrade standards (Heny & Pechey, 2017).

This point related to the issue-based flexibility of contracting in Ghana is important for two reasons. First, the commercial contract is evidently an extremely important location of governance, which is capable of mediating between and internalizing the governance preferences of a variety of different transnational agri-food stakeholders, both public and private. Regardless of whether one is optimistic or pessimistic about the possibility of

contracting to improve the democratic legitimacy of agri-food governance and also address critical governance challenges within that sector, the contract is likely an important point of intervention. This insight is important to acknowledge, especially given the near universal silence on contracting found in agri-food governance literatures.

Second the very broad array of regulatory issues present in the smallholder contract in Ghana also suggests that there is nothing fundamentally incompatible about using contractual clauses as a way to strengthen the capacities of small-scale producers, ensure good working conditions and the inclusion of certain groups, such as women as equal decision-makers, provide fair compensation to farmers, improve the environmental sustainability of farming, or address issues of food sovereignty and food security. In fact, contracts appear to be quite malleable governance instruments, that would be readily capable of complimenting alternative governance approaches mentioned already, including non-state market driven standard-setting, corporate social responsibility, civil society and consumer pressure, and governmental policy, whether national, regional or international in origin.

Given this reality, the question becomes, how might we enhance the democratic legitimacy, and effectiveness of contracts as private regulatory instruments capable of improving critical global agri-food governance challenges (Haufler, 2018, 117)? The following section outlines four preliminary options that I believe are worthy of more research. It should be noted that neither option is mutually exclusive from the other. In fact, they are likely complementary, and all four can be pursued simultaneously;

5.5 Enhancing the Public Interest Content of Private Contracts

One possibility that has recently received some attention is to alter the regulatory framework for contract farming at the national level in order to establish specific rules for how agricultural contracts are negotiated and how disputes are resolved (FAO, 2018, 2019; FAO-IISD, 2018; Interview H8). It should be reiterated at this point that private contracts have always operated within a state-defined regulatory framework. As demonstrated by the massive proliferation of contracting by private actors in the Global Political Economy outlined in Chapter 4, this clearly does not detract from their utility or effectiveness as exceptionally nimble, efficient, and flexible governance arrangements. What this suggests is that regulation is not necessarily an impediment to contracting and indeed, that regulation could go a long way in addressing power-imbalances such as the ones discussed in the Ghana case study.

In particular, the FAO (2018, vii) has sought to provide national regulators with advice on how they might enable regulatory environments that allow for responsible contract farming, which they define as “profitable, inclusive, environmentally sensitive, and aligned with broader country objectives for agricultural and economic development as well as with the FAO “Guiding principles for responsible contract farming operations.” Their advice is generic in nature and they correctly point out that a government’s role in

developing an enabling environment for contract farming is always dependent on the national context, institutional and legal frameworks present in that country. Nevertheless, one suggestion made by the FAO is to separate agricultural contract farming law from both general contract law and agrarian laws through legislation as a way to address specific issues associated with contract farming. Subsequently, regulators can more freely develop an environment for issues of particular importance to them, through for example, the implementation of “mandatory rules” for farming contracts (FAO, 2018). This could include the requirement that contracts leave a portion of a producer’s land open for subsistence farming, the requirement that women are included as beneficiaries and negotiators in contract farming arrangements, the requirement to include clauses on the environmental responsibilities of producers and buyers, or the requirement that parties commit to price negotiations in contracts that begin above and periodically take account of changes in the base costs required for production (FAO, 2018).⁴⁸

Other suggestions do not relate to regulation of the agricultural contract itself, but around *the process* regulating contract farming associated with representation and capacity. For example, one option to mitigate power imbalances in contracting is to create and define a formal role for expert representatives for producers who are able to opt in and act on their behalves and with their best interests in mind, if requested (FAO, 2018). A second is to empower and develop the legal capacity of farmers and other often marginalized stakeholders about the process of contract farming and their rights within that process. As a leading international expert on contract farming from the United Nations International Institute for the Unification of Private Law (UNIDROIT) explained to me, “This is a big problem. There are many bilateral cooperation agencies working with farmers and they all stress the importance of legal empowerment. World Farmers organizations, the FAO, they all do capacity building and they report to us that there is a lack of legal empowerment, especially in developing countries especially on the part of small farmers.” A third option is to create a facilitative role in contract farming negotiations for a neutral government representative who ensures that “minimum standards” of contracting are being respected by both parties (FAO, 2018, Interview H8).

With respect to contract enforcement, increasing access to alternative dispute resolution mechanisms outside the regular state court system is something which states may wish to pursue, given the expensive, slow and adversarial nature of many private court systems (FAO, 2018). For example, “non-judicial” procedures such as government, or community-led mediation could be made a state-mandated requirement of dispute resolution in agricultural contracts before parties are able to access courts, or legally enforceable arbitration mechanisms.⁴⁹ This point around dispute resolution was one that was

⁴⁸ See also the Republic of the Philippines (April 5, 2017), House Bill No. 5085: An Act Regulating the Establishment and Implementation of Agribusiness Ventures Arrangements in Agrarian Reform Lands” Section 7(E). http://www.congress.gov.ph/legisdocs/basic_17/HR00919.pdf

⁴⁹ This is the case in Morocco, where the applicable legislation requires parties involved in contract farming to use conventional mediation prior to being able to bring a dispute before any arbitration or judicial authority (FAO, 2018, 99). This is also the case in the Philippines for any agribusiness venture arrangement

emphasized as quite important to me, during an interview I conducted with a legal expert from UNIDROIT. As they explained “there is very scarce reliance on the legal environment currently for producers especially in developing countries. Law is purported not to work, not to be properly applied. The legal rules may be weak or not adapted to farming. The court system very often doesn’t work, people are sometimes corrupt, and the system may be slow and expensive... organizing clear definition of obligations, and organizing mediation, these are solutions internal to good contracting that help to compensate for weaknesses in legal systems (Interview H8).”

Governments can also encourage these types of contracting arrangement through the provision of incentives. For example, in Vietnam, the government has agreed to provide various supports to those involved in contract farming, including for the transportation of exported commodities off of farm (FAO, 2018). As mentioned above in this chapter, transportation costs were a critical concern and key negotiation point for smallholders. Finally, governments can also introduce fines for contractual non-compliance, when, for instance, a party refuses to pursue legislatively mandated mediation, or a government mandated contractual provision to periodically renegotiate price with smallholders (FAO, 2018).

Proactively regulating agricultural contracts through state legislation in the ways described above could serve to significantly increase the substantive participatory components and public orientation of contract farming as well as significantly reduce the power imbalances common to producer-buyer relationships in agri-food. It cannot go unmentioned however, that these approaches designed to enhance the potential of contract farming will likely suffer from many of the critiques of traditional public government highlighted at the beginning of this dissertation.

For example, the legislative changes and modifications to contract farming may be too slow, and inflexible. Moreover, proactive state-regulation of contract farming in ways that seek to address producer-buyer power imbalances could be detrimental to many developing countries that depend on agricultural exports in a highly competitive international agricultural market defined in part by exceptional corporate mobility. In addition, unless all agricultural contracts reference the same applicable law within their contractual terms, such an approach will only be piecemeal, applicable only within the territorial boundaries of the national regulator that has adopted an enabling environment for responsible contract farming, which of course does not reflect the increasingly transnational nature of global agricultural value chains. In this respect, “choice of law” for contract enforcement and interpretation is a standard component of contracting that must be agreed upon by both parties. It provides parties with considerable flexibility in selecting the legal framework that will be applied to the contract. A farming contract negotiated between parties in Ghana does not have to utilize Ghana’s legal system to

(AVA). See Republic of the Philippines (April 5, 2017) House Bill 5085, Section 7(K). AVAs are part of a broader agricultural reform and development plan.

interpret and enforce the contract, if parties wish to choose another legal system. This can include mediation, arbitration, or the utilization of a private law system of another country.

It is also important to acknowledge, based on the insights derived from FRT and GPE GVC scholarship that these changes are not a given, and in many cases, may prove difficult to achieve. As discussed in Chapter 3, states have been the primary architects of the current “GVC world” in which we live, where inequality is not a “bug” in the GVC system but rather a clear objective, and where for-profit private interests have been tremendously privileged (Mayer & Phillips, 2017; McMichael). In this respect, states have not been passive bystanders of economic globalization. Indeed, given the flexibility of foreign direct investment, companies may simply prefer to move their contracting arrangements out of countries which develop higher minimum standards for contract farming.

However, as Mayer & Phillips (2017, 148) rightly note, “by arguing that this system is the outcome of choice made by states, because state behaviour is an outcome of politics, there is a possibility of a political solution.” In this respect, there is a long-standing and detailed body of literature in public policy which focusses on the ability and methods through which interest groups and public opinion can influence policy development. This includes for example, analysis of how external actors can most effectively and strategically formulate and frame ideas for policy uptake, the conditions during which policy windows are most likely to be available to policy entrepreneurs to influence policy-making, as well as how transnational activists can most effectively pressure government decision-making (Baumgartner & Jones 1991; Braithewaite & Drahos 2000; Cairney, 2007; Keck & Sikkink, 1999; Kingdon & Stano, 1995; Stone, 1989). With that said, a detailed exploration of these different approaches to policy agenda-setting and uptake while certainly holding promise for future research, will not be explored further here.

A second option, inspired by an interesting article written by Claire Cutler is to embed model contract farming requirements that define minimum standards within multilateral trade agreements dealing with agriculture (Cutler, 2016). These minimum requirements could then be standardized across multiple countries, and dispute resolution in cases of conflict could also be specified within the terms of the trade agreements. Although Cutler does not discuss contract farming in particular, she notes that recently, there has been an effort to enhance the democratic legitimacy of investment agreements and state-investment dispute resolution by expanding participation to civil society groups, human rights activists, environmentalists and arbitration lawyers who are increasingly involved as expert witnesses in investment arbitration hearings. As Cutler (2016, 116) confirms, in the case of multilateral investment agreements “the applications of civil society, environmental and human rights groups to participate in investor-state arbitration proceedings as *amici curiae* have proliferated and have been a source of significant development in enhancing the public and participatory dimensions of the regime.”

Alternatively, a third possibility which may be worth pursuing at the international level is the “orchestrating” or “coordinating” role that international / regional organizations might be able to play in contractual development within global value chains. For example, in a recent article Postuma & Rossi (2017) have discussed how international organizations are becoming increasingly focused and interested in grappling with the role of GVCs in governance outcomes. As a result, the authors focus their attention on the International Labour Organization and highlight the different ways in which the ILO has been mediating and facilitating dialogue between civil society, labour organizations and market actors around labour governance in global value chains. At the regional level, the Organization for the Harmonization of Business Law which is composed of 17 countries from Central Africa, West Africa and the Indian Ocean has been working towards developing a common approach to Contract Farming, as well as dispute resolution that is mutually recognized between all the member-states to the organization (FAO, 2017).⁵⁰

While any multilateral state-led approach to contract farming will also suffer from the shortcomings of traditional public government highlighted above, these international options would nevertheless be more capable of ensuring common minimum standards of responsible contract farming across borders.

Finally, a fourth option could be to significantly expand and increase the role of global civil society in influencing private contractual governance. Their role could be visible in a variety of different ways and at multiple different levels. For example, specialized contract farming NGOs could provide legal capacity, and affordable expertise within value chains in the negotiation process in an effort to mitigate information and power imbalances. Alternatively, NGOs could also explicitly politicize contract farming as a key location of private agricultural governance in order to lobby states, powerful transnational retailers, multinational corporations, and private standard-setting bodies themselves. State lobbying could be focused on the policy / regulatory suggestions made above that can contribute to an environment that enables responsible contract farming.

This function of NGOs and global civil society more generally could be particularly important in situations where less wealthy states are incentivized to loosen regulation in an effort to attract foreign-direct investment and access extremely competitive international agricultural markets. Corporate lobbying could focus on the adoption / utilization of model contracts, the democratic legitimacy of the contracting practices of powerful transnational corporations within their value chains as well as the costs associated with their private standardization requirements.

⁵⁰ For more see, Contract farming and the law: What do regulators need to know? <http://www.fao.org/3/a-i7580e.pdf>

Once again, whether pressuring states, or corporations to change their approach to commercial contracting, civil society actors will likely face many of the structural political constraints that have been outlined by food regime and GPE GVC scholars. Certainly, however, numerous strategies exist through which civil society and NGOs can effectively alter both corporate and state behaviour and set agendas despite structural constraints including the “model mapping” strategy developed by Braithwaite & Drahos (2000). In addition, many other of these strategies have already been briefly mentioned above.

