

## **WEEK 7**

# **INFORMATION AND INTERNATIONAL INSTITUTIONS**

**Robert Keohane and Joseph Nye, *Power and Interdependence: World Politics in Transition* (Second Edition, Little-Brown, 1989)**

**Chapter 4**

**THE POLITICS OF OCEANS AND MONEY: HISTORICAL OVERVIEW**

Keohane and Nye choose the "issue areas" of monetary affairs and oceans space and resources to "test the applicability of our models of regime change under changing political and economic conditions" (64). In chapter 4 they describe major events in these two areas between 1920 and 1975, emphasizing changes.

They define "issues" as "problems about which policymakers are concerned, and which they believe are relevant to public policy. Thus a policy issue is partly subjective". Issue areas, which are also defined subjectively, are constituted when governments see a "set of issues as closely interdependent, and deal with them collectively". This is a "statement about actors' beliefs and behavior" not the reality of the problems themselves.

The discussion begins with the perceptions of the boundaries of a policy issue area.

**The International Monetary Issue Area**

*I. The International Gold Standard before 1914*

The "myth" of the pre-WW1 Gold Standard was that it was an "eternal, automatic, stable, and fair system, which could be damaged only if tampered with by politicians". In reality it was short-lived (50 years), managed with national orientations, and highly subject to change: the trends away from the hierarchy were intensified but by no means created by WW1. "It rested on political domination of the wealthy classes in Britain over less prosperous groups and of Britain, France and Germany over peripheral countries".

However, in later years, the myth was in many ways more powerful in its effects on behavior than the reality.

*II. International Monetary Regimes, 1920-76*

Keohane and Nye divide these years, at the risk of disrupting the flow of history, into seven periods. Regime periods are defined in terms of the key currency countries - Great Britain until 1931 and the US thereafter. Each period is described in terms of the adherence to the norms and rules that characterized each period, and the reasons for choosing the beginning and endpoints of each regime.

<i>Period</i>	<i>Regime situation</i>	<i>Action at beginning</i>
1. 1920-5	<i>Nonregime:</i> floating rates, currency depreciation	<i>post-war instability</i>

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|------------|---|--------------------------------------|
| 2. 1925-31 | <i>International regime (de facto):</i><br>weak polit'y & econ'y, focused on £-\$   | <i>Britain's return to gold</i>      |
| 3. 1931-45 | <i>Nonregime</i><br>floating rates, currency depreciation, exchange controls  | <i>Britain leaves gold-standard</i>  |
| 4. 1946-58 | <i>Recovery Regime</i><br>internationally agreed on-system, permits ad hoc modifications;<br>exchange controls, inconvertibility of Euro currencies                                       | <i>Bretton Woods operational</i>     |
| 5. 1959-71 | <i>International Regime</i><br>fixed but adjustable parities; \$ convertible into gold  | <i>Euro currencies convertible</i>   |
| 6. 1971-5  | <i>Nonregime</i><br>no stable set of rules - but partial period of fixed currencies,<br>and increased central-bank coordination at the end  | <i>US \$ inconvertible into gold</i> |
| 7. 1976-   | <i>International regime</i><br><b>based on flexible exchange rates &amp; SDRS, IMF Articles of Agreement</b><br>with central bank and governmental coordination of exchange rate policies | <i>Interim Committee amends</i>      |

It is worth noting that the Bretton Woods agreement went through a continual process of political and institutional as well as financial adaptation, contrasting with the rigidity of currency values that member states sought to maintain. Its gradual erosion is symptomatic of how international regimes do not usually start or stop with a given date.

## The Ocean Issues Area

The peacetime use and regulation of oceans space and resources. Two major dimensions:

1. nature and extent of states' jurisdiction over the oceans adjoining their coasts
  2. ownership, use, and regulation of space and resources beyond national jurisdiction
- Area includes both "physical" relationships and "political" ones. Geography provides the oceans issue with fairly well demarcated boundaries.

The issues area consists of weakly related issues: some are linked functionally, but political and legal perceptions provide the more important linkages stemming from legal structures and bargaining tactics.

### I. *The Classical Free Seas Regime*

The high seas were treated as non-appropriable *res nullius* and coastal state jurisdiction claims were narrowly restricted. The pre-1914 oceans regime was hierarchical and stable, and depended on British domination externally and on the strong position of certain interests inside British politics (Navy and shipping).

### II. *Regime Periods, 1920-75*

1. **1920-45: Free seas regime** - Britain retained hegemonic power but with concessions to US

2. **1946-66: Strong quasi regime** - Truman Declaration sowed the seeds inadvertently of regime destruction by establishing unilateral fishing conservation zones off the US. Challenges in particular issues; Britain losing power through decolonization

3. **1967- : Weak quasi regime** - seabed resource and wealth dramatized so that the oceans have been treated less as a public highway from whose efficient management all states can gain, but more like a zero-sum game. Narrow coastal jurisdiction would be radically changed.

The issue area has therefore become more and more closely knit.

### **Chapter 6: The Politics of Rule Making in Oceans and Money**

In this chapter, Keohane & Nye begin by applying the economic process model of regime change to oceans (the international regime of the sea) and money (international economic relations). This model predicts that “regimes will be established by technological and economic change, and that regimes will be established or reestablished to ensure the welfare benefits of interdependence” (131). While such a model does not provide a “sufficient explanation of any change” and may both over and under predict change, it must at the very least be considered.

The authors differentiate their international organization model, developed in Chapter 3, from the “overall structure” model whereby the “strong make the rules” (132). The overall structure model is insufficient to explain the changes in oceans and money that they observe. The overall structure model is then applied to trace the erosions of the oceans regime and the money regimes. Of the 9 regime changes they identify, the overall structure model is only “an adequate and elegant explanation of three cases” (137).

They next turn to “issue structure models,” according to which “the strong make the rules but it is strength within the issue area that counts” (137). In this model, regimes are likely to change “when the underlying distribution of power in an issue area is inconsistent with the effective distribution of power within a regime.” Again, this model is applied to observed regime change in oceans and money. The issue structure model likewise proves insufficient. While it does help explain pre-1920 oceans regimes and changes in monetary regimes between 1931 and 1971, it fails to explain recent changes in ocean regimes and a number of issues in the money area.

