

The Power and Peril of International Regime Complexity

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The proliferation of international rules, laws, and institutional forms raises important questions for regime theory. Looking at the theoretical and empirical arguments presented by all the contributors, however, it seems clear that that complexity's effects on actor strategies—particularly powerful actors—remain open to debate. Some of the posited effects of international regime complexity have contradictory or cross-cutting effects. Further effects of regime complexity—cross-institutional strategizing, the asymmetrical distribution of legal and technical expertise, and the fragmentation of reputation—can erode the significance of institutions in complex environments. This contribution considers the effect that regime complexity has on how powerful actors approach world politics—in part by connecting the current debate with past discussions about the significance of international regimes in world politics.

Karen Alter and Sophie Meunier correctly point out that the recent proliferation of international rules, laws, and institutional forms present important questions for regime theory. This has triggered attention to the role that forum-shopping, nested and overlapping institutions, and regime complexes play in shaping the patterns of global governance.¹ The previous articles in this symposium all move the discussion forward on the political implications of international regime complexity. Looking at the theoretical and empirical arguments presented by all the contributors, however, it seems clear that that complexity's effects on actor strategies—particularly of powerful actors—remain open to debate. Some of the posited effects of international regime complexity—bounded rationality, small group dynamics, feedback effects, and a renewed attention to the politics of implementation—have contradictory or cross-cutting effects. Further effects of regime complexity—cross-institutional strategizing, the asymmetrical distribution of legal and technical expertise, and the fragmentation of reputation—can undermine the significance of institutions in complex environments. This article considers the effect that regime complexity has on how powerful actors approach world politics—in part by connecting the current debate with past discussions about the significance of international regimes in world politics.

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Back to the Future²

To understand how international regime complexity can affect global governance outcomes, it is worth reflecting why international institutions are considered to be important in the first place. In the debate that took place between realists and institutionalists a generation ago, the latter group of theorists articulated in great detail how international regimes and institutions mattered in world politics. The primary goal of neoliberal institutionalism was to demonstrate that even in an anarchic world populated by states with unequal amounts of power, structured cooperation was still possible.³ A key causal process through which institutions facilitate cooperation is by developing arrangements that act as “focal points” for states in the international system.⁴ Much as the new institutionalist literature in American politics focused on the role that institutions played in facilitating a “structure induced equilibrium” within domestic politics, neoliberal institutionalists made a similar argument about international regimes and world politics.⁵ Robert Keohane and Lisa Martin argued that “in complex situations involving many states, international institutions can step in to provide ‘constructed focal points’ that make particular cooperative outcomes prominent.”⁶ By creating a common set of rules or norms for all participants, institutions help to intrinsically define the substance of cooperation, while highlighting instances when states defect from the agreed-upon rules.

By creating focal points and reducing the transaction costs of rule creation, institutions can shift arenas of international relations from power-based outcomes to rule-based outcomes. In the former, disputes are resolved without any articulated or agreed-upon set of decision-making criteria. The result is a Hobbesian order commonly

associated with the realist paradigm.⁷ While such a system does not automatically imply that force or coercion will be used by stronger states to secure their interests, the shadow of such coercion is ever present in the calculations of weaker actors.⁸

Most institutionalists agree that power also plays a role in rule-based outcomes as well.⁹ However, they would also posit that the creation of a well-defined international regime imposes constraints on the behavior of actors that are not present in a strictly Hobbesian system. Institutions act as binding mechanisms that permit displays of credible commitment. In pledging to abide by clearly defined rules, great powers make it easier for others to detect noncooperative behavior. These states will incur reputation costs if they choose to defect. If the regime is codified, then they impose additional legal obligations to comply that augment the reputation costs of defection.¹⁰

In a world thick with institutions, the central problem for institutionalists is no longer surmounting the transaction costs of policy coordination, but selecting among a welter of possible governance arrangements.¹¹ As Duncan Snidal and Joseph Jupille point out: “Institutional choice is now more than just a starting point for analysts and becomes the dependent variable to be explained in the context of alternative options.”¹² Indeed, the point of this symposium is to consider the effects of regime complexity as an independent variable. It is an unexplored question whether the proliferation of laws, rules, and organizational forms undercuts or augments the institutionalist logic articulated here.

