

The Role of Beneficiaries in Transnational Regulatory Processes

Mathias Koenig-Archibugi and Kate Macdonald

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Abstract

The editors of this volume highlight the role of intermediaries, alongside regulators and targets, as a way to better understand the outcomes of regulatory processes. Here, we explore the benefits of distinguishing a fourth category of actors: the groups whose interests the rules are meant to protect: the (intended) beneficiaries. We apply that framework to nonstate regulation of labor conditions, where the primary intended beneficiaries are workers and their families, especially in poorer countries. We first outline the different ways in which beneficiaries can relate to regulators, intermediaries, and targets; we then develop conjectures about the effect of different relationships on regulatory impacts and democratic legitimacy in relation to corporate power structures, specifically those embedded in the governance of global supply chains. We illustrate these conjectures primarily with examples from three initiatives—Rugmark, the Fair Labor Association, and the Fairtrade system. We conclude that it matters whether and how beneficiaries are included in the regulatory process.

Keywords:

labor regulation; private governance; regulatory intermediaries; beneficiaries; fair trade

In exploring questions about regulatory power, legitimacy, and effectiveness, recent regulatory scholarship has placed particular emphasis on the identity of regulators (Abbott and Snidal 2009). Kenneth Abbott, David Levi-Faur, and Duncan Snidal (this volume) highlight the importance of also scrutinizing the identities and roles of intermediaries and targets of regulation. The dynamics through which targets and intermediaries engage with regulatory processes can play a crucial role in shaping key regulatory functions such as rule-interpretation, monitoring compliance, and implementation (or evasion) of rules. The regulator-intermediary-target (RIT) framework that Abbott, Levi-Faur, and Snidal developed indicates that interactions involving all three categories of regulatory actors have important potential implications not only for dynamics of power and accountability within regulatory systems but also for regulatory outcomes.¹

This article builds on the RIT framework to examine different modes of engagement in transnational regulatory processes by the groups whose interests the rules and policies are ostensibly meant to protect, and whose protection is often invoked to justify new forms of transnational regulation.² For the sake of brevity, we call these actors *intended beneficiaries*, or just *beneficiaries*, although the question of whether they actually benefit from rules and regulations requires separate and careful analysis. It is entirely conceivable that a range of

¹ We are very grateful to Kenneth Abbott, David Levi-Faur, and Duncan Snidal for being a generous source of inspiration and insight in the process of writing and revising this article. Many thanks also to Graeme Auld, Anna Holzscheiter, Felicity Vabulas, Stephan Rencken, an anonymous reviewer and the participants in the “Politics of Regulatory Intermediaries” workshop at the Leonard Davis Institute, Hebrew University of Jerusalem, May 2014; and the “Non-Governmental Organizations” panel at the 2015 International Studies annual convention. We remain responsible for the article’s shortcomings.

² On access by intended beneficiaries to transnational regulatory processes see, for instance, Dingwerth (2007), Chan and Pattberg (2008), Macdonald (2012).

actors involved in a regulatory scheme may benefit from it, but not the supposed beneficiaries. For instance, a scheme purportedly aimed at promoting labor standards in an industry may fail to improve the conditions of workers, but nevertheless shield participating companies from public criticism, assuage the conscience of consumers, absolve public authorities from taking remedial measures, or provide employment to scheme managers and auditors. The key point is that such benefits are contingent on the (valid or unfounded) claim that workers stand to benefit from the scheme.

In some regulatory domains, such as consumers in the food safety systems that Havinga and Verbruggen (2017) analyze, beneficiaries are said to be “prominent by their absence.” In this article we analyze the varying modes of engagement through which intended beneficiaries of transnational regulation engage with regulatory processes, and identify some possible consequences of such engagement for processes and outcomes. We take Abbott, Levi-Faur, and Snidal’s RIT framework as our reference point to explore how this model might be extended to focus on beneficiaries. In this way, we lay the groundwork for a descriptive typology of relationships between beneficiaries and each of the main categories of regulatory actors previously distinguished: regulators, intermediaries, and targets. We suggest that relationships between beneficiaries and the actors performing the regulatory roles of regulator, intermediary, and target can be usefully conceptualized as three broad types: *separation*, where regulatory actors are completely disconnected from beneficiaries; *identity*, where beneficiaries act directly as regulators, intermediaries, or targets; or *representation*, where regulators, intermediaries, or targets are said to represent beneficiaries. The type of relationship that beneficiaries have with regulatory actors is important from at least two *normative* perspectives. From a *welfarist* perspective, such relationships can be an important determinant of the regulatory system’s effect on the welfare of beneficiaries, since they are likely to affect the content of regulations, their

implementation, and their outcomes. In short, who performs regulatory roles (and how) can affect what regulatory systems do, and what they do can affect the welfare of beneficiaries. From a *democratic* perspective, such relationships affect the degree to which people can gain control over their own fate through forms of collective self-rule. As has been argued at length elsewhere (Macdonald and Macdonald 2010), certain forms of power exercised by non-state actors affect in some problematic way the autonomy of individuals and therefore generate a normative need for their democratic control. Corporate power belongs in this category, including the power exercised within sectoral supply chain systems of production and trade across state borders. The entrenched importance of such transnational supply chain systems under conditions of sustained economic globalization makes the task of devising and realizing democratic control mechanisms particularly significant. While the welfarist perspective may lead analysts to attach an *instrumental* value to beneficiaries' involvement in the regulatory processes, the democratic perspective is likely to stress the *intrinsic* value of such involvement. Participatory opportunities for beneficiaries may be considered an essential condition for legitimacy for two reasons: either because beneficiaries are *subject* to regulations, or because their interests are significantly *affected* by them. Further in this article we clarify this distinction and discuss its implications for the normative assessment of regulatory arrangements.

Here we are mainly interested in nonstate regulation of labor conditions, where the key intended beneficiaries are workers and their families, especially in poor countries. Many prominent transnational regulatory initiatives present themselves as operating primarily to enhance the welfare of such beneficiaries. Examining the role played by rule-intermediation is often particularly important in the domain of labor standards, since strong incentives to avoid compliance with certain regulations lead regulatory outcomes to be heavily dependent

on monitoring, certification, and other functions provided by intermediaries (Marx and Wouters 2017).