Of course, none of this is to ignore the complexity associated with identifying which issues are “public” and which actors are most capable of advancing those issues. Indeed, as Dryzek (2006, 102) notes, “civil society has many forms and meanings, some of which are highly problematic from any democratic point of view.” This point picks up on a broader one already outlined in Chapter 1, which is that defining who and what issues are most relevant as public, is a challenging exercise within global and transnational spaces (Abbott & Snidal, 2009).

This chapter has explored the novelty, prevalence and impact of private contractual governance while using the transnational value chain for pineapple between Ghana and western Europe as a case study. As discussed in Chapter 4, the case study demonstrated many of the theoretical assumptions related to social constructivism and legal pluralism outlined there. Regulatory contracts were ubiquitous, but also relatively novel and dynamic instruments which proved themselves capable and flexible in reflecting the interests of different actors across transnational spaces. In Ghana, contracting negotiations between smallholders and their buyers did indicate that the process of contracting internalized and reflected some of the preferences of producers as well. However, they did, nevertheless, unequally reflect the regulatory interests of powerful transnational food retailers. In this respect, regulatory contracts, currently fall short, at least in Ghana from a democratic legitimacy perspective, but also in their ability to address serious global agri-food governance challenges.

Yet as outlined above, there is nothing inherent to contracts that prevents them from acting as democratically legitimate instruments of private governance capable of addressing global agri-food governance issues. In fact, the flexibility and participatory aspects of contracting, which are most conceptually promising as potential avenues to enhance the democratic legitimacy and public orientation of commercial contracting were very easily visible in my case study. What is therefore required, in my view, is exploration and experimentation to advance the public orientation of contracting. In this respect, Chapter 5 concluded by providing some preliminary complimentary options which could be worthy of pursuit in that regard. Chapter 6 will conclude by examining how the insights developed in this thesis contribute to our understanding of global and private agri-food governance. Following this, it will expand on future areas of inquiry that could usefully build on the exploratory research conducted in Ghana.

Chapter 6 – Concluding Remarks on Private Contractual Governance

In the closing pages of this dissertation, I would like to discuss what a focus on private contracting contributes to our understanding of global, private and agri-food governance literatures, and how we might move forward in advancing the exploratory research on this topic begun here.

6.1 Public Pursuits Through Private Governance Arrangements?

At the outset of this dissertation, I outlined two major criticisms / shortcomings commonly levelled against global / private governance arrangements related to enforceability and democratic legitimacy. One of the major reasons that private contractual governance excited me, in this respect, is that it appeared to have qualities which were capable of addressing these issues. Following my research in Ghana, I remain convinced that it does. In Ghana, smallholders used contracts in order to deliberate and shape the nature of their participation in the transnational value chain in different areas of decision-making within a transnational environment marked by stark power imbalances. There was also widespread indication that contractual terms were legally enforceable, either through arbitration, mediation, or the domestic court system in Ghana.

Moreover, despite the transnational / global orientation of private contracting, this system of governance demonstrated an impressive ability to take into account place-based differences unique to each party's local circumstances. In Ghana, contracting was flexible and responsive enough to internalize different priorities and circumstances between the two pineapple farming cooperatives I interviewed, who were both involved with the same buyers and located just dozens of kilometers away from one another. Contracts also proved themselves to be exceptionally flexible with respect to the issues that they were capable of internalizing within their contractual terms. As discussed above, the regulatory interests of several different agri-food stakeholders, both public and private were directly or indirectly embedded within smallholder pineapple contracts in Ghana.

Based on the insights derived from my case study, this thesis has also advanced four different and complimentary options which could be pursued and built upon by activists seeking to actualize the potential of commercial contracting to effectively address critical agri-food challenges in more democratically legitimate ways.

This research into private contracting in the agri-food sector adds to a body of existing literature indicating that “private” governance arrangements may be more capable than many often given them credit for in governing in democratically legitimate ways over issue areas of broad public interest (Bernstein 2011; Bernstein & Cashore 2007; Porter, 2016). Arguably, the critical aspect in this respect, is not whether the actors involved in the system are traditionally conceived of as being “public” or “private” but rather, that the governance process itself is sufficiently flexible, participatory, transparent and

accountable to those involved. These qualities go a considerable way in ensuring democratic legitimacy and in enhancing the likelihood that outcomes will be in the public interest. It is the more frequent commitment of traditionally “public” actors to these processes that contribute to their legitimacy as actors. Yet as I hope I have demonstrated, transnational governance relationships between “private” actors are also capable of reflecting these features and, in the case of private contracts, advancing more than just commercial interests.

6.2 Private Agri-Food Theory Building and Contractual Governance

The literatures reviewed in Chapter 3 grapple with these questions of democratic legitimacy and enforceability in private agri-food and global governance as well, but they do not address private contracting in their frameworks. I argue that this is an important oversight, as private contractual governance is evidently an influential system of agri-food governance with important implications for some of the assumptions these literatures make.

For Food Regime scholars, the global agri-food system can be explained through a structural power-based framework which seeks to explain, in part, how transnational corporations, backed by powerful states, use private systems of governance instrumentally in order to enhance their power and profit relative to other stakeholders. Certainly, elements of this theoretical framework were visible within the private contractual arrangements that existed between actors in Ghana’s transnational pineapple value chain. In particular, onerous, and costly private standards which primarily served the interests of powerful food retailers were incorporated and diffused from one end of the value chain to the other. With that said, my case study showed how private contracts also presented opportunities for other stakeholders to address some of the key concerns outlined by Food Regime Scholars. These include the concerns that global agricultural production leads to “distanciated” and socially “disembedded” transnational food relations that in turn create the conditions for unsustainable economic, social and environmental relationships between stakeholders (Campbell, 2005; Friedmann 2005, 2009). Indeed, if leveraged appropriately, I argue that private contracting could effectively re-embed and re-localize social, environmental and economic relationships around the production of food.

Moreover, private contractual governance helps to advance a criticism made of Food Regime Theory which is that its framework is predisposed to over-deterministically emphasizing the structure of the agri-food system and the rules which govern it. In turn, FRT scholars under-value the individual agency and autonomy of actors as well as governance instruments to alter that system from within it (Goodman & Watts, 1994). As I attempted to demonstrate through my case study, the substantive democratically participatory elements and flexibility of contracting creates considerable space for individuals to act with agency and autonomy in determining the conditions of their participation in transnational value chains. In this respect, private contracting may

represent an avenue for regime transformation that FRT scholars have not, and indeed, may not be theoretically capable of pursuing.

This dissertation adds evidence to a pre-existing body of literature that criticizes New Institutional Economics for its devaluation of the role of power in accounting for the development and proliferation of institutional arrangements. In the case of private contracting in Ghana, power imbalances between actors played a clear role in what was included within contractual arrangements, and also in determining the distribution of value between market actors. Indeed, contracts in Ghana were used by food retailers as a governance instrument to pass along the costs of food safety regulation and many other of their preferences onto actors further upstream in the value chain as legally enforceable requirements (Fuchs & Kaflagianni, 2010, 13). With that said, I think that it is also important to acknowledge the way in which the insights in NIE literatures were also reflected through my case study in Ghana. Evidently, regulatory contracting was a relatively novel governance mechanism that had emerged in part as a response to a vacuum of state-led governance and oversight within Ghana. In this respect, contracting clearly defined quality and price predictability and significantly reduced the transaction costs between transnational actors within the chain associated with these issues in conditions where “public” state actors had not been able to do so. In addition, the private contracts themselves also acted in a somewhat hybrid, or complimentary fashion to national labour, food safety and environmental laws, as well as international conventions on labour through the inclusion of private standards which themselves reference these laws within their standards.

I argue that private contractual governance also impacts assumptions that have been made regarding how we have theorized utilizing private governance arrangements in ways that will best advance public interests at the global / transnational levels. A common perspective which transcends the “Private Authority” and critical GVC literatures outlined in Chapter 3 is that “public” state actors are best positioned and required in order to oversee and enhance the democratic legitimacy and public orientation of global / private governance systems that are emerging. In this respect, states and IO’s must “orchestrate,” “facilitate” and help direct private systems of governance through the “shadow of hierarchy.”

However, my case study on private contracting helps to reveal how private actors through private governance arrangements are capable of independently advancing public objectives in the absence of direct state involvement. This point is not made to juxtapose the public vs. the private. Indeed, Chapter 4 has reflected already on the importance of and complex interrelationship between pre-existing “public” state systems of governance with non-state “private” systems of governance, such as commercial contracting. In addition, Chapter 5 has also presented a number of options to enhance the public orientation of commercial contracting which rely heavily on state intervention.

However, it is to highlight the importance of the “taken-for-granted” legitimacy ascribed to states and international organizations, and to open these literatures up to the possibility of alternative (and complementary) approaches to securing democratically legitimate, effective and public-oriented governance arrangements at the transnational level. Indeed, a major hurdle to be overcome in enacting the options to improve contracting, which I outline near the end of Chapter 5, is the role that powerful states themselves have played over the past several decades in advancing economic globalization, the development of a global value chain world, and the central governance role that for-profit transnational corporations play within it. I hope that this dissertation has demonstrated the pitfalls and risks of approaching many of the relatively recent and complex transformations in global governance using binary heuristics to conceptualize the “public” and “private.”

In summary, through the constructivist legally pluralistic framework that I developed in Chapter 4, I have opened up space to theorize how we may address important cross-border problems and pursue public interest(s) in an increasingly globalized world, while simultaneously dealing directly with more complex, interdependent and often “private” forms of governance. I argue that if appropriately leveraged, the geographic scope, informed consent, accountability, and transparency requirements, as well as the issue-based flexibility and transnational enforceability of commercial contracts offer governance opportunities to pursue public interests in agriculture. These could both enhance democratically legitimacy and effectiveness of governance in addressing key agri-food challenges that more traditional state-based approaches can no longer unilaterally resolve.

6.3 Soft Law, Private Standards, Lead Firms and Vertical Governance?

Despite the differences between the four literatures reviewed, all four conceptualize the private governance of the global agri-food system in similar ways. Namely, soft law governance instruments and voluntary private standards in particular play a critical role in governing transnational value chains. Furthermore, these standards derive their transnational influence primarily through their endorsement and diffusion in a top-down, vertical manner by powerful lead firms who adopt them as market requirements within the value chain to organize relationships.

An interrogation of the defining features of private contractual governance contrasts sharply in many ways with the characterization that these literatures present of this transnational space. Private contracting is a “hard law” system of private governance, which is enforceable through court, arbitration or mediation. Moreover, it operates on a horizontal basis, requiring parties to participate, deliberate and jointly shape the terms of their relationship. As my case study demonstrated, smallholders were involved and partially successful in negotiations with their buyers over the terms of their relationships. With that said, negotiations were also marked by power imbalances, especially related to the internalization of the GlobalGAP standard as a non-negotiable aspect of contracting. Possible options to address the issue of power imbalance were explored at the end of

Chapter 5, but more work is required. Nevertheless, it is the participatory, issue-based flexibility and enforcement features of contracting that hint at its potential and require more interrogation.

6.4 Future Areas of Research

My dissertation has made both theoretical and empirical contributions. Theoretically, I have developed a framework through which to understand how private commercial contracting can act as an instrument of transnational governance to address serious democratic legitimacy, and enforceability challenges common in global /private governance, as well as key governance challenges found in the agri-food sector specifically. I have also advanced four complimentary options through which to advance the public-orientation and democratic legitimacy of contracting. Many of my theoretical propositions were borne out empirically through my case study in Ghana. I would argue that my case study has demonstrated that contractual governance is an important site of exploration for any political scientist who is preoccupied with how transnational agri-food governance operates, how power is operationalized, how value and risk are distributed in value chains, and how we might address critical global agri-food governance challenges in ways that are democratically legitimate and also effective.

In terms of future research, the theoretical framework that I developed in Chapter 4 is quite generalizable to commercial contracting as a process, rather than specific to the agri-food sector. Moreover, it is well known that regulatory commercial contracting is not limited to agri-food but has also become ubiquitous across a range of sectors of the global political economy including manufacturing and textiles, private military security, and finance (Cutler & Dietz, 2017). Consequently, exploring the potential of commercial contracting to address serious governance challenges in other arears should be a major area of future research.

