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## Harnessing TBGIs for Regulatory Quality and Marginalized Actors

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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.

# Harnessing TBGIs for Regulatory Quality and Marginalized Actors

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## Abstract

The chapters of this book paint a mixed and not particularly optimistic picture of the prospects for harnessing 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—to improve the quality of transnational regulation and advance marginalized interests. This chapter synthesizes key findings about the impact of TBGIs of regulatory quality and marginalized actors, explores the implications of these findings for identifying and shaping TBGIs that foster regulatory quality or advance marginalized interests, and presents concluding reflections on lessons learned and future research directions.

## Keywords

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

## 1. Introduction

This book asks whether and how transnational business governance interactions (TBGIs)—the myriad overlaps, intersections and collisions amongst the actors and institutions involved in transnational regulation of business activity (Eberlein et al. 2014; Wood et al. 2015)—can be harnessed to enhance the quality of regulation and advance marginalized interests. The chapters explore numerous ways to mobilize TBGIs in pursuit of these goals, as well as constraints on doing so. In this concluding chapter we synthesize key findings about the impact of TBGIs (Part 2) and explore their theoretical and practical implications for identifying and shaping interactions that foster regulatory quality or advance marginalized interests (Part 3), before concluding with some reflections on lessons learned and future research directions (Part 4).

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## 2. Findings

The fifteen chapters that make up the body of this book paint a mixed and not particularly optimistic picture of the prospects for harnessing TBGIs to improve regulatory quality and advance marginalized interests. Table 17.1 summarizes the authors' findings and projections. Six chapters identify positive impacts of TBGIs on one or the other goal. Three of those find improvements for both regulatory quality and marginalized actors: Rebecca Schmidt (Chapter 4: sustainable mega-events), Natalie Oman (Chapter 15: free, prior and informed consent (FPIC) in sustainable forestry) and Wood (Chapter 16: the ISO 26000 social responsibility guide). Of the other three, Paul Verbruggen and Tetty Havinga (Chapter 2: Global Food Safety Initiative—GFSI) find improvement in regulatory quality but deterioration in the position of marginalized actors. Matthew Bach (Chapter 12: Oil & Gas Climate Initiative—OGCI) projects improvement in regulatory quality, subject to a strong risk of greenwashing. Oliver Westerwinter (Chapter 7: networks of transnational public-private initiatives) suggests pathways by which TBGIs might improve regulatory quality, but does not make empirical findings to this effect.

In the rest of the chapters, the impacts of TBGIs on regulatory quality or marginalized actors are mixed, unclear or negative. Errol Meidinger (Chapter 3: sustainable supply chain management—SSCM), Lasse Folke Henriksen and Leonard Seabrooke (Chapter 8: professional-organizational networks) suggest that the consequences of TBGIs are mixed for both goals. Two further chapters find negative impacts on regulatory quality, but do not address marginalized actors: Jane Winn (Chapter 5: Single European Payments Area—SEPA) and Auld and Renckens (Chapter 6: Marine Stewardship Council—MSC). The remaining five chapters do not address regulatory quality but suggest that TBGIs disadvantaged marginalized actors: Donal Casey (Chapter 9: the GLOBALGAP good agricultural practices regime), Sophia Carodenuto and Benjamin Cashore (Chapter 10: deforestation and forest legality in Cameroon), Phillip Paiement (Chapter 11: sustainable biofuels), Simin Gao and Christopher Chen (Chapter 13: derivatives trading), and Paul Foley (Chapter 14: fisheries eco-certification). All five suggest ways to steer interactions in more desirable directions.

Enhancement of regulatory quality and advancement of marginalized actors can be assessed in terms of regulatory capacities, outputs, outcomes and impacts, as discussed in Chapter 1. We organize our discussion of the chapters' findings around these four dimensions.

### 2.1 Regulatory Capacities

Regulatory capacities include a range of attributes that enable actors to achieve their regulatory goals; examples include material and symbolic resources, organizational capabilities, network resources, capacity for learning and resilience to shocks (see Chapter 1). Three of these attributes emerge from the chapters as particularly significant: material and symbolic resources, network resources, and learning capacity. We focus on those here.

The chapters reveal that the relationship between TBGIs and regulatory capacities is bidirectional: interactions affect regulatory capacities, and regulatory capacities shape interactions. Uneven distribution of regulatory resources influences TBGIs in at least two ways. It tilts interactions in favour of those who already have resources (see especially Foley, Chapter 14), and it drives actors who lack resources to interact with others in hopes of securing them (see especially Verbruggen and Havinga, Chapter 2).

**Table 17.1 Effects of TBGIs on Regulatory Quality and Marginalized Actors**

Effects on regulatory quality	Effects on marginalized actors	Chapters
Positive	Positive	4. Schmidt (Sustainable mega-events) 15. Oman (FPIC in the Forest Stewardship Council) 16. Wood (ISO 26000 and organized labour)
Positive	Negative	2. Verbruggen & Havinga (GFSI)
Possibly positive	Unknown	7. Westerwinter (Networks of transnational public-private governance initiatives) 12. Bach (OGCI)
Mixed	Mixed	3. Meidinger (SSCM) 8. Henriksen & Seabrooke (professional-organizational networks)
Negative	Unknown	5. Winn (SEPA) 6. Auld & Renckens (MSC audits)
Unknown	Negative	9. Casey (GLOBALGAP) 10. Carodenuto & Cashore (REDD+ and FLEGT/VPA deforestation and forest legality regimes in Cameroon) 11. Paiement (EU Renewable Energy Directive) 13. Gao & Chen (Asian derivatives trading) 14. Foley (Fisheries eco-certification)

### 2.1.1 Material and symbolic resources

The chapters find a strong relationship between TBGIs and the distribution of material and symbolic resources. Starting with material resources, the chapters suggest that a major factor impeding the enhancement of marginalized actors' material resources is the reluctance of powerful actors to redistribute such resources. In the case of supply chain management, for example, lead firms offer suppliers material incentives that are usually too modest to support genuine movement toward sustainable practices (Meidinger, Chapter 3). Interactions between sustainable fisheries certification schemes and small-scale fishers did little to improve the latter's material position (Foley, Chapter 14). The support mobilized by European and international organizations in Cameroon did little to benefit marginalized forest producers or government agencies, though it might line the pockets of some officials (Carodenuto and Cashore, Chapter 10). And the powerful market actors behind transnational food safety schemes failed to provide sufficient resources to enable small-scale producers to implement more stringent standards (Verbruggen and Havinga, Chapter 2). In short, transnational regulators' rhetorical commitments to advancing marginalized actors are often belied by their unwillingness to back up those commitments with adequate material resources (Auld, Renckens and Cashore 2015, p. 117).

In contrast, several chapters find that TBGIs enhanced the symbolic resources of particular actors or regulatory regimes. For example, interactions with state actors enhanced GFSI's authority, legitimacy and credibility, state actors' knowledge and competence, and the symbolic capacities of the food safety regime (Verbruggen and Havinga). Isomorphic adoption of Western models of derivatives regulation enhanced the credibility of marginalized East Asian states and market operators, and reduced uncertainty over regulatory design choices (Gao and Chen, Chapter 13). Interactions around greening the Olympics enhanced the symbolic resources of the Olympic regime by mobilizing host cities' legitimacy, credibility, expertise, local knowledge and environmental commitments (Schmidt, Chapter 4).

Interactions amongst the International Organization for Standardization (ISO), the International Labour Organization (ILO) and organized labour enhanced ISO's expertise and legitimacy and the authority of organized labour, although its effect on ILO authority was ambiguous (Wood, Chapter 16).