Our analysis considers three transnational regulatory schemes: the Fair Labor Association (FLA), Fairtrade Labeling Organization (now called Fairtrade International; FLO), and Rugmark.³ Our examples are made up of snapshots taken at various points in time rather than exhaustive discussions of how the schemes have evolved (or not) over the years.

There are two reasons why it is useful to consider together the relationships of beneficiaries with regulators, intermediaries and targets. First, the effect of a relationship on an outcome may depend on its interaction with another relationship. For instance, if the outcome of interest is rule compliance, beneficiary participation in rule-making may be complementary to beneficiary participation in rule monitoring, in that one amplifies the impact of the other. Such a conjecture is not obvious: one could also formulate the opposite conjecture: that they are substitutes, in that arrangements with either, but not both, lead to most compliance. We do not aim to formulate and assess specific conjectures about interaction effects in this article, though the possibility of such interactions suggests that a comprehensive view of the three relationships may be fruitful.

The second reason it is useful to consider these relationships together is that different relationships may not emerge independently from one another, but co-evolve according to certain causal patterns. For instance, regulatory arrangements where beneficiaries are represented by regulators may have a propensity to develop monitoring mechanisms in which beneficiaries are represented by intermediaries; or, on the contrary, representation by regulators may result in separation from intermediaries as a result of the need for credibility.

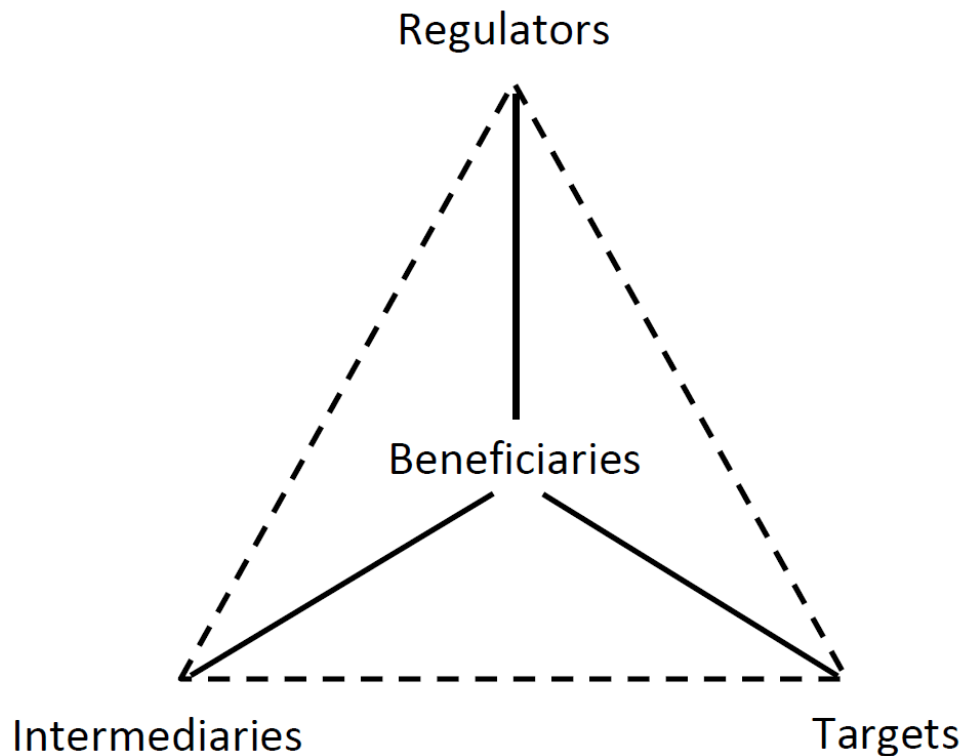
³ Our analysis focuses on events up until 2009—before some participating organizations separated from Rugmark and formed a follow-up scheme called GoodWeave.

The possibility of such co-evolutionary dynamics also makes it useful to consider all three relationships within a common framework. Although we do not develop our analysis of such interactions in any depth, we consider such dynamics where they arise in the examples that we present.

A General View of the Regulatory Process

To systematically analyze the ways with which intended beneficiaries of transnational regulation engage regulatory processes, we begin by summarizing the roles of key actors in the regulatory process. Abbott, et al. (2017) offer a framework that provides a helpful starting point, by highlighting the importance in regulatory processes of targets and intermediaries, alongside regulators. Figure 1 provides a simple framework for conceptualizing how our analysis of beneficiaries can be connected to their analytical framework. The solid and dashed lines in Figure 1 illustrate six bilateral relationships. The dashed lines correspond to the three relationships at the center of Abbott, Levi-Faur and Snidal's RIT framework: (i) between regulators and targets, (ii) between regulators and intermediaries, and (iii) between targets and intermediaries. The solid lines correspond to the relationships discussed in this article: (iv) between beneficiaries and targets, (v) between beneficiaries and regulators, and (vi) between beneficiaries and intermediaries.

FIGURE 1 **Beneficiaries in the Regulatory Triangle**



We suggest that the relationships between beneficiaries and the three regulatory roles can be of three types:

- 1) *Separation*. At one extreme, regulators/intermediaries/targets are completely disconnected from beneficiaries.
- 2) *Identity*. At the other extreme, beneficiaries *are* the regulators/intermediaries/targets within a specific regulatory arrangement. This conceptualization does not entail that they be the *only* regulators, intermediaries, or targets, or that all beneficiaries perform such roles.
- 3) *Representation*. In this situation, beneficiaries are not themselves regulators, intermediaries, or targets, but ostensibly “represented” by them. Regulators, targets, or intermediaries somehow act on behalf of beneficiaries in such arrangements, although we stipulate that what it means to represent someone and how to evaluate the validity of

“representative claims” is the topic of a major debate in political philosophy and political science (Pitkin 1967, Rehfeld 2006, Urbinati and Warren 2008, Saward 2010). Here we limit ourselves to noting that some regulators, intermediaries, and targets advance at least minimally plausible claims to perform some representative function in relation to beneficiaries, whereas others do not state any such claim. We should also note that representation is often associated with a social relationship between two actors that is characterized by intense interaction, communication, and mutual understanding, but this is not always the case.⁴

Table 1 summarizes the possible relationships defined in abstract terms. In ideal-typical terms, rules can apply to actors with no connections to beneficiaries, to representatives of beneficiaries, or to beneficiaries (row 1); rules can be made by actors with no connections to beneficiaries, by representatives of beneficiaries, or by beneficiaries (row 2); and key intermediary functions can be performed by actors with no connections to beneficiaries, by representatives of beneficiaries, or by beneficiaries (row 3). The next sections provide concrete illustrations.

