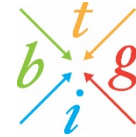




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TRANSNATIONAL  
BUSINESS  
GOVERNANCE  
INTERACTIONS

Transnational Business Governance Interactions Project  
Working Paper No. 38  
April 2019

# Transnational Business Governance Interactions, Regulatory Quality and Marginalized Actors: An Introduction

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The TBGI Project: Transnational initiatives to regulate business activities interact increasingly with each other and with official regulation, generating complex governance ensembles. Heterogeneous actors and institutions interact at multiple levels and in various ways, from mimicry and cooperation to competition and conflict. The TBGI Project investigates the forms, drivers, mechanisms, dynamics, outputs and impacts of transnational business governance interactions (TBGI) from diverse theoretical and methodological perspectives. It is led by Stepan Wood, Professor and Canada Research Chair in Law, Society and Sustainability at the Peter A. Allard School of Law, University of British Columbia.

# Transnational Business Governance Interactions, Regulatory Quality and Marginalized Actors: An Introduction

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## Abstract

In what circumstances can transnational business governance interactions (TBGIs)—the myriad overlaps, intersections, conflicts, collisions and synergies amongst the actors and institutions involved in transnational regulation of business activity—be harnessed to enhance the quality of transnational regulation and advance the interests of marginalized actors? This chapter introduces the concept of transnational business governance interactions (TBGIs), summarizes the TBGI analytical framework and defines regulatory quality and marginalized actors. It proposes to investigate the relationship between TBGIs, regulatory quality and marginalized actors at three levels: regulatory capacities, outputs and outcomes. The chapter presents the plan of the book and summarizes the key messages of the chapters.

## Keywords

Transnational business governance interactions, regulatory quality, marginalized actors, capacity, outputs, outcomes, TBGIs

## 1. Introduction

Powerful actors such as major states and business organizations frequently exploit gaps, overlaps and conflicts in global governance to bypass unattractive institutions or rules, shift decision-making to preferred fora, shape rules and decisions in their favour, and sometimes evade transnational regulation. Academic research increasingly reveals how powerful actors seek to steer interactions amongst global governance actors and institutions by, for example, creating conflicts amongst different regimes, exploiting the fragmented character of international law, orchestrating intermediaries to advance their agendas, shopping for favourable fora and creating new fora to tilt governance contests in their favour (Raustiala and Victor 2004; Alter and Meunier 2009; Gehring and Oberthür 2009; Abbott et al. 2015; Blome et al. 2016). As important as it is to understand how

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powerful actors manipulate these overlaps, conflicts and intersections, this book investigates the obverse: the circumstances in which these governance interactions can be harnessed to advance the interests of marginalized actors and improve the quality of transnational regulation.

This introductory chapter proceeds as follows. In Part 2 we justify our focus on what we call transnational business governance interactions (TBGIs) and briefly summarize the TBGI analytical approach. In Part 3 we turn to the central question of this book: when and how TBGIs can be harnessed to advance marginalized interests and enhance the quality of transnational regulation. We ask this question at the level of regulatory capacities, outputs and (to a lesser extent) outcomes. The first dimension, regulatory capacities, is drawn from the literature on regulation and includes a range of symbolic and material resources along with capacities to learn and adapt. The second and third, regulatory outputs and outcomes, are drawn from the literature on regime effectiveness, and include regulatory standards, institutional design features such as decision-making structures and processes, and regulatory synergies and uptake. The chapters in this book explore whether and in what circumstances TBGIs can be steered to enhance regulatory capacities, outputs and outcomes for transnational regulatory organizations and regimes generally, and for marginalized actors in particular. Part 4 presents the plan of the book and summarizes the chapters.

## 2. Transnational Business Governance Interactions

### 2.1 What are TBGIs and why do they matter?

We coined the term transnational business governance interactions (TBGIs) to describe the interactive dynamics of transnational regulation, and proposed a framework to analyse these dynamics (Eberlein et al. 2014; Wood et al. 2015). Here we introduce TBGIs in broad strokes, by way of an example. Consider the problem of tropical deforestation. In the 1980s civil society groups in developed countries pressured governments and industry to combat tropical deforestation. In the 1990s, frustrated by states' failure to conclude a global forest treaty or to control deforestation, a coalition of civil society and business actors created the non-state Forest Stewardship Council (FSC) to set international standards for sustainable forestry and certify companies' compliance with those standards. Big retailers signed on, often in response to NGO threats to the value of their brands, and FSC-certified forests and products multiplied quickly.

Forest owners and industry groups soon created their own competing certification schemes (Cashore, Auld, and Newsom 2004). There is some evidence that this competition raised forest management standards and improved the governance of forest certification schemes (Overdevest 2010). There is also evidence that upward convergence is superficial, masking persistent differences in transparency, accountability, rigour and effectiveness (Fransen 2011). In addition to competing with one another, these schemes interact with national and international laws in complicated ways. It is unclear, for example, what impact new laws requiring verification of the legality of forest products will have on forest certification or on deforestation (Bartley 2014). In short, these governance initiatives interact with one another and with state-based law and policy in diverse ways, with uncertain implications for businesses, communities and consumers, not to mention forests.

Comparable developments are observed in other economic sectors, from apparel to mining to private military contractors (Wood et al. 2015). Transnational non-state governance actors and institutions interact with each other and with state-based actors and institutions at multiple spatial and temporal scales, with a range of poorly understood effects on regulatory capacity, social and environmental standards, and marginalized actors (Eberlein et al. 2014).

### 2.2 Toward A Common Research Agenda

The concept of TBGIs provides a common starting point for investigating these phenomena. *Governance* denotes deliberate efforts to change target actors' behaviour in furtherance of collective goals via some combination of norms (broadly defined), monitoring and enforcement (eg. Black 2002,

p. 170; Wood et al. 2015, pp. 337–38). Governance so understood is synonymous with ‘regulation’ or ‘regulatory governance’. It is distinct from ‘government’ insofar as it is not restricted to states, international organizations and their formal governmental apparatus, but includes non-state and hybrid regulatory regimes promulgated and implemented by a wide variety of regulatory actors and employing a wide range of regulatory techniques and instruments (Hood, Rothstein and Baldwin 2001, p. 25; C. Scott 2004, pp. 161–66).

We focus on the governance of *business*, whether that business is conducted by private firms or other entities such as state-owned enterprises. The globalization of business generates some of the most serious and widespread contemporary governance challenges. The TBGI research agenda is, however, ripe for extension to other governance domains, such as health, education, migration, crime and security.

*Transnational* governance is governance in which non-state<sup>i</sup> actors or institutions assert or exercise authority in the performance of one or more components of regulatory governance across national borders. Such components include agenda-setting (including problem definition and arena selection), norm formation, implementation, monitoring, enforcement and evaluation (captured by the acronym ‘ANIMEE’). Actors and institutions have authority when relevant audiences perceive them as appropriately engaged in a regulatory task and their decisions as worthy of respect. But transnational governance is as much about the assertion and contestation of authority as it is about its exercise; we therefore include asserted—not just established and accepted—authority in our definition.