Keohane & Nye then apply their international organization model, according to which “outcomes are predicted by regime-dependent capabilities, that is capabilities that are legitimized or made possible by norms and processes that characterize a regime” (147). According to this model, regime decay is “explained by changes in the norms and organizational processes of world politics” (147). Regimes may be altered by “political bargaining processes that diminish the position of states with underlying power that gave rise to the regime.” Likewise, “development of networks of political interaction, often

centered on international organizations, may facilitate agreement on new principles for an international regime” (147).

Applying this international organization model to oceans and money, Keohane and Nye find that the for recent developments in the oceans issue area and in many ways for the money area, this model “provides insights that are crucial to understanding the politics of regime change” (153). While they acknowledge that this is a supplemental approach to be used when simpler models fail and that this approach may produce indeterminate results, they conclude that it can produce significant results.

Keohane and Nye proceed to explain how the international organization model better accounts for issues of domestic politics and time lags which pure systemic models fail to address. The international organization model “at least points us toward the political processes typical of complex interdependence, in which the line between domestic and international politics is blurred” (153).

In conclusion, Keohane & Nye reiterate their desire to start with simple models first and add complexity where necessary. They find that a combination of models, including the international organization model, is best able to account for the regime changes they identify in money and oceans. They observe that with “respect to trends in the conditions of world politics over the past half century, the international organization model is becoming more relevant;” that traditional theories based on overall structure models and economic process models” work best under realist conditions, rather than those of complex interdependence; and that traditional theories are therefore becoming less useful (161). They note finally that “the traditional tools need to be sharpened and supplemented with new tools, not discarded” (162).

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***Robert Keohane: After Hegemony: Cooperation and Discord in the World Political Economy***; Princeton UP, 1984; chapters 1 & 9 (pp. 1-17, 182-216)

This book is about how cooperation has been, and can be, organized in the world political economy when common interest exist. Keohane takes the existence of mutual interests as given and examines the conditions under which they will lead to cooperation. More precisely, the major puzzle addressed by the book is *how can cooperation take place in world politics in the absence of hegemony?*

Realism and institutionalism constitute the two most serious accounts of international cooperation.

- **Realists**, basically, argue that patterns of cooperation derive from patterns of power and conflict. The “theory of hegemonic stability” illustrates the realist view of international cooperation. It holds that order depends on the preponderance of a

single state. Hegemony facilitates cooperation and the creation of international regimes. The decline of hegemony is likely to put hegemonic regimes under stress.

- **Institutionalists**, on the contrary, argue that shared economic interests create a demand for international institutions and rules and point out the functions performed by such institutions. They further argue that institutions are recognized patterns of practice around which expectations converge, and which therefore affect state behavior –thanks to the “malleability” of interests. “The functional theory stresses how international institutions change rational calculations of interest and facilitate mutually advantageous bargains among independent states; it also emphasizes the greater ease of maintaining existing regimes than of creating new ones.

**Keohane tries to combine both approaches**, basically adding the insights of institutionalists to a neo-realist framework. “Any functional explanation, which deals with the value of a given process or pattern of interaction, must be embedded in an understanding of political structure, especially the distribution of power among actors”. To do that, he tries to show first how, under some conditions, cooperation can develop on basis of complementary interests and second that institutions, broadly defined, affect the patterns of cooperation that emerge.

*Cooperation* is to be distinguished from harmony since, unlike harmony, it requires mutual adjustment and thus it emerges from a pattern of potential discord.

Keohane’s point is that since the existence of common interests is not enough to guarantee cooperation, and that it takes institutions to adjust policies to meet the mutual demands.

His assumptions look very much like realist ones: it is all about states, which do not have to abide by any rule and are moved by rational egoism. **STILL**, even under these conditions governments may construct regimes and even abide by their rules. The main reason why international regimes contribute to cooperation is not by implementing rules that states must follow, but by changing the context within which states make decisions based on self-interests: “international regimes are valuable to governments not because they enforce binding rules on others (they do not), but because they render it possible for governments to enter into mutually beneficial agreements with one another. They empower rather than shackling them”.

Thus Keohane both accepts, broadly speaking, the hegemony theory and adds to it functionalists arguments:

- The creation of international regimes often requires a hegemonic player
- But once created, regimes acquire value for states because they perform important functions and because they are difficult to create or reconstruct.

Now, having said this, what are those mysterious “functions” fulfilled by institutions?

- They reduce the transaction costs involved in policy coordination
- They provide information to governments (and thus reduce uncertainty)

- They modify states' expectations

These benefits (not further detailed here) explain why it makes sense to accept obligations that restrain one's own freedom of action in unknown future situations if others also accept responsibilities.

### *Chapter 9 – The Incomplete Decline of Hegemonic Regimes*

In this chapter, Keohane evaluates the applicability of the theory of hegemonic stability to the evolution of international regimes for money, trade and oil between the mid-1960s and the early 1980s. Does the relative decline of American power lead to a decline of cooperation?

It is too long a story to be told here, but basically his conclusion is threefold:

- The pattern of regime change varied a great deal from one issue-area to another (increased cooperation in trade, decreased in oil and mitigated change in finance) and that shifts in American power were of different significance in international finance, trade and oil
- The decline of American hegemony provides *only part* of the explanation for the decline of postwar international regimes, and only in oil is the theory of hegemonic stability consistent with the overall trends *and* with the process by which changes took place. For instance pressures of international competition and structural adjustment provide a better explanation of the decline of the trade regime than the theory of hegemonic stability. And the hegemonic theory does not account for the fact that there **is** hope for post-hegemonic international regimes.
- Cooperation survived strong pressures in the 1970s: old patterns of cooperation work less well than they did, partly because U.S. hegemony has declined; but the survival of patterns of mutual policy adjustment, and even their extension, can be facilitated by regimes that had their origins in the period of hegemony.

The theory of hegemonic stability is deficient because, as a systemic theory, it fails to take into account domestic political pressures. More importantly, it fails to take into account the role of international institutions in fostering and shaping patterns of cooperation.

