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EXPLORING THE FORMAL AND INFORMAL ROLES OF REGULATORY INTERMEDIARIES IN TRANSNATIONAL MULTI-STAKEHOLDER REGULATION

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Abstract

Research on regulation and regulatory processes has traditionally focused on two prominent roles: rule-making and rule-taking. Recently, the mediating role of third party actors, intermediaries, has started to be explored – notably by Abbott and colleagues in a dedicated special issue of the *Annals of the American Academy of Political and Social Science*. The present special issue extends this line of research by elaborating the distinction between formal and informal modes of regulatory intermediation, in the specific context of transnational multi-stakeholder regulation. In this introduction, we identify two key dimensions of intermediation (in)formalism: officialization and formalization. This allows us to develop a typology of intermediation in multi-stakeholder regulatory processes: formal, interpretive, alternative and emergent. Leveraging examples from the papers for this special issue, we discuss how these four types of intermediation co-exist and evolve over time. Finally, we elaborate on the implications of our typology for regulatory processes and outcomes.

Keywords

Informalism, intermediation, multi-stakeholder regulation, regulatory intermediary, transnational governance

1. Introduction

Research on regulation and regulatory processes has traditionally focused on two prominent roles: rule-making and rule-taking. Recently, however, a third role – intermediation – has come to trigger significant scholarly interest (Abbott *et al.*, 2017b). Regulatory intermediaries (RI) mediate the relationship between the producers of rules and their targets, and they do so in different ways – they promote, enforce, monitor, and even certify compliance with regulations (Abbott *et al.*, 2017c; Levi-Faur & Starobin, 2014). The intermediary is a go-between who "stands between the regulator and its target" (Abbott *et al.*, 2015c, p. 5), thus making regulation (or some aspects of it) indirect. This understanding of the dynamics within the triad has been symbolized through the R>I>T (Regulator > Intermediary > rule-Taker) model (Abbott *et al.*, 2017c).

Building on this seminal conceptualization, Abbott and colleagues edited a special issue in the *Annals of the American Academy of Political and Social Science* (AAAPSS) (Abbott *et al.*, 2017b) which laid the ground for further elaboration of intermediation processes in regulation studies. The AAAPSS special issue focused on the "downstream stages of the regulatory process" (Abbott *et al.*, 2017b, p. 17), hence on the formally defined roles of intermediaries particularly with respect to rule-taking. But it also revealed the importance of informal intermediary roles upstream, in rule-making stages. Our special issue extends this line of research by exploring further the distinction between formal and informal regulatory intermediation, in the specific context of transnational multi-stakeholder regulation (e.g. Fransen, 2012; Marx, 2008; Mena & Palazzo, 2012).

Once developed mostly by states in a 'command and control' fashion, regulations for business conduct are now largely initiated and negotiated through multi-stakeholder platforms, where states may or may not be involved (Djelic & Quack, 2018; Schneiberg & Bartley, 2008). In contrast to more traditional forms of government where state regulators

directly produce regulations that rule-takers must then adopt, one important feature of multi-stakeholder regulation has been the crucial role played by intermediaries (Abbott *et al.*, 2015c). Because transnational multi-stakeholder regulation cannot rely on the monopoly of force or violence associated with nation-states – and hence lacks strong mechanisms of enforcement and monitoring – it has to devise and deploy alternative processes to ensure and control stages of adoption and of implementation. Multi-stakeholder and similar types of private governance initiatives have therefore heavily relied on regulatory intermediaries for downstream stages – enforcing and monitoring compliance of rule-takers with 'soft', non-state regulations (Abbott & Snidal, 2009). Intermediaries, usually non-governmental actors, are diverse and play different roles in multi-stakeholder regulatory processes (Grabosky, 2013). Typically, NGOs (Gereffi *et al.*, 2001), consulting firms (Brès & Gond, 2014) or expert groups (Ghafran & O'Sullivan, 2013) perform monitoring duties in association with multi-stakeholder regulatory platforms to verify that rules are indeed applied adequately and complied with by rule-takers (Gereffi *et al.*, 2001). Other actors, accredited by multi-stakeholder platforms, certify rule-takers for compliance (Bartley, 2011). Hence, intermediaries of different kinds and with different roles have become ubiquitous in private regulation (Eberlein *et al.*, 2014).

Despite the importance of RIs in transnational private governance, research has largely focused on their role as monitors of the downstream dimension of rule-taking, when such a role is formally defined. This is most particularly the case when the multi-stakeholder platform imposes monitoring of compliance and defines an explicit protocol for this. For instance, in addition to its Code of Conduct for working conditions, the Fair Labor Association (FLA) has defined Principles of Monitoring and Compliance Benchmarks as an explicit protocol to verify compliance by companies and suppliers (FLA, 2018). Different studies have considered, for example, how monitoring by intermediaries unfolds, whether

audit fatigue ensues (Locke, 2013), or whether accredited monitors lead to effective implementation and compliance (e.g. Katz *et al.*, 2009; Locke *et al.*, 2007; Marx & Wouters, 2017). While these studies have shed light on the important formal monitoring roles of RIs, the emerging literature on intermediation has surfaced the importance of other, more informal, roles. For instance, several papers in the AAAPSS special issue documented how, through their formal involvement in the downstream monitoring of regulation, regulatory intermediaries became experts. This expertise could then position them as informal advisors in upstream stages, when the regulation was being changed or revised (Galland, 2017; Havinga & Verbruggen, 2017; Lytton, 2017; Silva, 2017). Auld and Renckens (2017) provide a telling illustration. They explain how auditors who certify fisheries for the Marine Stewardship Council (MSC), a transnational private regulatory program for sustainable fishing, develop expertise from the practical application of MSC's rules. In turn, this expertise leads auditors to influence the regulator, the MSC, through 'intermediation feedback.'