Another area of future research lies in the widespread need to quantify the prevalence of private contractual governance both within the agri-food sector, but also within other industries in the global political economy. As a widespread phenomenon, there is next to no primary research and good data on identifying the practice of regulatory contracting, the growth (or contraction) of the practice over time, or how the practice differs between industries. This dissertation has made the argument that private contractual governance may be able to play a key role in addressing common global agri-food governance challenges, related to food security / sovereignty, inclusion of smallholders and other marginalized actors, environmental sustainability and so on, yet there are very few estimates as to the prevalence of contracting in agri-food despite the growth of transnational agri-food relationships.

Second, more exploratory research is required into understanding how contractual relationships between actors change within the value chain depending on your positionality. In Ghana, it was extremely difficult to gain access to contracts within the

value chain, and this state of affairs meant that I was only able to provide an incomplete picture of contracting as a system of governance. This information would be useful for those seeking to reduce the impacts of power imbalances on the democratic legitimacy aspects of contracting within value chains.

Third, exploring the generalizability of the findings from my case study to other agri-food commodities would be an important next step in assessing the potential of private contracting as a transnational instrument of governance. The growing conditions, quality expectations, and level of market concentration are quite different between agri-food commodities and one would suspect that these variables would play a role in the development of contracts between actors.

Fourth, it would be useful to begin comparative studies which seek to assess the impact of private contractual governance within different institutional settings in order to explore local implementation models of contracting under different political regimes and contexts. One of the major insights from transnational law literature is that we must pay attention to and acquire a better understanding of the multiple scales through which functionally differentiated sources of law interact with one another, as well as the significance of these interactions for regulation and governance outcomes. As one example, in 2018, Thailand became one of the first countries in the world to pass a public law dealing specifically with contract farming, agriculture and development, outlining unique requirements for the negotiation of agricultural contracts between parties, as well as governmental oversight and involvement procedures in dispute resolution. Conducting a comparative analysis to detect differences in outcomes between Ghana, a country without specialized agri-food contract laws, and Thailand would be useful in better understanding the interactions between functionally differentiated law at multiple scales.

Fifth, it would be helpful to further define the areas in which contracting can likely play a role in improving democratic legitimacy conditions and addressing critical global agri-food challenges, and where its ability to do so will likely be less impactful. In this respect, acquiring a better understanding of the interests and incentives for participation in contractual governance of value chain actors, as well as the interests and incentives of actors who play a role in global agri-food governance, would be helpful in better mapping out where and with respect to what issues contracting can make a difference. As I have mentioned already, private contracting is not a panacea to solving all issues that are present in the global governance of agri-food. However, I remain confident that it can certainly be utilized to improve agri-food governance in important ways if leveraged appropriately.

Relatedly, it would be useful for future research to explore and gain a better understanding of how different political actors including states, international organizations, and global civil society can work in order to reduce the effects of power imbalances between actors within value chains. These power imbalances can retard the democratic legitimacy of contracting and are perhaps the clearest threat to its legitimacy

and effectiveness as a system of governance. This point is recognized in the literature (FAO, 2018), and I also saw evidence of it in my own research in Ghana, where retailers utilized contracts effectively to download responsibility over risks to food safety and so forth onto their suppliers, as well as the costs associated with those risks.

I hope I have demonstrated that private contracting is an exceptionally flexible and adaptable system of governance that is capable of incorporating all kinds of different regulatory objectives and types of law including human rights law, environmental law, labour law into its contractual terms as legally binding upon parties to the agreement. They certainly have the potential to address serious global and agri-food governance challenges. Strategizing on how contractual governance can best be utilized in order to pursue these objectives, however, is something that requires more thought, research and experimentation. Without question, there is a role for both traditionally “public” and “private” actors to play in improving the democratic legitimacy and public orientation of private contractual governance in this regard. This thesis has sketched the details of some preliminary options for doing so near the end of Chapter 5. A major hope of mine, based on the arguments made within this thesis, is that those taking up this research recognize that options for enhancing private contractual governance should not rely exclusively on states and international organizations and rather, take a broader and more inclusive approach.

References

- Abbott, K. W. (2017). Orchestrating experimentation in non-state environmental commitments. *Environmental Politics*, 26(4), 738–763.
<https://doi.org/10.1080/09644016.2017.1319631>
- Abbott, K. W., Genschel, P., Snidal, D., & Zangl, B. (2016). Two Logics of Indirect Governance: Delegation and Orchestration. *Brit. J. Polit. Sci.*, 46(4), 719–729.
<https://doi.org/10.1017/s0007123414000593>
- Abbott, K. W., & Snidal, D. (2009). Strengthening international regulation through transnational new governance: Overcoming the orchestration deficit. *Vanderbilt Journal of Transnational Law*, 42(2), 501–577.
- Abbott, K. W., & Snidal, D. (2013). Taking responsive regulation transnational: Strategies for international organizations. *Regulation & Governance*, 7(1), 95–113. <https://doi.org/10.1111/j.1748-5991.2012.01167.x>
- Alford, M., & Phillips, N. (2018). The political economy of state governance in global production networks: change, crisis and contestation in the South African fruit sector. *Review of International Political Economy*, 25(1), 98–121.
<https://doi.org/10.1080/09692290.2017.1423367>
- Altieri, M. (2012). The scaling up of agroecology: spreading the hope for food sovereignty and resiliency. *SOCLA Position Paper to Rio +20*.
- Amstutz, M. (2008). Global (Non-)Law: The Perspective of Evolutionary Jurisprudence. *Ger. Law j.*, 9(4), 465–476. <https://doi.org/10.1017/s2071832200006532>
- Anderson, K. (2010). Globalization's effects on world agricultural trade, 1960–2050. *Philosophical Transactions of the Royal Society B: Biological Sciences*, 365(1554), 3007–3021. <https://doi.org/10.1098/rstb.2010.0131>
- Andonova, L. B., Betsill, M. M., & Bulkeley, H. (2009). Transnational Climate Governance. *Global Environmental Politics*, 9(2), 52–73.
<https://doi.org/10.1162/glep.2009.9.2.52>
- Archibugi, D., & Cellini, M. (2017). The Internal and External Levers to Achieve Global Democracy. *Global Policy*, 8, 65–77. <https://doi.org/10.1111/1758-5899.12490>
- Archibugi, D., & Held, D. (1995). *Cosmopolitan democracy*. Polity.
<https://doi.org/0745613810>
- Arnold, N. (2014). *Evolution of Non-Technical Standards: The Case of Fair Trade*. 59–78. https://doi.org/10.1057/9781137432124_4
- Arnold, N., & Hasse, R. (2015). Escalation of Governance: Effects of Voluntary Standardization on Organizations, Markets and Standards in Swiss Fair Trade. *Sociological Research Online*, 20(3), 94–109. <https://doi.org/10.5153/sro.3734>
- Arrighi, G. (1990). The developmentalist illusion: A reconceptualization of the semi-periphery. In W.G Main (ed.) *Semiperipheral states in the world economy*. Greenwood Press.
- Auld, G. (2014). *Constructing Private Governance*. Yale University Press.
<https://doi.org/9780300190533>

- Auld, G., & Gulbrandsen, L. H. (2010). Transparency in Nonstate Certification: Consequences for Accountability and Legitimacy. *Global Environmental Politics*, 10(3), 97–119. https://doi.org/10.1162/glep_a_00016
- Auld, G., Gulbrandsen, L. H., & McDermott, C. L. (2008). Certification Schemes and the Impacts on Forests and Forestry. *Annu. Rev. Environ. Resour.*, 33(1), 187–211. <https://doi.org/10.1146/annurev.enviro.33.013007.103754>
- Avant, D., & Haufler, V. (n.d.). *The dynamics of “private” security strategies and their public consequences: transnational organizations in historical perspective*. 47–69. <https://doi.org/10.1017/cbo9781107281837.005>
- Ayres, I., & Braithwaite, J. (1992). *Responsive Regulation: Transcending the deregulation debate*. Oxford University Press. <https://doi.org/9780199879953>
- Bäckstrand, K. (2008). Accountability of Networked Climate Governance: The Rise of Transnational Climate Partnerships. *Global Environmental Politics*, 8(3), 74–102. <https://doi.org/10.1162/glep.2008.8.3.74>
- Bain, C. (2010). Governing the global value chain: GLOBALGAP and the Chilean fresh fruit industry. *International Journal of Sociology of Agriculture and Food*, 17(1), 1–23.
- Bain, C., Deaton, J. B., & Busch, L. (2005). Reshaping the agri-food system: The role of standards, standard makers and third-party certifiers. In Higgins, V. & Lawrence, G. (eds.), *Agricultural governance: Globalization and the new politics of regulation*. Routledge.
- Bain, C., & Hatanaka, M. (2010). The Practice of Third-Party Certification: Enhancing Environmental Sustainability and Social Justice in the Global South. In Higgins, V. & Larner, W. (Eds.), *Calculating the Social: Standards and the Reconfiguration of Governing*. Palgrave MacMillan
- Bair, J. (2005). Global Capitalism and Commodity Chains: Looking Back, Going Forward. *Competition & Change*, 9(2), 153–180. <https://doi.org/10.1179/102452905x45382>
- Bair, J. (2009). *Frontiers of commodity chain research*. Stanford University Press. <https://doi.org/9780804759243>
- Bair, J., & Gereffi, G. (2001). Local Clusters in Global Chains: The Causes and Consequences of Export Dynamism in Torreon’s Blue Jeans Industry. *World Development*, 29(11), 1885–1903. [https://doi.org/10.1016/s0305-750x\(01\)00075-4](https://doi.org/10.1016/s0305-750x(01)00075-4)
- Barnett, M., & Duvall, R. (2005). Power in International Politics. *International Organization*, 59(01), 39–75. <https://doi.org/10.1017/s0020818305050010>
- Barnett, M. N., & Finnemore, M. (1999). The Politics, Power, and Pathologies of International Organizations. *International Organization*, 53(4), 699–732. <https://doi.org/10.1162/002081899551048>
- Barrientos, S., Gereffi, G., & Rossi, A. (2011). Economic and social upgrading in global production networks: A new paradigm for a changing world. *International Labour Review*, 150(3–4), 319–340. <https://doi.org/10.1111/j.1564-913x.2011.00119.x>
- Barrientos, S. W. (2013). ‘Labour Chains’: Analysing the Role of Labour Contractors in Global Production Networks. *The Journal of Development Studies*, 49(8), 1058–1071. <https://doi.org/10.1080/00220388.2013.780040>

- Barrientos, Stephanie, Dolan, C., & Tallontire, A. (2003). A Gendered Value Chain Approach to Codes of Conduct in African Horticulture. *World Development*, 31(9), 1511–1526. [https://doi.org/10.1016/s0305-750x\(03\)00110-4](https://doi.org/10.1016/s0305-750x(03)00110-4)
- Bartley, T. (2005). *Corporate Accountability and the Privatization of Labor Standards: Struggles over Codes of Conduct in the Apparel Industry*. 211–244. [https://doi.org/10.1016/s0895-9935\(05\)14007-8](https://doi.org/10.1016/s0895-9935(05)14007-8)
- Bartley, T. (2007). Institutional Emergence in an Era of Globalization: The Rise of Transnational Private Regulation of Labor and Environmental Conditions. *American Journal of Sociology*, 113(2), 297–351. <https://doi.org/10.1086/518871>
- Bartley, T. (2011). *Transnational Governance as the Layering of Rules: Intersections of Public and Private Standards*. 12(2). <https://doi.org/10.2202/1565-3404.1278>
- Bartley, T. (2018). *Rules Without Rights: Land, Labor, and Private Authority in the Global Economy*. Oxford University Press. <https://doi.org/9780198794332>
- Bartley, T., & Child, C. (2014). Shaming the Corporation. *Am Sociol Rev*, 79(4), 653–679. <https://doi.org/10.1177/0003122414540653>
- Baudry, B., & Chassagnon, V. (2019). The Williamsonian Ambiguity on Authority and Power in Transaction Cost Economics. *Journal of Economic Issues*, 53(1), 257–276. <https://doi.org/10.1080/00213624.2019.1573094>
- Baumgartner, F. R., & Jones, B. D. (1991). Agenda dynamics and policy subsystems. *The Journal of Politics*, 53(4), 1044–1074.
- Beck, R. J. (1996). International Law and International Relations: The Prospects for Interdisciplinary Collaboration, In Beck, R.J., Clark, A., & Vander Lugt, R.D. (Eds.) *International Rules: Approaches from International Law and International Relations*. Oxford University Press.
- Beckers, A. (2015). *Enforcing Corporate Social Responsibility Codes. On Global Self-regulation and National Private Law*. Hart Publishing: Oxford.
- Bellemare, M. F., & Bloem, J. R. (2018). Does contract farming improve welfare? A review. *World Development*, 112, 259–271. <https://doi.org/10.1016/j.worlddev.2018.08.018>
- Bernard, A., & Bonnaud, L. (2014). Beyond the Public–Private Divide: GlobalGAP as a Regulation Repository for Farmers. *International Journal of Sociology of Agriculture and Food*, 21(2), 227–246.
- Bernstein, S. (2011). Legitimacy in intergovernmental and non-state global governance. *Review of International Political Economy*, 18(1), 17–51. <https://doi.org/10.1080/09692290903173087>
- Bernstein, S., & Cashore, B. (2007). Can non-state global governance be legitimate? An analytical framework. *Regulation & Governance*, 1(4), 347–371. <https://doi.org/10.1111/j.1748-5991.2007.00021.x>
- Best, J., & Gheciu, A. (2014). *The Return of the Public in Global Governance*. Cambridge University Press. <https://doi.org/9781107783171>
- Biggart, N. W., & Beamish, T. D. (2003). The Economic Sociology of Conventions: Habit, Custom, Practice, and Routine in Market Order. *Annual Review of Sociology*, 29(1), 443–464. <https://doi.org/10.1146/annurev.soc.29.010202.100051>