International regimes tend to maintain patterns of cooperation, but they do not necessarily facilitate innovative expansions of cooperation in response to crisis and change.

Shared interests and existing institutions make it possible to cooperate, but the erosion of American hegemony makes it necessary to do so in new ways.

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Overall, reading those chapters is quite disappointing. The puzzle is definitely interesting, so are the hypothesis, but Keohane fails to provide a detailed and thus convincing account of the “functions” he claims are fulfilled by international institutions which explain first

why cooperation occurs and second why it survives the decline of the hegemonic power. It is not clear whether it is because this theory appears in other chapters not included in the reading or whether Keohane never makes his point neatly.

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**Andreas Hasenclever, Peter Mayer & Volker Rittberger. *Theories of International Regimes***  
(Cambridge: Cambridge University Press, 1997), chapters 1, 2.

### Chapter 1

Hasenclever, et. al., observe that interest in the role of institutions and regimes persists, and important questions about them are still being asked (e.g., “what accounts for the emergence of instances of rule-based cooperation in the international system”, “how do international institutions ... affect the behavior of state and non-state actors in the issue-areas for which they have been created”, etc.). Depending on where the emphasis is placed (power, interests, knowledge), they classify theories about regimes as: Realist, Neoliberal, or Cognitivist. These range from a relatively weak view of institutions (Realists), to a somewhat stronger one (Neoliberals), to the strongest (Cognitivists). Hasenclever, et. al., propose two measures for institutions:

- i) effectiveness: a regime is effective to the extent that its members abide by its norms and rules, and to the extent that it achieves certain objectives or fulfills certain purposes, and
- ii) robustness: a regime’s “staying power” in the face of challenges (e.g. to the extent that prior institutional choices constrain collective decisions and behavior in later periods).

The different degrees of institutionalism of each of the three theories listed above is due to the behavioral models employed by each, i.e. the assumptions that they make about the nature of the actors. Thus, power-based theories (Realist) argue that relative gains matter also, whereas Neoliberals tend to emphasize the interest that states have in their own, absolute gains. “Weak Cognitivists” wish to supplement Neoliberalism with a theory of preference formation, where “Strong Cognitivists” accuse Neoliberals of failing to account for the ways in which institutions affect the identities of international actors.

### Chapter 2

Hasenclever, et. al., begin with Strange’s criticism of theories of international regimes, according to which the very concept is imprecise. To this they juxtapose Krasner’s attempt at a useful and usable definition, according to which regimes are “implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area of international relations. Principles are beliefs of fact, causation, and rectitude. Norms are standards of behavior defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice”. Despite its flaws, this definition has promoted research by providing students of regimes with a valuable analytical tool, or at least, a non-arbitrary point of



departure. However, there are two problems with it: i) how can one distinguish between principles, norms, rules, and decision-making procedures, and ii) when can we say that a rule exists in a certain issue area? The chapter proceeds to examine Young's three objections to Krasner's definition (definition is only a list of elements that are hard to differentiate, it exhibits "disconcerting elasticity" when applied to real world of international relations, and it fails to link the concept of a regime to the larger issues that concern international regimes). Hasenclever, et. al., then consider Keohane's proposed remedy for this, which comes in the form of the following definition: "Regimes are institutions with explicit rules, agreed upon by governments, that pertain to particular sets of issues in international relations". The chapter then turns to the consideration of behavioral (determined through an observation of actors' actions), cognitive (emphasis on intersubjective meanings and shared understandings), and formal theories of regimes (assessing regimes in terms of explicit rules). Hasenclever, et. al., examine some of the disadvantages of these theories (tautology of defining regimes "on the basis of observed behaviour, and then ... [using] them to 'explain' observed behaviour", collecting relevant information, etc.), but note that despite these shortcomings, these approaches are employed by the three schools of thought listed above, with Realists and Neoliberals preferring formal and behavioral tools, and Cognitivists preferring ... cognitive ones. The chapter ends with the declaration of the authors' intention to examine all three approaches to the formation of regime theories, in order to determine the extent to which they succeed in providing strong theories that survive Strange's criticism.

### Chapter 3

- I. Realist and neoliberal theories of international regimes are both rationalist (holding preferences stable), but they diverge over the specifications of utility functions, namely whether states are concerned with absolute or relative gains.
  
- II. Keohane's contractualist (or functional) theory retains realist assumptions about the nature of states as rational egoists (though their utility functions are held as independent of one another) and their social environment as providing external structural constraints on foreign policy decisionmaking (strongly systemic). In issue areas where states have common interests (most importantly for Keohane, the Prisoner's dilemma), regimes "facilitate cooperation . . . by providing states with information or reducing their information costs" (p. 34) as well as reducing uncertainty and transaction costs by (a) creating of potential "linkages" between issues, in particular for nested regimes; (b) increasing the shadow of the future; and (c) increasing reputational harm.
  - a. Keohane proposes to account for the emergence of regimes in terms of their effects. "Institutions exist because they could have reasonably been expected to increase the welfare of their creators" (p. 37). A regime will be created when the transaction costs of creating a regime are lower than the reduction of transaction costs facilitated by the regime (e.g., when the policy space is dense). Moreover, "regimes may *persist* despite the declining satisfaction of their members, precisely because *creating* a regime in the first place is so difficult" (p. 39).