We follow a rich vein of scholarship on transnational relations (for example Keohane and Nye 1971; Risse-Kappen 1995; Keck and Sikkink 1998), transnational law (for example Jessup 1956; Likosky 2002; Callies and Zumbansen 2010; Halliday and Shaffer 2015) and global legal pluralism (for example Tamanaha 2001; Twining 2009; Berman 2012). Interaction amongst transnational actors and institutions is fundamental to these literatures. But the focus tends to be on the emergence, operation, legitimacy or effectiveness of individual programs or regimes in isolation rather than their interaction with one another (for example Cutler, Haufler and Porter 1999; Dingwerth 2007; Hale and Held 2011). To the extent that these literatures consider interactions, it is usually between non-state and state regulation (for example C. Scott, Cafaggi and Senden 2011). We also draw on the literature on regulatory interactions (for example Hahn and Noll 1983), regulatory competition (for example Esty and Geradin 2001), international law fragmentation (for example M. A. Young 2012; Andenas and Borge 2015), interactive federalism (for example Schapiro 2006), interactive governance (for example Kooiman 2003), multilevel governance (for example Hooghe and Marks 2001; Bache and Flinders 2004), international institutional interplay (for example Oberthür and Gehring 2006; Oberthür and Stokke 2011) and regime complexity (for example Raustiala and Victor 2004). Our TBGI agenda is distinctive in that it examines interactions amongst non-state actors and institutions in addition to interactions between state and non-state regulation, or within state regulation. This book explores these interactions in several economic sectors (agriculture, food safety, fisheries, forestry, financial services, biofuels, oil and gas, and sports) and cross-cutting issue-areas (including climate change, corporate social responsibility, indigenous rights and sustainability).

Finally, *interactions* are the mutual actions and reactions of governance actors, norms, institutions and systems. They can be deliberate or unintended, symmetrical or asymmetrical, cooperative or conflictual, and orderly or chaotic. They engage social agency (interactions amongst the makers, targets, interpreters, enforcers and beneficiaries of transnational regulatory governance) and social structure (interactions amongst transnational rules, principles, standards, programs, regimes, discourses, networks, technologies, legal orders and social systems). Some interactions are thus the result of exercises of agency, while others are unconscious effects of impersonal forces. Governance interactions are neither desirable nor undesirable *per se*; they are inherent in all governance.<sup>ii</sup>

Governance interactions occur and can be studied at and across various scales. At a micro scale, individual actors or norms interact within a single governance organization, program or

jurisdiction. At a meso scale, governance initiatives or jurisdictions interact within regimes or organizational fields, while regimes, fields and discourses shape actors and norms. At a macro scale, regimes or fields interact within complexes or systems, and complexes or systems interact with one another (see Table 1.2).

Like early research into interactions among intergovernmental institutions (O. R. Young 2002), research into interactions among transnational governance institutions and actors has reached a point where the lack of common concepts and data hinders the emergence of a shared core of knowledge. We developed the TBGI analytical framework in response to this problem (Eberlein et al. 2014). It provides common definitions of central concepts and enables researchers to identify knowledge gaps, prioritize research efforts, conduct empirical research and compare results. The framework disaggregates the regulatory governance process into six components: agenda-setting, norm formation, implementation, monitoring and information-gathering, enforcement, and evaluation and review. Interactions can occur within or between any of these components. The framework also poses six questions that researchers can ask about interactions in relation to each component: who or what interacts, what drives interaction, what are the mechanisms and pathways of interaction, what is the character of interaction, what are its effects, and how does interaction change over time? The framework thus produces a six-by-six matrix, which we apply to the chapters of this book in Table 1.1 (Eberlein et al. 2014; Wood et al. 2015).

The framework recognizes that interaction involves heterogeneous entities (such as individuals, organizations, states, institutions, norms, discourses, or systems) and often crosses organizational and spatial scales. The same actors can regulate while being regulated themselves (Braithwaite and Drahos 2000, p. 10). The framework also acknowledges that actors and social structures co-evolve, that interaction is both a cause and an effect, and that it has diverse forms, pathways and causal mechanisms (Wood et al. 2015). In short, as a concept and as a framework for analysis, TBGI is not intended to be monolithic or totalizing. Rather, it is intended to promote mutual intelligibility while accommodating heterogeneity and complexity.

Our analytical framework enables researchers in multiple disciplines to contribute to an expanding body of shared knowledge while pursuing their individual research interests. But a common analytical framework is only a starting point for a shared research agenda. Researchers also need to direct attention to theorizing the interactive dynamics of transnational business governance and how they can be steered. That is where this book comes in. This book attempts to provide an integrative account of TBGIs that gains strength from productive encounters among a range of disciplines, theories and methods. The book draws on scholarly literatures in law, business, political science, sociology, environmental studies and other fields. Several of the contributors work across disciplines. Three contributors are not just academics but also transnational business governance (TBG) practitioners, one (Carodenuto, Chapter 10) having until recently worked with an international forestry and environmental consulting firm, another (Bach, Chapter 12) working for a global network of local governments committed to sustainability, and a third (Wood, Chapter 16) representing Canada at the International Organization for Standardization (ISO).

### 3. Enhancing Regulatory Quality and Advancing Marginalized Actors

The goal of this book is to generate insights into whether and how TBGIs, in all their variety, can be harnessed to enhance the quality of transnational regulation and advance the interests of marginalized actors in transnational governance contests. We explore such questions as which interactive strategies hold promise and who can use them (Verbruggen and Havinga, Chapter 2; Paiement, Chapter 11; Wood, Chapter 16)? Should the focus be on entrepreneurial individuals who spread regulatory models and norms (Meidinger, Chapter 3; Oman, Chapter 15); on social networks (Auld and Renckens, Chapter 6; Henriksen and Seabrooke, Chapter 8); or on isomorphic pressures (Gao and Chen, Chapter 13)? Why do TBGIs emerge, multiply and persist in some cases while they stagnate, dwindle or fail to emerge in others (Westerwinter, Chapter 7; Winn, Chapter 5); how do

discursive and economic structures enable or constrain interactions (Casey, Chapter 9; Foley, Chapter 14); and how do various mechanisms and pathways of interaction operate (Bach, Chapter 12; Carodenuto and Cashore, Chapter 10; Schmidt, Chapter 4)?

Before we can answer these questions we must specify what we mean by regulatory quality and marginalized actors. Both concepts are contested. We aim to specify these concepts in terms capable of attracting relatively broad agreement while leaving open points of deep disagreement. We start with regulatory quality (Part 3.1). Then, drawing on the literature on international regime effectiveness, we suggest assessing the relation between TBGIs and regulatory quality in terms of regulatory outputs and outcomes (Part 3.2). In Part 3.3 we argue that in addition to outputs and outcomes, the relation between TBGIs and regulatory quality should be assessed in terms of regulatory capacities—a factor overlooked by the literature on regulatory quality. We then define marginalized actors and suggest assessing the relations between them and TBGIs in the same terms of regulatory capacities, outputs and outcomes (Part 3.4). Finally, in Part 3.5 we consider linkages and tensions between improvement of regulatory quality and advancement of marginalized actors.

### 3.1 Regulatory Quality

The lament that no two lists of criteria for regulatory quality coincide rings as true today as it did two decades ago (Gunningham, Grabosky and Sinclair 1998, p. 25). Certain elements are nonetheless common to most accounts: effectiveness, efficiency, responsiveness, transparency, accountability and participation.