Meidinger (Chapter 3) predicts that supply chain interactions may enhance firms' symbolic resources, including sustainability commitments, expertise, and increased salience of sustainability in decision-making. Similarly, Bach (Chapter 12) speculates that interactions involving OGCI may enhance participating companies' collective expertise and legitimacy by sharing best practices, developing common measurements, and communicating commitments and progress. Both Bach and Meidinger warn, however, that these prospects may be defeated by economic self-interest and regulatory capture.

On the negative side, TBGIs sometimes hindered development of symbolic resources. With SEPA (Winn, Chapter 5), the banks' legitimacy deficit and the cognitive limitations of banks and European Union (EU) regulators impaired the legitimacy of EU regulation and bank self-regulation alike, while limiting the capacity of the regulatory regime. Casey (Chapter 9) found that early institutionalization enhanced GLOBALGAP's technical expertise and legitimacy with industry, but prevented it from enhancing its credibility with governments, civil society and marginalized actors in supply chains. In Cameroon, international actors' expressed goal of enhancing local expertise was frustrated by the use of policy tools that had the opposite effect (Carodenuto and Cashore, Chapter 10). Foley (Chapter 14) found that fisheries eco-certification schemes' emulation of neoliberal Food and Agricultural Organization (FAO) guidelines enhanced the schemes' legitimacy and reinforced the idea that voluntary eco-certification produces win-win economic and social outcomes; yet these same symbolic resources limited the schemes' capacity to spur transformative change. Finally, Henriksen and Seabrooke (Chapter 8) caution that issue professionals' network interactions can consolidate professional expertise and prestige at the expense of transnational governance organizations.

### 2.1.2 Network resources

The chapters suggest that network resources can either help or hinder efforts to enhance regulatory quality and advance marginalized actors. Westerwinter's Chapter 7 on membership overlaps amongst transnational governance initiatives suggests that inter-organizational network ties can enhance regulatory quality by providing information about members' missions, goals, and participants; unlocking the resources of well-connected organizations; and facilitating exchange of information and lessons learned. These positive network effects are supported by other research (for example, Smith and Fischlein 2010).

Other chapters point to potential drawbacks of networks. Auld and Renckens observe that the mobility of individual auditors may compromise the independence of MSC audit firms. Henriksen and Seabrooke note that the pursuit of issue control by professionals within networks is responsible for many of the obstacles to productive TBGIs documented in this book. Gao and Chen suggest that networks of financial institutions and professionals spread the Western models that leave little room for the agency of marginalized East Asian actors. And Paiement finds that regulatory assemblages (which have some network characteristics) may not produce the positive externalities that some scholars (for example, Perez 2011) have identified, especially not for marginalized actors.

### 2.1.3 Capacity for learning

The chapters provide evidence that capacity for learning fosters productive interactions. Schmidt indicates that certain host cities' openness to experimentation and innovation fostered an upward spiral in social and environmental standards for Olympic Games. Winn, by contrast, observes that limited learning capacity contributes to unproductive interactions. Learning requires openness to feedback and revision in light of experience, but in establishing SEPA European regulators dug in their heels and shut down dialogue with banks as implementation languished. Winn's analysis suggests that a deficit in learning capacity will lead to repeated downward spirals of frustrated expectations.

What sorts of TBGIs can enhance actors' or regulatory systems' learning capacity? In the Olympic example, an iterative, global-local cycle of norm development, implementation, review and revision promoted policy learning (Schmidt). But the frustrating local-global interactions over the

deforestation and forest legality regimes in Cameroon provide an illuminating contrast (Carodenuto and Cashore). Rather than iterated loops of norm development, experimentation and adjustment, policy momentum was unidirectional from global to local, with no feedback loops to facilitate learning.

Four other modes of interaction also appear to enhance learning: modelling, mentoring, professional mobility and overlapping membership. Bach observes that modelling often works in two directions: the same organization models itself after others and presents itself as a model to be emulated. This dual approach could initiate cycles of mutual learning, although it is too early to tell whether this will happen with OGCI. Different forms of modelling may promote or hinder learning to various degrees. Modelling based on unreflective imitation is unlikely to promote learning. Uncritical emulation can be driven by regulators' incentives to satisfice or to appear sophisticated. Braithwaite and Drahos (2000, pp. 585-92) call the first kind of emulator a model miser, the second a model modernizer. We see evidence of both types in Gao and Chen's analysis of derivatives governance in Asia, coupled with some local adaptation.

Meidinger's study of sustainable supply chain management suggests that personal relationships based on mentoring, cajoling and information-sharing – rather than impersonal interactions based on formal rules and third-party monitoring – can promote mutual learning and enhance suppliers' capacity for adaptation and innovation. These benefits are often limited by an emphasis on productivity, however. Overlapping memberships (Westerwinter) can promote learning via epistemic arbitrage and diffusion of knowledge, as can mobility of professionals across organizations. Yet mobility may lead to an undersupply of competent professionals due to free-riding on other organizations' training efforts (Auld and Renckens; Henriksen and Seabrooke).

## 2.2 Regulatory Outputs

We consider two main regulatory outputs in this book: the design of regulatory institutions and the content of regulatory programs. We begin with institutional design, which both shapes and is shaped by TBGIs. Some findings of the chapters relate to institutional design generally; others relate to design features particularly relevant to advancing marginalized actors, namely participation, transparency and accountability.

### 2.2.1 Institutional design features

On institutional design generally, Verbruggen and Havinga find that mutual enrolment by states and private food safety schemes improved institutional design by lowering states' enforcement costs, facilitating risk-based prioritization of state resources, and increasing the efficiency of food safety regulation. Gao and Chen observe similarly that isomorphic TBGIs generated efficiencies for Asian derivatives regulators and market participants. Schmidt argues that local-global interactions institutionalized sustainability in the policies and organs of the Olympic movement. Bach speculates that TBGIs around OGCI might shift dialogue from a reactive, regressive industry forum toward a potentially more proactive, progressive one. In contrast, interactions around SEPA failed to enhance the design of European banking governance (Winn). These interactions triggered creation of the self-regulatory European Payments Council, which could have enhanced regulatory efficiency and innovativeness. But an effective co-regulatory process never emerged, as EU regulators refused to grant the Council a substantial regulatory role.

The chapters have even more to say about participation, transparency and accountability. Schmidt, Oman and Wood all document improvements in these institutional features as a result of TBGIs. Local-global interactions led to more open, inclusive governance of Olympic Games, at least for well-resourced actors (Schmidt). Interactions enhanced indigenous voice and participation in FSC-Canada and FSC-International (Oman). And TBGIs led to a markedly more transparent and inclusive ISO standard-setting process, at least temporarily (Wood).

In contrast, several chapters find negative or ambivalent effects of TBGIs on participation, transparency and accountability. Paiement concludes that delegating enforcement of biofuel

sustainability standards to voluntary schemes reduced these attributes, especially for vulnerable stakeholders. In Cameroon, international organizations' preference for technical policy tools inhibited inclusive governance and did little to enhance transparency in the informal forest sector (Carodenuto and Cashore). Interactions with states and non-governmental organizations (NGOs) produced modest improvements in participation and transparency in GLOBALGAP, but did not dislodge industry's organizational logic and control (Casey).

Similarly, interactions in fisheries eco-certification created some movement toward transparent and inclusive governance, but did not substantially empower marginalized producers and workers (Foley). The picture in derivatives markets is also mixed (Gao and Chen). Adopting Western regulatory models facilitated peripheral East Asian actors' participation in derivatives regulation. Changes imposed by the G20 after the global financial crisis enhanced transparency but hindered East Asian participation, further concentrating trading in Western market institutions. Interactions in SSCM were also ambivalent, modestly increasing transparency, but not appreciably relaxing top-down control by lead firms (Meidinger). Finally, OGCI relies on self-selective transparency, has no mechanism for accountability and restricts participation to major oil companies (Bach).