- Black, J. (2008). *Constructing and contesting legitimacy and accountability in polycentric regulatory regimes*. 2(2), 137–164. <https://doi.org/10.1111/j.1748-5991.2008.00034.x>
- Blowfield, M. E., & Dolan, C. S. (2008). Stewards of Virtue? The Ethical Dilemma of CSR in African Agriculture. *Development & Change*, 39(1), 1–23. <https://doi.org/10.1111/j.1467-7660.2008.00465.x>
- Bolle, M.J. (2014, Jan. 10). Bangladesh Apparel Factory Collapse: Background in Brief. *Congressional Research Service*.
- Bolwig, S., Riisgaard, L., Gibbon, P., & Ponte, S. (2013). Challenges of Agro-Food Standards Conformity: Lessons from East Africa and Policy Implications. *Eur J Dev Res*, 25(3), 408–427. <https://doi.org/10.1057/ejdr.2013.8>
- Botterill, L. C., & Daugbjerg, C. (2015a). Commensalistic institutions and value conflicts: the World Trade Organization and global private food standards. *European Political Science Review*, 7(1), 23–42. <https://doi.org/10.1017/s1755773913000295>
- Braimoh, A. K. (2013). Global agriculture needs smart science and policies. *Agriculture & Food Security*, 2(1). <https://doi.org/10.1186/2048-7010-2-6>
- Braithwaite, J. (2011). The essence of responsive regulation. *University of British Columbia Law Review*, 44(3), 475. <https://web.archive.org>
- Braithwaite, J. (2006). Responsive regulation and developing economies. *World Development*, 34(5), 884–898. <https://doi.org/10.1016/j.worlddev.2005.04.021>
- Braithwaite, J., & Drahos P. (2000) *Global Business Regulation*. Cambridge University Press.
- British Retail Consortium. (BRC). 2020. <https://brc.org.uk/about/>
- Brown, O. (2005), Supermarket Buying Power, Global Commodity Chains and Smallholder Farmers in the Developing World. In: H.D.R. Office, ed., *Human Development Report 2005*. New York: UNDP
- Burch, D., & Lawrence, G. A. (2005). Supermarket own brands, supply chains and the transformation of the agri-food system. *International Journal of Sociology of Agriculture and Food*, 13(1), 1–18.
- Burch, David, & Lawrence, G. (2009). Towards a third food regime: behind the transformation. *Agric Hum Values*, 26(4), 267–279. <https://doi.org/10.1007/s10460-009-9219-4>
- Busch, L., & Bain, C. (2004). *New! Improved? The Transformation of the Global Agrifood System**. 69(3), 321–346. <https://doi.org/10.1526/0036011041730527>
- Büthe, T., & Mattli, W. (2011). *The new global rulers*. Princeton University Press. <https://doi.org/0691144796>
- Cafaggi, F. (2013). The regulatory functions of transnational commercial contracts: New architectures. *Fordham International Law Journal*, 36(6), 1558–1616. <https://web.archive.org>
- Cafaggi, Fabrizio. (2011). New Foundations of Transnational Private Regulation. *Journal of Law and Society*, 38(1), 20–49. <https://doi.org/10.1111/j.1467-6478.2011.00533.x>

- Cafaggi, F. (2012). Transnational Governance by Contract: Private Regulation and Contractual Networks in Food Safety. In Marx, A., Maertens, M., Swinnen, J., & Wouters, J. (Eds.) *Private Standards and Global Governance: Economic Legal and Political Perspectives*, Cheltenham: Edward Elgar.
- Cafaggi, Fabrizio. (2014). The Many Features of Transnational Private Rule-Making: Unexplored Relationships between Custom, Jura Mercatorum and Global Private Regulation. *University of Pennsylvania Journal of International Law*, 36(4), 875–938. <https://doi.org/10.2139/ssrn.2636359>
- Cafaggi, Fabrizio, & Pistor, K. (2015). Regulatory capabilities: A normative framework for assessing the distributional effects of regulation. *Regulation & Governance*, 9(2), 95–107. <https://doi.org/10.1111/rego.12065>
- Cairney, P. (2007). Using devolution to set the agenda? Venue shift and the smoking ban in Scotland. *The British Journal of Politics and International Relations*, 9(1), 73–89.
- Calliess, G.-P. (2001). Lex Mercatoria: A Reflexive Law Guide To An Autonomous Legal System. *Ger. Law j.*, 2(17). <https://doi.org/10.1017/s2071832200004120>
- Calliess, G.-P., & Zumbansen, P. (2010). *Rough Consensus and Running Code*. Bloomsbury Publishing. <https://doi.org/9781847318046>
- Campbell, H. (2005). The rise and rise of EurepGAP: European (re) invention of colonial food relations. *International Journal of Sociology of Food and Agriculture*, 13(2), 1–19. <https://web.archive.org>
- Campbell, H. (2009). Breaking new ground in food regime theory: corporate environmentalism, ecological feedbacks and the ‘food from somewhere’ regime? *Agric Hum Values*, 26(4), 309–319. <https://doi.org/10.1007/s10460-009-9215-8>
- Campbell, H. (2016). In the long run, will we be fed? *Agric Hum Values*, 33(1), 215–223. <https://doi.org/10.1007/s10460-015-9639-2>
- Caruso, D. (2006). Private Law and State-Making in the Age of Globalization. *New York University Journal of International Law and Politics*, 39(1), 1–74. <https://web.archive.org>
- Casey, D. K., & Lawless, J. S. (2011). The parable of the poisoned pork: Network governance and the 2008 Irish pork dioxin contamination. *Regulation and Governance*, 5(3), 333–349. <https://doi.org/10.1111/j.1748-5991.2011.01113.x>
- Cashore, B. (2002). Legitimacy and the privatization of environmental governance: How non-state market-driven (NSMD) governance systems gain rule-making authority. *Governance*, 15(4), 503–529. <https://doi.org/10.1111/1468-0491.00199>
- Cashore, B. W., Auld, G., & Newsom, D. (2004). *Governing Through Markets*. Yale University Press. <https://doi.org/9780300133110>
- Cassese, A. (2005). *International Law*. Oxford University Press. <https://doi.org/9780199259397>
- Cattaneo, E. Gereffi, G., & Staritz, C. (2010). Global value chains in a postcrisis world: a development perspective. World Bank Policy Research Paper. <https://elibrary.worldbank.org/doi/abs/10.1596/978-0-8213-8499-2>
- Center for Disease Control. (CDC). (2020). Burden of Foodborne Illness: Findings. <https://www.cdc.gov/foodborneburden/2011-foodborne-estimates.html>

- Cerny, P. G. (1999). Globalization and the erosion of democracy. *European Journal of Political Research*, 36(1), 1–26. <https://doi.org/10.1111/1475-6765.00461>
- Chan, S., & Pattberg, P. (2008). Private Rule-Making and the Politics of Accountability: Analyzing Global Forest Governance. *Global Environmental Politics*, 8(3), 103–121. <https://doi.org/10.1162/glep.2008.8.3.103>
- Charlesworth, H. (2017). International Legal Encounters with Democracy. *Glob Policy*, 8, 34–43. <https://doi.org/10.1111/1758-5899.12488>
- Christian, M., Fernandez-Stark, K., Ahmed, G., & Gereffi, G. (2011). The tourism global value chain: Economic upgrading and workforce development. Duke Center on Globalization and Competitiveness https://gvcc.duke.edu/wp-content/uploads/2011-11-11_CGGC_Ex.Summary_Tourism-Global-Value-Chain.pdf
- Clapp, J. (2015). Food Security and Contested Agricultural Trade Norms. *Journal of International Law and International Relations*, 11(2), 104–115. <https://web.archive.org>
- Clapp, J. (2017a). Food self-sufficiency: Making sense of it, and when it makes sense. *Food Policy*, 66, 88–96. <https://doi.org/10.1016/j.foodpol.2016.12.001>
- Clapp, J. (2017b). The trade-ification of the food sustainability agenda. *The Journal of Peasant Studies*, 44(2), 335–353. <https://doi.org/10.1080/03066150.2016.1250077>
- Clapp, J. (2018). Mega-Mergers on the Menu: Corporate Concentration and the Politics of Sustainability in the Global Food System. *Global Environmental Politics*, 18(2), 12–33. https://doi.org/10.1162/glep_a_00454
- Clapp, J., & Fuchs, D. (2009). *Corporate power in global agrifood governance*. MIT Press. <https://doi.org/9780262012751>
- Clarke, R. (2010). Private food safety standards: their role in food safety regulation and their impact. *33rd Session of the Codex Alimentarius Commission*, 1-36.
- Coase, R. (1937). The nature of the firm. *Economica*, 4(16), 386–405. <https://doi.org/10.1017/cbo9780511817410.009>
- Coglianesi, C. (2009). *Import Safety: Regulatory Governance in the Global Economy*. University of Pennsylvania Press. <https://doi.org/9780812205916>
- Coleman, W. D., & Porter, T. (2000). International Institutions, Globalisation and Democracy: Assessing the Challenges. *Global Society*, 14(3), 377–398. <https://doi.org/10.1080/13600820050085769>
- Collier, D. (2011). Understanding Process Tracing. *APSC*, 44(04), 823–830. <https://doi.org/10.1017/s1049096511001429>
- Committee on Sanitary and Phytosanitary Measures. (2014). “Report of the Co Stewards of the Private Standards E-Working Group on Action.” SPS G/SPS/55.
- Cutler, A. C. (2003). *Private power and global authority: transnational merchant law in the global political economy*. Cambridge University Press. <https://doi.org/052153397>
- Cutler, A. C. (2013). Legal Pluralism as the “Common Sense” of Transnational Capitalism. *Oñati Socio-Legal Series*, 3(4), 719–740.