Why Great Powers Will Embrace Regime Complexity

Many practitioners and scholars have welcomed the proliferation of international institutions. Policymakers have issued calls for ever-increasing thickness of regimes, laws, and international institutional forms.¹³ The editors of *Legalization and World Politics* observe approvingly that “in general, greater institutionalization implies that institutional rules govern more of the behavior of important actors—more in the sense that behavior previously outside the scope of particular rules is now within that scope or that behavior that was previously regulated is now more deeply regulated.”¹⁴

All of the articles here suggest the existence of cases when the growth of international regime complexity leads to greater adherence to norms. Kelley points out the ways in which election monitoring groups can reinforce each other. Davis points out the way in which increasing institutionalization has a multiplier effect on reputation, thereby enhancing compliance with trade rules. Hafner-Burton shows how the European Community used the Vienna Convention on the Law of Treaties (VCLT) to reinforce conditionality in trade agreements. Alter and Meunier dis-

cuss the role that “metanorms” can play as international regimes act to reinforce each other. Hofmann suggests that competition between NATO and ESDP has contributed to the development of the comprehensive security doctrine. In all of these cases, competition and strategic behavior enhance the institutionalist logic discussed in the previous section.

As regimes grow into regime complexes, however, there are at least three reasons to believe that the institutionalist logic for how regimes generate rule-based orders will fade in their effect.¹⁵ First, institutional proliferation can dilute the power of previously constructed focal points. Regime complexity inevitably increases the number of possible focal points around which rules and expectations can converge; by definition, however, focal points should be rare. Second, the creation of overlapping legal mandates with contradictory mandates could weaken all actors’ sense of legal obligation. Finally, the increased complexity of global governance structures raises the transaction costs of compliance for all actors.

All of these reasons create dynamics that favor the great powers more than would be expected under the institutionalist paradigm. In an uncertain world of proliferating focal points, great powers can use their ideational and material capabilities to create common conjectures by other actors about their intentions.¹⁶ Of course, NGOs and weaker actors will attempt to do this as well. Because powerful states possess greater capabilities for institutional creation, monitoring, and sanctioning, however, regime complexity endows them with additional agenda-setting and enforcement powers relative to a world defined by a single regime.¹⁷

This logic can be seen in the cases discussed in the other memos. Helfer observes how the growth of forum-shifting in the intellectual property rights regime can lead to the creation of “counterregime norms.” The proliferation of norms leads to an inevitable increase in the number of possible focal points around which rules and expectations can converge.¹⁸ Hafner-Burton’s article discusses the extent to which the European Community strategically deployed the VCLT at different times to weaken or strengthen the human rights provisions contained in different regional trade agreements. Kelley discusses the ways in which non-democratic states can try to game different election monitors.¹⁹

The weakening of legal obligations disproportionately enhances great powers. States, international governmental organizations, and courts will face complexity in trying to implement policies that lie at the joints of regime complexes.²⁰ Politically, however, this situation privileges more powerful actors at the expense of weaker ones. When states can bring conflicting legal precedents to a negotiation, the actor with greater enforcement capabilities will have the bargaining advantage. Both Helfer and Alter and Meunier discuss the absence of international legal hierarchy in their

essays. Hofmann discusses how Turkey has used its veto power within NATO to prevent high-level political consultations between NATO and the EU.

One counterargument would be that legal obligation fosters concerns about reputational costs if a state violates international law. Indeed, Christina Davis argues that the effect of reputation can compel actors into compliance even in a world of burgeoning complexity. Recent theoretical work, however, suggests that reputational effects are far more limited than previously believed.²¹ As Eyal Benvenisti and George Downs observe, “a fragmented legal order provides powerful states with much needed flexibility. . . . the existence of multiple contesting institutions removes the need for them to commit themselves irrevocably to any given one. This helps them to manage risk, and it increases their already substantial bargaining power.”²² Indeed, prominent policymakers in the United States have articulated this position as well.²³