*Effectiveness* at achieving policy goals is an element of most accounts of regulatory quality, but there is disagreement over which goals regulation should prioritize: social and environmental improvement, on one hand ( Gunningham, Grabosky and Sinclair 1998, p. 26), or business, trade and economic integration, on the other (World Bank 2016; European Commission 2017). If the former, the emphasis is often on increasing the scope and ambition of regulatory standards; if the latter, on reducing regulatory burdens (Pelkmans, Labory and Majone 2000; Brown and Scott 2011). We join the former camp: we understand effectiveness primarily in terms of social and environmental improvement.

*Efficiency* is the second, and in many accounts decisive, element of regulatory quality. According to this criterion, quality is not simply a matter of the volume or stringency of regulation; it is a matter of optimizing regulatory benefits and burdens. Efficiency means that regulatory goals are set at a level that maximizes net benefits to society, and that regulatory means are selected to achieve those goals at minimum cost (OECD 1995, 2005). It also demands that regulation be the product of systematic advance assessment of costs, benefits, risks and impacts, and the subject of regular review and revision (Ogus 1995; European Commission 2002; OECD 1995). These assessments should consider the full range of possible regulatory goals, instruments and actors (European Commission 2001; Brown and Scott 2011). The distributive consequences of regulatory choices should also be considered ( OECD 1995; Baldwin and Cave 1999). Equity in the distribution of burdens and benefits is an independent criterion in some accounts and indeed is quite distinct from efficiency (Gunningham, Grabosky and Sinclair 1998, p. 26). Since equity is a central aspect of the second theme of this book, namely advancement of marginalized actors, we do not single it out for special attention in relation to regulatory quality.

Third, most accounts of regulatory quality emphasize that regulation should be *responsive*. Responsive regulation employs a flexible, pluralistic and complementary mix of actors, strategies and tools. It is tailored to problem characteristics, industry structures, regulatory institutions, and actors' incentives and motivations. It is sensitive to variation in these and other contextual factors over time and across different components of the regulatory governance process (Ayres and Braithwaite 1992; Osborne and Gaebler 1992; Baldwin and Black 2008). Responsive regulation is also comprehensive, in the sense of matching the scope of the problem (World Bank 2016).

Transparency, accountability and participation round out most recipes for regulatory quality. The principle of *transparency* holds that regulation and regulatory processes should be clear,

coherent, consistent, comprehensible and accessible to interested parties (OECD 1995; Labory and Malgarini 2000). In some formulations, regulation should also be simple and practical (European Commission 2001; OECD 2005). *Accountability* requires regulators to justify their actions to, and submit to the scrutiny of, the general public or some narrower constituency of interested and affected parties (Radaelli and De Francesco 2007, p. 33; Alemanno 2015). Accountability and transparency are often combined with principles of certainty, proportionality, due process and respect for the rule of law (OECD 1995).

Finally, *participation* means that all interested parties should have the opportunity to participate in regulatory governance processes that concern them (Lobel 2004). Effective participation by a wide range of actors, it is said, enhances regulation's legitimacy, expands the knowledge, experience, expertise and perspectives brought to bear on problems, helps identify unintended consequences and interactions with other regulations, acts as a check on the quality of regulators' assessments, and fosters compliance by regulatory targets (OECD 1995). That said, the form and degree of participation thought to be necessary for regulatory quality vary greatly, from mere notice-and-comment to joint decision-making.

All the preceding criteria—effectiveness, efficiency, responsiveness, transparency, accountability and participation—are subjects of ongoing debate and encompass a wide range of perspectives. The chapters address these criteria in different ways and to differing degrees, reflecting this variety of perspectives. They devote more attention to effectiveness, transparency, accountability and participation than to efficiency or responsiveness; indeed only a few pay explicit attention to the latter two criteria. As a consequence it is difficult to draw conclusions about the relationships between TBGIs, efficiency and responsiveness from the research presented in this book.

Effectiveness, transparency, accountability, participation and to a lesser extent efficiency and responsiveness thus comprise our criteria for regulatory quality. In Parts 3.2 and 3.3 we propose to address these criteria at three levels: regulatory outputs, outcomes and capacities.

### 3.2 Regulatory Outputs, Outcomes and Impacts

In the 1960s David Easton highlighted the need to distinguish between outputs, outcomes and impacts when investigating the consequences of political systems (Easton 1965). Put briefly, political systems produce *outputs*, including regulations and other policy instruments, which lead to *outcomes*, in the form of changes in the behaviour, values or perceptions of regulatory targets, which in turn have intended and unintended *impacts* on social, economic, environmental or other conditions. International relations scholars have applied this schema in studying the effectiveness of international regimes (Underdal and Young 2004). We suggest applying it to regulatory quality generally: not just effectiveness but efficiency, responsiveness, transparency, accountability and participation can be assessed at the level of regulatory outputs, outcomes or impacts.

Outputs are relatively easy to assess. Outcomes can be tricky and impacts even more challenging, due to the multiplicity of forces at work, the complexity of causal relations, the diversity of contexts, the pervasiveness of scientific uncertainty, and the difficulty of specifying both ideal results and no-regulation counterfactuals (O. R. Young 2017, pp. 28, 47). Yet success at the level of outputs and outcomes is no guarantee of progress in solving the relevant problems (*ibid.*). Impacts are therefore our ultimate interest, but theoretical and methodological hurdles lead us to focus on regulatory outputs and to a lesser extent outcomes in this book.

The outputs we focus on are institutional designs and regulatory standards. Institutional designs include the structure and composition of organs that make regulatory decisions and the rules and procedures by which they operate. Some observers recognize institutional design as a key dimension of regulatory quality (Radaelli and De Francesco 2007, p. 29). Institutional designs can be more or less efficient, effective, responsive, transparent, accountable or participatory. Analyzing institutional designs as outputs might seem odd, since they seem more like inputs that shape the production of regulatory outputs like rules, standards and decisions. But institutional designs are also regulatory outputs insofar as actors interact with each other and with existing institutions to design

or redesign regulatory institutions. We are interested in this dimension: how can TBGIs be manipulated to improve the design of regulatory institutions?

Regulatory standards include all the diverse rules, norms, guidelines decisions and programs that regulatory institutions promulgate with a view to influencing the conduct of regulated actors. Regulatory standards are often articulated at the norm formation stage of regulatory governance, but also exist in other stages. Examples include best practice guidance for rule implementation, and standards for auditor independence and competence. Our focus is on the ambition (that is, stringency) and scope of standards. Standards can be more or less effective, efficient, responsive or transparent and can foster or hinder accountability and participation. We want to know whether TBGIs can be harnessed to raise regulatory standards, in the sense of increasing their comprehensiveness in relation to the problem addressed or raising the level of social and environmental performance they demand. We are also interested in harnessing TBGIs to induce upward regulatory races and in understanding how such races can become ratchets, in which the interaction of multiple regulatory forces prevents backsliding (Braithwaite and Drahos 2000, pp. 518–20). Our emphasis on the strength and breadth of regulatory standards, rather than their efficiency or optimality, reflects the fact that in most regulatory domains, 'ordinary citizens want higher standards of regulatory protection than they get' (ibid., p. 609).