- Cutler, A.C. (2016). Transformations in Statehood, the Investor-State Regime, and the New Constitutionalism. *Indiana Journal of Global Legal Studies*, 23(1), 95. <https://doi.org/10.2979/indjglolegstu.23.1.95>
- Cutler, A. C. (2018). The Judicialization of Private Transnational Power and Authority. *Indiana Journal of Global Legal Studies*, 25(1), 61. <https://doi.org/10.2979/indjglolegstu.25.1.0061>
- Cutler, A. C., & Dietz, T. (2017). *The Politics of Private Transnational Governance by Contract*. Taylor & Francis. <https://doi.org/9781315409566>
- Cutler, A. C., Haufler, V., & Porter, T. (1999). *Private authority and international affairs*. SUNY Press. <https://doi.org/0791441199>
<http://www.opo.iisj.net/index.php/osls/article/viewFile/271/271>
- Dannenbergh, P., & Nduru, G. M. (2013). Practices in International Value Chains: The Case of the Kenyan Fruit and Vegetable Chain Beyond the Exclusion Debate. *Tijdschr Econ Soc Geogr*, 104(1), 41–56. <https://doi.org/10.1111/j.1467-9663.2012.00719.x>
- Deutsch, C. A., Tewksbury, J. J., Tigchelaar, M., Battisti, D. S., Merrill, S. C., Huey, R.B., & Naylor, R. L. (2018). Increase in crop losses to insect pests in a warming climate. *Science*, 361(6405), 916–919. <https://doi.org/10.1126/science.aat3466>
- Dingwerth, K. (2007). *The New Transnationalism*. Springer. <https://doi.org/9780230590144>
- Dingwerth, K. (2017). Field Recognition and the State Prerogative: Why Democratic Legitimation Recedes in Private Transnational Sustainability Regulation. *Politics and Governance*, 5(1), 75–84. <https://doi.org/10.17645/pag.v5i1.794>
- Djama, M., Fouilleux, E. & Vagneron, I. (2011). Certifying and Benchmarking: A Governmentality Approach to Sustainability Standards in the Agro-Food Sector. In Ponte, S. Gibbon, P., & Vestergaard, J. (Eds.) *Governing through Standards: Origins, Drivers and Limitations*. Palgrave MacMillan.
- Dolan, C., & Humphrey, J. (2000). Governance and Trade in Fresh Vegetables: The Impact of UK Supermarkets on the African Horticulture Industry. *Journal of Development Studies*, 37(2), 147–176. <https://doi.org/10.1080/713600072>
- Donkor, A., Osei-Fosu, P., Dubey, B., & Kingsford-Adaboh, R. (2016). Pesticide residues in fruits and vegetables in Ghana: a review. *Environmental Science and Pollution Research*, 23(19).
- Dryzek, J.S (2006). Transnational democracy in an insecure world. *International Political Science Review*, 27(2), 101-119.
- Duhigg, C., & Barboza, D. (2012). In China, human costs are built into an iPad. *New York Times*, 25.
- Dürr, J. (2017). Agricultural Growth Linkages in Guatemala: New Insights from a Value Chain Approach. *The Journal of Development Studies*, 53(8), 1223–1237. <https://doi.org/10.1080/00220388.2016.1214721>
- Eberlein, B., Abbott, K. W., Black, J., Meidinger, E., & Wood, S. (2014). Transnational business governance interactions: Conceptualization and framework for analysis. *Regulation & Governance*, 8(1), 1–21. <https://doi.org/10.1111/regg.12030>

- Eckert, S., & Börzel, T. A. (2012). *Experimentalist governance: An introduction*. 6(3), 371–377. <https://doi.org/10.1111/j.1748-5991.2012.01163.x>
- Eurostat. (2019). Global value chains and trade in value added. https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Archive:Global_value_chains_and_trade_in_value_added
- ETC Group. (November 2011). Who Will Control the Green Economy? *Communiqué No107*
- Fagotto, E. (2014). Private roles in food safety provision: the law and economics of private food safety. *European Journal of Law and Economics*, 37(1), 83–109. <https://doi.org/10.1007/s10657-013-9414-z>
- Fairtrade International. (2020a). *Fairtrade Standards*. <https://www.fairtrade.net/standard>
- Fairtrade International, (2020b). Our General Assembly and Board. <https://www.fairtrade.net/about/ga-and-board>
- FAO. (2006). Policy Brief: Food security. http://www.fao.org/fileadmin/templates/faotaly/documents/pdf/pdf_Food_Security_Cocept_Note.pdf
- FAO (2015). *The State of Agricultural Commodity Markets 2015-2016- Trade and Food Security: Achieving a Better Balance Between National Priorities and the Collective Good* (Rome: FAO).
- FAO. (2017). *The future of food and agriculture – Trends and challenges*. Rome. <http://www.fao.org/3/a-i6583e.pdf>
- FAO. (2018a). Enabling regulatory frameworks for contract farming. <http://www.fao.org/3/I8595EN/i8595en.pdf>
- FAO-IISD. (2018). Model Agreement for Responsible Contract Farming. <http://www.fao.org/3/ca1772en/CA1772EN.pdf>
- FAO-IWMI. (2017). Water pollution from agriculture: a global review. <http://www.fao.org/3/a-i7754e.pdf>
- FAO. (2018a). The state of agricultural commodity markets: Agricultural trade, climate change and food security. <http://www.fao.org/3/I9542EN/i9542en.pdf>
- FAO. (2018b). Overview of food fraud in the fisheries sector. <http://www.fao.org/3/i8791en/I8791EN.pdf>
- FAO. (2018c). Antimicrobial Resistance and Foods of Plant Origin <http://www.fao.org/3/BU657en/bu657en.pdf>
- FAO. (2019). Ensuring the Protection of Women’s Rights in Contract Farming Arrangements. <http://www.fao.org/in-action/contract-farming/news-cf/news-detail/en/c/1191588/>
- FAO. (2020). *FAOSTAT*. <http://www.fao.org/faostat/en/#data/TP>
- FAO-WHO. 2018. Global situation of pesticide management in agriculture and public health. <http://www.fao.org/3/ca7032en/ca7032en.pdf>
- Flyvbjerg, B. (2006). Five Misunderstandings About Case-Study Research. *Qualitative Inquiry*, 12(2), 219–245. <https://doi.org/10.1177/1077800405284363>

- Fold, N. (2008). Transnational Sourcing Practices in Ghana's Perennial Crop Sectors. *Journal of Agrarian Change*, 8(1), 94–122. <https://doi.org/10.1111/j.1471-0366.2007.00164.x>
- Fold, N., & Gough, K. V. (2008). From smallholders to transnationals: The impact of changing consumer preferences in the EU on Ghana's pineapple sector. *Geoforum*, 39(5), 1687–1697. <https://doi.org/10.1016/j.geoforum.2008.06.004>
- Fortin, E., & Richardson, B. (2013). Certification Schemes and the Governance of Land: Enforcing Standards or Enabling Scrutiny? *Globalizations*, 10(1), 141–159. <https://doi.org/10.1080/14747731.2013.760910>
- Fortin, N., & Weir, C. (2015). International Food Regulation Foundations. In *Regulatory Foundations for the Food Protection Professional* Springer. pp. 345-359.
- Fouilleux, E., Bricas, N., & Alpha, A. (2017). 'Feeding 9 billion people': global food security debates and the productionist trap. *Journal of European Public Policy*, 24(11), 1658–1677. <https://doi.org/10.1080/13501763.2017.1334084>
- Fouilleux, E., & Loconto, A. (2017). Voluntary standards, certification, and accreditation in the global organic agriculture field: a tripartite model of techno-politics. *Agric Hum Values*, 34(1), 1–14. <https://doi.org/10.1007/s10460-016-9686-3>
- Fraser, N. (2009). *Scales of Justice*. John Wiley & Sons. <https://doi.org/9780745658919>
- Friedmann, H. (1982). The Political Economy of Food: The Rise and Fall of the Postwar International Food Order. *American Journal of Sociology*, 88, S248–S286. <https://doi.org/10.1086/649258>
- Friedmann, H. (1993). The political economy of food: a global crisis. *New left review*, (197), 29-57.
- Friedmann, H. (2005) From colonialism to green capitalism: social movements and emergence of food regimes. in Marsden, T (ed.), *New directions in the sociology of global development*. Bingley: Emerald Group Publishing Limited. Pp. 227-264.
- Friedmann, H. (2009). Discussion: moving food regimes forward: reflections on symposium essays. *Agric Hum Values*, 26(4), 335–344. <https://doi.org/10.1007/s10460-009-9225-6>
- Friedmann, H. (2016). Commentary: Food regime analysis and agrarian questions: widening the conversation. *The Journal of Peasant Studies*, 43(3), 671–692. <https://doi.org/10.1080/03066150.2016.1146254>
- Friedmann, H., & McMichael, P. (1989). Agriculture and the state system: The rise and decline of national agricultures, 1870 to the present. *Sociologia Ruralis*, 29(2), 93–117. <https://doi.org/10.1111/j.1467-9523.1989.tb00360.x>
- Fuchs, D., & Kalfagianni, A. (2010a). *Private Food Governance: Implications for Social Sustainability and Democratic Legitimacy*. 225–247. https://doi.org/10.1057/9780230246966_10
- Fuchs, D., & Kalfagianni, A. (2010b). The Causes and Consequences of Private Food Governance. *Bus. Polit.*, 12(3), 1–34. <https://doi.org/10.2202/1469-3569.1319>
- Fuchs, D., Kalfagianni, A., & Havinga, T. (2011). Actors in private food governance: the legitimacy of retail standards and multistakeholder initiatives with civil society participation. *Agric Hum Values*, 28(3), 353–367. <https://doi.org/10.1007/s10460-009-9236-3>

- Galvin, P., & Morkel, A. (2001). Modularity on industry structure: The case of the world bicycle industry. *Industry and Innovation*, 8(1), 31–47.
<https://doi.org/10.1080/13662710120034392>
- Gatune, J., Chapman-Kodam, M., Korboe, K., Mulangu, F., & Rakotoarisoa, M. A. (2013). An Analysis of Trade Impacts on The Fresh Pineapple Sector in Ghana. *FAO Commodity and Trade Policy Research Working Paper*, (41).
- Gereffi, G. (1999). International trade and industrial upgrading in the apparel commodity chain. *Journal of International Economics*, 48(1), 37–70.
[https://doi.org/10.1016/s0022-1996\(98\)00075-0](https://doi.org/10.1016/s0022-1996(98)00075-0)
- Gereffi, G., & Frederick, S. (2010). The Global Apparel Value Chain, Trade and the Crisis: Challenges and Opportunities for Developing Countries. World Bank Policy Research Paper. <https://openknowledge.worldbank.org/handle/10986/3769>
- Gereffi, G., & Fernandez-Stark, K. (2010). The offshore services value chain: developing countries and the crisis. World Bank Policy Research Paper.
<https://elibrary.worldbank.org/doi/abs/10.1596/1813-9450-5262>
- Gereffi, G., Humphrey, J., Kaplinsky, R., & Sturgeon*, T. J. (2001). *Introduction: Globalisation, Value Chains and Development*. 32(3), 1–8.
<https://doi.org/10.1111/j.1759-5436.2001.mp32003001.x>
- Gereffi, G., Humphrey, J., & Sturgeon, T. (2005). The governance of global value chains. *Review of International Political Economy*, 12(1), 78–104.
<https://doi.org/10.1080/09692290500049805>
- Gereffi, G., & Korzeniewicz, M. (1994). *Commodity chains and global capitalism*. ABC-CLIO. <https://doi.org/9780275945732>
- Gerring, J. (2004). What Is a Case Study and What Is It Good for? *American Political Science Review*, 98(2), 341–354. <https://doi.org/10.1017/s0003055404001182>
- Gibbon, P. (2003). *Value-chain Governance, Public Regulation and Entry Barriers in the Global Fresh Fruit and Vegetable Chain into the EU*. 21(5–6), 615–625.
<https://doi.org/10.1111/j.1467-8659.2003.00227.x>
- Gibbon, P., Bair, J., & Ponte, S. (2008). Governing global value chains: an introduction. *Economy and Society*, 37(3), 315–338.
<https://doi.org/10.1080/03085140802172656>
- Gibbon, P., & Ponte, S. (2008). Global value chains: from governance to governmentality? *Economy and Society*, 37(3), 365–392.
<https://doi.org/10.1080/03085140802172680>
- Gill, S. (1998). New constitutionalism, democratisation and global political economy*. *Pacifica Review: Peace, Security & Global Change*, 10(1), 23–38.
<https://doi.org/10.1080/14781159808412845>
- GlobalGAP. (2015a). GlobalGAP General Regulations Part Two: Quality Management System Rules. *English Version 5.0*. www.globalgap.org.
- GlobalGAP. (2015b). GlobalGAP Control Points and Compliance Criteria in IFA Version 5. Fruits and Vegetables: Summary of Changes. www.globalgap.org
- GlobalGAP. (2020a). *GlobalGAP database*. https://www.globalgap.org/uk_en/what-we-do/the-gg-system/GLOBALG.A.P.-Database
- GlobalGAP (2020b). GlobalGAP Milestones. https://www.globalgap.org/uk_en/who-we