The increase of international legal complexity also privileges great powers at the expense of weaker states and non-state actors. Negotiating the myriad global governance structures and treaties requires considerable amounts of legal training and technical expertise related to the issue area at hand. Although these transaction costs might seem trivial to great powers with large bureaucracies, specialized human capital is a relatively scarce resource in much of the developing world.²⁴ This is particularly true when dealing with regime complexes that contain potentially inconsistent elements. Hafner-Burton, Helfer, and Alter and Meunier reference the “spaghetti bowl” problem of overlapping international economic agreements.²⁵ On issues ranging from intellectual property rights to money laundering, great powers have exploited complexity to advance their interests.²⁶ An asymmetric distribution of technical expertise can also lead to a situation in which weaker actors act as if boundedly rational, while more powerful actors are better able to trace out cause-and-effect relationships.

If there is a wide divergence of interests between significant actors, then the proliferation of rules, laws, and organizational forms can undercut the adherence to coherent regimes. This can be seen in the contradictory effects posited by Alter and Meunier. Small group dynamics, for example, have less of a constraining effect if “the most relevant politics of an issue may occur over time in an entirely separate arena.”²⁷ The effects of bounded rationality and feedback effects might affect the politics of international regime complexity in the short term, but the ability of powerful actors to engage in forum-shifting and forum-creating strategies counteracts these short-term constraints over time. Empirically, Hofmann demonstrates the extent to which the NATO/ESDP overlap has “impeded the development of an efficient division of labor between the two institutions.”²⁸ Betts concludes that the complex institutional environment has “had a

potentially negative effect on the quality of protection available to refugees.”²⁹

Even instances in which weaker actors successfully exploited regime complexity appear, in retrospect, to have been ephemeral. For example, less developed countries and humanitarian NGOs succeeded in 2001 in getting the United States to agree to the Doha Declaration, creating a public health exception to the TRIPS regime. Since 2001, however, the United States has successfully blocked meaningful change by complicating the implementation of the declaration at the WTO. They have also engaged in cross-institutional strategizing by inserting TRIPS-plus arrangements into bilateral trade agreements.³⁰ In a November 2006 briefing paper, Oxfam concluded that “little has changed” since the Doha Declaration: “Through free trade agreements (FTAs) and unilateral pressure, the USA has shackled developing countries with ever-higher standards of intellectual property protection that exceed the TRIPS agreement. Other rich countries, particularly member countries of the European Union, have silently watched and reaped the benefits of the U.S. trade agenda.”³¹ Indeed, the European Commission explicitly warned Thailand, for example, to scale back its use of compulsory licenses for patented drugs.³² The combined EU-U.S. pressure has limited developing country use of the flexibilities ostensibly contained within the Doha Declaration. Indeed, both Oxfam and Médecins Sans Frontières concluded that the implementation of the Doha Declaration has failed to facilitate the delivery of affordable medicines to developing countries.³³

Paradoxically, after a certain point institutional and legal proliferation can shift global governance structures from a Lockean world of binding rules to a Hobbesian world of plastic rules. Although all actors will engage in forum-shopping, only the great powers will possess the capabilities necessary to enforce, implement or resolve inter-regime disputes. Perhaps the existence of nested and overlapping regimes creates a new style of global bargaining, but the underlying causal determinants of international cooperation remain the distribution of power and interest. It might be, as Betts suggests in his memo, that complexity has stronger effects by altering the prevalent ideas and identities in world politics.

Variables to Consider for the Future

In their introductory essay, Alter and Meunier state that their goal is to treat the issue of overlap and complexity as an independent variable. As we have seen, however, the mere existence of regime complexity can have contradictory effects on governance outcomes. It might be more appropriate to consider whether there are particular attributes of complexity that vary over time—and from regime complex to regime complex—that determine whether nested and overlapping regimes reinforce or undercut each other.