- b. Issues:
- i. *Post hoc ergo propter hoc*: The role regimes play does not necessarily explain their emergence, in particular if we relax the assumption of rational anticipation.
  - ii. The distinction between regimes and agreements is not clear and makes the study of regime compliance very difficult.
  - iii. Circularity: If regimes are regarded as agreements themselves, the strategy of regime-building to solve a cooperation problem depends on its very solution by agreements.
- I. Situation-structural theorists expand the number of strategic situations that states may face, arguing that different situation structures lead to different regimes. While the Prisoner's dilemma leads to highly formalized institutions, coordination games (e.g., Battle of the Sexes) lead to negotiation (but not compliance) facilitation, whereas assurance games (e.g., Stag Hunt) lead to facilitation of communication, and suasion games to arrangements that enable tactical issue linkage. Zürn hypothesizes that regimes are likely to form in decreasing probability for the strategic situations of assurance, coordination, collaboration, and suasion. Some remaining issues for situation-structural theorists are: (a) lack of explanation for the supply side of regimes (i.e., when and how demand for regimes is met); and (b) difficulty in distinguishing whether regimes have an independent impact on states, rather than reflecting domestically-driven convergence of state interests.
- II. The problem-structural approach posits that "the nature of the issue-areas . . . may well be responsible for at least part of the observable differences" (p. 60). Problem-structuralists have hypothesized that economic issue-areas are regime-conducive, whereas issue-areas of "rule" (e.g., human rights) are not amenable to cooperation. Scholars argue that conflict typologies (classifying issue-areas by conflict over means or values and by whether goods are assessed in relative or absolute terms) may explain variation in conflict management. Some issues with this approach are that (a) problem-structuralism remains theoretically underspecified to date, (b) issue-areas are heavily perception-dependent, and (c) mixed conflicts are difficult to classify under the conflict typology that has proven difficult to operationalize.
- III. Young's theory of institutional bargaining (or "bargaining with the objective of creating an institution" (p. 69)) is a model of regime formation that views regimes as a kind of agreement, namely a "constitutional contract." Young argues that prospects for successful negotiations are much worse than what rationalist theory suggests. Regime formation is characterized by integrative (as opposed to distributive) bargaining, occurs under a "veil of uncertainty" regarding states' own future positions and interests, and is generally subject to a unanimity rule. Young hypothesizes conditions conducive to integrative bargaining are a contractual environment that creates a veil of uncertainty, and

the occurrence of exogenous shocks. Negotiations for international regimes are likely to be successful when a salient equitable solution exists, a compliance mechanism is available, and leadership emerges.

### Chapter 5

- I. Proponents of knowledge-based regime theories can be divided into weak and strong cognitivists – both groups share the conviction that rationalists ignore a great deal of significant behavior on the part of states by treating identities and interests as given.
  
- II. Weak cognitivists complement rationalist theories by examining how changes in knowledge allow interests to change; weak cognitivists are still comfortable with the idea of the state as a rational utility-maximizer provided that the conception of utility is made dependent on knowledge and that the latter is not seen as reducible to material factors.
  - A. Three assumptions of weak cognitivists
    1. Interests are not given but need to be treated analytically as a function of how decision-makers understand the world.
    2. Decision-makers need to reduce uncertainty through access to high-quality information and expert advice
    3. States need some minimum consensus of understanding concerning the issue in question before a system of shared rules can be developed.
  - A. Weak cognitivist explanatory variables
    1. Goldstein and Keohane (see week 5 readings) have identified three causal pathways for ideas: as road maps, focal points, and underlying principles in institutional frameworks.
    2. Learning cooperation – two forms of “learning” have been identified by Ernst Haas (similar ideas have been developed by Nye) that are particularly relevant to regime theory (note: these can lead to either greater or less interstate cooperation through regimes, depending on the circumstances)
      - a. Adaptation – a new understanding of the environment leads to new strategies for achieving unchanged interests
      - b. Learning – a state not only changes its strategies but also changes its basic conception of interests (if a state became involved in an arms control regime because it came to believe that cooperative security approaches were more productive than realpolitik approaches, for example)
    1. Epistemic communities – Peter Haas (again, see week 5) argues that epistemic communities can promote regime formation, and that such groups will be influential if:
      - a. There is a high degree of uncertainty among policymakers
      - b. There is a high degree of consensus among the experts
      - c. The expert advice has a strong institutional base
  
- I. Strong cognitivists want to supplant rationalist regime theories with theories that emphasize how regimes constitute state identities – states thus do not comply with

regimes because of rational calculations of interest but rather because non-compliance would be inconsistent with the state's conception of itself.

- A. This school argues that states should not be seen as creating regimes to maximize some utility but rather as role-players whose identities depend upon international institutions – states and institutions imply each other. In this way, strong cognitivists are emphasizing institutions that define states as the central actors in international politics. Rationalists could respond that they are concerned with more issue-specific regimes, so the strong cognitivists need to establish a connection between fundamental institutions and issue-specific ones.
- B. Strong cognitivists also argue that rationalists preoccupation with positivism leads them to ignore critical intersubjective issues and shared meanings. For example, to understand the effectiveness of regimes (i.e. the rate of compliance), it is important not just to understand states' material interests but also the normative validity of the regime.

I. Four Strong Cognitivist Approaches:

- A. The power of legitimacy – this approach argues that the question of legitimacy is critical for regimes: regimes that are perceived as illegitimate can only be upheld coercively, while legitimate ones are complied with more voluntarily. Regime legitimacy is in turn a function of determinacy (the clarity of the rules), symbolic validation (rituals that show how deeply a given rule has take root in a given society), adherence (the extent to which the rule is related to broader understandings of how rules are made and applied), and coherence (the extent to which the rule fits logically with a larger network of rules governing interstate interaction).
- B. The power of arguments – theorists such as Ruggie and Kratochwil see the discourses that surround regimes as key. Since interpretation of any regime is often (always?) in flux, the success with which states reach consensus on interpretation and implementation through discussion of the regime is important. These discussions will be successful when a basic set of norms concerning argumentation is accepted and respected by the various parties and when the arguments made are embedded in uncontested background that can serve to legitimize them.
- C. The power of identity – Wendt stresses how the development of a collective sense of identity among actors can promote cooperation and regime formation. While he acknowledges that rationalists have much to say about cooperation among states lacking such a collective identity, he notes that such cooperation can lead to the development of a more collective sense of identity. As the collective sense of identity increases, one should see increasing regime resilience.
- D. The power of history – Robert Cox in particular stresses the role of history in shaping the fundamentally capitalist nature of current international regimes. These regimes reflect the pro-capitalist nature of American hegemony, and constitute a process through which elites in developed capitalist countries can socialize elites from other countries into the capitalist world. National elites and ruling classes thus come to share a common identity and ideology. Cox even condemns regime theory itself as part of the capitalist project and as serving to legitimize an inequitable international status quo.