We should note that the boundaries between the columns—that is between beneficiaries and representatives, and between representatives and unconnected actors—can be fuzzy, and often evolve over time (Auld and Renckens 2017). For instance, labor unionists often *are* workers, but they also represent other workers. Moreover, some links between beneficiaries and representatives are clear and direct, such as explicit delegation of representative powers as a result of elections; while others are more indirect (and questionable). Some self-appointed “representatives” have such a tenuous link to beneficiaries that it is appropriate to regard them as unconnected actors. As with all ideal

⁴ See Koenig-Archibugi and Macdonald (2013) for a discussion of the ways in which representatives can be related to beneficiaries in transnational nonstate governance arrangements.

types, Table 1 should be used as a heuristic device rather than as a map where actual cases can be unambiguously located.

TABLE 1 Types of Relationships between Intended Beneficiaries and Regulators, Intermediaries and Targets

Intended beneficiaries' relationship with:	A: Separation	B: Representation	C: Identity
1: Targets	1A Rules do not target beneficiaries	1B Rules target beneficiary representatives (e.g. worker cooperatives)	1C Rules target beneficiaries (as well as other actors)
2: Regulators	2A Beneficiaries are not regulators	2B Beneficiary representatives participate in rule-making	2C Beneficiaries participate in rule-making
3: Intermediaries	3A Beneficiaries play no role in intermediation	3B Beneficiary representatives perform intermediation functions (e.g., monitoring compliance)	3C Beneficiaries participate in intermediation

Our discussion is limited in important ways. First, we focus on *transnational* rule-making. This excludes from our purview the relationship between intended beneficiaries and regulators acting in a purely national or subnational capacity, such as the electoral accountability of legislators and executives responsible for national labor laws or links between trade unions and labor ministries. Second, we acknowledge that interactions between nonstate regulatory arrangements and state-centered (national and intergovernmental)

regulatory processes are very important, as shown in the recent literature on collaboration and orchestration (Abbott, et al. 2015). However, space constraints prevent us from analyzing them here.

In the discussion that follows, we examine beneficiary engagement in regulatory processes of each category represented by the cells in Table 1—each row of which represents one functional component of the regulatory process. We first examine the different ways in which beneficiaries can be positioned in regulatory processes as *targets*. We then examine modes of engagement that beneficiaries can undertake in processes of regulatory *rule-making*. This is followed by an examination of beneficiary engagement in *rule intermediation*, involving monitoring and compliance systems associated with transnational regulatory schemes. As the framework article by Abbott, Levi-Faur, and Snidal (this volume) shows, monitoring and compliance are not the only functions performed by intermediaries, but we focus on this aspect because it is especially important in the domain of labor regulation. “Horizontal” movement along each row—from low to high levels of beneficiary participation—enables us to systematically consider the consequences for regulatory processes and outcomes of varying degrees of beneficiary inclusion at each functional stage (rule-making intermediation, and rule-taking). The “vertical” line of comparison *between* functional stages enables us to demonstrate the general point that beneficiary participation matters in processes of intermediation just as it does at other functional stages of the regulatory process.

Our analysis of the effects of beneficiary participation on regulatory processes and outcomes is complicated by potential endogeneity of causal relationships, whereby the initiators of a regulatory scheme determine both the levels of beneficiary inclusiveness reflected in the scheme’s governance and the content of specific regulatory rules. Control by the scheme’s initiators over the level and the consequences of beneficiary inclusion over time

is, however, potentially limited in a number of ways. First, the decision to include beneficiaries can have long-term consequences on rule-making and intermediation that were not expected when the scheme was originally designed. Second, patterns of beneficiary inclusion may evolve over time in ways no regulatory actor can fully control. For example, decisions by regulators not to include beneficiaries may have unintended effects, such as greater efforts by NGOs to unilaterally undertake nondelegated intermediation functions. Moreover, changes in levels of beneficiary participation may be triggered by “exogenous shocks,” such as complaints, protests, or pressures to conform to evolving norms within a wider regulatory field. Auld, et al. (2015) note that private governance programs faced pressures to increase stakeholder involvement regardless of whether they were initially based on a “logic of control” (improving social outcomes by establishing strict and enforceable rules) or a “logic of empowerment” (reducing exclusion of marginalized actors in the global economy). We briefly mention examples of such dynamics below. Regardless of whether such dynamics actually unfold in particular cases, the fact that they are possible makes the counterfactual question meaningful: Would the content, application, and impact of rules be different if the level and type of involvement of beneficiaries had been different?

Intended Beneficiaries and Targets

Actors can be affected by a rule without being a target, while being a target implies being affected by the rule (though not necessarily through compliance with the rule). Intended beneficiaries are by definition meant to be affected by a regulatory arrangement. But being a target entails a specific form of affectedness, i.e., the rule is intended to restrict the range of possible courses of action available to those being regulated, either through prescribing or proscribing certain behaviors. In other words, rules *constrain* targets by addressing the behavior of these actors—imposing responsibilities on them, and thus limiting the choices

available to them. The constraining effect of rules can go hand in hand with an enabling or empowering effect. For example, a rule regarding the constitution of a worker organization can be enabling in the sense that it facilitates potentially empowering forms of collective action. At the same time, it can be restrictive in the sense that a given constitutive rule enables collective organization to occur in only one particular way, foreclosing other ways of organizing. Beneficiaries qualify as targets of regulation when their choices are somehow constrained, even if the enabling dimensions may be predominant.