One possible determinant is the degree to which powerful or particularistic interests can *capture* an individual regime. Some international organizations are the creature of powerful governments; others are a haven for particular interests, be they material or ideational. Edward Mansfield has posited that the “capture” of international institutions by powerful state or interest groups could spur the creation of countervailing organizational forms.³⁴ The more that particular regimes are vulnerable to capture by interest groups, the more likely that regime complexity would lead to opportunism rather than adherence to metanorms. A related determinant is the degree of organized hypocrisy within a regime complex.³⁵ A hypocritical regime complex generates policies that are at odds with great power interests, decoupled from stated norms, or so inchoate that they cannot be implemented or enforced.

In conclusion, the participants in this symposium are to be commended for demonstrating how regime complexity affects international interactions as an independent variable. Clearly, there exist circumstances when such complexity can create new and unanticipated constraints (or opportunities) for actors. That said, however, there are powerful reasons to believe that regime complexity will enhance rather than limit the great powers. Despite the hopes of global governance enthusiasts, it is far from clear whether international regime complexity will change the character of world politics.

Notes

- 1 Shanks, Jacobson, and Kaplan 1996; Goldstein et al. 2001; Raustiala and Victor 2004; Aggarwal 2005; Alter and Meunier 2006; Rosenau 2007.
- 2 This section draws from Drezner 2008.
- 3 Keohane 1984; Oye 1986; Baldwin 1993; Keohane and Martin 1995; Hasenclever, Mayer and Rittberger 1996; Martin and Simmons 1998. Though often conflated, the institutionalist paradigm is distinct from liberal theories of international politics. On this distinction, see Moravcsik 1997.
- 4 Schelling 1960.
- 5 On structure-induced equilibrium, see Shepsle and Weingast 1981. See Milner 1997 and Martin and Simmons 1998 for conscious discussions of translating this concept to world politics.
- 6 Keohane and Martin 1995, 45.
- 7 Waltz 1979; Mearsheimer 1994/95, 2001; Wendt 1999, ch. 6.
- 8 Carr 1964, Drezner 2003.
- 9 Indeed, Oran Young made this point in an early article about international regimes. See Young 1980, 338.
- 10 Snidal and Abbott 2000; Goldstein and Martin 2000.
- 11 Krasner 1991; Drezner 2007a.

- 12 Jupille and Snidal 2005, 2.
- 13 For recent examples, see Ikenberry and Slaughter 2006; Daalder and Lindsay 2007.
- 14 Goldstein et al. 2001, 3. See also Slaughter 1997, 2004; Rosenau 2007.
- 15 For a fuller discussion, see Drezner 2008.
- 16 Medina 2005; Drezner 2007a, ch. 3.
- 17 Krasner 1991; Voeten 2001; Johns 2007.
- 18 This is true even if newer organizational forms are created to buttress existing regimes. Actors that create new rules, laws and organizations will consciously or unconsciously adapt these regimes to their political, legal, and cultural particularities. Even if the original intent is to reinforce existing regimes, institutional mutations will take place that can be exploited via forum-shopping as domestic regimes and interests change over time. For empirical examples, see Raustiala 1997; Hafner-Burton 2009.
- 19 For another example where actors have tried to game different NGOs and private orders, see Chatterji and Listokin 2007.
- 20 Aggarwal 2005; Alter and Meunier 2006.
- 21 Downs and Jones 2002, Press 2005, and Tomz 2007.
- 22 Benvenisti and Downs 2007, 627.
- 23 Bolton 2007.
- 24 Stiglitz 2002, 227; Jordan and Majnoni 2002; Reinhardt 2003; Drezner 2007a, ch. 5. Some governments outsource their legal needs to western law firms well-versed in international law. This mitigates the human capital problem, but replaces it with a budgetary problem. While NGOs can supply some expertise to weaker actors, this is an imperfect substitute.
- 25 Sutherland et al. 2005.
- 26 Drezner 2007a.
- 27 Alter and Meunier 2009.
- 28 Hofmann 2009.
- 29 Betts 2009.
- 30 Drezner 2007a, ch. 7.
- 31 Oxfam 2006.
- 32 Bounds 2007.
- 33 Oxfam 2006; Médecins Sans Frontières 2006. “Neither expeditious, nor a solution: The WTO August 30th Decision is unworkable,” August 2006.
- 34 Mansfield 1995.
- 35 On this concept, see Krasner 1999; Lipson 2007.

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