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**Peter Gourevitch, “The Governance Problem in International Relations”**, in Lake and Powell, eds. *Strategic Choice and International Relations*, pp. 137-164, Princeton 1999

Framework: Governments recognize that institutions benefit cooperation by providing order and information, lowering transaction costs, and reducing chances for opportunism. They also recognize that different governance structures may grant different actors different relationships, privileges, expectations, and procedural knowledge, which alters the strategic environment and so can influence the distribution of benefits. When actors have investments in certain governance structures through these elements, the cost of change can be high. Thus, although there may be several pareto-optimal outcomes, governments will fight to create institutions that increase their leverage. They will challenge existing institutions if the potential benefits of change outweigh the costs of a challenge. This cost-benefit calculation depends on assessments of an institution’s strength, the vested interest of other actors, and the ‘reversion point’ – what outcome will prevail if discussions collapse and no agreement is reached.

Elements that affect how a Governance Dispute is Resolved:

1. Strong Institutions: The standard story: ‘preferences plus political resources refracted by institutions equals policy outputs.’ Actors may demand changes in the rules but accept the existing rules as the proper procedure for considering the change (biasing those already more powerful). Example: US fast-track authority in congress/exec. Relationship setting.

2. Weak Institutions: Their processes are not able to be decisive in shaping the outcomes of any dispute, and discussions resemble bargaining by fully independent actors. With this more fluid strategic setting, the factors of military/economic power, population, signalling skills, ideological biases, etc. becomes more important. Examples: WTO creation negotiations, OPEC. The EU provides an intermediate case.

3. Collective Action and Joint Product: States have shared interests that lead them to want an institution, but a state (or several) may also have individual interests in an institution in addition to those shared by others (a situation called joint product). Joint product provides this state individual incentives to pay for the overcoming of collective action costs; it is thus more likely to affect the specific features of the institution. Examples: UK and the Gold Standard, U.S. and free trade regime.

4. Information Costs and ‘Priors’: Actors design institutions that are most likely to meet their goals over time, but it is hard to know what would be best given all the cause and

effect possibilities of strategic interaction. As such, ideas and interests interact to allow actors to simplify the information requirements for designing institutions. If the initial institutional setting weak, ideas and interests will play an even larger role.

NB. Gourevitch expect that over time, institutions will have some feedback affect in that they may affect actors' preferences and beliefs. Similarly, the disintegration of institutions may alter preferences and beliefs (ie. in civil war) or act as the 'tipping point' that leads to major action based on pre-existing causes.

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*Lisa Martin, **Interests, "Interests, Power, and Multilateralism"**, *International Organization* 46, no. 4 (Autumn 1992), pp. 765-92*

Martin focuses on four problems of cooperation and the potential role of multilateralism in helping states overcome these problems. Collaboration, coordination, suasion, and assurance. Each of these problems presents states with unique challenges. Why do we have alternative institutional solutions? What is the instrumental value of patterns of multilateralism under different configurations of state interests?

- Collaboration problems contain strong incentives to defect from cooperation, since defection results in immediate payoffs. Mechanisms of cooperation must focus on maintenance of agreements: significant role for formal organizations, extensive monitoring, specific reciprocity or direct retaliation, compromise of multilateral principles, delegation.
- Coordination games, where the problem is to help states settle on a particular outcome, do not require institutions with strong mechanisms for surveillance and enforcement: no state would gain by deviating from the established outcome. We may expect formal organizations to be rather superfluous: but there is the issue of transaction costs on the collection of information about state intentions, information about future plans.
- In a suasion game the hegemon who is willing to provide public goods must persuade or coerce others to cooperate. Equilibrium outcomes leave one actor dissatisfied: the appearance of multilateralism may be quite important to conceal hegemonic pressure: secretive international organizations, specific reciprocity, little role for multilateral norms, linking of issues that facilitate persuasion.
- In assurance games all players will have strong incentives to cooperate as long as others players do not defect. The problem is simply one of assuring all players that each sees no benefits from unilateral defection and is in control of domestic policymaking: exchange of information but little need for complex institutional arrangements.

Now, although we can rule out certain kinds of solutions for each type of cooperation problem, more than one potential solution usually remains, and the consideration of the structural characteristics of the international system proves to be necessary (783-89). Also, what factors are likely to upset a pattern of cooperation established under certain configurations of interests and power (789-791)?

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*Abram and Antonia Handler Chayes: "On Compliance",  
International Organization 47:2 (Spring 1993)*

General propositions:

- The general level of compliance with international agreements cannot be empirically verified
- violations of treaty rules are not based on decisions or calculations
- A regime of rules need not and should not be held to a strict standard of compliance, but to a level of overall compliance acceptable according to interests the regime has been designed to safeguard.

The general propensity to comply as a background assumption is illuminating for studies of compliance.

The statement that states comply when it is in their interest cannot hold true because states are not bound by rules in the first place except with their own consent. Moreover, treaties do not offer a binary choice of signing or not signing, but in fact define, redefine and shape parties' interests. The whole process of treaty making if perfectly reflects states' interests will help induce compliance with the treaty.

If the agreement is well-designed, -- sensible, comprehensible, and prediction of the probable patterns of conduct – compliance and enforcement issues must be manageable.

Although the possibility of willful deviation from legal obligations is not precluded from the background assumption, the real experience of foreign affairs reveals that it rarely happens that an act of violation is carried out through a calculation process.

Main situations that lie at the root of violation causes:

- indeterminacy of the language of the treaty
- limitations on the capacities of the parties to carry out their obligations
- the temporal dimension of social and economic changes contemplated by regulatory treaties.

Precision often excludes the likelihood of broad interpretation which in turn may cause deviation from treaties, yet it may produce further complications that make it more difficult to comply.

The acceptable level of compliance is yet subjective, varying with the significance and costs of reliance that parties place on the others' performance. The acceptable level of compliance will reflect the perspectives and interests of participants in the "ongoing political process" and not determine by some scientific standard. Managerial mechanisms such as strong and efficient secretariat in a regime that can exert pressure for compliance and negotiations could improve the level of compliance.