### 2.2.2 Programs and standards

Our second inquiry at the level of regulatory outputs considers the relation between TBGIs and the ambition and scope of regulatory programs or standards. Four chapters find that TBGIs strengthened programs and standards; five find mixed or unclear effects; and two find negative effects.

Beginning with positive effects, interactions among private schemes, states and GFSI tightened GFSI member schemes' standards for food safety, auditor competence, audits and fraud prevention (Verbruggen and Havinga). Interactions among the International Olympic Committee (IOC), host cities and non-state actors broadened Olympic standards to include environmental and sustainability concerns, and generally strengthened environmental and social standards for Olympic games (Schmidt). TBGIs in sustainable forestry led to more ambitious and binding standards for FPIC and protection of indigenous culture and law (Oman). Interactions around ISO produced broader and stronger labour standards in ISO 26000 than in other contemporary social responsibility initiatives (Wood).

TBGI impacts on regulatory ambition and scope were ambivalent in several cases. Auld and Renckens conclude that it is unclear whether competition amongst audit firms enhances or reduces audit rigor. Bach suggests that OGCI may produce an upward regulatory ratchet through its commitment to a two-degree climate target and to principles of best practice and continual improvement, but recognizes that this may result only in 'greenwashing'. Foley shows that interactions amongst the MSC, territorial and ethical fisheries eco-certification programs resulted in upward convergence around FAO norms, some expansion to small-scale fisheries, and (for ethical certification) increased focus on socioeconomic advancement of marginalized producers. Yet these interactions also reproduced neoliberal or embedded liberal development models incapable of producing structural transformation.

Casey finds that interactions enhanced GLOBALGAP's standards for third-party compliance verification. Yet the trade-off was reduced emphasis on sustainability and enhancement of marginalized producers' capacities. Meidinger, by contrast, observes a move away from third-party verification toward informal coaching and mentoring in SSCM. It is unclear whether this shift will be accompanied by greater protection for marginalized workers, but it is unlikely to change the power disparity between lead firms and their global suppliers.

Finally, Paiement and Winn both find that TBGIs had a negative effect on regulatory standards. Interactions between EU regulators and banks stymied the development of standards for seamless cross-border Eurozone payments for over a decade (Winn). In EU biofuels, limited upward convergence around official sustainability criteria was overwhelmed by a trend toward narrower, less ambitious social and environmental standards (Paiement).

### 2.3 Regulatory Outcomes

As discussed in Chapter 1, regulatory outcomes and impacts are our ultimate interest, but their assessment is difficult. We therefore restrict our attention to aspects of regulatory outcomes that are easier to assess: uptake of regulation by targets and synergies with other regulatory programs. Several chapters find that TBGIs resulted in greater uptake, greater synergy or both. Only a few find that TBGIs hindered regulatory uptake or synergy.

Regulatory uptake encompasses the number of actors implementing a regulatory program, the program's regulatory market share, and actors' conformity to program standards. Uptake in these senses was an outcome of TBGIs in several cases. One clear example is GFSI (Verbruggen and Havinga): interactions amongst GFSI, its member schemes and governments increased the number of firms implementing GFSI-benchmarked food safety standards as well as member schemes' share of the food safety certification market; interactions also improved compliance with state regulations. Another example is the proliferation of sustainable biofuel certification schemes after the revised EU Renewable Energy Directive (Paiement). In contrast, however, uptake of stronger Olympic environmental and social standards was limited by local circumstances and the sunk-cost effect of host city selection (Schmidt). Uptake of SEPA was hindered by the inability of banks to recoup their private costs of providing an integrated cross-border payment system (Winn). And uptake of standards for forest legality and avoided deforestation in Cameroon was limited by a misfit between the chosen regulatory tools and the local political economy (Carodenuto and Cashore).

The picture is similar for regulatory synergies. Several chapters find that TBGIs enhanced synergies amongst regulatory programs in the same policy space. For example, interactions in transnational food safety governance led to greater harmonization of state and industry standards (Verbruggen and Havinga). The spread of SSCM codes and contracts has been accompanied by some harmonization of expectations and practices in certain sectors (Meidinger). TBGIs around the Olympics have increased harmonization of sustainability standards for the entire events-management sector (Schmidt). Oman points to a potential increase in synergy amongst private forest certification systems, international human rights law and domestic law. Gao and Chen find that TBGIs led to harmonization of derivatives regulation, albeit around Western models. All of this is consistent with Westerwinter's prediction that overlapping memberships promote regulatory synergies.

Again, there are counter-examples. In particular, Paiement shows that delegating enforcement to non-state biofuels certification schemes resulted in a simultaneous harmonization of criteria and divergence in institutional design, resulting in a downward trend in ambition, inclusiveness, transparency and accountability—at odds with the goals of EU biofuels policy.

### 2.4 Impacts, Tensions and Tradeoffs

Some chapters go beyond regulatory outcomes to consider the impacts of TBGIs on social or environmental conditions. These are generally less optimistic. Schmidt finds that TBGIs produced social and environmental improvement for some Olympic Games but not others. Meidinger concludes that lead firm-supplier interactions may improve sustainability performance, but perpetuate suppliers' subordination. Foley concludes that TBGIs in the capture fisheries sector might improve conditions for some small-scale producers, but perpetuate the structural inequity of fisheries production. Others see only negative impacts. The impact of TBGIs in Cameroon was to exclude most domestic forest operators, marginalize non-experts, and benefit a few export-oriented multinationals (Carodenuto and Cashore). Interactions around GLOBALGAP perpetuated the marginalization of small-scale producers (Casey). On the positive side, however, Oman suggests that interactions around FPIC will benefit indigenous peoples, vindicating their right to consent to forest operations in their territories. Bach speculates that interactions involving the oil and gas industry might create a regulatory ratchet, leading to climate change mitigation or adaptation.

The chapters also reveal tensions and trade-offs amongst regulatory capacities, outputs, outcomes and impacts, and between regulatory quality and marginalized actors. For example, more



ambitious standards and more rigorous conformity verification can conflict with the interests of small-scale producers (for example, Verbruggen and Havinga). There can be trade-offs between the ambition and enforceability of standards: international actors promoted ambitious standards advancing marginalized interests in Cameroon, but legal unenforceability and limited government resources robbed them of effectiveness (Carodenuto and Cashore). There can also be trade-offs between different regulatory capacities. GLOBALGAP chose to enhance its enforcement capacity at the expense of marginalized producers' ability to participate or to practice sustainable agriculture (Casey).

Increasing regulatory uptake and synergy often conflict with advancing marginalized interests. Thus, food safety governance interactions disadvantaged marginal players in global agrifood markets even as they enhanced synergies and uptake (Verbruggen and Havinga). Likewise, while uptake of biofuel certification standards increased in the EU, powerful agri-business interests benefitted at the expense of marginalized communities (Païement). Interactions in derivatives regulation increased uptake and synergy, but further entrenched the power of Western states and economic actors, deepening the marginalization of their Asian counterparts (Gao and Chen). Harnessing TBGIs to enhance regulatory quality and advance marginalized actors is partly a matter of minimizing or avoiding tensions like these.

