

# INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

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Edited by **Beth A. Simmons**  
and **Richard H. Steinberg**

with the concept of transnationalism have posited a web of interdependence that makes any emphasis on sovereignty analytically misleading and normatively questionable. Keohane and Nye's discussion of complex interdependence rejects the assumptions of the primacy of force and issue hierarchy assumed by a realist perspective.<sup>16</sup> Ernst Haas points out that what he calls organic theories – eco-environmentalism, eco-reformism, and egalitarianism – deny conventional power-oriented assumptions.

\*\*\* The issue is not so much whether one accepts the possibility of principles, norms, rules, and decision-making procedures affecting outcomes and behavior, as what one's basic assumption is about the normal state of international affairs. Adherents of a Grotian perspective accept regimes as a pervasive and significant phenomenon in the international system. Adherents of a structural realist orientation see regimes as a phenomenon whose presence cannot be assumed and whose existence requires careful explanation. The two "standard cases" are fundamentally different, and it is the definition of the standard case that identifies the basic theoretical orientation. \*\*\* From a realist perspective, regimes are phenomena that need to be explained; from a Grotian perspective, they are data to be described.

In sum, conventional structural arguments do not take regimes seriously: if basic causal variables change, regimes will also change. Regimes have no independent impact on behavior. Modified structural arguments, represented here by a number of adherents of a realist approach to international relations, see regimes as mattering only when independent decision making leads to undesired outcomes. Finally, Grotian perspectives accept regimes as a fundamental part of all patterned human interaction, including behavior in the international system.

## EXPLANATIONS FOR REGIME DEVELOPMENT

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### 1. Egoistic Self-Interest

The prevailing explanation for the existence of international regimes is egoistic self-interest. By egoistic self-interest I refer to the desire to maximize one's own utility function where that function does not include the utility of another party. The egoist is concerned with the behavior of

<sup>16</sup> Keohane and Nye, *Power and Interdependence*, especially chap. 8.

others only insofar as that behavior can affect the egoist's utility. All contractarian political theories from Hobbes to Rawls are based on egoistic self-interest. In contrast, pure power seekers are interested in maximizing the difference between their power capabilities and those of their opponent.

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\*\*\* It is not so clear that coordination involves regimes. Coordination may only require the construction of rules. If these rules are not informed by any proximate principles or norms, they will not conform to the definition of regimes set forth earlier. \*\*\*

[The benefits provided by regimes are likely to outweigh the costs of regime formation and maintenance when there is asymmetric information, moral hazard, potential dishonesty, or high issue density. In addition, the costs of forming regimes will be lower when there is a high level of formal and informal communication among states, a condition more likely to be found in open political systems operating under conditions of complex interdependence. \*\*\* Hence calculations of egoistic self-interest emerge as central elements in most of the [chapters] in this [book].

## 2. Political Power

The second major basic causal variable used to explain regime development is political power. Two different orientations toward power can be distinguished. The first is cosmopolitan and instrumental: power is used to secure optimal outcomes for the system as a whole. In game-theoretic terms power is used to promote joint maximization. It is power in the service of the common good. The second approach is particularistic and potentially consummatory. Power is used to enhance the values of specific actors within the system. These values may include increasing power capabilities as well as promoting economic or other objectives. In game-theoretic terms power is used to maximize individual payoffs. It is power in the service of particular interests.

### *a. Power in the Service of the Common Good*

The first position is represented by a long tradition in classical and neoclassical economics associated with the provision of public goods. The hidden hand was Adam Smith's most compelling construct: the good of all from the selfishness of each; there could be no more powerful defense of egoism. But Smith recognized that it was necessary for the state to provide certain collective goods. These included defense, the maintenance of order, minimum levels of welfare, public works, the protection of infant

industries, and standards for commodities.<sup>17</sup> Economists have pointed to the importance of the state for establishing property rights and enforcing contracts; that is, creating conditions that prevent predatory as opposed to market behavior. The state must create institutions that equate public and private rates of return.<sup>18</sup> Keynesian analysis gives the state a prominent role in managing macroeconomic variables. For all of these arguments the purpose of state action is to further general societal interests.

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### *b. Power in the Service of Particular Interests*

\*\*\* A game-theoretic analogy makes it easier to distinguish between two important variants of the viewpoint of power in the service of particular interests. The first assumes that payoffs are fixed and that an actor's choice of strategy is autonomously determined solely by these payoffs. The second assumes that power can be used to alter payoffs and influence actor strategy.