Political pressure to enhance compliance may intervene if:

- States feel that the survival of the regime depends on a higher level of compliance
- States committed to a higher level of compliance than the generally accepted level by others feel need to ratchet up the level of compliance with the regime.
- NGOs use their political lobbying abilities and political resources to intervene in order to enhance the level of compliance with a regime.

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**Downs, Rocke, and Barsoom, “Is the good news about compliance good news about cooperation?”**, *International Organization* 49:1 (Winter 1995), pp. 171-190

NOTE 1

**This essay attempts to critique the assertions of the “managerial school”—that state compliance with international agreements is generally quite good and that enforcement has played little or no role in achieving and maintaining that record—by presenting evidence that states are often presented with negligible benefits for treaty defections and arguing that “conceptions of enforcement” should not be thrown out of the debate on international cooperation.**

The Managerial School has argued:

- 1) that compliance is generally quite good
- 2) that this high level of compliance has been achieved with little attention to enforcement
- 3) that those compliance problems that do exist are best addressed as management rather than enforcement problems
- 4) that the management rather than the enforcement approach holds the key to the evolution of future regulatory cooperation in the international system

\*\*The critique of these tenets lies precisely with what the authors describe as an analysis of weak international agreements (selection bias), where compliance and marginality of enforcement result directly from the fact that most treaties require states to make only modest departures from what they would have done in the absence of an agreement.

\*\*The Managerialists make a logical error by assuming that the connection between the depth of cooperation represented by a given treaty and the amount of enforcement that is needed in mixed-motive games can be properly evaluated by examining how high compliance is when enforcement is low or absent. (This represents what the authors deem an inherently flawed assumption.)

\*\*The authors also critique the Managerial assumption that self-interest (and therefore mixed-motive and prisoners’ dilemma games) rarely plays a conspicuous role in treaty violations; and that violations are instead the consequences of ambiguous treaties, capacity limitations of states, and uncontrollable social and economic changes.

Evidence: The authors highlight the histories of several specific policy areas as a way to test the relationship between the depth of cooperation and necessary enforcement statutes.

\*\*The areas of trade and European integration have shown a dual growth in cooperation AND enforcement.

--the Uruguay Round has “substantially reduced many of the most egregious trade barriers around the world.”

--the cooperation embodied in the Maastricht Treaty has developed as “the member states chose to strengthen [the Court of Justice’s] power to monitor and punish defections”

--they conclude that it is difficult to believe that increased enforcement represents solely an attempt to pacify naïve realists who might demand such game-theoretic rules.

\*\*All of the policy examples the authors consider are meant, not to stress the universality of non-compliance, but rather to stress how counterexamples to Managerialist claims require one to remain concerned about issues of enforcement. They are meant to challenge any assumptions as to the insignificance of mixed-motive game-based cooperation in regulatory cooperation regimes.

\*\*The question becomes: Is it better to cope with a state's reluctance to cooperate by declaring that enforcement is unimportant and exaggerated or by trying to remedy enforcement matters? The authors, obviously, opt for the second course of action.

--a possible strategy to be considered: restriction of regime membership to states that will not have to defect very often, built around the assumption that whatever benefit is lost by excluding such states from the regime will be more than made up by permitting those that are included to set and also enforce a deeper level of cooperation and obtain a higher standard of free trade.

\*\*Should membership be limited so that collective action can occur more frequently?

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**Downs, Rocke, and Barsoom, "Is the good news about compliance good news about cooperation?"**, *International Organization* 49:1 (Winter 1995), pp. 171-190

NOTE 2

**Brief Summary:**

*Social scientists who are interested in cooperation have shifted more of their attention to the problem of compliance. The most important finding is that "those compliance problems that do exist are best addressed as management rather than enforcement problems." The preceding finding leads to the conclusion that "the management rather than the enforcement approach holds the key to the evolution of future regulatory cooperation in the international system." This article tries to challenge that finding on the ground that "evidence suggests that the high level of compliance and the marginality of enforcement result from the fact that most treaties require states to make only modest departures from what they would have done in the absence of an agreement." The evidence along with a further progress in international regulatory cooperation that will require the agreements that present far greater incentives to defect than those currently in place surely demands a better enforcement.*

*Main puzzle*

1) Is there any implication underneath the fact that the record of state compliance in the environment of weak enforcement is quite satisfactory?

2) Is the argument of the managerial school stating that enforcement has played little or no role in achieving and maintaining a state compliance with international agreements correct?

### Main answer

*To question 1:* The implication is that states decide to agree upon the contract that demands only modest departures from what they would have done anyway.

*To question 2:* It is incorrect based on game theoretical analysis and the recent empirical evidence. Countries tend to move to an agreement that has clearer enforcement rules such as WTO and EU.

### The Managerial Thesis

- The main thesis of the managerial school is that when noncompliance cases occur, they should be viewed as “isolated administrative breakdowns, ”
- In the managerial school, formal and informal enforcement measures, such as punishment, are not only inappropriate given the absence of any exploitative intent but also too costly, too political, and too coercive (DBR, 381).
- Instead, states should mutually consult to improve cooperation based on following strategies: 1) improving dispute resolution procedures, 2) technical and financial assistance, and 3) increasing transparency (DBR, 381).
- The overly optimistic managerial approach not only sharply contradicts with many realists and neorealists, but also runs counter to the rational-choice tradition.

### The Endogeneity and Selection Problems

- The main question of this section is “[d]oes it mean that even in the absence of enforcement states will comply with any agreements that do not require much enforcement?” (DBR, 383) And the likely answer is no.
- The reason that compliance has been successful without enforcement is that “the depth of cooperation” is low; states choose to sign the treaties of which contents are more likely to be complied with.
- A treaty’s depth of cooperation means “the extent to which it requires states to depart from what they would have done in its absence” (DBR, 383).
- In contrast to the managerial school, game theorists suggest that in a trade game that is represented by a prisoner’s dilemma, states must resort to a punishment for defection.
- According to the game theory, the punishment must hurt the transgressor state at least as much as that state could gain by defection so that that state will shy away from breaking the deal.