Among targets understood in this way, we distinguish between direct and indirect targets. *Direct* targets are those explicitly targeted by rules, and formally identified as holders of obligations and responsibilities in relevant documents, such as statutes, private contracts, licensing agreements, Memorandum of Understandings, and so on. Regulatory arrangements usually specify sanctions for noncompliance on the part of direct targets. By contrast, *indirect* targets are (intentionally or unintentionally) subject to constraints without this condition being explicitly stated and formalized. We call them indirect targets because for them the constraints typically result from compliance (or other rule-induced behavior) by the direct targets. For instance, a certification scheme may place formal obligations only on brands at the consumer end of global supply chains, but in reality (albeit implicitly) target also the practices of factories supplying those brands.

We now consider in turn the three types of relationships between beneficiaries and targets depicted in the first row of Table 1: beneficiaries are distinct from targets, beneficiaries' representatives are targets, and beneficiaries themselves are targets. We provide illustrative examples of each type of relationship as our analysis proceeds. As we illustrate, a given regulatory scheme can, and often does, encompass more than one type of relationship with beneficiaries. We conclude this section by discussing whether and how the type of relationship with beneficiaries matters.

Relationship of separation (cell 1A)

Complete separation is relatively uncommon, since most nonstate regulatory arrangements include some rules that have intended beneficiaries as direct or indirect addressees. However, the extent to which such rules constrain beneficiaries varies significantly across regulatory arrangements. For instance, rules imposed on trading organizations within Fairtrade, especially long-term purchasing obligations, are intended to empower producer cooperatives and thus expand the options of both beneficiaries and their representatives (managers of cooperatives).

Relationship of representation (cell 1B)

The Fairtrade system also illustrates the second scenario in Table 1; that is, rules of a nonstate governance arrangement that constrain the *representatives* of beneficiaries. The system requires that Fairtrade products be purchased on a long-term basis from democratically governed worker or producer organizations. This requirement—a condition for participating in Fairtrade trading relationships—entails extensive obligations for participating producers in relation to the composition and governance of their collective organizations. These organizations are required to meet minimum standards regarding membership composition (a majority of small producer members being required in the case of cooperative production models), transparency, and democratic participation in organizational decision-making, and internal processes and training to facilitate producer or worker involvement, among other requirements. Such requirements affect farmers as well as their representatives. Fairtrade standards also impose obligations directly on small producer beneficiaries in relation to environmental management, labor conditions for contract workers, and record-keeping and other internal administrative practices.

Relationship of identity (cell IC)

Regulatory arrangements in the labor standards field rarely identify individual workers or other beneficiaries as *direct* targets. There are some exceptions to this within the Fairtrade system, where many production standards for Small Producer Organizations are explicitly identified as also applying directly to individual producer members (one important category of Fairtrade beneficiaries).

More commonly, however, workers and other beneficiaries can be understood as *indirect* targets. Consider the case of the Rugmark certification scheme, founded in 1994 as a result of a campaign against child labor in the Indian carpet industry conducted by Indian, German, British, and U.S. NGOs. Subsequently the initiative was extended to carpet production in Nepal and Pakistan. Rugmark standards consist of substantive rules concerning the use of child labor in carpet production and procedural rules concerning registration, inspection, and deregistration in case of noncompliance. The key direct targets of Rugmark rules are the exporters and manufacturers who sign license agreements with the Rugmark Foundation. If Rugmark inspectors repeatedly find illegal child labor in registered looms, the delinquent exporters lose permission to use the label. Carpet weavers, children actually or potentially working on looms, and their families are indirect targets. Rugmark-licensed exporters and traders are required not to purchase carpets from suppliers who employ children, or, if the child is a family member of the loom owner, if the child does not have evidence of regular school attendance. Whatever the welfare effect of such a requirement, it limits the options available to children and their families.

Separation, representation, or identity in rule-taking: Does it matter?

As noted in the introduction, the role of beneficiaries in regulatory systems can be normatively assessed from a welfarist or a democratic vantage point. In turn, different

approaches to democracy lead to different views about who should have participatory entitlements for a decision-making process to have democratic legitimacy. One influential view is that everyone who is significantly affected by a decision should have the right to participate in that decision (Goodin 2007, Fung 2013). While endorsed, in one form or another, by various prominent political theorists, this “all-affected principle” has also been subject to a great deal of scrutiny and criticism. Authors such as Abizadeh (2012, 12) prefer an alternative “all-subjected principle,” according to which all those who are subject to a coercive and symbolic political power should have a say in the terms of its exercise.

In light of such debates, the question whether the intended beneficiaries of regulatory systems are targets matters considerably. From the perspective of the all-subjected principle, a democratic deficit emerges when targets are not also regulators. More specifically, participatory entitlements must be offered at least to targets that have not acquired this status voluntarily. The Rugmark case illustrates this situation: the decision to join the certification scheme is taken by the carpet exporters rather than by the loom workers, and loom workers can only disentangle themselves from Rugmark rules and inspections by re-negotiating or severing their relationship with the exporters and middle-men. Given the risks and costs involved in such an “exit” decision, it is plausible to conclude that at least some of Rugmark’s beneficiaries are coercively subject to it. Rugmark would then be democratically illegitimate if it did not offer beneficiaries a formal say in the content and implementation of its rules. In the following sections on rule-making and intermediation, we show that such a negative assessment appears well supported by the lack of participatory opportunities within the Rugmark system.

If we endorse the all-affected principle, by contrast, the presence of coercion is not decisive. Beneficiaries do not need to be targets to have a valid claim to participation, as long as the regulatory system has (or might have) a significant impact on their interests. While the

all-subjected principle would lead us to treat the cases in cell 1A differently from those in cell 1C, the all-affected principle would not.