Hence, these studies indicate that beyond formally defined roles, regulatory intermediaries in multi-stakeholder platforms are also bound to play more *informal* roles. We propose that these informal roles may even be more important than formal ones. The emergence of these informal roles can be explained in different ways. The role of regulatory intermediaries is likely to evolve or even diverge over time from its initial formal definition as regulatory intermediaries face real issues on the ground (Auld & Renckens, 2017). It might also come to include additional and unexpected dimensions (van der Heijden, 2017), notably due to intermediaries' self-interest (Galland, 2017). Moreover, not all intermediaries have an official or formal mandate either – and even if they have one it might be quite broad and general. Some intermediaries (or intermediation processes) are informal by nature, and have emerged spontaneously to mediate the relationship between regulators and rule-takers.

Hence, a relatively unexplored consequence of the rise of transnational private regulation is the large share of informalism that comes along with the multiplication of intermediaries from all backgrounds and of all types (Eberlein *et al.*, 2014; Waddock, 2008).

To be sure, regulation scholars have been interested in informal processes of regulation before transnational regulation's rise to prominence (see for instance Woll, 1963). However, recent developments in private governance underline the renewed importance of informal actors, roles, and mechanisms in market-oriented regulations (Bartley, 2017; Gong & Zhou, 2015; Wallace & Latcheva, 2006). Still, we lack detailed scholarly explorations of the tensions and dynamics between formal and informal dimensions of intermediation. Given the 'soft' nature and global scope of transnational regulations, the roles of intermediaries will be complex and plural and the dynamics between formal and informal dimensions are bound to be highly consequential. Hence, this is an important and urgent research agenda.

This special issue aims precisely to contribute a better understanding of the dynamics of regulatory intermediation in transnational private regulation. Exploring both the formal and informal dimensions of intermediation in private regulation (and their interactions) will enrich and deepen our understanding of regulatory capitalism by extending the current contributions of the RIT model of intermediation (Bartley, 2007; Eberlein *et al.*, 2014; Levi-Faur, 2011). In particular, a focus on informal mechanisms can help us understand how regulatory intermediaries end up having a significant influence not only downstream but also upstream, at the rule-making stage.

This introduction starts with some conceptual clarifications aimed at structuring our discussion of (in)formalism in intermediation. First, we propose a definition of (in)formalism. Second, from this definition, we deduce a typology of formal and informal intermediations in private governance. Finally, based on this framework, we propose an understanding of intermediation as a dynamic process of officialization and formalization, we provide

examples from the existing literature, and then introduce the different contributions of this special issue.

2. (In)Formalism in Transnational Private Governance Intermediation

Although in current depictions of RIs 'informal' is most often associated with the *roles* that RIs can take, we propose to see (in)formalism from a broader perspective: not only related to roles, but also to activities and structures. Indeed, intermediation can be defined as a process through which regulation is brought to the target through a series of mediating activities. Intermediaries can be individuals, organizations or networks. They are embedded in a regulatory framework or context defined by particular mechanisms and role structures (in this regard, see the idea of 'organizational role' introduced in this special issue by Kourula *et al.*, 2018). Those will vary with respect to their degree of formality.

So, what is formal and what is informal in intermediation processes? Although theoretical definitions of 'informalism' are sparse in the literature, let us start with the definition of *formal rules* proposed by Skoog:

> "Formal rules are consciously designed by humans and often codified in written form – examples are constitutions, laws and regulations. They are also often enforced by some external authority. The police and the courts, for instance, enforce the rule of law." (Skoog, 2005, p. 21)

In this definition, the idea of rule formalism is broken down into two dimensions. A first dimension pertains to macro institutional and structural characteristics of the regulatory process. It tends to equate formal with official: it posits the existence of an official, authoritative, and well-established process of regulation. What occurs outside of such a regulatory process is therefore not formal as in 'unofficial', i.e. not endorsed by a sovereign authority.

A second dimension stemming from this definition of rule formalism relates to the more micro, cognitive and interpretive, characteristics of a regulatory process. It tends to

equate formal rules with formalized—or ‘codified’ as in the definition above – and hence informal with tacit or non-formalized. Formalization can be understood as the process of codifying tacit norms of behaviour into explicit and often detailed rules inscribed in material artifacts (such as written codes).

While Skoog explicitly details formalism in *rules*, we can transpose his definition to other aspects of the regulatory process, such as intermediation. A rule or a set of rules (e.g. a constitution) can include an official and formalized process on how these rules will be intermediated (e.g. enforced, monitored, verified, etc.) (Pegram, 2017). But some rules can also be less explicit about how they will be intermediated. Some rules do not prescribe pre-established and well-defined processes of intermediation. Accordingly, when it comes to intermediation, some (sets of) rules will vary on one or both dimensions of (in)formalism. In line with Skoog, one dimension of intermediation (in)formalism refers to ‘officialization’, whereas another can be described as ‘formalization’. This means that for a given regulation, the intermediation process(es) can be more or less official and more or less formalized. We now elaborate on these two key dimensions of (in)formalism in intermediation.