The first approach closely follows the analysis that applies when purely cosmopolitan objectives are at stake, except that political power is used to maximize individual, not joint, payoffs. Under certain configurations of interest, there is an incentive to create regimes and the provision of these regimes is a function of the distribution of power. \*\*\* [Keohane has] argued that hegemons play a critical role in supplying the collective goods that are needed for regimes to function effectively.<sup>19</sup> Hegemons provide

<sup>17</sup> There is a lively debate over precisely how much of a role Smith accords to the state. Some (see for instance Albert Hirschman, *The Passions and the Interests* [Princeton: Princeton University Press, 1977], pp. 103–104) maintain that Smith wanted to limit the folly of government by having it do as little as possible. Others (see for instance Colin Holmes, “Laissez-faire in Theory and Practice: Britain 1800–1875,” *Journal of European Economic History* 5, 3 [1976], p. 673; and Carlos Diaz-Alejandro, “Delinking North and South: Unshackled or Unhinged,” in Albert Fishlow et al., *Rich and Poor Nations in the World Economy* [New York: McGraw-Hill, 1978], pp. 124–25) have taken the intermediate position endorsed here. Others see Smith trying to establish conditions for a moral society that must be based on individual choice, for which a materialistically oriented, egoistically maintained economic system is only instrumental. See, for instance, Leonard Billet, “The Just Economy: The Moral Basis of the Wealth of Nations,” *Review of Social Economy* 34 (December 1974).

<sup>18</sup> Jack Hirschleifer, “Economics from a Biological Viewpoint,” *Journal of Law and Economics* 20 (April 1977); Weber, *Economy and Society*, pp. 336–37; Douglass C. North and Robert Paul Thomas, *The Rise of the Western World: A New Economic History* (Cambridge: Cambridge University Press, 1973), chap. 1.

<sup>19</sup> Robert O. Keohane, “The Theory of Hegemonic Stability and Changes in International Economic Regimes, 1967–77,” in Ole R. Holsti et al., *Changes in the International System* (Boulder, Col.: Westview, 1980).

these goods not because they are interested in the well-being of the system as a whole, but because regimes enhance their own national values. \*\*\*

The theory of hegemonic leadership suggests that under conditions of declining hegemony there will be a weakening of regimes. Without leadership, principles, norms, rules, and decision-making procedures cannot easily be upheld. No one actor will be willing to provide the collective goods needed to make the regime work smoothly and effectively. \*\*\* On the other hand, \*\*\* as hegemony declines there will be greater incentives for collaboration because collective goods are no longer being provided by the hegemon. The international system more closely resembles an oligopoly than a perfect market. Actors are aware of how their behavior affects others. When smaller states perceive that a hegemon is no longer willing to offer a free ride, they are likely to become paying customers. \*\*\*

The second line of argument associated with power in the service of specific interests investigates the possibility that powerful actors may be able to alter the pay-offs that confront other actors or influence the strategies they choose. Here power becomes a much more central concept – the element of compulsion is close at hand. Weaker actors may not be able to make autonomous choices. The values assigned to a particular cell may be changed.

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When a hegemonic state acts to influence the strategy of other actors, the regime is held hostage to the persistence of the existing distribution of power in the international system. If the hegemon's relative capabilities decline, the regime will collapse. \*\*\* For instance, the norms of the colonial regime collapsed because the power of its supporter, the major European states, eroded. This set of arguments about regime change and hegemonic decline differs from the analysis emerging from a focus on the provision of collective goods for either cosmopolitan or particularistic reasons. Here a decline in power leads to a change in regime because the hegemon is no longer able to control the payoff matrix or influence the strategies of the weak, not because there is no actor to provide the collective goods needed for efficient regime functioning.