While the democratic yardstick produces a relatively clear picture of which regulatory processes are legitimate and which are not, the welfare implications of positioning beneficiaries as targets within a given regulatory arrangement are often ambiguous and highly context-dependent. Imposing constraining rules directly on beneficiaries can be costly for them, and may harm their welfare. For example, rules that constrain workers' opportunities to generate extra income by working more than permitted hours of overtime, or to increase their perceived comfort during hard physical labor in hot conditions by not wearing protective equipment, might constrain worker welfare in certain dimensions, either in relation to individual workers or through externalities among them. Such rules may also have welfare-enhancing consequences, when considered from the perspective of broader indicators of health or well-being. The "overall" impact on welfare is often unclear.

Intended Beneficiaries and Regulators

We turn next to the second row of Table 1, which identifies three modes of beneficiary engagement with regulators. Such relationships can range from the complete separation between beneficiaries and regulators, to the presence of some kind of "representative" in the rule-making process, to the provision of opportunities for beneficiaries to participate in the formal rule-making process. We provide illustrations for each of the three types and conclude the section by discussing whether and how the type of relationship matters.

Relationship of separation (cell 2A)

Rugmark is an example of separation between beneficiaries and regulators. There was no sustained effort to enable children to participate in determining what kind of program would

be in their best interest. Rugmark has been far from exploring all opportunities for involving working children in the design of its activities, especially if compared to the work of other organizations, such as Save the Children (Black 2004, Bourdillon, et al. 2010). Such neglect has also extended to parents and carers of the affected children. A survey of 5,545 workers on looms registered by Rugmark or other labeling schemes, or unregistered found that “villagers had little or no idea of the labeling programs initiated for tackling the problem of child labor in the carpet industry” (Sharma et al. 2000, 49). Similarly, a German evaluation team noted that Rugmark India never attempted to develop partnerships with its beneficiaries (Dietz, et al. 2003, 60).

Although the separation between intended beneficiaries and regulators is not quite as stark as in Rugmark, intended beneficiaries of the Fair Labor Association (FLA) are able to exercise very little direct control over FLA managers. Structures of beneficiary representation within the FLA are very weak, and the FLA’s accountability to workers is further constrained by the limited knowledge possessed by many regarding the substance of FLA decisions, the procedures through which these decisions are made, and in many cases the very existence and purpose of the FLA.

Relationship of representation (cell 2B)

Formalized inclusion of beneficiaries in rule-making processes is much more common in representative structures. A clear example of beneficiary engagement through representative processes is offered by FLO. Although the majority of positions on the FLO board are still held by fair trade stakeholders from consuming rather than producing countries; delegates of fairtrade certified producer organizations hold four out of thirteen positions on the board. Moreover, producers have some direct representation on FLO’s Standards Committee, the body to which FLO’s standard-setting functions are delegated. Other members of this

committee are representatives of national initiatives, producers, traders, and other designated “experts.”

Third-party organizations linked to beneficiaries also play important roles in rule-making within the FLA. Modes of indirect beneficiary engagement occur quite differently in the FLA compared with the FLO. Beneficiaries are represented in FLO governance through formalized representative structures, in which beneficiaries are directly represented through their collective organizations. In the FLA, the individuals who speak in some sense “on behalf” of the interests of beneficiaries can represent these groups only indirectly or informally. The FLA board, which is responsible for setting the association’s strategic direction and overseeing its activities, is structured so that control is shared among companies, universities, and NGOs, each of which have six representatives on the board. Some NGO representatives aspire to speak for beneficiary concerns, though none claim to formally represent these groups.

Informal engagement by representatives or advocates of beneficiary groups is also common. For example, representative organizations that we have elsewhere called “solidaristic proxies” (Koenig-Archibugi and Macdonald 2011) exercise important forms of influence over managerial decisions in FLO via their role in facilitating two-way information flows that connect beneficiaries with managers and enable deliberative processes of learning. Such learning processes have been facilitated in a number of ways. In the past, both the International Fair Trade Association (IFAT, now World Fair Trade Organization) and the fair trade alliance Network of European World Shops (NEWS) established global deliberative and communicative spaces involving fair trade groups, making use of transnational networks, newsletters, electronic updates, and commercial contacts to facilitate communication and

learning among beneficiaries, proxies, and managers.⁵ The links built between fair trade organizations and wider grassroots and activist groups at forums related to the World Trade Organization, the United Nations Conference on Trade and Development, and Summit of the Americas have also been important in enabling the preferences of beneficiary groups to be communicated to managers.⁶

Relationship of identity (cell 2C)

Direct beneficiary participation in rule-making (as opposed to participation through representative structures) is rare in most nonstate governance schemes. In some cases this reflects a tendency to exclude beneficiaries from participation in the governance of transnational regulatory schemes altogether. For those schemes that recognize the value of beneficiary engagement in rule-making, it is perhaps not surprising that reliance tends to be placed on representative procedures, given that a large number of beneficiaries of most transnational regulatory schemes are geographically dispersed.

There are some examples of direct beneficiary engagement in rule-making, in which ordinary worker or smallholder producers (not simply their organizational representatives) are given opportunities to have direct input into standard-setting processes. However, such channels are usually informal and/or ad hoc.

Means through which beneficiaries can participate directly in FLO governance have been expanded in recent years. These include the introduction of an FLO Fairtrade Forum, which enables stakeholders to meet every two years; the creation of Regional Producer Assemblies, which meets regularly between forums to strengthen producer involvement; and,

⁵ Nicholls and Opal (2005, 254), citing Carol Wills from IFAT.

⁶ See www.worldshops.org/FairTradeAdvocacy/FINEJun04.pdf.

in 2007, the granting of membership to three regional producer networks (Nicholls and Opal 2005). Additionally, producers, together with traders, alternative trading organizations (ATOs) and other stakeholders, now serve on a Standards and Policy Working Group and a Certification Committee (Courville 2008).

Although formal FLO rule-making relies heavily on a committee process that is remote from ordinary beneficiaries, formal opportunities for producer networks (among other stakeholders) to request reviews in areas of concern do exist,⁷ and the Standards Unit sometimes arranges additional consultation mechanisms such as stakeholder workshops to facilitate direct input from at least a small number of ordinary workers or producers.

Separation, representation, or identity in rule-making: Does it matter?