2.1. (In)formal as (un)official – The officialization dimension

The first dimension of intermediation formalism, is a continuum going from official intermediations, openly endorsed and often decreed or legislated by a legitimate authority, to unofficial intermediations, occurring outside established and official regulatory channels. Here we draw on the classic distinction between authority and power (Lukes, 2005[1974], p. 21). When it comes to intermediation, we define power as the capacity to influence regulation whereas legitimate authority is defined as the socially accepted capacity to do so (Krasner, 1999; Zürn *et al.*, 2012). Of course, authority’s complete control over all spheres of society is neither feasible nor desirable. However, regulation can be seen as an ongoing negotiation for autonomy and control between a central authority and a galaxy of powers – as illustrated by

the idea of ‘autonomous’ versus ‘control’ regulation (Evans *et al.*, 1999; Reynaud, 1988). Society can be described as a temporary stable order, where a central hegemonic power needs to face various antagonisms (Mouffe, 2000). As already documented, RIs can serve to negotiate this tension between the autonomy of the rule-taker and the control of the regulator (see for instance Maggetti *et al.*, 2017).

Hence, on the one hand, the intermediation process for a given rule can be endorsed by a legitimate regulatory authority (see also Kourula *et al.*, 2018 in this special issue). The International Organization for Standardization (ISO), for example, is a widely accepted private authority for international standard setting. For most of its standards, ISO elaborates precise procedures for potential official intermediaries. In most countries national standards bodies have established registrars where prospective auditors need to undergo specific accreditation before they can audit or certify organizations. The nascent literature on RIs highlights the importance of certifiers’ endorsement to maintain the legitimacy of certifiable sustainable standards in transnational governance (Loconto, 2017).

On the other hand, intermediation in transnational private governance can also be unofficial. In that case, it will not stem from or be endorsed by a well-established authority. Regulatory intermediaries can operate in the shadow of authority, unassumingly supporting regulation or, on the contrary, insidiously undermining its legitimacy, gradually transforming or emptying its content. Here, we include official intermediaries who unofficially (without the authorities’ agreement or even knowledge) change their official mandate (Talesh, 2009). Previous studies have already documented a number of ‘pathologies’ related to the unofficial, and sometimes self-interested, roles of intermediaries (Abbott *et al.*, 2017a; van der Heijden, 2017). There is also a rise in unofficial actors who act as *de facto* intermediaries to enforce official regulations, such as compliance managers (Parker, 2002; Parker & Gilad, 2011), epistemic communities (Adler & Haas, 1992), advocacy and activist groups (Mena &

Waeger, 2014; Silva, 2017), think tanks or consultants (Brès & Gond, 2014; Sörbom & Garsten, 2017; Windell, 2007; Young *et al.*, 2003). Beyond a focus on actors, it is also important to recognize that unofficial intermediation can encompass alternative ways and mechanisms. For instance, private litigation and mediation processes have been described as processes through which regulation becomes more 'endogenous' to rule-takers (Talesh, 2009). Similarly, in-house processes to handle regulation (Edelman & Suchman, 1999) can be thought of as unofficial intermediation. For instance, corporate policies to handle diversity issues intermediate diversity-related regulations in a country (Edelman *et al.*, 2001).

2.2. (In)formal as (un)formalized – The formalization dimension

The second dimension of (in)formalism distinguishes between formalized and non-formalized intermediations. We define formalization as the process of turning tacit processes into explicit and 'material' ones. Codification is as old as civilization, emerging with early Mesopotamians who inscribed their rules on stone tablets (Encyclopaedia Britannica, 2018). In the context of regulatory capitalism – "a technological as much as a political order" (Levi-Faur & Jordana, 2005, p. 21) – the formalization dimension points towards both cognitive and material aspects of intermediation. The cognitive aspect refers to the fact that rules – whether related to intermediation or not – are interpreted by different actors. The more tacit intermediation rules are, the more actors will interpret underlying processes and how they are supposed to take place. Hence, one important assumption here is that any regulation is bound to remain at least partially informal in the sense of unformalized.

The material aspect of formalization refers to the documents, procedures, codes and other artifacts that are used to formalize some aspects of regulation, for instance its application. As opposed to tacit intermediation rules, more explicit intermediation rules are necessarily materialized: explicitly codified on a material support. However, since there is a risk of 'infinite regression' in the over-formalization of regulation, no regulation can be made

entirely explicit. All rules, including those governing intermediation, need to be enacted through intermediaries who "act directly or indirectly in conjunction with a regulator to affect the behavior of a target" (Abbott *et al.*, 2017c, p. 19).