Turning to regulatory outcomes, for the reasons mentioned earlier we do not assess the degree to which TBGIs lead to changes in the social or environmental performance of regulated actors. Rather, we address two lower-order outcomes that are easier to assess: the uptake of standards by regulatory targets, and the creation of synergies amongst regulatory regimes. Greater uptake contributes to greater participation and (all else being equal) effectiveness, although it can also be associated with other components of regulatory quality. Synergy amongst regulatory regimes can enhance responsiveness (contribution to a smart, sophisticated ensemble of regulatory instruments and actors), transparency (in the sense of consistency and coherence) or efficiency (especially in the sense of cost-effectiveness).

Some chapters discuss other regulatory outcomes—including changes in regulated actors' social or environmental practices—and the social and environmental impacts that are the ultimate object of our inquiry. We consider this evidence in the Conclusion, but systematic attention to the impacts, intended or unintended, of TBGIs on social, environmental and economic conditions remains beyond the scope of this book.

### 3.3 Regulatory Capacity

Regulatory quality can be examined at yet another level: regulatory capacity. This concept is absent from most accounts of smart, responsive, better or high-quality regulation, but it has received substantial attention from other scholars of regulation and public policy. There is much to be gained by connecting the literature on regulatory quality with that on regulatory capacity.

Like regulatory quality, regulatory capacity is the subject of diverse definitions and perspectives. We understand it as a multi-dimensional, open-ended, contextually-specific endowment of resources and capabilities that enable regulatory actors to pursue goals and that must be mobilized for regulatory systems to function. The capacities we focus on are material and symbolic resources, organizational capabilities, networks, capacity for feedback and learning, and resilience to shocks.

Material resources include technology, equipment, supplies, physical facilities, finances and energy. Symbolic resources include authority, legitimacy, information, knowledge, skill, expertise, motivation and commitment (Black 2003, pp. 73–76). One symbolic resource, legitimacy, is amongst the most valuable regulatory assets and is recognized as a determinant of regulatory quality (Baldwin and Cave 1999; Alemanno 2015). Organizational capabilities combine material and symbolic resources and include leadership, management and staff, as well as governance and operational structures, problem-solving ability, physical and communication infrastructure, and inter-organizational linkages (Lusthaus et al. 2002; Black 2003, pp. 78–79).



Social networks are another dimension of capacity that cuts across the material-symbolic divide. They enable members to mobilize relational assets including visibility, reputation, expertise, reliability and trust, not to mention access to information, people, organizations and material resources (Gulati 2007; Smith and Fischlein 2010; Westerwinter, Chapter 7; Henriksen and Seabrooke, Chapter 8).

Capacity for feedback, learning and adaptation is another important regulatory capacity. Entire agendas for governance reform, including adaptive management (Lee 1993) and experimentalist governance (Sabel and Zeitlin 2008), are built around this capacity. Iterative processes of innovation, monitoring, evaluation, mutual learning and revision are a common feature of many accounts of reflexive or responsive regulation (Lobel 2004, pp. 395–400). Ciara Brown and Colin Scott (2011, pp. 477–79) argue that capacity for learning about problems, solutions and preferences ought to be a criterion for regulatory quality.

Finally, resilience refers to an actor or institution's ability to cope with, adapt to, overcome and bounce back from exogenous shocks while maintaining essential functions and structures (Holling 1973; Underdal 2004, p. 30; Bourbeau 2018, p. 7). It is the subject of a diverse, multi-disciplinary literature. The key point for our purposes is that resilience, like learning, is a valuable attribute that should be included in catalogues of regulatory capacities.

Regulatory capacity is relevant to all components of regulatory governance: agenda-setting, norm formation, implementation, monitoring, enforcement and evaluation/review. Different components demand different capacities (Black 2003), but some combination of the capacities identified above will be necessary for successful performance of regulatory tasks across all components. Lack of capacity at any point along complex governance chains can jeopardize the performance of a regulatory system (Wood et al. 2015, p. 357).

Mobilizing the capacities of multiple actors and institutions is essential to any regulatory governance process. At a minimum, a regulator must have capacity to promulgate standards and a regulatory target must have capacity to implement them. Single actors seldom possess all the capacities necessary to achieve their regulatory goals or ensure the operation of a regulatory regime. An actor's ability to enroll the capacities of other actors, regimes or networks can thus be crucial to achievement of regulatory goals.

Our catalogue of regulatory capacities is, of course, partial and contestable. Other scholars propose different lists. Kenneth Abbott and Duncan Snidal (2009) identify four essential competencies for organizations to act effectively throughout the regulatory governance process: independence, representativeness, expertise and operational capacity. Two of these—expertise and operational capacity—are included in our discussion of regulatory capacity, while independence and representativeness are captured in our discussion of regulatory quality. Julia Black's (2003, p. 73) six critical resources of information, expertise, financial and economic resources, authority and legitimacy, strategic position, and organizational capacity, are covered more or less by our account of regulatory capacity. Black emphasizes the further point that capacity comprises not just resources but 'the existence of actual or potential conditions [including ability and willingness to act] that make it likely that those resources will be deployed both now and in the future in such a way as to further the identified goals of those seeking to regulate or resolve identified problems' (ibid., p. 72). We accept this point, but our focus in this book is on the resources and capabilities themselves. Systematic exploration of the linkages between capacities and the conditions for their effective mobilization is a question for future research.

Having set out how we understand regulatory capacity, we now explain why it should be integrated into analyses of regulatory quality. Our basic claim is that regulatory capacity is both a precondition and a criterion for regulatory quality. Regulation cannot be effective, efficient, responsive, transparent, accountable or participatory if regulatory actors and institutions lack the capacity to achieve these characteristics. This point is most evident in relation to effectiveness. Many scholars of public administration recognize that organizations with greater material and symbolic resources tend to be more effective at achieving their goals, while low-capacity organizations face

greater challenges (for example Bolton et al 2016). But the point also applies to other dimensions of regulatory quality. Resources such as information, expertise, organizational capacity and networks help ensure regulatory efficiency. Responsiveness cannot be achieved without some resilience and learning capacity. Transparency, accountability and participation require material resources and organizational capacities, among others.

The relation between capacity and quality is not unidirectional. Elements of regulatory quality both depend upon and contribute to regulatory capacity. For example, a regulatory regime is more likely to attract wide participation if it enjoys authority and legitimacy and its existing participants are committed to transparency, accountability and participation. Wider participation in turn is likely to further enhance the regime's authority and legitimacy and its participants' commitment. Likewise, more efficient regulation frees up resources to enhance the capacity of relevant actors and institutions, including targets.

It is also possible to make a normative argument about the relation between regulatory capacity and quality. Fabrizio Cafaggi and Katarina Pistor (2015) propose a normative concept of regulatory capabilities grounded in a theory of individual and collective self-determination.<sup>iii</sup> For them, '[t]he concept of regulatory capabilities stands for the normative principle that individuals and collectives should have the ability to choose the rules and regulations that shall govern them,' which 'implies both a right to choose and the capacity to collectively select and develop these rules' (ibid., p. 98). They argue that 'a just regulatory regime must promote regulatory capabilities for all affected by it' (ibid., p. 104). The authors are vague on the content of regulatory capabilities and how to foster and sustain them (ibid., pp. 104-105), but their argument represents a possible avenue to integrate regulatory capacities into normative agendas for improving regulation.