The preceding discussion highlighted different configurations of beneficiary engagement in rule-making. We now offer some preliminary illustrations of how such differences can influence regulatory processes and outcomes, specifically with regard to the content of rules and their welfare effects. For example, if the families in India's carpet belt had been regulators in addition to targets, would the content of Rugmark's rules have been different? And would such differences have brought about significant changes in the welfare of beneficiaries? The answer is probably yes to both questions.

Interviews conducted by one of us with parents of (former) child laborers in the Indian carpet belt showed that their priorities were access to fee-free schools that offered teaching of sufficient quality (no teacher absenteeism); did not discriminate against poor and low-caste pupils; and provided midday meals, clothes, and school books. Parents also linked

⁷ See http://www.fairtrade.net/fileadmin/user_upload/content/2009/standards/documents/2012-02-07_SOP_Development_Fairtrade_Standards.pdf.

the end of child labor to provision of earning opportunities and financial help for the purchase of farm animals.⁸ Other researchers found that for villagers an improvement in school attendance depends on the establishment of schools at an accessible distance, regular teachers attendance, improved teacher-pupil ratios, and the provision of midday meals (Sharma et al. 2000, 66). Parents stressed the link between the economic condition of households and school attendance (Sharma et al. 2000, 66). While parents supported the provision of schooling and income opportunities, they tended to oppose the prohibition and monitoring of children's work (Sharma et al. 2000, 67).

The Rugmark system provides some of the activities preferred by the beneficiaries. The Rugmark Foundation created a center for the rehabilitation of former bonded child laborers and nonresidential primary schools for children in carpet weaving areas. However, Rugmark provides no compensation to families for loss of income from child work and no alternative income opportunities (except some training for women in carpet weaving). Between 1997 and 2002, Rugmark India spent about half of its license fee income on monitoring and administration and the other half on social programs (Dietz 2003, 64). If the intended beneficiaries had been regulators, it is likely that a much greater proportion of the income would have been spent on schooling and income replacement.

Conversely, the content of fair trade rules would have likely been significantly different had producers not had formal representation on the FLO board. Producers were not formally represented on the board when the organization was established in 1997, but reforms since that time have progressively strengthened their representation. Formal representation of beneficiaries proved to be crucial in helping producer representatives to secure an increase of

⁸ Interviews with sixty direct beneficiaries of child labor projects in villages of eastern Uttar Pradesh (Lokapur, Thakkarnagar, Birohi, Majhwan, and Katka), January 2005.

the minimum price for coffee and the social premium paid to producer groups in 2007, even with initial opposition from some managers of fair trade organizations in consuming countries (Bacon 2010, Reinecke 2010).

Advocacy groups or other third party organizations linked to beneficiaries have also played an important role in shaping rule-making processes and outcomes in the FLA. Specifically, third party organizations have contributed to greater alignment between rule-making processes and preferences of beneficiaries. To some extent, such organizations have been able to exert influence directly through the board, either via individual NGO board members, or via the indirect leverage that campus-based student activists have often been able to wield over university managers. More often, however, third party organizations have exercised influence over deliberative processes of feedback and learning among managers.

Nevertheless, third-party organizations linked to beneficiaries have in many cases proven to have insufficient influence on managerial choices about some of the more overtly allocative instruments for which beneficiaries and solidaristic proxies have advocated. Of particular note, managers continued to resist demands for “living wages,” for the FLA to carry out programs to train workers, and for the FLA to participate in a proposed designated supplier program.

Intended Beneficiaries and Intermediaries

As discussed in the framework article of this volume, an intermediary can be understood as “any actor who acts in conjunction with a regulator to affect the behavior of a target” (Abbott, Levi-Faur, and Snidal, this volume). In the following, we provide examples of complete separation between beneficiaries and intermediaries, “representatives” playing some rule-intermediary role, and direct involvement of beneficiaries in rule-intermediation.

As in the previous sections, we conclude by offering some thoughts on whether and how the type of relationship matters.

Relationship of separation (cell 3A)

Separation between beneficiaries and intermediaries is the predominant practice among nonstate governance schemes operating in the transnational labor regulation field. One clear illustration of such practices is offered by Rugmark. The Rugmark certification system is based on inspectors employed by Rugmark, who visit villages and loom sheds without advance warning. The Rugmark Foundation thus performs the roles of both regulator and intermediary. Researchers working in the carpet belt have noted that the families of working children tend to see the inspectors as outside forces threatening their means of livelihood. A team from the Institute for Human Development observed that “the manner in which these inspectors visit a specified loom is more in the nature of a raiding party,” with adult weavers being threatened with fines (Sharma, et al. 2000, 49). Another large-scale survey of households with children working in the carpet industry found that “NGOs working with government agencies for better enforcement are not well regarded by the villagers” (Srivastava and Raj 2002, 111).

The relationship between beneficiaries and intermediaries is also characterized by high levels of separation in the FLA and FLO—both of which rely heavily on professional auditors. In the FLO, professional auditors operate through FLOCERT, an independent entity linked to the standard-setting organization. The FLA arranges for monitoring to be carried out both by professional compliance staff contracted by member companies, and by “independent” auditors arranged in a selection of facilities by the FLA Secretariat.

Relationship of representation (cell 3B)

In the sphere of labor regulation, it is rare for transnational private regulatory schemes to rely heavily on intermediaries that have close relationships with beneficiaries (reflected in cell 3B of our table). It is particularly rare for the involvement of such groups to be formalized within the governance and compliance systems of these initiatives. Perhaps because of the orientation of many of these schemes toward providing assurance about production conditions to external audiences in consuming countries, processes of rule-implementation and monitoring usually involve a central role for independent auditors. The trend highlighted by Van Der Heijden (2017) in relation to other policy domains also applies to labor: “regulation has become an industry in itself in which many regulatory intermediaries undertake business activities.”

Nonetheless, there are some rather idiosyncratic examples of intermediaries that could be placed in the representative category. For example, the FLO has created FLO “liaison officers,” who are based in selected producing countries, and who work with plantation managers and small producers to help build their capacity to implement and comply with designated standards. Their focus is the fairtrade rules (plantation and cooperative managers), but they also have regular communication with worker “joint bodies” (the collective worker organizations operating on fairtrade certified plantations) and individual cooperative members.