- are/about-us/history/globalg.a.p.-milestones-1997-2017/
GlobalGAP (2020c). Have your say. https://www.globalgap.org/uk_en/what-we-do/globalg.a.p.-certification/public-consultation/index.html
- Goguen, M., Muirhead, J., & Porter, T. (2018). Counting on Numbers to Feed the World: BigData, 'Visibilities', and Agency in Global Agri-Food Governance. Unpublished. Copy on file with author.
- Goldstein, K. (2002). Getting in the Door: Sampling and Completing Elite Interviews. *APSC*, 35(04), 669–672. <https://doi.org/10.1017/s1049096502001130>
- Goodman, D., & Watts, M. (1994). Reconfiguring the rural or fording the divide?: Capitalist restructuring and the global agro-food system. *Journal of Peasant Studies*, 22(1), 1–49. <https://doi.org/10.1080/03066159408438565>
- Grabs, J., Auld, G., & Cashore, B. (2020). Private regulation, public policy, and the perils of adverse ontological selection. *Regulation & Governance*. <https://doi.org/10.1111/rego.12354>
- Graffham, A., E. Karehu & J. MacGregor (2007), *Impact of EurepGAP on Small-scale Vegetable Growers in Kenya*. *Fresh Insights*. London: International Institute for Environment and Development.
- Grant, R. W., & Keohane, R. O. (2005). Accountability and abuses of power in world politics. *American political science review*, 29-43.
- Green, J. F. (2014). *Rethinking Private Authority Agents and Entrepreneurs In Global Environmental Governance*. Princeton University Press. <https://doi.org/9780691157597>
- Green, J. F., & Colgan, J. (2013). *Protecting Sovereignty, Protecting the Planet: State Delegation to International Organizations and Private Actors in Environmental Politics*. 26(3), 473–497. <https://doi.org/10.1111/j.1468-0491.2012.01607.x>
- Groenewegen, J., Kerstholt, F., & Nagelkerke, A. (1995). On Integrating New and Old Institutionalism: Douglass North Building Bridges. *Journal of Economic Issues*, 29(2), 467–475. <https://doi.org/10.1080/00213624.1995.11505684>
- Gulbrandsen, L. H. (2006). Creating markets for eco-labelling: are consumers insignificant? *Int J Cons Stud*, 30(5), 477–489. <https://doi.org/10.1111/j.1470-6431.2006.00534.x>
- Gulbrandsen, L. H. (2014). Dynamic governance interactions: Evolutionary effects of state responses to non-state certification programs. *Regulation & Governance*, 8(1), 74–92. <https://doi.org/10.1111/rego.12005>
- Hachez, N., & Wouters, J. (2011). A Glimpse at the Democratic Legitimacy of Private Standards: Assessing the Public Accountability of GlobalG.A.P. *Journal of International Economic Law*, 14(3), 677–710. <https://doi.org/10.1093/jiel/jgr026>
- Hale, T. N. (2008). Transparency, Accountability, and Global Governance. *GG*, 14(1), 73–94. <https://doi.org/10.1163/19426720-01401006>
- Hale, T., & Roger, C. (2014). Orchestration and transnational climate governance. *Rev Int Organ*, 9(1), 59–82. <https://doi.org/10.1007/s11558-013-9174-0>
- Hall, D. (2011). Land grabs, land control, and Southeast Asian crop booms. *Journal of Peasant Studies*, 38(4), 837–857. <https://doi.org/10.1080/03066150.2011.607706>

- Hall, R. B., & Biersteker, T. J. (2002). *The emergence of private authority in global governance*. Cambridge University Press. <https://doi.org/0521523370>
- Hatanaka, M., Bain, C., & Busch, L. (2005). Third-party certification in the global agrifood system. *Food Policy*, 30(3), 354–369. <https://doi.org/10.1016/j.foodpol.2005.05.006>
- Haufler, V. (2018). Producing Global Governance in the Global Factory: Markets, Politics, and Regulation. *Glob Policy*, 9(1), 114–120. <https://doi.org/10.1111/1758-5899.12525>
- Hawkins, D. G., Lake, D. A., Nielson, D. L., & Tierney, M. J. (2006). *Delegation and Agency in International Organizations*. Cambridge University Press. <https://doi.org/9781139458818>
- Held, D. (2006). Reframing global governance: Apocalypse soon or reform! *New Political Economy*, 11(2), 157–176. <https://doi.org/10.1080/13563460600655516>
- Held, D., & Maffettone, P. (2017). Moral Cosmopolitanism and Democratic Values. *Glob Policy*, 8, 54–64. <https://doi.org/10.1111/1758-5899.12412>
- Held, D., McGrew, A., Goldblatt, D., & Perraton, J. (2000). *Global Transformations: Politics, Economics and Culture*. 14–28. https://doi.org/10.1057/9780333981689_2
- Henderson, J., Dicken, P., Hess, M., Coe, N., & Yeung, H. W. C. (2002). Global production networks and the analysis of economic development. *Review of International Political Economy*, 9(3), 436–464. <https://web.archive.org>
- Henriksen, L. F., & Ponte, S. (2018). Public orchestration, social networks, and transnational environmental governance: Lessons from the aviation industry. *Regulation & Governance*, 12(1), 23–45. <https://doi.org/10.1111/rego.12151>
- Henson, S. & Humphrey, J. (May 2009). The Impacts of Private Food Safety Standards on the Food Chain and on Public Standard-Setting Processes. Paper Prepared for FAO/ WHO and Codex Alimentarius Commission. FAO Headquarters Rome: 29 June- 4 July 2009. <http://www.fao.org/3/a-i1132e.pdf>
- Henson, S., & Reardon, T. (2005). Private agri-food standards: Implications for food policy and the agri-food system. *Food Policy*, 30(3), 241–253. <https://doi.org/10.1016/j.foodpol.2005.05.002>
- Horner, R. (2017). Beyond facilitator? State roles in global value chains and global production networks. *Geography Compass*, 11(2), e12307. <https://doi.org/10.1111/gec3.12307>
- Intergovernmental Panel on Climate Change. (2015). *Climate Change 2014: Mitigation of Climate Change*. Cambridge University Press. <https://doi.org/9781107058217>
- International Institute for Environment and Development (IIED). (2008). Costs and Benefits of EurepGAP Compliance for African Smallholders: A Synthesis of Surveys in Three Countries, *Fresh Insights*, 13, 1-21.
- ILO. (2015). *World Employment Social Outlook: The Changing Nature of Jobs* (Geneva: ILO).
- ILO. (April 17, 2020). ILO Sectoral Brief: Covid 19 and the impact on agriculture and food security. https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/briefingnote/wcms_742023.pdf

- International Standard Organization. (2020). <https://www.iso.org/standards.html>
- Isakson, R. S. (2014). Food and finance: the financial transformation of agro-food supply chains. *The Journal of Peasant Studies*, 41(5), 749–775. <https://doi.org/10.1080/03066150.2013.874340>
- Jaeger, P. (2008). Ghana Export Horticulture Cluster Strategic Profile Study. Part I- Scoping Review: Report prepared for World Bank Sustainable Development Network (WB-SDN), Africa Region, Agriculture and Rural Development (AFTAR), The Republic of Ghana Ministry of Food and Agriculture and European Union All ACP Agricultural Commodities Programme (EU-AAACP).
- Jansen, N., & Michaels, R. (2007). Private Law and the State – Comparative Perceptions and Historical Observations. *RebelsZ*, 71(2), 345. <https://doi.org/10.1628/003372507780577063>
- Kahler, M., & Lake, D. (2004). Governance in a Global Economy: Political Authority in Transition. *PS: Political Science and Politics*, 37(3), 409–414.
- Kalfagianni, A. (2015). ‘Just food’. The normative obligations of private agrifood governance. *Global Environmental Change*, 31, 174–186. <https://doi.org/10.1016/j.gloenvcha.2015.01.007>
- Kalfagianni, A., & Fuchs, D. (2015) The effectiveness of private food governance in fostering sustainable development. In Havinga, T., Van Waarden, F., & Casey, D. (eds.) *The Changing Landscape of Food Governance: Public and Private Encounters*. Edward Elgar Publishing pp. 134-152.
- Kalfagianni, A., & Pattberg, P. (2013). Participation and inclusiveness in private rule-setting organizations: does it matter for effectiveness? *Innovation: The European Journal of Social Science Research*, 26(3), 231–250. <https://doi.org/10.1080/13511610.2013.771888>
- Kawakami, M., & Sturgeon, T. (2010). *Global value chains in the electronics industry: Was the crisis a window of opportunity for developing countries?* <https://doi.org/10.1596/1813-9450-5417>
- Keck, M. E., & Sikkink, K. (1999). Transnational advocacy networks in international and regional politics. *Int Social Science J*, 51(159), 89–101. <https://doi.org/10.1111/1468-2451.00179>
- Keohane, R. O. (n.d.). *International relations and international law*. 117–131. https://doi.org/10.4324/9780203218174_chapter_6
- Kingdon, JW & Stano, E. (1984). *Agendas, alternatives and public policies*. Harper Collins.
- Konefal, J., Mascarenhas, M., & Hatanaka, M. (2005). Governance in the Global Agro-food System: Backlighting the Role of Transnational Supermarket Chains. *Agric Hum Values*, 22(3), 291–302. <https://doi.org/10.1007/s10460-005-6046-0>
- Konefal, J., Mascarenhas, M., & Hatanaka, M. (2014). *Governance in the Global Agro-food System: Backlighting the Role of Transnational Supermarket Chains*. <https://doi.org/10.5040/9781474220156.ch-009>
- Krasner, S. D. (1983). *International Regimes (Cornell Studies in Political Economy)*. Cornell University Press. <https://doi.org/0801492505>
- Land Matrix (2015). The Online Public Database on Land Deals. Retrieved from

- <http://www.landmatrix.org/en/>
- Lasswell, H. D. (1936). *Politics: Who Gets What, When, How*. Pickle Partners Publishing. <https://doi.org/9781789125573>
- Lee, J., Gereffi, G., & Beauvais, J. (2012). Global value chains and agrifood standards: Challenges and possibilities for smallholders in developing countries. *Proceedings of the National Academy of Sciences*, 109(31), 12326–12331. <https://doi.org/10.1073/pnas.0913714108>
- Lernoud, J., Potts, J., Sampson, G., Garibay, S., Lynch, M., Voora, V., Willer, H., & Wozniak, J. (2017). *The State of Sustainable Markets – Statistics and Emerging Trends 2017*. (ITC, Geneva).
- Lewis, C. W. (2006). In pursuit of the public interest. *Public Administration Review*, 66(5), 694–701. <https://doi.org/10.1111/j.1540-6210.2006.00634.x>
- Lilleker, D. (2003). Interviewing the political elite: Navigating a potential minefield. *Politics*, 23(3), 207–214.
- Lin, C.-F. (2014). Public-Private Regime Interactions in Global Food Safety Governance. *Food and Drug Law Journal*, 69(2), 143–160. <https://doi.org/10.2139/ssrn.2309495>
- Locke, R. M. (2013). *The Promise and Limits of Private Power*. Cambridge University Press. <https://doi.org/9781107067677>
- Locke, R. M., Rissing, B. A., & Pal, T. (2013). Complements or Substitutes? Private Codes, State Regulation and the Enforcement of Labour Standards in Global Supply Chains. *British Journal of Industrial Relations*, 51(3), 519–552. <https://doi.org/10.1111/bjir.12003>
- Loconto, A.M., & Dankers, C. (2014). Impact of International Voluntary Standards on Smallholder Market Participation in Developing Countries: A Review of the Literature. *Food and Agriculture Agribusiness and Food Industries Series*, 3, 1-104.
- Loconto, A.M., Silva-Castaneda, L., Arnold, N., & Jimenez A. (2019). Participatory Analysis of the Use and Impact of the Fairtrade Premium. Research Report Inconnu. <https://hal.archives-ouvertes.fr/hal-02048855/document>
- Lytton, T. D., & McAllister, L. K. (2014). Oversight in private food safety auditing: Addressing auditor conflict of interest. *Wisconsin Law Review*, 289–335. <https://web.archive.org>
- MacDonald, J. M. (2015). Trends in Agricultural Contracts. *Choices*, 30(3), 1–6.
- Maertens, M., Minten, B., & Swinnen, J. (2012). *Modern Food Supply Chains and Development: Evidence from Horticulture Export Sectors in Sub-Saharan Africa*. 30(4), 473–497. <https://doi.org/10.1111/j.1467-7679.2012.00585.x>
- Maertens, M., & Swinnen, J. (2015). Agricultural trade and development: a value chain perspective (No. ERSD-2015-04). WTO Staff Working Paper
- Marks, A. B. (2015). The Risks we are Willing to Eat: Food Imports and Safety. *Harvard Journal on Legislation*, 52, 125–138. <https://web.archive.org>
- Marmor, A. (2019). *Soft Law, Authoritative Advice and Non-binding Agreements*. 39(3), 507–525. <https://doi.org/10.1093/ojls/gqz009>