### Discussion

- This section attempts to evaluate the managerial theories VS the game theories on two grounds.
  - *The assessment of the depth of cooperation and the level of enforcement connected with prominent regulatory agreements that involve the reduction of behaviors that states have concluded are collectively counterproductive but*

*that contain few enforcement provisions.* It is an ideal to examine the correlation between enforcement and depth of cooperation. But, such strongly enforced regulatory agreements are relatively rare. If the managerial school is correct, there should be numerous examples of states agreeing to alter dramatically the trajectory that they were following at the time a treaty was signed while paying little attention to enforcement. If the game theorists are right, any tendency of states to avoid committing themselves to punishing noncompliance is likely to be associated with either a world in which there are relatively few deeply cooperative agreements.

- The game theorists are right in a sense that most of the new regulatory organizations which aim at a deeper cooperation contains some strong enforcement measures such as WTO and EU.
- *The examination of the managerial school's claim that rather than self-interest a combination of the ambiguity of treaties, the capacity limitations of states, and uncontrollable social and economic changes play a conspicuous role in the treaty violations.*
  - Although the authors agree that managerial defections, such as ambiguity of the agreements, have partly caused some cases of compliance problems, most of noncompliance cases have a root from self-interested parties' incentives to defect.

#### Enforcement and the future of cooperation

- Cooperation in arms, trade, and environmental regulation may begin with agreements that require little enforcement, but continued progress seems likely to depend on coping with an environment where defection presents significant benefits.
- It is possible that deeper cooperation can be ensured without much enforcement. This can occur whenever the underlying game changes in such a way that there is less incentive to defect from a given agreement.
- It is true, particularly in the area of trade liberalization, that changes in technology, relative prices, domestic transitions, and ideas have inspired more international cooperation and regulatory compliance than have all efforts at dispute resolution and enforcement combined. However, for a well-specified strategies that instruct policymakers how they can increase the rate of compliance, we know much more about the impact of enforcement coupled with managerial variables such as transparency.

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***Anne-Marie Burley and Walter Mattli: "Europe Before the Court: A political Theory of Legal Integration", *International Organization* 47, 1, Winter 1993***

- The main argument is that neofunctionalism can explain the role and the development of The European Court of Justice (ECJ) in the process of European integration.

### **<Introduction>**

\* Goals in this article are combining the insights of legal scholars and the theoretical framework developed by political scientists. (p. 43)

- The theoretical framework: neofunctionalism (by Ernest Haas)
- The basic assumption of neofunctionalism
- : “The need for a functional domain to circumvent the direct clash of political interests” (p.44)

\* Independent variable: supranational and subnational actors pursuing their own self-interests within a politically insulated sphere

\* Dependent variable: legal integration in the dimension of formal penetration as well as the dimension of substantive penetration

## **1. Legal and political theories of juridical contribution to European integration**

### **1) legal approaches**

(1) legalism: pure law

Since legalism only cares about the aspect of law itself, it does not pay much attention to the existence of ideological and sociopolitical influences on the Court’s jurisdiction.

(2) contextualism: law and politics

Contextualism substitutes a law-politics duality for the “rule of law.” However, it underspecified the relationships between laws and politics.

### **2) political science theories**

(1) Realism

Basically, realism does not admit the role of supranational organizations such as the ECJ since “realism asserts the primacy of national politics over community law and emphasizes the limits that the member states have imposed upon their involvement in community affairs.”(p.49)

(2) Neorationalism

The basic assumption of neorationalism is that it admits the basic assumption of realism such as “sovereign and unitary actors” but it can be distinguished with realism in the aspect of accepting “a role for institutions based on rational choice a game theory.”(p.50)  
Ex) the EJC is monitoring compliance with community obligation or to create shared belief system about cooperation and defection.(p.50)

(3) Other approaches

## **2. A return to neofunctionalism**

### **1) Neofunctionalism in historical perspectives: a theory of political integration**

\* The first work about the neofunctionalism is Ernst Haas’s “The Uniting of Europe.”

\* Neofunctionalism describes the political integration as “whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities towards a new and larger center, whose institutions possess or demand jurisdiction over the pre-existing national states.” (p.53)

\* The contribution of neofunctionalism is that it overcomes national barriers.

## **2) Neofunctionalism as a theory of the integration process: overcoming national barriers**

(1) The actors: circumventing the state

The primary players are the nation-states. Yet, there are other important actors such as interest groups and political parties (below the state) and supranational regional institutions (above the state.)

(2) The motives: instrumental self-interest

\* An unambiguously utilitarian concept of interest politics that stands in sharp contrast to the notion of unselfishness or common goods.

(3) The process: incremental expansion

- \* functional spillover: Since many different sectors of a modern industrial economy are highly interdependent, changes in one sector can be easily spilled over to other sectors.
- \* political spillover: “ the incremental shifting of expectations, the changing of values, and the coalescing at the supranational level of national interest groups and political parties in response to sectoral integration.”(p.55) Yet, not automatically cumulative integrative process.
- \*upgrading common interests : swapping concessions in related fields

(4) The context: nominally apolitical

\* A key assumption: functional cooperation must begin on the relatively low-key economic and social planes and Haas replaced the dichotomous relationship between economics and politics in functionalism by a continuous one.(p.56)

## **3. A neofunctionalist jurisprudence**

### **1) Actors: a specialized national and supranational community**

\* Actors: the thirteen ECJ judges, the commission legal staff and the six advocates-general, official members of the court assigned the task of presenting an impartial opinion on the law in each case.

\* Two important facets for the judges to be free from their accountability to the home governments are 1) secrecy of deliberation and 2) the absence of dissenting opinions.

\* Crucial subnational actors: community law professors. As a leading figure in their own national legal and political communities, they play a critical role in bolstering the legitimacy of the court. (p.59)

### **2) Motives: the self-interest of judges, lawyers, and professors**

The element for binding community of supra-and subnational actors is “self-interest.”(p.60)

(1) Giving individual litigants a personal stake in community law

\* *Van Grend & Loos* is a landmark decision because it imposed new duties of citizenship as well as corresponding rights for the people in the community.