This distinction is usefully connected to the contrast often made between civil or code law and common law (Dainow, 1966). Code law is associated with high degrees of formalization and codification – the law is written down, made explicit and in the process becomes less amenable to change. Common law suggests instead a fair degree of informal space where interpretation and the 'reading of the law' in context imply a much more dynamic and fluid regulatory tradition. Again, as with the transposition of Skoog's definition of *rule* formalism to intermediation, we argue that such a distinction between code and common law can also be transposed to intermediation. Arguably, transnational forms of private regulation are closer, in kind and nature, to the common law tradition. And intermediaries have a major role in the contextualized process of reading and interpreting intermediation rules. Past studies have already underlined the peculiar importance of knowledge, knowledge practices and experts (Knorr-Cetina, 1999) in transnational private regulation (Voss & Freeman, 2016). Recent studies have revealed how intermediaries can be a way to share the burden of regulatory formalization among several actors. For instance, complex law can be translated and implemented locally through a 'regulatory chain' composed of various intermediaries (Havinga & Verbruggen, 2017; Silva, 2017). In transnational governance, given the importance of translating global regulation into many different local contexts (Djelic & Sahlin-Andersson, 2006), intermediaries have proven key to engineering this local adaptation (Auld & Renckens, 2017). In this special issue, Kourula *et al.* (2018) highlight how intermediaries can take such a 'translator' role in the case of specific private regulatory programs (e.g. incentives-based schemes).

The two dimensions of (in)formalism should be seen as continuums. Indeed, intermediation processes are rarely fully official or unofficial (or formalized or non-formalized). Rather they will be situated somewhere along the two continuums. These gradations and slight variations in formalization and officialization allow for differences in the outcomes of seemingly similar intermediation processes. Moreover, the degrees of officialization and formalization can vary over time, again allowing for differences in regulatory outcomes. In fact, the two dimensions reflect central historical tensions in regulatory processes: between control and autonomy, on the one hand, and between formalization and spontaneity, on the other hand. The two continuous dimensions of intermediation we develop here should therefore be seen in light of the long-standing dynamics of global business regulation: between convergence (narrower reach) and informed divergence (broader reach) (Djelic & Quack, 2018). In this sense, looking at (in)formalism in intermediation complements current discussions on regulatory intermediaries in multi-stakeholder regulations by suggesting that intermediation is a key variable in the process of balancing power and authority and of negotiating an appropriate degree of formalization.

3. A Typology of (In)Formal Intermediation

Four different types of intermediation emerge when plotting the two dimensions of intermediation formalism on orthogonal axes, as illustrated in Figure 1. We argue that intermediation in the context of multi-stakeholder regulation can be connected to any of these four types. Often, intermediation will take different forms at the same time: a formalized and official intermediation can co-exist with an unofficial and non-formalized one, for instance. Moreover, as most articles in this special issue show, the typology should be understood dynamically: intermediation processes can evolve from one type to another over time. For example, some intermediation processes in labor standards were initially weakly formalized but became over time increasingly formalized, in close association with the development of

multi-stakeholder schemes such as the Fair Labor Association or the Ethical Trading Initiative (Bartley, 2005). We will explore implications in the discussion section below. For now, we elaborate on these four types of regulatory intermediation to show their distinct contribution to the RIT model. We also connect the different articles of this special issue to our typology, showing how, taken as a whole, they enhance our understanding of (in)formal dynamics of regulatory intermediation.

INSERT FIGURE 1 ABOUT HERE

3.1. Official and formalized: Formal intermediation

As indicated above, until recently, research on intermediation in private regulatory governance has focused mostly on the explicit role of monitors. Most archetypal forms of intermediation can be understood as 'delegation' where regulators have a direct control on intermediaries and specify what the latter have to do and how (Abbott *et al.*, 2015a). Contributions that explore how private regulations can be enforced and monitored adequately through official and formalized processes fall within our first type of regulatory intermediation: formal intermediation implies that governance platforms first endorse and then guide and support intermediaries, delegating key tasks for the enforcement and monitoring of transnational rules (Abbott *et al.*, 2015b). The role of intermediaries is therefore codified, explicit and formally endorsed (and legitimated) by the regulator.

This type of intermediation is quite widespread in transnational private regulation. For example, a multiplicity of auditors monitor the application of sustainability or corporate responsibility standards, whether those developed by the International Labor Organization (ILO), by ISO or a variety of multi-stakeholder platforms (Bartley, 2017). In this special issue, Paiement (2018) describes what can be considered as a typical situation of formal intermediation: social auditors tasked by the FLA to audit Chinese factories. Here, the

endorsement of intermediaries is clear and rules for auditing are fairly explicit. And yet, this case reveals the importance of auditors' informal role even in the context of formal intermediation. Through the idea of 'jurisgenerative role,' the author accounts for the need to interpret regulation when the context forbids straightforward application – as, in his example, in China with regard to the freedom of association for workers. The political context in China is such that associations of workers could be seen as a form of political contestation. Hence, blunt application of FLA regulation might prove detrimental if not dangerous for Chinese workers. In this context, it falls upon social auditors to determine whether and how FLA's requirements can be applied.

Another interesting contribution of Paiement's work has to do with the question of which regulators are actually being helped by formal intermediation. Beyond the official regulator, formal intermediaries can also serve what we could call a second-order regulator. Here, FLA's auditors are able to promote ILO's Conventions in China, even though they have not been fully ratified in that country (Paiement, 2018). Second-order regulators are particularly important in transnational regulations, which by definition cut across a variety of jurisdictions and levels (local, national, transnational, global). Hence, formal intermediation can play out in relation to a cluster of regulators and regulations that reinforce each other across multiple jurisdictional levels.