The literature on regulatory quality largely overlooks these connections between capacity and quality, aside from scattered acknowledgements that particular capacities such as legitimacy or ability to learn contribute to regulatory quality (for example Baldwin and Cave 1999; Brown and Scott 2011; Alemanno 2015). Regulatory quality and capacity are thoroughly intertwined, however, and should be integrated. This book takes a step in this direction by incorporating regulatory capacity into our investigation of regulatory quality, alongside outputs and outcomes.

### 3.4 Marginalized Actors

We turn now to the second main theme of the book, advancing marginalized actors. This theme is concerned with challenging disparities of power in transnational governance. For us, *marginalized actors* are actors who are excluded from or enjoy relatively little voice or influence in the creation and operation of regulatory governance institutions, and have relatively little influence over regulatory outputs and outcomes. Unlike actors who enjoy positions and symbols of power, which they may periodically exchange with one another through routine governance contests, marginalized actors are systematically disadvantaged in regulatory governance. The purposes, structures and rules of governance arenas tend to disfavour their interests; shared understandings tend to reinforce their disadvantage; and they appropriate a minor share of material and symbolic rewards. They are excluded from 'important positions and symbols of economic, religious, or political power' (J. Scott 2014, "marginalization"). They are equivalent to 'challengers' in theories of social movements and social action fields (Fligstein and McAdam 2012, p. 13).

Marginalization is multidimensional and contextual. At the extreme it includes the most downtrodden and dispossessed—those who are utterly excluded from the social contract and mostly socially invisible (Santos 2002, p. 457). Depending on the circumstances, these actors might include indigenous and stateless peoples, refugees, illegal immigrants, the disabled, migrant labourers, unskilled or unemployed workers, young people excluded from labour markets, slum dwellers, landless peasants, subsistence producers and people living with addiction or mental health problems. In other circumstances, marginalized actors occupy intermediate social positions and experience a mix of social inclusion and exclusion—such as women, ethnic minorities, consumers, workers, LGBTQ+ people and advocates for marginalized actors, including journalists, trade unionists, anti-poverty

groups, and environmental or human rights activists (Kiai 2014). Business actors can also be marginalized if they occupy marginal positions in global supply chains, such as third or fourth-tier suppliers or subsistence producers in developing countries. Consumer, environmental, labour or human rights groups can be marginalized in some contexts—as where they seek to influence regulatory arenas dominated by global corporations and powerful states—but not in others, as when elite, well-resourced NGOs based in the Global North play influential roles in regulatory arenas for the purported benefit of marginalized people or non-human entities (often in the Global South) that have no effective means to hold the NGOs to account.

In short, marginalization is a capacious category. Ultimately, marginalized actors should define and speak for themselves (Cornwall 2004; Agyeman et al. 2009), but the chapters in this book treat the following actors as marginalized for particular purposes: suppliers in developing countries, small-scale producers, small and medium-sized enterprises (SMEs), peripheral East Asian state and market actors, public interest NGOs, industry-affected communities, workers, trade unions and indigenous peoples. As this list suggests, marginalization can operate at scales from individuals and firms to the world system.

We do not define marginalized actors in terms of whether they have justice on their side. Characterization of a given actor's cause as just is inherently contestable, even if it might be possible to reach consensus on some—such as indigenous people, people living in extreme poverty, or persecuted minorities. Moreover, different actors with legitimate and worthy claims may have interests or values that clash with one another's; any choice between them is based on contestable normative commitments. Finally, there is no external touchstone for the public interest; social life always involves 'a combination of pecuniary interest-pursuit and citizenship', and actors' 'definitions of their self-interest are generally congealed with a vision of the appropriate social order' (Meidinger 1992, unpaginated; see also 1987, pp. 365–66). Everyone enters regulatory governance interactions 'from the perspective of one's own preferences that are always already partial and contested or contestable but striving for universal recognition' (Koskenniemi 2012, p. 320), and actors generally advance their preferences and interests via a public-regarding discourse (Ayres and Braithwaite 1992, p. 59).

Advancement of marginalized actors takes weak and strong forms. In its weak form, it means harnessing TBGIs to better address marginalized actors' needs, mitigate adverse impacts on them, give them greater voice in regulatory governance processes, and 'play' the existing system in their favour. This might be accomplished by, for example, increasing the transparency of regulatory governance institutions, opening them to greater participation by marginalized actors, and enhancing their access to information about social and environmental issues (Gunningham, Grabosky and Sinclair 1998, pp. 101–4). It might also include providing marginalized actors with the resources needed to organize themselves and participate effectively in regulatory governance (Ayres and Braithwaite 1992, pp. 18, 59). Such actions enable marginalized actors to get the most they can out of contestation within existing regulatory spaces, while expanding those spaces to encompass more actors, voices, interests and values.

This kind of incremental advancement is the focus of this book. But the line between 'playing' the system and challenging it is blurry. Marginalized actors are always looking for cracks in the system that they can exploit, and it is hard to distinguish routine contestation from system rupture until a crisis is in full swing (Fligstein and McAdam 2012, pp. 97, 111). So we are also interested in a stronger form advancement: enhancing marginalized actors' chances to challenge and remake regulatory worlds. This entails the development of skills and resources that enable marginalized actors to recognize when the limits of routine contention and adjustment are reached and a systemic crisis is initiated; to fashion alternative conceptions that undermine existing regulatory settlements and provide new visions capable of attracting support; to invent and deploy innovative regulatory forms; and to transform regulatory governance institutions or create new ones (Fligstein and McAdam 2012).

Like regulatory quality, the advancement of marginalized actors can be assessed at the level of regulatory capacities, outputs and outcomes. So in this book we ask: Do TBGIs enhance marginalized

actors' capacities to 'play the regulatory game' within existing systems or to change the game? Do they add to or detract from marginalized actors' material and symbolic resources? Do they improve marginalized actors' positions in regulatory networks, enhance their capacity for feedback and learning or increase their resilience? Do they lead regulatory institutions toward more or less participation, transparency and accountability? Do they produce regulatory standards that advance or hinder marginalized actors' interests and goals? And do they lead to regulatory outcomes that benefit marginalized actors?

### 3.5 Linkages

The goals of enhancing regulatory quality and advancing marginalized actors are often aligned. Increasing transparency, accountability and participation simultaneously helps to advance marginalized actors, stave off capture by powerful actors, generate more regulatory options, provide better information, strengthen standards and enhance regulatory effectiveness. Broader participation in governance institutions can enhance their legitimacy, an important regulatory capacity. And the more capacities marginalized actors can mobilize via networks, enrolment and other means, the greater their ability to advance their interests in governance contests. Most of the components of regulatory quality discussed in Part 3.1 are at least potentially consistent with advancement of marginalized actors in the weak sense of getting the most they can out of existing regulatory systems.

But regulatory quality and advancement of marginalized actors are not always aligned. Enhanced regulatory capacity does not translate automatically into more ambitious standards, improved performance or better protection for vulnerable interests. Efficiency and effectiveness can be in tension with marginalized actors' interests: broader participation can make regulatory processes more cumbersome and expensive, and can reduce the likelihood that targets will accept regulatory standards. On the other hand, greater voice for marginalized parties often necessitates a more nuanced understanding of regulatory quality. Low income communities in developing countries, for example, are likely to insist on adequate schooling and alternative economic opportunities as part of a regulatory strategy to eliminate child labour. Small-scale producers might accept tougher environmental or social standards for their production processes only if accompanied by technical and financial support, price guarantees or enhanced market access.