There are also examples of independent auditors that place relatively high value on strong communication and worker engagement in processes of monitoring. For example, the Guatemalan organization COVERCO (Commission for the Verification of Corporate Codes of Conduct) is a nonprofit consortium of individuals from Guatemalan civil society and relevant professions who provide independent code monitoring, and who have been contracted by the FLA in Guatemala on a number of occasions. They will only agree to carry out monitoring where factory management gives them full access to company records, and

allows them open access to factory locations over a period of months. They also insist on retaining the right to share the findings of their audits with other interested parties. Although they avoid any direct advocacy role for workers, to maintain their independence, their degree of “closeness” to workers is much greater than is usually the case for auditors of this kind. Another example of an auditing system that facilitates extensive input from beneficiaries into audit processes is the Fair Wear Foundation, described by Marx and Wouters (this volume).

There are also examples in which outside advocacy groups, which aspire to speak on behalf of beneficiaries, have undertaken monitoring or compliance activities. Adversarial outside groups such as the Workers Rights Consortium (WRC) or United Students Against Sweatshops (USAS) are examples. There are also similar examples from other regulatory schemes—such as the role of the Dutch NGO SOMO in initiating its own investigations into compliance with Rainforest Alliance standards by tea producers in India and Kenya, or the UK based Forest Peoples Programme conducting independent investigations of producer compliance with Roundtable for Sustainable Palm Oil standards in Indonesia. Each of these examples illustrates how advocacy organizations external to a regulatory scheme can investigate or monitor compliance with the scheme’s stipulated rules (thus performing rule-intermediation functions), albeit through informal or ad hoc processes.

Relationship of identity (cell 3C)

In some cases, beneficiaries of nonstate governance arrangements can be considered intermediaries, as defined by Abbott, Levi-Faur, and Snidal (this volume). Direct beneficiary involvement in intermediation is most commonly associated with fire-alarm monitoring systems. The FLA has established a third-party complaint mechanism that enables beneficiaries to make formal complaints to the FLA Secretariat in the case of alleged violations of FLA rules. FLOCERT similarly offers a procedure whereby beneficiaries or

their representatives may make formal “accusations” against certified fairtrade operators alleged to have violated fairtrade standards or policies.⁹

Another example of a fire-alarm monitoring mechanism is the Clean Clothes Campaign (CCC), specifically its Urgent Appeals (UA) system, created in the mid-1990s (den Hond, et al. 2014). The CCC itself has the characteristics of a regulator, in the sense that it decides which actions by factory owners and managers qualify as violation of core labor rights and deserve to be subject to transnational pressure. Factory owners and managers are targets; although the CCC is not based on their voluntarily accepting a set of rules to which they can be held to account. Workers themselves, in conjunction with local trade unions and NGOs, function as intermediaries, in the sense that it is up to workers to trigger the procedure by requesting help from the CCC and providing information on alleged labor rights violations.

Separation, representation, or identity in rule-intermediation: Does it matter?

While we cannot offer a systematic review of all the available evidence, there are good reasons to believe that beneficiaries’ relationships to intermediaries affect the interpretation and implementation of rules, and that this has potential implications both for the welfare of beneficiaries and for regulatory outcomes.

Of particular relevance is a long-standing controversy over the relative merits of monitoring compliance through professional auditing companies, as opposed to worker-based mechanisms, such as the CCC’s urgent appeal system or the procedures used by the Workers’ Rights Consortium (WCR) (Esbenshade 2004). Mark Anner has recently shown how the relationship between beneficiaries and intermediaries in the FLA matters for the outcome of

⁹ See <http://www.flocert.net/wp-content/uploads/2014/03/QM-Complaints-SOP-14-en.pdf>.

monitoring processes. On the basis of an analysis of all 805 factory audits conducted by the FLA between 2002 and 2010, Anner (2012) maintains that violations in areas such as minimum wages, hours of work, and health and safety are much more frequently detected than violations of freedom of association (FoA) rights.

Anner makes two interesting comparisons. One is a comparison between FLA audits and a different procedure available in the FLA system, the third-party complaint mechanism. The FLA investigated nineteen third-party complaints between 2002 and 2010, and the single greatest issue-area in these complaints was FoA (32 percent of all violations, as opposed to 5 percent of violations detected by FLA audits). Anner notes that the higher proportion of FoA violations detected following third-party complaints suggests that “when worker representatives and their activist allies take the initiative, they are more likely to detect violations of the empowering rights embodied in FoA” (Anner 2012, 621). The other comparison is between the findings of FLA auditors and those of inspections by the WRC, whose strategy is to encourage workers to present complaints and then investigate them. Anner finds that the WRC is six times more likely to find FoA violations in factories than the FLA, compared to other types of violations. This is strong evidence that it matters whether and how the monitors are connected to beneficiaries.

Furthermore, as Abbott, Levi-Faur, and Snidal (this volume) indicate, RIT relationships are subject to the risk of capture of intermediaries by targets, most crudely in the form of bribes to monitors to prevent the reporting of rule violations, or as a result of competition between intermediaries to secure targets as their clients (Galland 2017, van der Heijden 2017). It is plausible that beneficiary involvement in monitoring activities can make this form of capture more difficult to achieve.

Interactions between Relationships

In the previous sections we asked whether it matters what kind of relationship (identity, representation, separation) there is between beneficiaries and each of the three regulatory actors taken separately, in terms of democratic legitimacy, the content of rules and their implementation, and consequences for beneficiary welfare and regulatory impacts. However, these relationships often interact, and thus the effects of any one of them often depend on how the others are configured.