3.2. Official and unformalized: Interpretive intermediation

A second type of intermediation in transnational private governance is officially endorsed by authorities, while its actual processes and content remain largely undefined and not codified. Why would intermediation be left undefined? This can be a way to develop intermediation as a 'boundary object' (Lainer-Vos, 2013; Miller, 2001; Star & Griesemer, 1989). The lack of definition and codification about intermediation processes keeps them broad and blurry enough to be widely acceptable and adaptable – thus creating a 'corridor of indifference'

(Westley & Vredenburg, 1991) and limiting negative reactions and resistance. Such interpretive intermediation implies the enrollment of intermediaries with minimal explicit guidance – though sometimes implicitly controlling them, for example, through the provision of resources and power.

The non-formalization of intermediation should be seen as a specific source of power. In the AAAPSS special issue, Galland (2017) warned about expert intermediaries developing an 'informational advantage' in the RIT relation – hence increasing their power in the triad. Contributions to our special issue largely confirm and explore in greater details the specific power of interpretive intermediation. Through their study of big audit firms' growing influence over transnational labor governance, Fransen and Lebaron (2018) show the magnitude of such informational advantage. Initially mostly confined to formal intermediation as insurance- and service providers, audit firms managed to develop a recognized expertise in transnational regulation, which gradually led them to advise regulators for the development of regulation in transnational labor – in particular regarding the issue of forced labor and modern slavery. In this process, the formalization of regulation is far from neutral. In Fransen and Lebaron's case, audit firms have a business-oriented mindset: they advocate soft law and a greater role for business in regulatory processes. In other words, the nature and form taken by intermediation reflect ideologies and patterns of power. Fransen and Lebaron surface the absence of liability of such 'expert' intermediaries and the related legitimacy questions. Moreover, as audit firms advise governments on formalization outside public scrutiny, the authors claim that interpretive intermediaries may make the entire regulation process even less transparent.

However, interpretive intermediation does not necessarily mean that regulators will be captured as intermediaries grow in expertise. In this special issue, Monciardini and Conaldi (2018) propose a useful distinction between target- and beneficiary-related intermediaries.

Papers in this special issue provide good evidence that regulators' interests are best served by beneficiary-related intermediaries. In their study of the Access to Medicine (ATM) Index, Mehrpouya and Samiolo (2018) provide a telling illustration of how this beneficiary-related intermediary fosters regulation through interpretive intermediation. Initially developed by a Dutch non-profit organization (as an unofficial intermediary), the ATM Index ranks major pharmaceutical firms regarding their willingness to facilitate access to medicine in poor countries. It became officially endorsed later on, after a period of what the authors call 'officialization struggles'. Moreover, and not surprisingly, the formalization of the ATM ranking is highly contentious. Mehrpouya and Samiolo show how interpretive intermediaries can actually exploit partial and selective formalization and juggle between the role of intermediary and that of rule-maker to maintain a balance between the divergent, and often conflicting, interests and values of rule-takers, regulators and beneficiaries. In the case of ATM, careful consideration of all parties' perspectives through the interplay between formalized and unformalized aspects of the Index resulted in a relatively well-accepted body of regulatory knowledge. More generally, this case indicates that intermediation is more likely to gain acceptance when it is perceived and interpreted as consensual and neutral.

Finally, weak formalization of intermediation by a regulator does not necessarily mean decoupling. The idea of 'organic trickle-up' by Bothello and Merhpouya (2018) shows how interpretive intermediaries can formalize regulation in ways that reflect regulators' intent by maintaining an organic presence in the regulatory network - through frequent contacts with all parties in conferences, events, or meetings.

3.3. Unofficial and formalized: Alternative intermediation

Alternative intermediation describes sophisticated and well-organized intermediaries who operate outside and sometimes against official regulation. Such intermediaries emerge without an official mandate to complement and intermediate existing regulation, but in some

cases also to challenge or obstruct existing or future regulations. Corporations working to turn regulation to their advantage or inhibit regulation is an obvious illustration (Bartley, 2017). While firms may seek to influence regulators directly through lobbying activities, they can also try to influence regulation indirectly by taking an intermediary role. In the case of alternative intermediation, firms' influencing of the sovereign authority is often done indirectly, through intermediaries such as think tanks, chambers of commerce or other industry associations (Marques, 2017; Salles-Djelic, 2017) which provide guidelines, services and advice on regulations. This has been well-documented in the tobacco (Landman *et al.*, 2002; Moodie *et al.*, 2013) or alcohol industries (Christiansen & Kroezen, 2016), or with regard to climate change (Kolk & Pinkse, 2007).

Alternative intermediation can also sustain or complement existing official intermediation. For instance, since the ILO's Declaration on Fundamental Principles and Rights is integrated in other transnational initiatives, and aside from ILO official intermediaries, several non-delegated but relatively sophisticated intermediaries also contribute to enforcing this regulation (Marx & Wouters, 2017). However, the recurring finding in this special issue that alternative intermediaries tend to work against regulators may indicate that, past a certain degree of sophistication, intermediation which is not endorsed by authority (i.e. official) necessarily challenges that authority in one way or another. Possibly, this can be explained by the specific empirical contexts examined here. There is solid research ground to assume that one central tension in transnational multi-stakeholder regulations is the constant effort to regulate business despite resistance and capture. Accordingly, all but one paper (Bothello & Mehrpouya, 2018) in this special issue draw on the divide between business as a target, and civil society as a beneficiary. Interestingly, two different articles provide contrasted stories of capture by alternative intermediation through the (in)formal dynamics of intermediation. The case analyzed by

Avidan, Etzion and Gehman (2018) can be seen as capture through officialization, while the case described by Marques (2018) can be understood as capture through formalization.