### 3. Promoting and Hindering Productive Interactions

Building inductively on the findings just outlined, in this Part we theorize several factors that enable or hinder productive TBGIs, by which we mean interactions that improve regulatory quality or advance the interests of marginalized actors. We find the first factor, the distribution of regulatory resources (3.1), to yield the richest insights. Varying complementary and conflicting configurations of regulatory resources influence cooperation, competition, regulatory enrolment, legitimation and other governance interactions. Indeed, this factor can be broken down into four components, each with its own implications for harnessing TBGIs: uneven distribution of regulatory resources (3.1.1), compatibility of capacities and of goals (3.1.2), legitimation deficits and differentials (3.1.3), and organizational clusters of capabilities (3.1.4). Other factors include the presence of regulatory entrepreneurs (3.2), characteristics of regulatory environments (3.3), the openness and inclusivity of regulatory governance organizations (3.4), conflicts between individual and collective interests (3.5), mismatched problem-solving logics (3.6), iterative regulatory cycles (3.7) and cross-scalar linkages (3.8). Five of these factors both hinder and promote productive interactions, four promote productive interactions, and two are only hindrances (Table 17.2). For each factor, we consider practical implications for harnessing TBGIs in productive directions.

**Table 17.2 Factors that Promote or Hinder Productive Interactions**

<b>Factors that both promote and hinder productive interactions</b>	<b>Factors that promote productive interactions</b>	<b>Factors that hinder productive interactions</b>
Uneven distribution of regulatory resources (3.1.1) Regulatory entrepreneurs (3.2) Regulatory environments (3.3) Iterative regulatory cycles (3.7) Cross-scalar linkages (3.8)	Compatible capacities and goals (3.1.2) Legitimacy deficits and differentials (3.1.3) Capacity clusters (3.1.4) Open and inclusive governance (3.4)	Conflicting interests (3.5) Mismatched logics (3.6)

#### 3.1 Distribution of Regulatory Resources

A key factor influencing TBGIs is the distribution of the regulatory resources transnational regulators strive to mobilize and appropriate. Uneven distribution of regulatory resources drives both cooperation and competition, which may advance or hinder efforts to improve regulatory quality and

advance marginalized interests (3.1.1). In addition, specific configurations of regulatory capacities can foster productive interactions: compatibility of capacities and of goals, legitimation deficits and differentials, and organizational clusters of capabilities (3.1.2-3.1.4).

### 3.1.1 Uneven Resource Distributions Driving Enrolment, Cooperation and Competition

We have so far treated regulatory resources as capacities that regulators mobilize to achieve their goals, but the chapters highlight a second aspect: regulatory resources are also rewards that regulators reap when they achieve their goals. Successful regulators enjoy a range of personal and institutional rewards, including prestige, legitimacy, revenues, participants and regulatory market share. These in turn help constitute regulators' capacities to achieve their goals in the future. Regulatory resources – understood as both capacities and rewards – are distributed unevenly. Some, including adherents and market share, are also finite. Uneven distribution of regulatory capacities drives actors to cooperate, enrolling one another into desired roles and mobilizing one another's capacities in support of individual or shared agendas (Verbruggen and Havinga, Chapter 2). Scarcity of regulatory rewards drives actors to compete, seeking to maximize their own share of a limited good.

The uneven distribution of regulatory resources – including money, technology, people, connections, motivations, knowledge and legitimacy – drives TBGIs, as actors who lack the resources to achieve their goals seek to enrol other actors into desired roles, mobilizing their regulatory capacities in support of their own agendas or a shared agenda (Black 2003). For example, developed states' limited capacity to regulate production outside their borders drives them to interact with developing states and transnational governance schemes. Those schemes' lack of state-based democratic legitimacy drives them to interact with states (Verbruggen and Havinga; Paiement, Chapter 11). Developing states' desire for material and symbolic resources (for example, exports, foreign aid) drives them to interact with developed states and international organizations (Carodenuto and Cashore, Chapter 10).

Enrolment refers to securing an actor's acceptance of a given role in a regime or network (Latour and Woolgar 1986). Regulatory roles include rule-maker, rule-taker, beneficiary, intermediary, legitimator, adviser, interpreter, verifier, enforcer, adjudicator, and so on. The main goal of enrolment, as Verbruggen and Havinga note, is to mobilize the enrolled actor's material and symbolic resources in support of the enrolling actor's agenda. Its main limitation is that the enrolling actor does not control the enrolled actor, and so must rely on indirect and uncertain 'action at a distance' (Grabosky 1995). To accept enrollment, an actor must be convinced that there is a net benefit (including avoided costs) to accepting the role. The principal benefit for the enrolled actor is the prospect that it can in turn mobilize the resources of other actors or the network. While the benefits of enrolment are often highly asymmetrical, enrolment is cooperative in the sense that the enrolled actor accepts and benefits from the arrangement.

It is difficult to overstate the importance of regulatory enrolment for the questions addressed in this book. Every successful case in this book of harnessing TBGIs to enhance regulatory quality or advance the interests of marginalized actors depends on enrolling other actors, and thus mobilizing their resources. Olympic host cities enroll local business actors, NGOs and standardization bodies, while the IOC enrolls local actors' legitimacy and innovativeness, enhancing its regulatory capacity and ratcheting up sustainability standards (Schmidt, Chapter 4). ISO enrolled the ILO and other intergovernmental organizations to lend legitimacy, expertise and authority to ISO 26000; organized labour enrolled the ILO to boost its impact on negotiations; and the ILO enrolled ISO's credibility with business and its implementation capacity (Wood, Chapter 16). State food safety regulators enrolled the information-gathering and enforcement capacities of private schemes, which in turn enrolled states' legitimacy and credibility (Verbruggen and Havinga). Enrollment is probably also essential to build productive interactions around OGCI (Bach, Chapter 12), in SSCM (Meidinger, Chapter 3), and in networks of transnational governance initiatives (Westerwinter, Chapter 7).

The chapters explore a variety of enrollment techniques, including recognition of non-state certification as compliance with state regulations, which can be analyzed as orchestration, delegation,

borrowing or rule-referencing (Foley, Chapter 14; Paiement; Verbruggen and Havinga); benchmarking governance schemes against a standard, which can be understood as meta-regulation (Verbruggen and Havinga); emulation of regulatory models, which can be understood as modelling (Bach; Gao and Chen, Chapter 13); creation of participatory governance fora (Foley; Wood); maintenance of direct relationships and regular interactions with suppliers (Meidinger); and symbiotic or parasitic piggy-backing on others' regulatory capacities (Wood).

Not all governance interaction is aimed at mutually beneficial enrolment, however. Competition for resources and influence also drives interactions. Actors compete to gain limited regulatory resources, such as market share, material rewards, prestige and legitimacy. Transnational governance schemes compete with one another and with intergovernmental organizations for authority, legitimacy and regulatory turf (Verbruggen and Havinga; Foley; Wood); audit firms compete for certification business (Auld and Renckens, Chapter 6). Sometimes regulatory actors compete and cooperate simultaneously (Esty and Geradin 2001). ISO, for example, simultaneously competed with other standard-setters for authority and adherents, and enrolled them in its standard-setting activities (Wood). The chapters in this book emphasize the synergistic dynamics of enrolment, but competition and other antagonistic interactions remain widespread.

The chapters show that both competition and cooperation have ambivalent impacts on regulatory quality and marginalized actors. Competition can lead to upward or downward regulatory races. Auld and Renckens, for example, find that competition amongst audit firms could enhance or reduce audit rigour. Similarly, enrolment is normatively ambivalent: it can work for or against better regulation and marginalized actors. The combination of GFSI benchmarking of non-state food safety standards and states' recognize of these standards results in upward convergence, enhanced legitimacy and market position for GFSI and its benchmarked schemes, and enhanced regulatory capacity for states. Yet mutual enrolment also carries risks, including subordination of food safety to profitability, compromise of law enforcement agencies' independence, and marginalization of small suppliers and alternative schemes (Verbruggen and Havinga). Casey (Chapter 9) similarly shows that retailers' enrolment of suppliers and producers into a three-tiered supply chain partnership locked in a culture and logic that have resisted efforts to toughen standards and empower weaker actors.