With these considerations of TBGIs, regulatory quality, marginalized actors and regulatory outputs, outcomes and capacities in mind, we close the chapter with an overview of the book.

## 4. Plan of the Book

### 4.1 Overview

The book is divided into two parts, corresponding to the book's two main themes. Part I focuses mainly on harnessing transnational business governance interactions (TBGIs) to improve the quality of transnational regulation, Part II on harnessing interactions to empower marginalized actors. Most chapters address aspects of both, which is no surprise—the themes are highly intertwined. Chapters that put more emphasis on regulatory quality appear in Part I. Those that put more emphasis on questions of power and marginalization appear in Part II. In the Conclusion we draw out the key empirical, theoretical and practical lessons of the book.

The chapters cover a wide variety of economic sectors, issue areas and professions. Eleven chapters address specific economic sectors, namely agriculture and food (Verbruggen and Havinga, Chapter 2; Casey, Chapter 9), energy (Paiement, Chapter 11; Bach, Chapter 12), finance (Winn, Chapter 5; Gao and Chen, Chapter 13), fisheries (Auld and Renckens, Chapter 6; Foley, Chapter 14), forestry (Carodenuto and Cashore, Chapter 10; Oman, Chapter 15), and sport (Schmidt, Chapter 4). The other chapters examine multiple sectors (Westerwinter, Chapter 7; Henriksen and Seabrooke, Chapter 8) or cross-sectoral initiatives (Meidinger, Chapter 3; Wood, Chapter 16). The issue areas examined in the book include climate change (Paiement, Bach), corporate social responsibility

(Wood), tropical deforestation (Carodenuto and Cashore), derivatives trading (Gao and Chen), food safety (Verbruggen and Havinga; Casey), financial technology (Winn), indigenous rights (Oman), labour standards (Wood), sustainable events (Schmidt), sustainable resource management (Auld and Renckens; Foley) and sustainable supply chain management (Meidinger).

The chapters cover the entire six-by-six TBGI analytical matrix (Eberlein et al. 2014, p. 8). Table 1.1 indicates which chapters address each cell of the matrix. The greatest emphasis is on norm formation, which has been the focus of most research on transnational governance. Monitoring, information gathering and enforcement receive almost as much attention, reflecting an interest in how transnational governance works when the rubber meets the road. Agenda-setting and implementation also receive substantial attention, especially in terms of interacting units, interactive mechanisms and pathways, effects of interaction and temporal dynamics.

The chapters analyze interactions at and across numerous scales. They consider interacting units ranging from individuals to entire social systems, with transnational organizations or initiatives playing a large part. Table 1.2 summarizes the units and scales explored in the book.

Table 1.1 Coverage of the TBGI Analytical Matrix in this Book

*Component of regulatory governance*

<i>Dimension of interaction</i>	<b>Agenda/goal setting</b>	<b>Norm formation</b>	<b>Implement-ation</b>	<b>Monitoring, information gathering</b>	<b>Enforcement</b>	<b>Evaluation, Review</b>	<b>All/Un-differentiated</b>
<b>Who or what interacts</b>	Bach; Foley; Meidinger; Wood	Casey; Foley; Gao & Chen; Meidinger; Oman; Schmidt; Verbruggen & Havinga; Winn; Wood	Carodenuto & Cashore; Casey; Meidinger; Oman; Winn	Auld & Renckens; Casey; Meidinger; Paiement; Verbruggen & Havinga	Auld & Renckens; Casey; Meidinger; Paiement; Verbruggen & Havinga	Meidinger; Oman; Schmidt; Wood	Henriksen & Seabrooke; Westerwinter
<b>Drivers and shapers</b>	Bach; Foley; Wood	Casey; Foley; Gao & Chen; Meidinger; Schmidt; Verbruggen & Havinga; Winn	Casey; Meidinger; Winn	Casey; Meidinger; Verbruggen & Havinga	Casey; Verbruggen & Havinga	Schmidt; Wood	Henriksen & Seabrooke; Westerwinter
<b>Mechanisms and pathways</b>	Bach; Foley; Meidinger; Wood	Casey; Foley; Gao & Chen; Meidinger; Oman; Verbruggen & Havinga; Wood	Carodenuto & Cashore; Casey; Meidinger; Oman	Auld & Renckens; Casey; Meidinger; Paiement; Verbruggen & Havinga	Auld & Renckens; Casey; Meidinger; Paiement; Verbruggen & Havinga	Oman; Wood	Henriksen & Seabrooke; Westerwinter
<b>Character of interaction</b>	Bach; Foley; Meidinger; Wood	Foley; Gao & Chen; Meidinger; Oman; Schmidt; Verbruggen & Havinga; Wood	Meidinger; Oman	Auld & Renckens; Meidinger; Verbruggen & Havinga	Auld & Renckens; Meidinger; Verbruggen & Havinga	Meidinger; Oman; Schmidt; Wood	Henriksen & Seabrooke
<b>Effects of interaction</b>	Foley; Bach; Meidinger; Wood	Casey; Foley; Gao & Chen; Meidinger; Oman; Schmidt; Verbruggen & Havinga; Winn; Wood	Carodenuto & Cashore; Casey; Meidinger; Oman; Winn	Auld & Renckens; Casey; Meidinger; Paiement; Verbruggen & Havinga	Auld & Renckens; Casey; Meidinger; Paiement; Verbruggen & Havinga	Meidinger; Oman; Schmidt; Wood	Henriksen & Seabrooke
<b>Change over time</b>	Meidinger; Wood	Casey; Gao & Chen; Oman; Schmidt; Verbruggen & Havinga; Winn; Wood	Carodenuto & Cashore; Casey; Meidinger; Oman; Winn	Auld & Renckens; Casey; Meidinger; Paiement; Verbruggen & Havinga	Auld & Renckens; Casey; Paiement; Verbruggen & Havinga	Oman; Schmidt; Wood	Henriksen & Seabrooke; Westerwinter

Shading key:

1-3 chapters

4-5 chapters

6+ chapters

**Table 1.2. Units and Scales of Analysis in this Book**

<b>Chapter</b>	<b>Micro</b>	<b>Meso</b>	<b>Macro</b>
	Actors or norms interact within a single organization, initiative or jurisdiction	Initiatives or jurisdictions interact within regimes or fields; regimes, fields and discourses shape actors and norms	Regimes or fields interact within complexes or systems; complexes or systems interact with one another
<b>2. Verbruggen &amp; Havinga</b>		Global GFSI and national and transnational non-state food safety schemes interact with state actors and international organizations in a global food safety regime	
<b>3. Meidinger</b>	Sustainability, procurement & C-suite managers interact within lead firms; lead firms, suppliers, auditors, consultancies, NGOs, governments and others interact within and between tiers of global supply chains		
<b>4. Schmidt</b>	Local Olympic organizing bodies interact with state, market and civil society actors within and beyond host cities; cities interact with one another and the global IOC		
<b>5. Winn</b>		National, EU and global banking regulators interact with European banks and industry associations to create a Single European Payment Area	
<b>6. Auld &amp; Renckens</b>	Individual assessors, transnational auditing firms and local audited fisheries interact within global MSC		
<b>7. Westwinter</b>		Transnational governance initiatives interact within global networks	
<b>8. Henriksen &amp; Seabrooke</b>	Issue professionals and transnational business governance organizations interact within a two-level professional and organizational network		
<b>9. Casey</b>	GLOBALGAP interacts with national and global state, market and civil society actors within and outside GLOBALGAP		
<b>10. Carodenuto &amp; Cashore</b>	National and subnational state, market and civil society actors in Cameroon interact with global REDD+ and FLEGT/VPA, which interact with each other in a global tropical forest management regime		
<b>11. Paiement</b>		EU organs interact with extra-EU transnational sustainable biofuel schemes within a transnational assemblage	
<b>12. Bach</b>	Global OGCI interacts with member firms within OGCI, and with states, intergovernmental organizations, firms, industry associations, civil society actors and transnational governance schemes within a global climate governance regime; principles interact in a global climate governance discourse		
<b>13. Gao &amp; Chen</b>		Global OTC and national futures trading schemes interact with each other and with national and international state actors within a global derivatives governance regime; dominant West interacts with marginal East	
<b>14. Foley</b>	Producers, states and other actors interact within fisheries eco-certification schemes; MSC interacts with territorial eco-certification schemes and transnational ethical eco-certification schemes; eco-certification schemes interact with state and non-state actors and institutions; neoliberal, embedded liberal and alter-globalization models of development interact with one another; all these interactions occur within three interacting spheres of action (social forces of production, state-civil society complexes, and world orders), each shaped by three interacting categories of power (material capabilities, ideas and institutions)		
<b>15. Oman</b>	FSC members and organs interact within and between FSC International and FSC Canada; FSC, intergovernmental organizations and the transnational indigenous peoples' movement interact with one another and with international and Canadian law		
<b>16. Wood</b>	Global ISO and ILO and national and global labour unions interact within and outside ISO, in a global social responsibility standardization field		

## 4.2 Improving the Quality of Transnational Regulation

Part I opens on a cautiously optimistic note. Paul Verbruggen and Tetty Havinga (Chapter 2) explore interactions amongst the Global Food Safety Initiative (GFSI), transnational non-state food safety schemes, and state actors in Canada, China and the Netherlands. They argue that distributions of regulatory resources drive interactions, as actors seek to enrol one another's resources. The main interactive strategy is meta-regulation, whereby GFSI benchmarks non-state standards against its own meta-standards and states recognize these standards for enforcement purposes. These interactions produced upward convergence of food safety standards, enhanced legitimacy for GFSI and its benchmarked schemes, and enhanced state capacity. Yet mutual enrolment carries risks, including marginalization of developing country suppliers.

Errol Meidinger (Chapter 3) explores interactions in sustainable supply chain management (SSCM). He unpacks SSCM professional discourse to determine how it depicts TBGIs. The main pathway of interaction in SSCM discourse is the supply chain; the main agent of interaction is the lead firm. Within lead firms, sustainability officers seek to enrol top managers. Externally, sustainability-conscious lead firms try to move toward more direct supplier relationships. Lead firms also foster collaboration within and between supply chain tiers. The discourse is predictably upbeat about the impacts of these interactions, yet there is little evidence that they actually enhance regulatory capacities or improve standards. Meidinger suggests refining the TBGI framework by distinguishing episodic from ongoing interactions and considering interpenetration of regulators and regulated.

Rebecca Schmidt (Chapter 4) examines environmental and social standards for Olympic Games. Over several Olympics, the International Olympic Committee (IOC) set down initial rules for bids; prospective host cities, facing pressure from sustainability advocates and competition from other cities, proposed innovative environmental and social standards; the IOC, facing critical scrutiny, incorporated these into its regulations for future hosts; and subsequent aspiring host cities built on this base, proposing further regulatory innovations. This process of cyclical regulation institutionalized local innovations as global standards and provided entry points for weaker actors. Yet these gains appeared only in sophisticated cities in advanced democracies boasting vigorous civil society; in other circumstances (for example, the Sochi 2014 Winter Games), the results were less successful.

Jane Winn (Chapter 5) presents a cautionary tale of failure to leverage TBGIs: the Single European Payments Area (SEPA). EU regulators delegated creation of SEPA to banks, expecting them to fund the process. Yet banks resisted, and many refused to participate; regulators then reacted with a heavy regulatory hand. In the end, after seventeen largely fruitless years, EU regulators mandated the use of SEPA for all payments. Winn argues that the failure of these interactions was the product of cognitive limitations on both sides. EU regulators failed to recognize the public goods characteristics of proprietary payment systems, while the banks systematically underestimated the magnitude of the costs and challenges posed by SEPA. Winn suggests that more constructive TBGIs could be achieved by treating proprietary market infrastructures as partial public goods, and establishing a consensus-based co-regulatory process.

Graeme Auld and Stefan Renckens (Chapter 6) apply social network analysis to TBGIs, focusing on Marine Stewardship Council (MSC) audits. They analyze interactions amongst fifteen MSC audit firms over sixteen years in relation to 312 fisheries. They find some indication that new and established audit firms compete on audit scores and audit duration, but the evidence is equivocal. Moreover, the implications for regulatory quality are unclear. Auld and Renckens also examine the mobility of individual assessors, finding that each audit firm employed multiple assessors who also worked for other auditors. Assessor mobility can diffuse knowledge and good practices, but can lead audit firms to free-ride on others' training expenditures, and can also limit audit firms' independence, with implications for regulatory quality.

Oliver Westerwinter (Chapter 7) also uses social network analysis, shifting the focus to the expanding universe of transnational multi-stakeholder governance initiatives, which increasingly overlap. Westerwinter shows that overlaps amongst 457 transnational governance initiatives are highly uneven over time and across issue areas. He shows that shared issue-area focus, large size,



clustering and popularity drive the emergence of institutional overlaps. These findings have significant implications for both regulatory quality and advancing marginalized actors' interests. For example, they suggest that weaker actors should concentrate their efforts on large, focal schemes.

Lasse Folke Henriksen and Leonard Seabrooke (Chapter 8) argue that two-level networks of issue professionals and organizations create the obstacles to better regulation and advancement of marginalized interests revealed by other chapters. They identify four such obstacles: gaps between policy design and implementation; competing interests within standard-setting bodies; power asymmetries in standards adoption; and professionals' desire for autonomy and issue control. They argue that these obstacles are outcomes of strategic behaviour by issue professionals who network to ensure they control governance of important issues. Henriksen and Seabrooke analyze these interactions as a two-level network, comprised of inter-personal and inter-organizational networks. Their analysis helps explain how regulatory capacities are developed and distributed, and why efforts to harness TBGIs often falter.

### 4.3 Advancing the Interests of Marginalized Actors

The chapters in Part II grapple more directly with how to harness TBGIs to advance (or frustrate) the interests of marginalized actors. Donal Casey (Chapter 9) documents the negative impact of early institutionalization on transparency, accountability and empowerment of marginalized actors in the field of food safety. Casey traces the growth of the GLOBALGAP farm assurance system from an informal retailers' initiative to a powerful organization involved in regulating food safety and agricultural practices globally. Early interactions amongst retailers, producers and suppliers enabled big business to entrench its dominant position. Governments, NGOs and marginalized actors such as smallholders increasingly pressed GLOBALGAP to adopt more democratic governance processes and more inclusive standards, but the early institutionalization of industry dominance limited the potential of these interactions. Casey also presents a nuanced theoretical account of legitimation as both driver and outcome of TBGIs.