In the former, the authors describe the development of the shale gas industry in North America over the last decade, which has raised growing environmental concerns, especially regarding the quality of drinking water around drilling sites. As a result, “fracking disclosure,” which consists of “disclosing data pertaining to the chemicals used in oil and gas wells completed using hydraulic fracturing technology” (Avidan *et al.*, 2018) is becoming mandatory in an increasing number of U.S. states and Canadian provinces. In this context, Avidan *et al.* investigate the case of FracFocus, a website strongly tied to the oil and gas industry, which was designed to allow firms to disclose information pertaining to fracking. Despite important - and possibly intentionally misleading - shortcomings regarding how this information can actually be used by citizens, disclosure via FracFocus has been endorsed by 22 out of the 24 U.S. states with a regulation on fracking disclosure. Accordingly, it is interesting to ask why, as Avidan *et al.* do in their article. To begin with, FracFocus was created early on in the regulatory process, before disclosure became mandatory in most states. The website thus appeared in a regulatory field free of competing intermediation. Yet, Avidan *et al.* also found another explanation for such direct officialization. FracFocus ‘disguised’ itself into an official website and continuously sustained confusion. Adopting visual codes of governmental websites may have actually helped FracFocus become officially endorsed in some jurisdictions. This paper hence forcefully shows that if alternative intermediation is by definition unofficial, it can still appear official. This pattern can be seen as a form of ‘astroturfing’ (Kraemer *et al.*, 2013) applied to regulatory intermediaries. In addition, this finding should be seen in relation to previous work on the ‘chameleonic’ nature of intermediaries (Havinga & Verbruggen, 2017). Since a specific characteristic of intermediaries compared to regulators is to have more plasticity in the way they present

themselves, this strategy of capture might be frequent in intermediation, and even more with alternative intermediation which has the level of sophistication to credibly imitate official authorities.

Marques (2018) provides a different story of capture, one that occurred through 'harmonization,' a field-level form of formalization. Much research has addressed the proliferation and fragmentation of social compliance programs for global production networks in consumer goods industries from the perspective of a specific regulatory initiative. Marques takes a global perspective on this phenomenon to paint a more comprehensive picture. The proliferation of social compliance programs for global production networks endangers global retailers' business model as it relies on a high level of standardization. At the same time, this proliferation generates complaints about audit fatigue from suppliers. Multinational firms, in this case global retailers, exploit this frustration, and offer, as a solution, to harmonize codes of conduct worldwide. Several intermediaries of regulation, such as the Global Social Compliance Programme (GSCP), have been created to harmonize the regulatory environment in comparing codes against each, in establishing 'best audit practices,' and in providing a platform to reuse audit reports. This is resulting in the gradual harmonization of all codes in a given production network, a form of meta-level formalization (Djelic & den Hond, 2014). This formalization tends to present all codes on the same footing, as interchangeable, thereby diminishing the value of more stringent multi-stakeholder initiatives. Moreover, over time, this formalization of the field reproduces power structures from supply chains – multinational firms being focal integrators and the assessors of suppliers – to the regulatory field level - multinationals becoming focal integrators and assessors of regulatory initiatives. This case shows how alternative intermediation can capture regulation not through direct opposition to other intermediations but rather through

integration and harmonization. It also reveals how intermediation may be at the center of a new trend of capture in transnational regulation.

3.4. Unofficial and unformalized: Emergent intermediation

Unofficial and non-formalized intermediation points toward the unexpected and unforeseen intermediaries that "have capacity to affect, control, and monitor relations between rule-makers and rule-takers" (Levi-Faur & Starobin, 2014, p. 21). It reveals intermediation as a process subject to unpredictability and constant evolution over time. Intermediaries are present where they are not expected. The underlying intermediation process is then best understood as a negotiated order (Strauss, 1993) between a variety of actors rather than as a carefully designed scheme controlled by some powerful and sovereign actors.

This fourth type of intermediation is probably the least studied. However, research on RIs has yielded fascinating insights already. Examples of such an emergent intermediation occur when intended beneficiaries, the group that regulation is meant to protect, become themselves intermediaries (Abbott *et al.*, 2017c). Most of the time, such a process is unforeseen and unformalized. Koenig-Archibugi and MacDonald (2017), for example, studied three private labor regulations: Rugmark, the Fair Labor Association, and the Fairtrade system. They portray how these regulations' intended beneficiaries (workers and their families) became gradually involved in the regulatory process in a capacity of intermediaries as well. The influence of these unofficial and non-formalized intermediaries led the above mentioned platforms towards unexpected developments. For instance, sending their children to good schools revealed itself more important to most workers than other regulations directly linked to the workplace. As a result, the Rugmark system started to provide more activities pertaining to the education of children.

This special issue develops this view of intermediation further. Kourula et al (2018) describe 'role appropriation' or how intermediaries can define their roles by themselves

rather than being formally assigned a role by a legitimate authority. Acknowledging the emergence of unexpected intermediation invites us to explore antecedents of intermediation, and the underlying dynamics that cause intermediation to appear, change, and disappear. In this regard, Bothello and Mehrpouya's (2018) historiography of the Council for Local Environmental Initiative (ICLEI) is particularly telling. For 30 years, this coalition of local authorities seeking to promote global sustainable urban development has faced strong suspicion from national governments combined with constant opposition from already established international organizations representing cities. And yet, against expectations, ICLEI has grown to become a significant actor in this regulatory field, and even surfaced at several moments during the history of transnational regulation of sustainable urban development as a regulatory intermediary between UN bodies and local authorities.