Modelling—which is an enrollment technique—can also be progressive or regressive, as Bach's study of OGCI illustrates. On one hand, OGCI models itself after intergovernmental and industry initiatives that pursue practical solutions and enjoy legitimacy within broad global networks. On the other hand, this modelling is aimed guaranteeing a future for fossil fuels and 'carbon majors' (Heede 2014), a prospect many in the global climate change community reject. Another example is Gao and Chen's description of mimetic and normative isomorphism among derivatives regulators, which provided East Asian actors ready-made regulatory solutions but reinforced their marginalization.

The same ambivalence characterizes the enrolment techniques of orchestration and delegation. These enable regulators to mobilize other actors' regulatory resources, but can weaken norms of transparency, accountability and participation applicable to the orchestrator or delegator. In EU biofuels regulation, for example, the EU's delegation of enforcement of sustainability criteria to private certification schemes led to a proliferation of schemes and some upward harmonization, but widespread regression toward less comprehensive and stringent standards, and less participation, transparency and accountability, especially for vulnerable stakeholders (Paiement).

Why does enrolment sometimes fail to produce the intended benefits? Winn (Chapter 5) points to cognitive biases and failure to provide enrolled actors with adequate incentives to produce public goods. Paiement reveals another cause: the regulator's failure to enforce its own enrolment criteria. When a regulator delegates tasks to regulatory targets or to third parties who rely on targets' voluntary participation, the delegate's preference for undemanding, opaque and unaccountable regulation is easy to understand; the puzzle is why the delegator would accept such slippage from its declared requirements. One explanation is the regulator's lack of regulatory resources, combined with lack of political will, both of which often reflect countervailing economic interests. In the biofuels case, the main such interest was increasing international biofuel trade—an interest shared by the delegator

(the European Commission) and the targets (agri-business). The perverse result of the Commission's incomplete enforcement was further empowerment of agri-business via enhanced access to the EU market for sustainable biofuel, at the expense not just of the accountability concerns of the European Council and Parliament but also of the interests of marginalized actors in global supply chains whose opportunities to contest biofuel standards were further curtailed by opaque and unaccountable standard-setting.

This example highlights a paradox of enrolment as a regulatory strategy. The same resource deficit that drives a regulator to enrol others can contribute to regulatory failure, if the regulator lacks the resources or inclination to monitor and control the enrolled actors. Thus a regulator's declared pursuit of enhanced sustainability, transparency and accountability in global supply chains can in fact facilitate the growth of unaccountable, opaque and lax governance. Foley argues that this paradox is inherent in the pro-production, pro-trade logic of both state-based and market-driven governance. The paradox must be effectively managed as part of any enrolment strategy.

It is useful to reflect further on the high-level implications of this discussion. Regulatory actors confront a basic choice between strategies of alliance and autonomy—between forging links and going it alone. Cooperative linkages facilitate exchange of knowledge and lessons learned, enable actors to learn about one other, and allow less well-connected actors to 'piggy-back' on well-connected actors' resources (Westerwinter; Wood; Buhmann 2015). But going it alone can help entrench a core constituency's decision-making power and organizational logic, insulating the regime against later challengers. GLOBALGAP's early institutionalization around a relatively homogeneous core of actors enhanced its regulatory capacity through internal cohesion, shared commitment and legitimacy with its constituency (Casey). Similarly, OGCI's small, like-minded membership can address contentious issues that broader industry groups cannot (Bach). While powerful actors have greater 'go-it-alone power' (Abbott and Snidal 2009), marginalized interests may also choose to create regulatory regimes that exclude big business, governments or both—for example, some ethical fisheries certification schemes discussed by Foley. More often, however, their lack of resources drives them toward strategies of enrolment.

The ambivalence of enrolment and related interactive strategies makes it important to understand what drives cooperative and competitive interactions, because harnessing interactions to improve the quality of regulation or advance marginalized actors is partly a matter of knowing when and with whom to cooperate, when and with whom to compete and when to carve out one's own unique regulatory niche. These choices depend in turn on how regulatory resources are distributed. Are the relevant actors' goals compatible? Are their regulatory capacities complementary? Do some actors or institutions enjoy more legitimacy than others? Are there organizational clusters of regulatory capacities? These questions emerge inductively from the chapters in this book and point toward the following strategic binary. It makes sense for regulatory actors to forge cooperative links where goals are compatible, capacities are complementary, there are strong potential allies to piggy-back on or cluster around, and there are no distinctive niches or network holes to be filled productively. Conversely, it makes sense to 'go it alone' and compete where goals are incompatible, capacities are not complementary, there are no strong potential allies to support clustering or piggy-backing, or there are distinctive niches or network holes to be filled productively. We now explore three configurations of regulatory resources that underlie this dichotomy.

### 3.1.2 Compatibility of Capacities and Goals

The chapters indicate that complementary capacities facilitate productive interactions. For example, private food safety schemes enjoyed audit, inspection, information-gathering and enforcement capacity, along with expertise, financial resources and strategic position in global supply chains; states enjoyed legitimacy and credibility that could strengthen officially recognized schemes (Verbruggen and Havinga). These capacities were complementary in that each party could supply capacities the other lacked. Their complementarity facilitated the strengthening of standards and audit practices amongst GFSI member schemes. It also allowed states to economize on their limited

enforcement resources. In the Olympic example (Schmidt), the IOC lacked credibility and expertise in environmental management and local governance, and had limited capacity to innovate and implement rules; host cities lacked the prestige to attract sufficient resources (from tourism, trade, and government funding) for urban development. Each offered the other capacities it lacked, enhancing the material and symbolic resources of each, and helping to strengthen environmental and social standards for Olympic Games.

Capacities are not complementary if an actor cannot utilize the capacities others provide. In Cameroon, international policymakers sought to mobilize highly technical capacities through technology and financial transfers, training and technical support. But the local actors that most needed international support lacked the capacity to benefit from these transfers; non-experts and the entire artisanal forest industry were effectively excluded (Carodenuto and Cashore). In addition, international actors' emphasis on legality and government enforcement accentuated national problems of corruption and inadequate government resources. The result was further marginalization of marginalized actors. In the SEPA case (Winn), the banks had technical capacity and expertise to design and implement SEPA; they lacked material incentives and the legitimacy to pressure the EU to provide them. EU regulators had the capacity to create such incentives, but refused to, partly due to limited cognitive capacity, which led them to underestimate the cost of SEPA implementation and ignore the public goods characteristics of proprietary payment systems.

Aside from complementarity of regulatory capacities, compatibility of regulatory goals also facilitates productive interactions. Goals need not be identical to be compatible. One actor's pursuit of narrow self-interest can be compatible with another's pursuit of other-regarding goals or of its own narrow self-interest. Goal compatibility is necessary for successful orchestration, a wholly voluntary relationship (Abbott et al. 2015), but it is not necessary for all regulatory intermediation, which can succeed even if regulators' and intermediaries' goals are somewhat incompatible (Abbott, Levi-Faur and Snidal 2017). In line with this research, the chapters suggest that goal compatibility is conducive to but not strictly necessary for productive TBGIs.

Finally, particular combinations of goals and capacities can promote or hinder productive interactions. Certain regulatory capacities may be more or less suited to the pursuit of particular goals, as Carodenuto and Cashore's study of forest legality verification and avoided deforestation demonstrates. Even if actors' goals are aligned, incompatible or redundant capacities can foil productive interaction; and incompatible goals can foil productive interaction even where capacities are complementary. Compatibility of goals with goals, capacities with capacities, and goals with capacities facilitates harnessing TBGIs to enhance regulatory quality or advance marginalized actors, while incompatibility hinders them. The practical implication is that those seeking to promote productive TBGIs should cultivate and exploit such compatibilities.