We can observe first the possibility that beneficiaries' relationship to regulators affects the interpretation or application of rules. Consider the interpretation that Anner (2012) makes, summarized in the previous section. He explains that the FLA auditing system results in a low proportion of detected FoA violations, lower than the FLA's third-party complaint mechanism as well as the WRC system, not just in terms of who does what at the factory level. Anner also argues that "corporate-influenced programs will be more likely to emphasize monitoring minimal labor standards (minimum wages, hours of work, health and safety) to increase their legitimacy, but will be less likely to emphasize the monitoring and remediation of FoA rights since these rights are perceived to lessen managerial control" (Anner 2012, 612). According to Anner, rule-intermediation in the FLA and in the WRC system generates different outcomes because of the influence exercised by different stakeholders on the regulatory arrangement as a whole.

This evidence is directly relevant to the issue of interaction, because (to repeat) the neglect of FoA rights is not located in the rules themselves, but in the activities of the intermediaries, i.e., the FLA auditors, and in Anner's view this ultimately results from the fact that workers are neither present nor effectively represented in the FLA's decision-making process. But this conclusion is not obvious, and the issue deserves further analysis based on a comparison of other nonstate regulatory arrangements.

Beneficiaries' relationships to intermediaries may also affect the making of rules, as well as associated policies about rule-intermediation procedures, through indirect feedback processes. As we have seen, there are few examples of direct beneficiary participation in rule-intermediation beyond ad hoc or informal instances of engagement, and as Auld and Renckens (this volume) emphasize, the investigation and monitoring functions performed by beneficiaries can sometimes be difficult to differentiate from influencing efforts external to the regulatory process. Nonetheless, where such beneficiary engagement has occurred, the capacity for investigation or monitoring procedures to highlight systemic failures in regulatory regimes has sometimes created pressure to change the rules. For example, independent auditing reforms in the FLA, as well as the introduction of regulatory initiatives to tackle pervasive problems, such as discrimination or FoA violations, can be linked to sustained pressure from external investigation and monitoring, in addition to internal processes.

As we also illustrated above, positioning beneficiaries as targets can involve complex considerations of the trade-offs between conflicting welfare effects. Moreover, welfare effects may depend not only on the content of rules (such as those concerning overtime limits or the wearing of protective equipment), but also on subtle questions about how such rules are implemented. In such situations, enabling beneficiaries to have input into rule-making may be an important means of enabling difficult trade-offs to be made in ways that are consistent with beneficiary welfare (or at least beneficiaries' own perceptions of their welfare). In other words, the welfare effects of the rule-taking status of beneficiaries are likely to be influenced also by the extent to which beneficiaries engage in rule-making and rule-intermediation.

Conclusion

We have argued that the participation of beneficiaries in transnational regulatory processes can “matter,” in that it influences what rules are made, in whose interests, and how these rules are interpreted and implemented. This is important for the welfare effects of regulatory systems, for conformity with democratic principles, and for regulatory outcomes.

By definition, (intended) beneficiaries are (meant to be) affected by processes of rule-making and intermediation irrespective of whether they are formally identified as targets. Even where workers or small producers are not direct addressees of transnational regulation, rules addressing employers (or other relevant supply chain actors) are supposed to have, and often actually have, significant welfare implications for workers or small producers (though not always the welfare effects that were intended by regulators). *How* they are affected depends importantly on the character of their engagement with regulatory processes; that is whether their relationship with rule-making and intermediation is characterized by identity, representation, or separation.

We have also suggested that the degree of participation or representation that beneficiaries have in regulatory processes can have significant welfare implications for beneficiaries at each functional stage of the regulatory process. These stages are connected in important ways, so that participation or representation at one level has direct welfare implications at that regulatory stage as well as spillover effects for welfare effects produced at other stages. Nevertheless, there is some degree of autonomy of processes at different levels, so participation or representation at one level cannot substitute for participation or representation at other levels. If beneficiaries are to be in a position to protect their own interests within transnational regulatory processes, opportunities for direct participation and/or indirect representation is likely to be required both in rule making processes and in processes of monitoring and auditing.

While we have reached the general conclusion that beneficiary participation in the regulatory process matters, further investigation is needed to ascertain which constellations of conditions are likely to produce which outcomes. We conclude by highlighting some promising avenues for future research.

First, research could explore potential contributions of beneficiaries to regulatory functioning, for example by providing unique sources of expertise regarding “on the ground” target behavior, mitigating risks of intermediary capture by countering potential misinformation provided by targets to intermediaries about their own compliance, or countering arguments made by targets to regulators about the kinds of rules and implementation processes that can be considered feasible or appropriate in a given sociopolitical context (such as occupational health and safety standards or levels of “living wages”).

Second, and relatedly, future research could examine how differences among beneficiaries mediate the impact of participatory mechanisms. Participation may yield different results depending on whether beneficiaries possess high or low organizational and epistemic capacities—shaping their ability to gather and communicate information about target performance in forms acceptable to regulatory authorities. For example, are there systematic differences in how unionized workers and illiterate families of working children contribute to processes of regulatory intermediation?

Third, as noted in the introduction to this article, we have provided a series of snapshots to illustrate different types of relationships, but analysis of how these relationships have evolved in the context of institutional and other changes would be a valuable extension (Auld 2014 , Auld, et al. 2015). The dynamic aspect deserves further attention because the transnational regulatory schemes considered here operate in a complex policy field, characterized by high levels of interaction among individual schemes (Fransen 2011,

Macdonald 2013), with the potential for both diffusion and differentiation among initiatives in relation to modes of beneficiary involvement.

Finally, this article focused on one policy domain—the regulation of labor conditions—where the identification of beneficiaries, while not exactly straightforward, is arguably easier than in other regulatory domains. In environmental policy, for instance, often the intended benefits have more clearly the character of (global) public goods. To what extent our conclusions extend to other policy domains is another worthwhile topic for further research. For instance, in her application of the RIT framework to the International Criminal Court (ICC), De Silva (2017) volume) highlights the fact that the court, as primary intermediary, delegates regulatory functions to, or orchestrates, NGOs, which thus acquire the role of “secondary intermediaries.” If we extended our argument to the domain of international criminal justice and considered the victims of atrocities as a key beneficiary group, we would expect to find that the type of relationship between these NGOs and victims (separation, representation, and victims as NGO members) matters for both the process and the outcomes of regulatory intermediation.

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