In this case, Bothello and Mehrpouya found a relationship between the fragmentation of a regulatory field and the emergence of intermediaries. The more fragmented the field, the more numerous and the more unofficial the intermediaries. This finding resonates with several other papers in this special issue, which show that the emergence of intermediaries as well as their trajectories are more difficult to predict in a fragmented regulatory field (e.g. Marques, 2018). Hence, future influential intermediations are likely to emerge from the fringes of highly fragmented regulatory fields.

From a regulator's perspective, insights on emergent regulation in this special issue lead to the idea that there are numerous potential intermediaries, which can be mobilized to enforce regulations. In this regard, by tracing the history of EU regulation on Corporate Social Accountability (CSA), Monciardini and Conaldi show the potential of what they call the 'NIU nexus' as a beneficiary-related intermediary. The NIU nexus is a network of NGOs, investors and unions. In the case of CSA, this nexus managed to pull together in-depth insights on European firms to provide relevant guidance for the development of CSA

regulations. NGOs, unions and investors have complementary resources and they combine different relevant perspectives from which to assess companies' social responsibility. Such NIU nexus can be thought to act as a powerful intermediary and as a credible counter-power to business in other transnational regulations. Yet, as the authors explain in their case, it is not always simple for actors in this nexus to converge on a common agenda.

Another interesting insight from the work of Monciardini and Conaldi relates to the link between regulatory field dynamics aforementioned and the emergence of intermediaries. Their analysis shows that the presence of more business-oriented intermediation initially hampers the apparition of the NUI nexus. Also drawing on the case of FracFocus (Avidan *et al.*, 2018), we think this observation can be generalized: the presence of alternative intermediation may deter the emergence of other informal intermediations.

4. Implications and discussion

Ultimately, our typology points towards four different combinations of autonomy and formalization in intermediation. As such, it has a number of implications for the governance of regulatory fields and for future research on regulatory dynamics.

First, our conceptualization of intermediation (in)formalism puts the dimensions of officialization and formalization at the center of RI studies. This means that there are important steps and turning points in officialization and formalization of intermediation with important consequences for the governance of a regulatory field. For instance, the formalization of intermediation needs to be carefully handled (Mehrpouya & Samiolo, 2018) to avoid being captured while gaining adhesion from rule-takers. Conversely, governance failure or capture may result from improper formalization or officialization. Avidan et al. (2018) present a case of regulatory astroturfing which results in officialization being undertaken by the rule-taker rather than granted by regulators. Given the proliferation of RIs, we can safely assume that the question of officialization of RIs is critical. A promising

avenue for research on RIs pertains to practices of formalization and officialization, and how they lead to governance failure or success.

A second implication of our conceptualization is that all four types refer to intermediations with different potentialities for imposing a rule to a rule-taker. Interpretive intermediation, if well managed, allows for a greater acceptance by initially autonomous targets. Yet, interpretive intermediation (official but unformalized) also runs greater risk of being captured through formalization with the development of an informational advantage (Fransen & Lebaron, 2018). Formal intermediation, although possibly allowing greater control by the regulator, may not fit all contexts, and even be counterproductive under specific circumstances (Paiement, 2018). In this sense, our model complements the one offered by Kourula *et al*. (2018) which also provide a pragmatic, role-oriented portrayal of different intermediations and their potentialities for regulation.

Third, our typology also allows for considering the varied nature of RIs. For methodological reasons, intermediaries have largely been defined as human or organizational actors. Emphasizing formalization in intermediation provides room to understand the role of material artifacts in the process of intermediation. Already, studies on RIs indicated that tools developed in reaction to regulation (i.e. as forms of intermediation) can, over time, take precedence over not only the regulation, but also the regulators and further rounds of regulatory activity (Galland, 2017; Kipping & Saint-Martin, 2005; Power, 1997). Articles in this special issue extend those insights and show how tools and other material artifacts are also important non-human or non-organizational intermediaries which often – if not always – stand between regulators and their targets (in this special issue, see Avidan *et al.*, 2018; Mehrpouya & Samiolo, 2018).

In this sense, looking at formalization in intermediation allows theorizing further the relation between power and knowledge. Studies of the regulatory process have shown how

apparently trivial elements of formalization in official documents, such as ‘brackets’ or ‘bullet points’, had wider political implications (Riles, 2006). This is particularly interesting regarding RIs such as experts, scientists, think tanks and more generally any ‘epistemic community’ (Haas, 1992), which specializes in the formalization of regulation and its associated knowledge forms (Voss & Freeman, 2016). For instance, studying how regulatory intermediaries enable and foreclose certain formalization rather than others can be instrumental to fully appreciate the importance of intermediation in regulatory capitalism.