### 3.1.3 Legitimation Deficits and Differentials

Legitimacy is a crucial regulatory capacity. Specific configurations of legitimacy, which Wood (Chapter 16) calls legitimation deficits and differentials, emerge as important in promoting interactions that improve regulatory quality and advance marginalized actors. A regulator's legitimation deficit with certain communities offers an opening for productive interactions. MSC, for example, suffered a legitimacy deficit with small-scale producers, who were marginalized in its regime (Foley). Small-scale producers exploited this deficit to carve out niches for ethical eco-certification programs, and to pressure MSC to enhance its governance and standards to promote socio-economic development in ways that benefitted them. Transnational food safety schemes' legitimation deficits allowed Canadian and Dutch regulators to pressure them to ratchet up food safety standards and audit practices (Verbruggen and Havinga). And the IOC's legitimation deficit allowed progressive forces in prospective host cities to enhance environmental and sustainability standards for Olympic Games (Schmidt). Civil society organizations exploited the deficit to gain access to decision-making locally, and later in the IOC itself. They used this access to influence rule-making and disseminate the message of environmental protection to a broad (potentially global) audience.

Not all legitimation deficits are equal, however. A deficit provides a meaningful opening for productive interactions only if it significantly impedes the regulator's pursuit of its goals. The chapters identify several circumstances where this is not the case. First, a regulator may not benefit substantially from an audience's approval or be substantially harmed by its disapproval. This may explain the limited responsiveness, even indifference, of some transnational regulatory schemes to the disapproval of marginalized producers and communities (Verbruggen and Havinga; Casey; Paiement; Foley). It also helps to explain discrepancies in the sustainability performance of different Olympic Games. Russia was less affected by domestic and global delegitimation around the Sochi Games than the UK was for the London Games (Schmidt). Second, accommodation of an audience's legitimation demands might compromise a regulator's legitimacy with a core constituency, as in GLOBALGAP's tripartite supply chain partnership (Casey). Third, even if a regulator desires an audience's approval, that audience's limited resources or attention may prevent it from monitoring the regulator's behavior, allowing the regulator to gain legitimacy without actually satisfying the audience's demands. Even the relatively well-resourced EU failed to apply its own transparency requirements when recognizing private biofuels certification schemes (Paiement).

Here what Wood calls legitimation differentials assume importance. Discrepancies between regulatory actors' legitimacy endowments can enlarge the openings offered by legitimation deficits, allowing marginalized actors to piggy-back on actors that enjoy high legitimacy. Thus, organized labour, a marginalized actor in this context, rode the coat-tails of the ILO – with abundant legitimacy on labour standards – to exploit the legitimacy deficit of ISO in the field of corporate social responsibility. The result was to strengthen ISO's social responsibility standards and enhance its inclusiveness and transparency. The Olympic example (Schmidt), however, hints at a downside of this strategy: powerful actors can also use it to advance their own interests. OGCI offers a cautionary tale in this respect: recognizing the oil industry's massive legitimation deficit on climate change, OGCI seeks to enroll the legitimacy and credibility of the UN by securing attendance and endorsement by UN climate change officials and the International Energy Agency (Bach).

### 3.1.6 Capacity Clusters

Organizations or arenas that unite complementary capacities represent a third configuration of capacities that enables productive interactions. We see this in the context of Olympic host cities, which combine business capacity, expertise and cutting-edge technologies, and have access to deep pools of expertise and resources not readily available to a specialized regulator such as the IOC (Schmidt). The same might be said of FSC, whose multi-stakeholder governance enables it to assemble diverse regulatory capacities in a single organization (Oman; Foley). This is not simply a function of size, although larger governance initiatives may be able to mobilize more resources and project wider legitimacy (Westerwinter). It is more a function of the range and complementarity of regulatory capacities that are clustered within a forum, and the forum's interconnectivity in governance networks. Learning to identify and utilize existing regulatory capacity clusters – or develop new ones – may be an important strategy for enhancing regulatory quality and advancing marginalized actors.

### 3.2 Networks of Enterprising Experts

Along with the distribution of regulatory capacities, networks of enterprising individuals with expertise in particular domains can be key conduits for interaction, with either positive or negative impacts on regulatory quality and marginalized actors. Networks can form around established, formally organized professions (law, accounting); emerging, specialized occupations (eco-certification, SSCM); ad hoc, project-driven coalitions (Olympic organizing committees); state or interstate bureaucracies (networks of regulatory officials); activist communities (labour or indigenous peoples' movements); or other expert communities (management consultants, bankers, standardization professionals). Professionals and other experts occupy strategic positions in many transnational governance regimes. Their role in linking organizations, influencing agendas and spreading values,

knowledge, norms, techniques and practices is well documented (eg Haas 1992; Keck and Sikkink 1998).

Expert networks can channel TBGIs in productive directions. Consultants and auditors helped disseminate food safety standards that were ratcheted up by interactions between states and GFSI (Verbruggen and Havinga). With transnational reach and a wealth of information about audited firms, they helped diffuse standards and practices, manage their interpretation and verify their implementation. In derivatives trading, networks of financial professionals spread Western models to emerging markets, reducing compliance and transaction costs and providing emerging market actors with proven regulatory recipes and access to international markets (Gao and Chen). Transnationally-organized indigenous norm entrepreneurs exploited political openings in Canada and globally to strengthen FPIC in FSC standards, and possibly in law (Oman). An ad hoc coalition of local government officials, business leaders, environmental NGOs, and event management and standardization professionals exploited the 2012 London Olympics to catalyze a regulatory innovation—sustainable events management systems—that quickly spread far beyond the world of sport (Schmidt).

Many of these experts are what Henriksen and Seabrooke call issue professionals—individuals who are recognized by peers as knowledgeable in a particular field, but who eschew traditional professional organizations in favour of informal networks. Issue professionals are key knowledge brokers. Sometimes they are insiders, who exploit the ‘small world’ characteristics of their specialized fields to build personal networks, mobilize organizations and influence agendas; in other cases, they fill structural holes in sparse network regions. Their mobility can diffuse knowledge and practices (Auld and Renckens). And they can often counter or reshape formal organizations’ efforts to control issues (Henriksen and Seabrooke).

When better regulation or advancement of marginalized interests is frustrated by blockages within particular governance organizations, issue professionals may offer pathways around them. For example, indigenous rights advocates exploited FSC’s inclusive governance, the relationship between FSC-International and FSC-Canada, and the moral power of international human rights law to circumvent blockages in Canada against realization of an indigenous right to consent to forestry operations (Oman). Oman’s chapter offers a rare example of marginalized actors successfully employing a strategy of forum-shifting (Helfer 2004) or institutional bypass (Prado and Hoffman 2017). Powerful actors often use these strategies, but weak and marginalized actors seldom can (Braithwaite and Drahos 2000, p. 571). Oman’s example demonstrates that forum-shifting can be a viable strategy for marginalized actors where they have a network of skilled, mobile experts who can advance their agenda across organizational lines. Marginalized actors may also be able to resist or shape forum-shifting by powerful actors. As Wood’s chapter demonstrates, while trade unions and the ILO could not stop ISO from drafting social responsibility standards, they limited the effect of this forum-shifting strategy by establishing ILO’s international labour standards as the benchmark for ISO 26000 standards.

By the same token, experts and their networks can frustrate efforts to improve regulatory quality or advance marginalized actors, as they pursue issue control, prestige, regulatory turf and revenue (Henriksen and Seabrooke). This includes professionals who typically act through formal organizations, such as accountants, engineers and lawyers; and consultants, auditors, sustainable supply chain managers and other issue professionals who (for now at least) prefer informal channels. All exhibit some of the pathologies Henriksen and Seabrooke identify. Awareness of these issues can help advocates promote productive interactions.