- Mayer, F. W., & Phillips, N. (2017). Outsourcing governance: states and the politics of a 'global value chain world.' *New Political Economy*, 22(2), 134–152.
<https://doi.org/10.1080/13563467.2016.1273341>
- Mayer, F. W., Phillips, N., & Posthuma, A. C. (2017). The political economy of governance in a 'global value chain world.' *New Political Economy*, 22(2), 129–133. <https://doi.org/10.1080/13563467.2016.1273343>
- McKeen-Edwards, H., & Porter, T. (2013). *Transnational Financial Associations and the Governance of Global Finance*. Routledge. <https://doi.org/9780415659741>
- McLaughlin, K. (2005). *New Public Management*. Routledge.
<https://doi.org/9781134544158>
- McMichael, P. (2008). Peasants Make Their Own History, But Not Just as They Please... *Journal of Agrarian Change*, 8(2–3), 205–228.
<https://doi.org/10.1111/j.1471-0366.2008.00168.x>
- McMichael, P. (2005). Global development and the corporate food regime. In Marsden, T. (ed.), *New directions in the sociology of global development*. Emerald Group Publishing Limited. pp. 269-303
- McMichael, P. (2009a). A food regime analysis of the 'world food crisis.' *Agriculture and Human Values*, 26(4), 281–295. <https://doi.org/10.1007/s10460-009-9218-5>
- McMichael, P. (2009b). A food regime genealogy. *The Journal of Peasant Studies*, 36(1), 139–169. <https://doi.org/10.1080/03066150902820354>
- McMichael, P. (2012). The land grab and corporate food regime restructuring. *The Journal of Peasant Studies*, 39(3–4), 681–701.
<https://doi.org/10.1080/03066150.2012.661369>
- McMichael, P. (2013a). Land Grabbing as Security Mercantilism in International Relations. *Globalizations*, 10(1), 47–64.
<https://doi.org/10.1080/14747731.2013.760925>
- McMichael, P. (2013b). *Food Regimes and Agrarian Questions*.
<https://doi.org/1853398799>
- McMichael, P. (2016). Commentary: Food regime for thought. *The Journal of Peasant Studies*, 43(3), 648–670. <https://doi.org/10.1080/03066150.2016.1143816>
- Michaels, R., & Jansen, N. (2006). *Private Law Beyond the State? Europeanization, Globalization, Privatization**. 54(4), 843–890.
<https://doi.org/10.1093/ajcl/54.4.843>
- Muirhead, J. (2020). "Indirect," land grabbing, private certification and GlobalGAP. In Bjørkhaug, H., McMichael, P., & Muirhead, B. (eds.). *Finance or Food?: The Role of Cultures, Values, and Ethics in Land Use Negotiations*. University of Toronto Press. 80-107.
- Muirhead, J., & Porter, T. (2019). Traceability in global governance. *Global Networks*, 19(3), 423–443. <https://doi.org/10.1111/glob.12237>
- Neilson, J., & Pritchard, B. (2009). *Value Chain Struggles*. John Wiley & Sons.
<https://doi.org/9781444355444>
- Nelson, V., & Tallontire, A. (2014). Battlefields of ideas: changing narratives and power dynamics in private standards in global agricultural value chains. *Agric Hum Values*, 31(3), 481–497. <https://doi.org/10.1007/s10460-014-9512-8>

- North, D. C. (1991). Institutions. *Journal of Economic Perspectives*, 5(1), 97–112.
<https://doi.org/10.1257/jep.5.1.97>
- North, D. C. (1994). Economic performance through time. *The American Economic Review*, 84(3), 359–368. <https://web.archive.org>
- Otero, G. (2012). The neoliberal food regime in Latin America: state, agribusiness transnational corporations and biotechnology. *Canadian Journal of Development Studies/Revue Canadienne d'études Du Développement*, 33(3), 282–294.
<https://doi.org/10.1080/02255189.2012.711747>
- Ouma, S. (n.d.). *Global Standards, Local Realities: Private Agrifood Governance and the Restructuring of the Kenyan Horticulture Industry*. 86(2), 197–222.
<https://doi.org/10.1111/j.1944-8287.2009.01065.x>
- Ouma, S. (2015). *Assembling Export Markets*. John Wiley & Sons.
<https://doi.org/9781118632611>
- Ouma, S., Boeckler, M., & Lindner, P. (2013). Extending the margins of marketization. *Geoforum*, 48, 225–235. <https://doi.org/10.1016/j.geoforum.2012.01.011>
- Overdevest, C., & Zeitlin, J. (2014). Assembling an experimentalist regime: Transnational governance interactions in the forest sector. *Regulation & Governance*, 8(1), 22–48. <https://doi.org/10.1111/j.1748-5991.2012.01133.x>
- Overdevest, C., & Zeitlin, J. (2018). Experimentalism in transnational forest governance: Implementing European Union Forest Law Enforcement, Governance and Trade (FLEGT) Voluntary Partnership Agreements in Indonesia and Ghana. *Regulation & Governance*, 12(1), 64–87. <https://doi.org/10.1111/rego.12180>
- Patel, R. (2009). Food sovereignty. *The Journal of Peasant Studies*, 36(3), 663–706.
<https://doi.org/10.1080/03066150903143079>
- Pattberg, P. (2005). The Institutionalization of Private Governance: How Business and Nonprofit Organizations Agree on Transnational Rules. *Governance*, 18(4), 589–610. <https://doi.org/10.1111/j.1468-0491.2005.00293.x>
- Pauwelyn, J., Wessel, R. A., & Wouters, J. (2014). When Structures Become Shackles: Stagnation and Dynamics in International Lawmaking. *European Journal of International Law*, 25(3), 733–763. <https://doi.org/10.1093/ejil/chu051>
- Pegram, T. (2015). Global human rights governance and orchestration: National human rights institutions as intermediaries. *European Journal of International Relations*, 21(3), 595–620. <https://doi.org/10.1177/1354066114548079>
- Pepper, A. (2017). Value chain development, gender and women's empowerment in Ghana. *Gender and Markets Study #1: World Food Programme*.
<https://docs.wfp.org/api/documents/WFP-0000022433/download/>
- Phillips, N. (2016). Labour in Global Production: Reflections on Coxian Insights in a World of Global Value Chains. *Globalizations*, 13(5), 594–607.
<https://doi.org/10.1080/14747731.2016.1138608>
- Phillips, N. (2017). Power and inequality in the global political economy. 93(2), 429–444.
<https://doi.org/10.1093/ia/iix019>
- Pierre, J., & Peters, B. (2005). *Governing Complex Societies*. Springer.
<https://doi.org/9780230512641>

- Ponte, S., & Cheyns, E. (2013). *Voluntary standards, expert knowledge and the governance of sustainability networks*. 13(4), 459–477.
<https://doi.org/10.1111/glob.12011>
- Ponte, S., & Gibbon, P. (2005). Quality standards, conventions and the governance of global value chains. *Economy and Society*, 34(1), 1–31.
<https://doi.org/10.1080/0308514042000329315>
- Ponte, S., Gibbon, P., & Vestergaard, J. (2011). *Governing Through Standards*. Palgrave Macmillan.
- Ponte, S., Kelling, I., Jespersen, K. S., & Kruijssen, F. (2014). The Blue Revolution in Asia: Upgrading and Governance in Aquaculture Value Chains. *World Development*, 64, 52–64. <https://doi.org/10.1016/j.worlddev.2014.05.022>
- Ponte, S., & Sturgeon, T. (2014). Explaining governance in global value chains: A modular theory-building effort. *Review of International Political Economy*, 21(1), 195–223. <https://doi.org/10.1080/09692290.2013.809596>
- Ponte, S., Sturgeon, T. J., & Dallas, M. P. (2019). *Governance and power in global value chains*. 120–137. <https://doi.org/10.4337/9781788113779.00013>
- Poore, J., & Nemecek, T. (2018). Reducing food’s environmental impacts through producers and consumers. *Science*, 360(6392), 987–992.
<https://doi.org/10.1126/science.aag0216>
- Porter, T. (2005). Private Authority, Technical Authority, and the Globalization of Accounting Standards. *Bus. Polit.*, 7(3), 1–30. <https://doi.org/10.2202/1469-3569.1138>
- Porter, T. (2016). *The Changing Fabric of Transnational Governance*. Unpublished.
- Porter, T., & Ronit, K. (2015). Implementation in International Business Self-regulation: The Importance of Sequences and their Linkages. *Journal of Law and Society*, 42(3), 413–433. <https://doi.org/10.1111/j.1467-6478.2015.00717.x>
- Potoski, M., & Prakash, A. (2005). Green Clubs and Voluntary Governance: ISO 14001 and Firms’ Regulatory Compliance. *Am J Political Science*, 49(2), 235–248.
<https://doi.org/10.1111/j.0092-5853.2005.00120.x>
- Pritchard, B. (2009). The long hangover from the second food regime: a world-historical interpretation of the collapse of the WTO Doha Round. *Agric Hum Values*, 26(4), 297–307. <https://doi.org/10.1007/s10460-009-9216-7>
- Ragin, C. C. (1997). Turning the tables: How case-oriented research challenges variable-oriented research. *Comparative Social Research*, 16(123), 27–42.
<https://web.archive.org>
- Ramankutty, N., Mehrabi, Z., Waha, K., Jarvis, L., Kremen, C., Herrero, M., & Rieseberg, L. H. (2018). Trends in Global Agricultural Land Use: Implications for Environmental Health and Food Security. *Annu. Rev. Plant Biol.*, 69(1), 789–815.
<https://doi.org/10.1146/annurev-arplant-042817-040256>
- Reinecke, J., & Donaghey, J. (2015). After Rana Plaza: Building coalitional power for labour rights between unions and (consumption-based) social movement organisations. *Organization*, 22(5), 720–740.
<https://doi.org/10.1177/1350508415585028>

- Renckens, S. (2020). *Private Governance and Public Authority: Regulating Sustainability in a Global Economy*. Cambridge University Press: Cambridge.
<https://doi.org/10.1017/9781108781015>
- Republic of the Philippines (April 5, 2017), House Bill No. 5085: An Act Regulating the Establishment and Implementation of Agribusiness Ventures Arrangements in Agrarian Reform Lands.
http://www.congress.gov.ph/legisdocs/basic_17/HR00919.pdf
- Risse-Kappen, T. (2007). Transnational Actors and World Politics. In: Zimmerli W.C., Holzinger M., Richter K. (eds) *Corporate Ethics and Corporate Governance*. Springer. pp 251-286.
- Risse-Kappen, T. (2011). *Governance Without a State?: Policies and Politics in Areas of Limited Statehood*. <https://doi.org/9780231151214>
- Roger, C., & Dauvergne, P. (2016). The Rise of Transnational Governance as a Field of Study. *Int Stud Rev*, 18(3), 415–437. <https://doi.org/10.1093/isr/viw001>
- Ronit, K., & Schneider, V. (1999). Global Governance through Private Organizations. *Governance*, 12(3), 243–266. <https://doi.org/10.1111/0952-1895.00102>
- Rose, N., & Miller, P. (1992). Political Power beyond the State: Problematics of Government. *The British Journal of Sociology*, 43(2), 173.
<https://doi.org/10.2307/591464>
- Rosenau, J. N. (2007). Governing the ungovernable: The challenge of a global disaggregation of authority. *Regulation Governance*, 1(1), 88–97.
<https://doi.org/10.1111/j.1748-5991.2007.00001.x>
- Ruggie, J. G. (2004). Reconstituting the Global Public Domain — Issues, Actors, and Practices. *European Journal of International Relations*, 10(4), 499–531.
<https://doi.org/10.1177/1354066104047847>
- Ruggie, J. G. (2014). Global Governance and “New Governance Theory”: Lessons from Business and Human Rights. *GG*, 20(1), 5–17. <https://doi.org/10.1163/19426720-02001002>
- Ruggie, J. G. (2018). Multinationals as global institution: Power, authority and relative autonomy. *Regulation & Governance*, 12(3), 317–333.
<https://doi.org/10.1111/rego.12154>
- Sabel, C.F., & Zeitlin, J. (2010). *Experimentalist Governance in the European Union*. OUP Oxford. <https://doi.org/9780191610189>
- Sabel, Charles F., & Zeitlin, J. (2008). Learning from Difference: The New Architecture of Experimentalist Governance in the EU. *Eur Law J*, 14(3), 271–327.
<https://doi.org/10.1111/j.1468-0386.2008.00415.x>
- Sabel, Charles F., & Zeitlin, J. (2010). *Experimentalist Governance in the European Union*. OUP Oxford. <https://doi.org/9780191610189>
- Sabel, Charles F., & Zeitlin, J. (2012). *Experimentalism in the EU: Common ground and persistent differences*. 6(3), 410–426. <https://doi.org/10.1111/j.1748-5991.2012.01157.x>
- Sarpong, S. (2014). Traceability and supply chain complexity: confronting the issues and concerns. *European Business Review*, 26(3), 271–284. <https://doi.org/10.1108/eb-09-2013-0113>