Fourth, our model also has implications for the dynamics of regulatory fields. It describes governance of a regulatory field in terms of degrees and trajectories of (in)formal intermediations. As first elaborated by Abbott and colleagues, intermediation can take different forms, intermediaries different roles, and these forms and role can have ambiguous boundaries (Abbott *et al.*, 2017c). Our typology builds on their seminal work and formalizes the dynamism assumed by the original RIT model. Abbott et al. discuss different sequences of intermediation, regulatory capture processes through failed intermediation, or intermediaries as beneficiaries. We develop these different instances of dynamism in intermediation by highlighting four types of intermediation. Our typology highlights that intermediation, rather than being stable, evolves over time and that these types of intermediation can overlap too. Our typology helps to understand how intermediary roles (see also Kourula *et al.*, 2018) can change over time (e.g. from emergent to delegated or formal), and how it can take multiple forms (e.g. alternative *and* formal). For instance, Merhpouya and Samiolo (2018) provide a good illustration of an unofficial intermediary becoming officially endorsed after some ‘officialization struggles’.

Accordingly, papers in this special issue point towards interesting field-level dynamics. For instance, it seems to be important to maintain a pool of emerging intermediation which can be usefully enrolled by regulators at different stages of the

regulatory process (see, e.g., the idea of beneficiary-related intermediaries and of the NIU nexus in Monciardini & Conaldi 2018). Perhaps even more interestingly, authors in this special issue have found possible recurring patterns of interactions between the different types of intermediation. For instance, alternative intermediations, when too central to a regulatory initiative, might prevent the emergence of other forms of intermediations or even regulations. Therefore, one can assume that alternative intermediation tends to reduce the pool of potential intermediaries available to regulators. Conversely, the structure of a regulatory field might favor certain types of intermediation over others. For instance, a fragmented regulatory field seems more favorable to emerging intermediations (Bothello & Mehrpouya, 2018).

Fifth, our typology helps recognize intermediation as being both socially constructed by and socially constitutive of the regulatory process. Indeed, intermediaries help construct and shape the meaning of regulations, just as they intermediate it – even if unofficial and unformalized. Whereas previous research has shown how private regulators can shape the meaning of rules and associated practices (Mena & Suddaby, 2016), most contributions in this special issue point to how *intermediaries* also do so to a large extent. Moreover, while extant research has tended to focus on the downstream constructionist role of regulatory intermediaries, associated with the monitoring and compliance stages in the regulatory process, the contributions to this special issue underscore the parallel importance of an upstream influence of regulatory intermediaries, at the rule-making stages of the regulatory process. Even when RIs have an official role, they will come to shape the specificities and the meaning of this well-defined role. In the process, additional unofficial aspects of intermediation will emerge and be added on top of official tasks – potentially resulting in a mission drift. This construction and evolution of the role of intermediaries highlights the complexity of private regulation at the transnational level. Different types of intermediation,

but also different types of rules (hard and soft laws), are increasingly enmeshed and overlapping, with the same actors taking on different and evolving roles at different times (Djelic & Quack, 2018).

As Bartley (2017) suggests for corporations, we need to acknowledge the roles and the nature of intermediaries in the process of regulation as being complex and multifaceted. In particular, we should recognize that through those diverse roles, both formal and informal, intermediaries of all types and nature create meaning and co-construct regulatory solutions. Intermediaries, through their interactions with regulations, regulators, rule-takers, and even beneficiaries create and transform meaning, redefine the regulatory process, and they do so formally and earnestly but also through more informal and insidious channels. In the end, this complex intermediation may contribute to the deployment of regulatory solutions in unexpected directions, reinforcing them sometimes but some other times derailing them as well. Paying attention to the different types of (in)formalism in intermediation, we argue, allows us to see how meaning is created, maintained, and disrupted through the regulatory process, and makes for a more processual, dynamic, and fluid view of transnational multi-stakeholder regulation.

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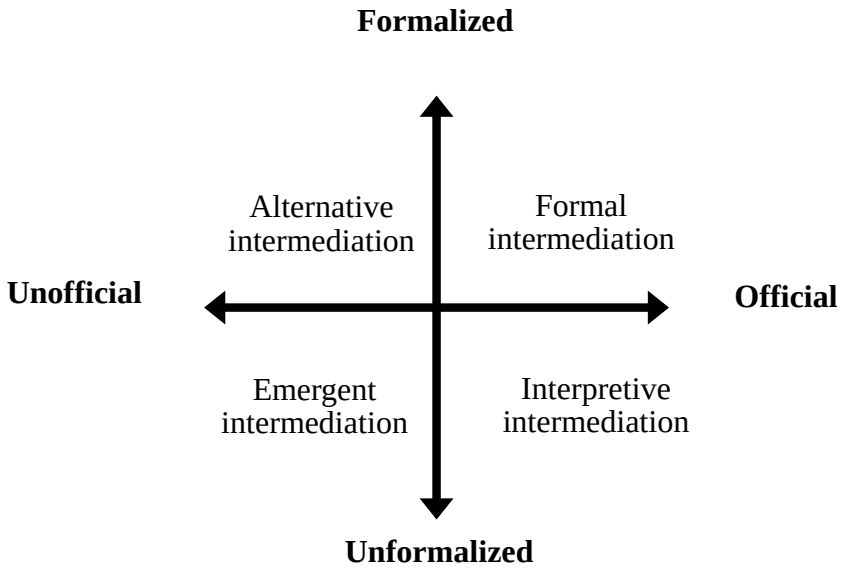
Figure 1. (In)formalism in regulatory intermediation