### 3.3 Environmental Conditions

Another lesson of the chapters is that the environments in which actors operate condition TBGIs. Three environmental factors appear particularly salient to the themes of this book: isomorphic pressures, early institutionalization, and local variation. These features are constituted and reproduced by interaction, but also shape and constrain it.

First, environmental conditions may create isomorphic pressures that lead organizations to resemble one another (DiMaggio and Powell 1983; Beckert 2010). One such condition is the presence of deeply and widely institutionalized norms, which constitute the discursive structures in which interaction occurs (Casey). The most influential norms discussed in this book include participation, transparency, accountability, democracy, sustainability and human rights. Implementation of institutionalized norms and mimicry of proven models can enhance regulatory credibility and efficiency, reduce compliance costs, and reduce the uncertainty that hampers institutional design (Gao and Chen). Norms can also help to advance marginalized interests, as illustrated in several chapters (Oman; Wood; Casey).

Institutionalized norms can instead pull in the opposite direction, as with the national sovereignty norm that accentuated regulatory incapacities in Cameroon (Carodenuto and Cashore), the norm of productive efficiency that inhibits SSCM (Meidinger), and the neoliberal market norms that limit the transformative potential of eco-certification (Foley). Superficial convergence around norms of transparency, accountability and openness can often mask continuing dominance by powerful economic interests (Casey; Gulbrandsen 2005; Fransen 2011). And as Gao and Chen document, isomorphic pressures can reinforce relations of domination and limit marginalized actors' room for resistance.

The isomorphic pressures generated by institutionalized norms are limited by a second environmental factor: early institutionalization. Early institutionalization around a homogeneous actor group can enhance an organization's regulatory capacity by providing internal cohesion, shared commitment and legitimacy with a core constituency—all of which are important symbolic resources. But it can also entrench a specific actor's dominance and preferred organizational logic, inhibiting productive interactions. The primary example in this book is GLOBALGAP (Casey). Even though democratization norms predisposed the organization toward external audiences' legitimation demands, including transparency and stakeholder participation, the early entrenchment of industry actors and their preferred 'logic of control' (emphasizing rules, compliance and verification) limited the potential for a 'logic of empowerment' that would advance effective participation by marginalized actors. On the other hand, FSC's early institutionalization of a predominantly civil society membership and a dual logic of empowerment and control has been remarkably resilient (Auld, Renckens and Cashore 2015).

Local variability is a third environmental factor influencing TBGIs. Local or sectoral circumstances can enable or constrain productive interactions. In the Olympic example (Schmidt), differences between host jurisdictions in terms of state and civil society institutions, regulatory standards, rule of law and societal values had major effects on the sustainability standards and performance of particular Games, preventing the emergence of a consistent upward ratchet. The negative impact of local variation is magnified by the sunk cost dynamic of host city selection, limiting the credibility of the threat of withdrawal of hosting privileges as a guard against social and environmental back-sliding. The Cameroon example shows that local political economy can hinder productive global-domestic interactions (Carodenuto and Cashore). The GFSI case suggests that differences between authoritarian and liberal democratic states, and advanced versus developing economies, explain differences in interactions between states and private transnational food safety schemes (Verbruggen and Havinga). Finally, MSC's insensitivity to local circumstances spurred the emergence of alternative, locally-embedded eco-certification schemes, but the global neoliberal political economy limits these schemes' ability to empower marginalized actors (Foley).

### 3.4 Open and Inclusive Governance

The chapters indicate that inclusive and open governance structures and processes foster productive interactions. They tend to enhance legitimacy and other symbolic resources, while promoting ambitious regulatory standards and advancement of marginalized interests. FSC is a clear example: its inclusive, multi-stakeholder design allowed advocates of indigenous rights to secure an Aboriginal chamber in FSC-Canada and a permanent indigenous committee at FSC-International



(Oman), and gives it a counter-hegemonic potential that MSC lacks (Foley). Open institutional structures also offered entry points to promote ambitious social and environmental standards for the Olympics and advance the agendas of some marginalized actors (Schmidt).

Yet both examples suggest that openness and inclusivity alone are insufficient to advance marginalized interests. Marginalized actors also require sufficient organizational and material resources, and their claims must be salient to other governance actors. The salience of a claim (Kingdon 2011) is partly a function of actors' attention (Peters and Hogwood 1985; Epstein and Segal 2000). Marginalized actors and their allies can influence attention through strategic action, even if they cannot resolve issues on their own. In the FSC and Olympics cases, for example, high salience of marginalized actors' claims combined with open institutions to achieve beneficial effects. But low salience can block this virtuous self-reinforcing dynamic. In EU biofuel regulation, the low political salience of claims for transparency, participation and accountability, evidenced by the Commission's neglect of these features in its early recognition decisions, may have facilitated the rise of opaque, exclusive and unaccountable schemes (Paiement).

It is important also to note that exclusionary, industry-dominated institutions inhibit the advancement of marginalized interests, from OGC's exclusive club structure (Bach), to industry's domination of GLOBALGAP (Casey) and monopsonistic lead firms' control of supply chain management (Meidinger). But the basic point remains: open and inclusive governance breeds more open and inclusive governance, provided regulatory actors are organized and sophisticated, with salient claims.

### 3.5 Conflicting Interests

As in all forms of regulation, the pursuit of self-interest can prevail over collective interests, inhibiting provision of collective goods. Most transnational regulation purports to provide collective goods: financial stability (Gao and Chen, Winn); food safety (Verbruggen and Havinga, Casey); sustainable fisheries (Auld and Renckens, Foley), sustainable forestry (Carodenuto and Cashore, Oman), sustainable supply chains (Meidinger); sustainable mega-events (Schmidt); socially responsible business (Wood); and so on. Beyond these substantive goals, regulatory regimes themselves have public goods characteristics (as Winn points out in the case of SEPA), and can be impeded by collective action problems such as free-riding, rent-seeking and capture.

The key point is that conflicts between private and collective interests impede productive governance interactions. Auditors and certifiers, for example, have an inherent conflict of interest between maximizing their profits and furthering the public interest the regulatory scheme purports to pursue (Lytton and McAllister 2014). And private interests often prevail. Meidinger warns of this dynamic in SSCM, where pursuit of sustainability is hindered by the continuing dominance of profit maximization within lead firms and in their supply relationships. Similarly, the interest in increasing biofuel trade (shared by industry and the European Commission) prevailed over a desire to empower marginalized actors (shared by those actors and the European Parliament), preventing enhancement of the accountability, transparency and inclusiveness of biofuel certification schemes. These public-private conflicts can also combine with environmental conditions to hinder productive interactions. For example, the tendency of concentrated economic interests to prevail in regulatory contests is amplified by a global political economy dominated by Western multinationals and capital-exporting states, asymmetrical global supply chain relations, and an ideology of market-driven development. This negative interaction between political economy and economic self-interest is revealed not just in Foley's Coxian critique of the transformative potential of fisheries eco-certification but also in the governance of derivatives markets (Gao and Chen) and transnational supply chains (Carodenuto and Cashore; Casey; Verbruggen and Havinga; Paiement; Meidinger).

### 3.6 Mismatched Logics

Mismatched problem-solving logics also impede productive interactions. Auld, Renckens and Cashore (2015) argue that transnational regulatory governance aims to solve intersubjectively-defined problems, and different problems have different problem-solving logics. Two such problems are overcoming the marginalization of peripheral actors in the global economy, and ameliorating the adverse social and environmental impacts of global production. Regulatory governance institutions focused on overcoming marginalization embody a logic of empowerment, which seeks to redistribute power, control and resources. It does so through inclusion in regulatory decision-making or, more rarely, through redirection of resources and power to facilitate self-determination (*ibid.*, pp 111-112). Institutions focused on ameliorating social and environmental impacts employ a logic of control, prescribing rules of conduct, monitoring their implementation, accrediting certifiers to verify compliance, and tracing products as they move through global value chains (*ibid.*, p 111).