- Scharff, R. L. (2015). *State Estimates for the Annual Cost of Foodborne Illness*. 78(6), 1064–1071. <https://doi.org/10.4315/0362-028x.jfp-14-505>
- Scholte, J. A. (2004). Civil Society and Democratically Accountable Global Governance. *Gov. & Oppos.*, 39(2), 211–233. <https://doi.org/10.1111/j.1477-7053.2004.00121.x>
- Scholte, J. A. (2005). *Globalization*. Macmillan International Higher Education. <https://doi.org/9780230368019>
- Scholte, J. A. (2011). *Building Global Democracy?* Cambridge University Press. <https://doi.org/9781139498029>
- Scholte, J. A. (2014). Reinventing global democracy. *European Journal of International Relations*, 20(1), 3–28. <https://doi.org/10.1177/1354066111436237>
- Sexton, R. J., & Xia, T. (2018). Increasing Concentration in the Agricultural Supply Chain: Implications for Market Power and Sector Performance. *Annu. Rev. Resour. Econ.*, 10(1), 229–251. <https://doi.org/10.1146/annurev-resource-100517-023312>
- Slaughter, A.-M. (2004). Disaggregated Sovereignty: Towards the Public Accountability of Global Government Networks. *Gov. & Oppos.*, 39(2), 159–190. <https://doi.org/10.1111/j.1477-7053.2004.00119.x>
- Slaughter, A.M. (Dec. 28, 2015). The Paris Approach to Global Governance. *Project Syndicate*. <https://www.project-syndicate.org/commentary/paris-agreement-model-for-global-governance-by-anne-marie-slaughter-2015-12?barrier=accesspaylog>
- Slaughter, A.-M., Tulumello, A. S., & Wood, S. (1998). International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship. *The American Journal of International Law*, 92(3), 367. <https://doi.org/10.2307/2997914>
- Stone, D. A. (1989). Causal stories and the formation of policy agendas. *Political science quarterly*, 104(2), 281-300.
- Sturgeon, T. J., Memedovic, O., Biesebroeck, J. V., & Gereffi, G. (2009). Globalisation of the automotive industry: main features and trends. *IJTLID*, 2(1/2), 7. <https://doi.org/10.1504/ijtlid.2009.021954>
- Stone Sweet, A. (2006). The new Lex Mercatoria and transnational governance. *Journal of European Public Policy*, 13(5), 627-646.
- Sturgeon, T., (2009). From Commodity Chains to Value Chains: Interdisciplinary Theory Building in an Age of Globalization. In Bair, J. (Ed.). *Frontiers of Commodity Chain Research*. Stanford University Press.
- Sturgeon, T., Van Biesebroeck, J., & Gereffi, G. (2008). Value chains, networks and clusters: reframing the global automotive industry. *Journal of Economic Geography*, 8(3), 297–321. <https://doi.org/10.1093/jeg/lbn007>
- Tanaka, K., & Ransom, R. (2008). Consumers and Citizens in the Global Agrifood System: The Cases of New Zealand and South Africa in the Global Red Meat Chain. In Wright, W. & Middendorf, G. *The Fight Over Food: Producers, Consumers, and Activists Challenge the Global Food System*. Pennsylvania State University Press. pp. 247-272.

- Tallontire, A., Opondo, M., Nelson, V., & Martin, A. (2011). Beyond the vertical? Using value chains and governance as a framework to analyse private standards initiatives in agri-food chains. *Agric Hum Values*, 28(3), 427–441. <https://doi.org/10.1007/s10460-009-9237-2>
- Tansey, O. (2007). Process Tracing and Elite Interviewing: A Case for Non-probability Sampling. *APSC*, 40(04), 765–772. <https://doi.org/10.1017/s1049096507071211>
- Teubner, G. (1997). “Global bukowina: Legal pluralism in the world-society.” In Teubner, G (Ed.) *Global Law Without a State*, Brookfield: Dartmouth Publishing.
- Teubner, G. (1997). *Global law without a state*. Dartmouth Publishing Company Ltd.
- Tracy, S. J. (2019). *Qualitative Research Methods*. John Wiley & Sons. <https://doi.org/9781119390800>
- Tran, N., Bailey, C., Wilson, N., & Phillips, M. (2013). Governance of Global Value Chains in Response to Food Safety and Certification Standards: The Case of Shrimp from Vietnam. *World Development*, 45, 325–336. <https://doi.org/10.1016/j.worlddev.2013.01.025>
- Tsutomu, T. (2004). Smallholders and non-traditional exports under economic liberalization: The case of pineapples in Ghana. *The Center for African Area Studies, Kyoto University*, 25(1), 29–43.
- UNCTAD (2013). Global Value Chains: Investment and Trade for Development, *World Investment Report*. United Nations, (UNCTAD: New York).
- United Nations Conference on Trade and Development (UNCTAD) (2020). *UNCTADSTAT merchant fleet by flag of registration and type of ship*. <https://unctadstat.unctad.org/wds/TableViewer/tableView.aspx?ReportId=93>
- Van der Ven, H. (2015). Correlates of rigorous and credible transnational governance: A cross-sectoral analysis of best practice compliance in eco-labeling. *Regulation & Governance*, 9(3), 276–293. <https://doi.org/10.1111/rego.12092>
- Verbruggen, P. (2013). *Gorillas in the closet? Public and private actors in the enforcement of transnational private regulation*. 7(4), 512–532. <https://doi.org/10.1111/rego.12026>
- Verbruggen, P. (2016). Private regulatory standards in commercial contracts: Questions of compliance. In H.-W. Micklitz, R. van Gestel and R. Brownsword (eds), *Contract and Regulation: A handbook on new methods of law making in private law*. Edward Elgar. 284-322
- Vertovec, S. (2009). *Transnationalism*. Routledge. <https://doi.org/9781134081585>
- Vind, I., & Fold, N. (2007). Multi-level Modularity vs. Hierarchy: Global Production Networks in Singapore’s Electronics Industry. *Geografisk Tidsskrift-Danish Journal of Geography*, 107(1), 69–83. <https://doi.org/10.1080/00167223.2007.10801376>
- Vogel, D. (2008). Private Global Business Regulation. *Annu. Rev. Polit. Sci.*, 11(1), 261–282. <https://doi.org/10.1146/annurev.polisci.11.053106.141706>
- Wallerstein, I., & Hopkins, T. (1977). Patterns of development of the modern world-system. *Review*, 1(2), 111–145. <https://web.archive.org>
- Wallerstein, I., & Hopkins, T. (1986). Commodity chains in the world economy prior to 1800. *Review*, 10(1), 157–170. <https://web.archive.org>

- Weis, T. (2007). *The Global Food Economy*. Zed Books Ltd.
<https://doi.org/9781848136885>
- Weiss, T. G., & Wilkinson, R. (2014). Rethinking Global Governance? Complexity, Authority, Power, Change. *Int Stud Q*, 58(1), 207–215.
<https://doi.org/10.1111/isqu.12082>
- Weiss, T. G., & Wilkinson, R. (2018). The Globally Governed—Everyday Global Governance. *Global Governance*, 24(2), 193–210.
<https://doi.org/10.1163/19426720-02402003>
- Whitfield, L. (2012). Developing Technological Capabilities in Agro-Industry: Ghana's Experience with Fresh Pineapple Exports. *Journal of Development Studies*, 48(3), 308–321. <https://doi.org/10.1080/00220388.2011.635198>
- Whytock, C. (2007). Litigation, arbitration, and the transnational shadow of the law. *Duke Journal of Comparative and International Law*, 18, 449–475.
- Whytock, C. A. (2010). Private-Public Interaction in Global Governance: The Case of Transnational Commercial Arbitration. *Bus. Polit.*, 12(3), 1–27.
<https://doi.org/10.2202/1469-3569.1324>
- Willer H., Sampson, G., Voora, V., Dang, D., Lernoud, J. (2019). The State of sustainable markets 2019: Statistics and emerging trends. *International Trade Center*.
<http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/Sustainable%20markets%202019%20web.pdf>
- Williamson, O. E. (1975). *Markets and Hierarchies: Analysis and anti-trust implications*. Free Press.
- Williamson, O. E. (1987). Transaction cost economics: The comparative contracting perspective. *Journal of Economic Behaviour and Organization*, 8, 617–625.
- Williamson, O. E. (2000). The New Institutional Economics: Taking Stock, Looking Ahead. *Journal of Economic Literature*, 38(3), 595–613.
<https://doi.org/10.1257/jel.38.3.595>
- World Bank. (2010). *Rising Global Interest in Farmland: Can it Yield Sustainable and Equitable Benefits?* Washington, DC: The World Bank
- World Bank. (2020a). *Agriculture and Food*.
<https://www.worldbank.org/en/topic/agriculture/overview>
- World Bank. (2020b). *Classifying countries by income*.
<https://datatopics.worldbank.org/world-development-indicators/stories/the-classification-of-countries-by-income.html#:~:text=As%20of%201%20July%202019,between%20%243%2C996%20and%20%2412%2C375%3B%20high%2D>
- World Bank. (2020c). *Exports of goods and services (% of GDP)*.
<https://data.worldbank.org/indicator/NE.EXP.GNFS.ZS>
- World Food Programme (WFP). (2020). *Ghana: Country Profile*.
<https://www.wfp.org/countries/ghana>
- World Health Organization. (April 2019). *No time to wait: Securing the future from drug-resistant infections- Report to the Secretary General of the United Nations*. Interagency Coordination Group on Antimicrobial Resistance.

- https://www.who.int/docs/default-source/documents/no-time-to-wait-securing-the-future-from-drug-resistant-infections-en.pdf?sfvrsn=5b424d7_6
- Zach, L., Doyle, M. E., Bier, V., & Czuprynski, C. (2012). Systems and governance in food import safety: A U.S. perspective. *Food Control*, 27(1), 153–162.
<https://doi.org/10.1016/j.foodcont.2012.03.013>
- Zumbansen. (2007). The Law of Society: Governance Through Contract. *Indiana Journal of Global Legal Studies*, 14(2), 191. <https://doi.org/10.2979/gls.2007.14.2.191>
- Zumbansen, P. C. (2014). The Incurable Constitutional Itch: Transnational Private Regulatory Governance and the Woes of Legitimacy. *Osgoode Hall Law School Legal Studies Research Paper Series*, No.18/2014 Vol. 10(6), 1-28.
- Zumbansen, P., & Bhatt, K. (2018). Transnational Constitutional Law. *SSRN Journal*.
<https://doi.org/10.2139/ssrn.3117352>

Appendix A: List of Interviewees

Anonymized Interviews

Interview Code	Position	Organization	Sector
A1	Chief Standards Compliance Officer	Pineapple Plantation Producer / Processor / Export Company	Agriculture
B2	Standards Compliance Officer	Pineapple Plantation Producer / Export Company	Agriculture
C3	Senior Officer	Industry Association	Agriculture
D4	Site Manager	Pineapple Plantation Producer / Export Company	Agriculture
E5	Senior Partner	Transnational Law Firm	International Private Law
F6	Senior Food Standards Officer	Codex Alimentarius	International Food Safety
G7	Senior Researcher	University of Lucerne	Sociology and Private Standards
H8	Senior Official	United Nations Institute for the Unification of Private Law	International Private Law
I9	Deputy Director	Directorate of Crop Services	Ministry of Food and Agriculture Directorate of Crop Services
J10	Monitoring and Evaluation Advisor	GIZ	International Development
K11	Director of Sustainability	Pineapple Producer/ Processor/ Exporter	Agriculture
L12	Senior Officer: Value Chain Sustainability	British Retail Consortium	Agriculture
M13	Senior Officer	GlobalGAP	Agriculture

Interview Code	Organization	Sector
Focus Group 1	Pineapple Smallholder Association	Agriculture
Focus Group 2	Pineapple Smallholder Association	Agriculture

Academics:

- Dr. Abigail Ampomah Gyebi (Department of Agribusiness, University of Ghana)

- Dr. Samuel Obeng Manteaw (Law Professor, University of Ghana)
- Dr. Nadine Arnold (Senior Researcher and Lecturer, University of Lucerne)

International Organizations:

- United Nations Food and Agriculture Organization
 - Rural Infrastructure and Agro-Industries Division
 - Smallholder Market Integration via Value Chain Development
 - Trade and Markets Division
 - Agriculture Economics Division
- Codex Alimentarius
 - Strategy and Communications Division

Regional Organizations:

- The European Commission
 - Agriculture and Rural Development (Trade and International Policies)
 - Health and Food Safety Directorate