Sophia Carodenuto and Ben Cashore (Chapter 10) examine TBGIs in the implementation of international policies for timber legality (FLEGT/VPA) and climate change mitigation through avoided deforestation (REDD+) in Cameroon. These programs appear to have frustrated their stated aim to empower domestic forestry operators and improve forest practices. A 'direct access' pathway of global-local influence dominated interactions in Cameroon, with a causal logic of empowerment. But the chosen implementation mechanisms emphasized formality, expertise, technical complexity, and governmental enforcement. The result was to exclude most Cameroonian forest operators, marginalize non-experts, privilege export-oriented firms and accentuate the government's limitations.

Phillip Paiement (Chapter 11) presents another story of harnessing TBGIs to support empowerment in theory, but creating disempowerment in practice, this time in the context of European biofuels policy. The EU's goal was to expand renewable energy while ensuring the sustainability of biofuel production. It delegated monitoring and enforcement of sustainability rules to voluntary schemes that met standards of reliability, transparency, and independent auditing. The EU recognized nineteen such schemes but failed to assess their transparency. EU policies triggered a proliferation of voluntary schemes and a downward trend in participation, transparency and accountability, further empowering powerful agri-business interests at the expense of marginalized communities.

Matthew Bach (Chapter 12) is cautiously optimistic about the potential of TBGIs steered by powerful actors to improve the oil industry's response to climate change, based on a case study of the nascent Oil & Gas Climate Initiative (OGCI). He examines agenda-setting interactions amongst OGCI, industry associations, oil companies, other transnational governance initiatives and international organizations. Building on Braithwaite and Drahos (2000), Bach proposes a hybrid form of modelling in which governance actors such as OGCI simultaneously model themselves after others and present themselves as models for emulation. He speculates that OGCI by endorsing a two-degree limit and promoting best practices, OGCI could trigger an upward regulatory ratchet, weave webs of dialogue

allowing it to enrol powerful industry and interstate actors, and initiate a micro-macro sequence to achieve large-scale regulatory change by shifting dialogue to more proactive, progressive fora.

Modelling also plays a central role in Simin Gao and Christopher Chen's (Chapter 13) analysis of TBGIs amongst transnational governance schemes for financial derivatives trading. Gao and Chen focus on responses by East Asian regulators and market operators to governance models exported from Western capitalist economies. They apply DiMaggio and Powell's (1983) concepts of coercive, mimetic and normative isomorphism to explain why Western models dominate, why governance varies between the futures and over-the-counter (OTC) markets, and why Asian actors sometimes resist Western models. The futures and OTC markets evolved separately, but each converged around a Western governance model through mimetic and normative isomorphism. Both regimes were later disrupted by the G20's coercive isomorphism, which consolidated Western dominance but generated resistance by some Asian regulators and exchange operators. The authors emphasize not just asymmetric Western power, but also the agency of marginal Asian actors, who resist Western models to protect local interests.

Paul Foley (Chapter 14) examines the potential for TBGIs to advance marginalized actors in fisheries governance. He argues that MSC's strained relationship with producers spurred the emergence of two counter-movements: territorial eco-certification schemes responded to MSC's neglect of national political economies; ethical eco-certification schemes responded to its neglect of social issues. Foley applies Robert Cox's (1987) critical international political economy to integrate production, power and social development into the TBGI research agenda. Foley argues that the counter-hegemonic potential of ethical eco-certification is limited by its market-driven approach, the entrenched advantage of large-scale producers and the force of international trade rules. New collaborations might overcome these constraints by shifting MSC toward an embedded liberal model in which the state moderates market forces, or by building a more radical bottom-up coalition of ethical and territorial eco-certification initiatives to forge new shared identities amongst fishery workers and transnational economic actors.

Natalie Oman (Chapter 15) is more sanguine about harnessing TBGIs to strengthen standards and advance marginalized actors. She documents an iterative process of interaction amongst the Forest Stewardship Council (FSC), international law and national law around the norm of indigenous peoples' free, prior and informed consent (FPIC). Indigenous norm entrepreneurs leveraged FSC's inclusive governance structures, international human rights law, and interactions between FSC International and FSC Canada to strengthen FPIC standards in FSC. They thereby opened an avenue to establish a *de facto* consent power over forestry projects in Canada, and to strengthen customary international law on FPIC. The chapter shows that TBGIs have implications for the formation of international law and should be integrated into international legal theory.

Finally, Stepan Wood (Chapter 16) uses a case study of the negotiation of ISO 26000 to theorize how marginalized actors can exploit TBGIs to secure favourable regulatory outcomes. Despite being marginalized in the International Organization for Standardization (ISO), organized labour became highly influential in drafting ISO 26000, often over opposition from industry, government and other actors. Wood offers a theory of regulatory legitimation and enrolment to explain these interactions. He finds that organized labour was able to prevail against more powerful adversaries by leveraging the uneasy relationship between one organization (ISO) with a legitimacy 'deficit', and another (the International Labour Organization) that could enhance the first's legitimacy. He proposes a triadic 'underdog-booster-regulator' strategy through which marginalized actors can prevail in transnational governance struggles by exploiting such legitimacy differentials.

Overall, the chapters paint a decidedly mixed picture of opportunities to steer TBGIs to improve regulatory quality and advance marginalized interests. Only five chapters find positive effects from TBGIs on one or both of those goals. In three chapters, TBGIs advanced both regulatory quality and marginalized actors' interests: Schmidt (Chapter 4), Oman (Chapter 15), and Wood (Chapter 16). Two chapters identify improvements in regulatory quality alone: Verbruggen & Havinga (Chapter 2) and Bach (Chapter 12); Westerwinter (Chapter 7) also suggests ways in which TBGIs might improve

regulatory quality. The rest of the chapters find (or predict) that TBGIs have mixed, unclear or negative impacts on regulatory quality or marginalized actors. We explore these findings in more detail in the Conclusion, along with their wider implications.

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<sup>i</sup> We prefer the terminology of ‘non-state’ over ‘private’ governance because there is no *a priori* private sphere of individual activity and market exchange. Public and private are social constructs. To use them as analytical categories risks obscuring how they are deployed to structure and restructure the very relations that the study of governance is intended to illuminate (Wood 2003, pp. 138–39; Zumbansen 2011). This risk is increased by a tendency to identify ‘public’ with ‘state’ and ‘private’ with ‘non-state’ even though the state has no monopoly over ‘public’ affairs, many non-state actors and institutions are active in the ‘public’ sphere, and state entities are often active players in ‘private’ markets.

<sup>ii</sup> Our term ‘governance interactions’ is similar to Jan Kooiman’s term ‘interactive governance’ insofar as interaction is a characteristic of all governance (Kooiman 2003), but we part company with scholars who use the term ‘interactive governance’ to denote one specific, normatively desirable, variety of governance (for example Edelenbos and van Meerkerk 2016).

<sup>iii</sup> Cafaggi and Pistor distinguish between regulatory capacities and regulatory capabilities, but the distinction is not relevant for our purposes.

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