(2) Courting the national courts

\* The entire process of increasing the use of the Article 177 procedure was an exercise in convincing national judges of the desirability of using the ECJ. (p.62)

\* The process occurred through seminar, dinners, and regular invitations to Luxembourg. It helped that the ECJ judges could put a human face on the institutional links they sought to build.

\* The European legal system transformed into a split system which has two authorities: one is their own national supreme courts and the other is the ECJ

### (3) Reciprocal empowerment

The empowerment of EJC caused to empower all those who make their living by analyzing and critiquing decision. (p.65)

### **3) Process**

#### (1) Functional spillover: the logic of law

- The effects of many cases judged by the ECJ were not limited to one area. They exerted influence on some other subnational cases and laws. It means that the evolution of community law also has manifested the substantive broadening typical of functional spillover.

#### (2) Political spillover: transnational incrementalism

\* A major function of a legal rule is to provide a clear and certain standard around which expectations and can crystallize. .

\* National governments have rarely raised the objections against the decision of the ECJ.

#### (3) Upgrading common interests

\* Upgrading the common interest is process of reasserting long-term interest, at least as nominally perceived at the founding and enshrined in sonorous phrases, over short-term interest. (p.68)

### **4) Context: the (apparent) separation of law and politics**

#### 1) Maintaining the fiction

\* The court itself has cooperated in burnishing this nonpolitical image.

#### 2) Transforming the political into the legal

#### 3) Law as a mask

- Law functions both as mask and shield. It hides and protects the promotion of one particular set of political objectives obtain contending objectives in the purely political sphere. (p.72)

## **4. Implication and Conclusions**

### **1) The Maastricht treaty**

It was a determination on the part of the member states to limit to the ECJ. However, there are two areas which the ECJ was excluded. One is foreign and security policy and the other is cooperation in the spheres of justice and home affairs.(p.73)

### **2) The sources of judicial autonomy**

Related to this issue, the scholars have argued about the role of institutions. In the reflectivism, it underlines that culturally conditioned operation of shared belief system. In the rationalism, it claims the importance of the cool calculation of exogenously determined interests. (p.75)

### **3) A return to sophisticated legalism**

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**Geoff Garrett “The Politics of Legal Integration in the European Union.”**  
*International Organization* 49:1 (Winter 1995)

EU member state governments weight the costs of acceptance of an ECJ decision against the benefits of an effective EU legal system. The benefits of accepting a decision are related to the country=s gains from the internal market. If the benefits from an effective legal system governing the internal market outweigh specific domestic costs, a rational government will accept the ECJ=s decision. Garrett describes Burley and Mattli=s argument as being comprised of three elements: (i) The development of the EU legal system was unforeseen; (ii) European law has expanded because the ECJ has coopted member state judges and lawyers; and (iii) while this legal system is not in the interests of the member states, the latter have failed to reorient the system to match their preferences. The last element is the focus of Garrett=s critique: He argues that (eg.) the German government=s behavior in *Cassis* can easily be explained in terms of rational self-interest.

The cost of an adverse ruling would have been low, since Anot all segments of the German alcohol sector would be hurt by the importation of Cassis.@ Moreover, by fighting the case in court, the German government would portray itself as a Agood European.@ Once the decision had been rendered, Germany could use its own compliance with the decision as leverage over other member states. Garrett sets up a 4 cell matrix (Fig. 1) with high/low Abenefit to national economy of trade liberalization@ and high/low Amarket share and political clout of industry potentially harmed by court decision.@ Governments are likely to overtly evade a Court decision if Abenefits@ are low and Amarket share ..@ is high, and are most likely to accept the decision if the opposite is true. In the other two cases, governments will either justify evasion (high benefit; low market share) or conceal evasion (low benefit; low market share).

Not only do member state governments act strategically, but so does the ECJ itself. While *legitimacy* purportedly does constrain ECJ judges (at 178), Garrett puts forward a peculiar view of how the Court will ensure that individual governments will not Aflout@ its decisions: He treats Articles 30 and 36 (Afree trade@ and Arestricting trade@) as simple alternatives that stand in tension to one another, and he asserts that AECJ behavior [presumably in >selecting= between the two] will likely be conditioned by its expectations about the likely responses of member governments.@ In other words, Awhen the court knows that an adverse decision against an important sector in a powerful member state not only will likely be evaded but also that this behavior will threaten its credibility and power, one should expect the ECJ not to challenge the government by accepting the existing protectionist behavior under Article 36)@ (at 179).

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**Walter Mattli and Anne-Marie Slaughter: “Law and Politics in the European Union: A Reply to Garrett”, *International Organization* 49:1 (Winter 1995)**

Points of contention are the nature of state interests, as considered by the ECJ, and the nature of the judicial decision-making process. The argument is not so much about whether a rational account of state behavior can be established, but how the relevant preferences and constraints should be defined.

Mattli and Slaughter claim that the preferences of member states and the Court diverge, and that the Court has a particular vision of Europe: In any given instance, [the ECJ judges] were likely to interpret the Treaty of Rome as requiring faster and deeper integration than member state preferences would have specified. Law provides a mask (legal/technical/nonpolitical reasoning) and a shield (within these constraints, the court can reach outcomes that depart significantly from member state preferences in case after case).

Garrett is mistaken in his claims that (i) the Court takes into account the interests of member states in particular cases (this violates the very core of the rule of law); and (ii) Articles 30 and 36 are co-existing, contradictory articles (Art. 30 is the rule, and Art. 36 the exception; states carry the burden of justifying their behavior under Art. 36).

Moreover, Garrett's use of *Cassis* as an example is misplaced, since his theory fails to explain Germany's compliance with the decision. Garrett claimed that Germany complied with the decision in part because it would only affect a small segment of the liquor industry. However, Germany also complied with the *Reinheitsgebot* decision, an adverse (free trade) ruling which affected a much larger and powerful segment (the German beer industry!). Secondly, on Garrett's own argument, Germany should have capitalized on the *Cassis* decision and its own highly competitive status within the European internal market to advocate trade liberalization. Historically, however, Germany has opposed the principle of mutual recognition (as affirmed in *Cassis*) because of its resistance to other nations' standards.

Mattli and Slaughter advocate further research on the question of *whose* interests are being advanced through European legal integration, and *how*.

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