These logics can conflict with one another, with local conditions, or with chosen policy instruments, hampering goal achievement. Casey explains the limited democratization of GLOBALGAP in terms of a clash between the founders' logic of control and newcomers' logic of empowerment. The poor prospects of SSCM can be understood in terms of a conflict between a dominant, compliance-focused logic of control and an innovation-oriented logic of empowerment and collaboration (Meidinger). To be sure, the incompatibility of logics can instead create productive tension and set regulatory systems in motion. Auld, Renckens and Cashore (*ibid.*) argue that private governance schemes face pressure to accommodate both logics, and typically evolve from one logic toward the other. The problem from our perspective is institutional entrenchment of logics that systematically favour vested interests.

Productive interactions are also obstructed when problem-solving logics conflict with local conditions or regulatory instruments. In Carodenuto and Cashore's chapter, for example, international actors embraced a logic of empowering marginalized actors through consultative processes and transparency. But their interactions seem likely to deepen the exclusion of marginalized actors and the opacity of forestry practices, because the choice of highly technical and complex policy tools was not calibrated to local circumstances.

### 3.7 Iterative Regulatory Cycles

We identified a positive relationship between cyclical regulation and capacity for learning in Part 2.1.3, above. Capacity for learning is one of several capacities that contribute to the quality of regulation. Iterative, self-conscious cycles of regulatory innovation, implementation, review and further innovation not only enhance regulatory quality through learning, they can also offer entry points for weaker actors. The clearest example is Schmidt's chapter on the Olympics. The IOC set down initial rules for bids; prospective host cities proposed innovative environmental and social standards to differentiate their bids; the IOC, facing critical scrutiny and lacking the credibility or expertise to develop its own sustainability rules, incorporated these innovations into its regulatory framework, for both the originator and future prospective hosts; and subsequent aspiring host cities proposed further regulatory innovations. Cyclical regulation was harnessed by both weaker actors and advocates of better regulatory quality. NGOs and other local actors could participate in preparing some host city applications, influencing the international standards that the IOC later adopted. A limitation of this example was that success of this process of innovation depended on local circumstances in the respective host cities. As a consequence, in some cases iteration led to regression (for example, the 2014 Sochi and 2016 Rio Games).

Oman's chapter shows how indigenous peoples' representatives navigated an iterative cycle of regulatory interaction between international and national FSC organs to ratchet up the FPIC norm. It also illustrates a potential limitation: a regulatory change welcomed by one marginalized actor can be seen as regressive by another. FSC International's extension of the FPIC norm to non-indigenous communities was seen by many in the developing world as a step forward, but by Canadian First

Nations as an unwelcome dilution of the distinctive rights of indigenous peoples. Finally, Meidinger's distinction between episodic and institutionalized TBGIs suggests that actors' efforts should be directed toward institutionalizing virtuous regulatory cycles to ensure their continuity.

### 3.8 Cross-Scalar Linkages

These regulatory cycles share another characteristic: they cut across local and global scales. The chapters suggest that regulatory quality and marginalized interests can be advanced by exploiting cross-scalar regulatory dynamics. Assemblage theory (Sassen 2008; DeLanda 2016), discussed by Paiement, emphasizes the multiplicity of actors, agendas, governance levels and sources of authority that come together in polycentric governance arrangements. As Lynn Staeheli (1994, p. 388) asserts, 'To the extent that oppositional movements can move across scales – that is, to the extent that they can take advantage of the resources at one scale to overcome the constraints encountered at different scales in the way that more powerful actors can do – they may have greater potential for pressing their claims'. The chapters contain numerous examples of cross-scalar dynamics (see Table 1.2). Eight chapters describe interactions that cross micro and meso scales (Bach; Carodenuto and Cashore; Casey; Henriksen and Seabrooke; Meidinger; Oman; Schmidt; Wood). One investigates interactions at meso and macro scales (Gao and Chen), while one combines micro, meso and macro scales (Foley). Oman's study illustrates the intersection of multiple spatio-organizational scales, from subnational (FSC BC) to national (FSC Canada and the Canadian state) to global (FSC International, intergovernmental organizations, public international law and the global indigenous peoples' movement).

Cross-scalar assemblages, like several of the factors we consider, can promote or hinder productive interactions. The biofuels example (Paiement) shows that they can disempower weaker actors and inhibit transparency and accountability; the Olympic and FPIC examples (Schmidt; Oman) show that they can empower the former and enhance the latter.

## 4. Concluding Remarks

Can TBGIs be harnessed to enhance regulatory quality and advance marginalized interests? It is clear that there is no single pattern or relationship, let alone strategy, that links TBGIs to these desired outcomes. We can, however, identify factors that shape the prospects for productive TBGIs, and explore some of their theoretical and practical implications. We found that five factors cut both ways, either hindering or promoting productive interactions depending on the circumstances: asymmetrical distributions of regulatory resources (3.1.1); regulatory entrepreneurs (3.2); regulatory environments (3.3); iterative regulatory cycles (3.7); and cross-scalar linkages (3.8). Four factors consistently promote productive interactions: compatible capacities and goals (3.1.2); legitimacy deficits and differentials (3.1.3); capacity clusters (3.1.4); and open and inclusive governance (3.4). Finally, two factors consistently hinder productive interactions: conflicting interests (3.5) and mismatched problem-solving logics (3.6) (Table 17.2).

While the empirical evidence in the chapters suggests that the prospects for harnessing TBGIs to improve regulatory quality or advance marginalized actors are modest, the implications we draw in this chapter paint a complex and ambiguous picture in which various factors and dynamics pull in different directions, with outcomes that are context-specific and difficult to predict. It is useful to think of this ambiguity as the co-existence of two narratives. On the one hand, there are the themes of economic self-interest, resource and power disparities, relations of domination in a global political economy, regulatory capture and issue control by professionals. Seen through this lens, the fundamental conflict between individual self-interest and collective goals in a market-driven context acts as key barrier to more productive interactions. The asymmetric distribution of regulatory resources and capacities is the most important arena of this conflict.

On the other hand, there are the themes of cooperative linkages, especially enrolment and mobilization of third actors; learning and experimentation, iterative regulatory cycles, networks of enterprising experts, modelling and mentoring, overlapping memberships; and cross-scalar and multi-level leverage. This alternative lens directs attention to opportunities and pathways towards fostering regulatory quality or advancing marginalized interests. Success at harnessing TBGIs to these ends – at least in the cases discussed in the book – seems to depend on enrolling other actors and mobilizing their resources. This resonates with the idea of a polycentric world of regulation (Black 2008) where cooperative linkages -- across actor groups, levels and scales, and in iterative regulatory cycles -- are of paramount importance. Finally, the theme of cooperative linkages connects to the four clear success factors that we distill from our case material: complementary regulatory capacities and compatible goals (Part 3.1.2); variable legitimacy endowments (Part 3.1.3); capacity clusters (Part 3.1.4); and open and inclusive regulatory governance institutions (Part 3.4) seem to have uniquely positive effects on both regulatory quality and the advancement of marginalized interests.

Clearly, both narratives are essential to the story. Depending on issue and context, one lens may offer more analytical or strategic traction than the other. We encourage future research to investigate the productive potential as well as the constraining effects of interactions amongst the actors and institutions involved in the transnational regulation of business conduct. Efforts to move TBGIs toward higher regulatory quality and deeper empowerment must necessarily attend to contextual conditions and be highly flexible and adaptive. The cases and analyses presented in this book can contribute to that process by providing examples to be compared, and by suggesting possible pathways for action, adjustment, analysis and learning.

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