### 3. Norms and Principles

To this point in the discussion, norms and principles have been treated as endogenous: they are the critical defining characteristics of any given regime. However, norms and principles that influence the regime in

a particular issue-area but are not directly related to that issue-area can also be regarded as explanations for the creation, persistence, and dissipation of regimes. The most famous example of such a formulation is Max Weber's *Protestant Ethic and the Spirit of Capitalism*. Weber argues that the rise of capitalism is intimately associated with the evolution of a Calvinist religious doctrine that fosters hard work while enjoining profligacy and uses worldly success as an indication of predestined fate.<sup>20</sup> Fred Hirsch has argued that without precapitalist values such as hard work, self-sacrifice, loyalty, and honor, capitalist systems would fall apart. Such values are critical constraints on self-interested calculations that would too often lead to untrustworthy and dishonest behavior.<sup>21</sup>

Financing by various pariah groups around the world offers a clear example of the way in which noneconomic norms have facilitated market activity. For instance, bills of exchange were devised by Jewish bankers during the late Middle Ages to avoid violence and extortion from the nobility: safer to carry a piece of paper than to carry specie. However, the piece of paper had to be honored by the recipient. This implied a high level of trust and such trust was enhanced by conventions: established practices were reinforced by the exclusionary nature of the group, which facilitated surveillance and the application of sanctions. The importance of conventions for the use of bills of exchange is reflected in the fact that they were frequently used in the Mediterranean basin in the 16th century but they were not used at the interface with the non-Mediterranean world in Syria where, according to Braudel, "two mutually suspicious worlds met face to face." Here all dealings were in barter, or gold and silver.<sup>22</sup>

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Discussion by other authors suggests that there is a hierarchy of regimes. Diffuse principles and norms, such as hard work as a service to God, condition behavior in specific issue-areas. In international relations, the most important diffuse principle is sovereignty. Hedley Bull refers to

<sup>20</sup> See David Laitin, "Religion, Political Culture, and the Weberian Tradition," *World Politics* 30, 4 (July 1978), especially pp. 568–69. For another discussion of noneconomic values in the rise of capitalism see Hirschman, *The Passions and the Interests*.

<sup>21</sup> Hirsch, *The Social Limits to Growth*, chap. 11. See also Michael Walzer, "The Future of Intellectuals and the Rise of the New Class," *New York Review of Books* 27 (20 March 1980).

<sup>22</sup> Fernand Braudel, *The Mediterranean and the Mediterranean World in the Age of Philip II* (New York: Harper, 1975), p. 370. For the tie between bills of exchange and Jewish bankers see Hirschman, *The Passions and the Interests*, p. 72, and Immanuel Wallerstein, *The Modern World-System* (New York: Academic Press, 1974), p. 147.

sovereignty as the constitutive principle of the present international system. The concept of exclusive control within a delimited geographic area and the untrammled right to self-help internationally, which emerged out of late medieval Europe, have come to pervade the modern international system.<sup>23</sup>

In this usage sovereignty is not an analytic assumption, it is a principle that influences the behavior of actors. With a few exceptions, such as Antarctica, Namibia, and the West Bank, sovereignty prevails. Those areas where sovereignty is not applied are governed by vulnerable regimes or lack regimes altogether. Sovereignty designates states as the only actors with unlimited rights to act in the international system. Assertions by other agencies are subject to challenge. If the constitutive principle of sovereignty were altered, it is difficult to imagine that any other international regime would remain unchanged.

#### 4. Usage and Custom

The last two sets of causal variables affecting regime development are usage and custom, and knowledge. Usage and custom will be discussed in this section, knowledge in the next. Usage and custom, and knowledge, are not treated in this [book] as exogenous variables capable of generating a regime on their own. Rather, they supplement and reinforce pressures associated with egoistic self-interest, political power, and diffuse values.

Usage refers to regular patterns of behavior based on actual practice; custom, to long-standing practice.<sup>24</sup> \*\*\* Patterned behavior accompanied by shared expectations is likely to become infused with normative significance: actions based purely on instrumental calculations can come to be regarded as rule-like or principled behavior. They assume legitimacy. A great deal of western commercial law, in fact, developed out of custom and usage initially generated by self-interest. Practices that began as *ad hoc* private arrangements later became the basis for official commercial law.<sup>25</sup>

\*\*\* Certain patterns of behavior are first adopted because they promote individual utility. Once established, such practices are reinforced by the growth of regimes. Most American drivers (outside New York City) would

<sup>23</sup> Bull, *The Anarchical Society*, pp. 8–9, 70.

<sup>24</sup> Weber, *Economy and Society*, p. 29.

<sup>25</sup> Leon E. Trakman, "The Evolution of the Law Merchant: Our Commercial Heritage," Part I, *Journal of Maritime Law and Commerce* 12, 1 (October 1980) and Part II, *ibid.*, 12, 2 (January 1981); Harold Berman and Colin Kaufman, "The Law of International Commercial Transactions (*Lex Mercatoria*)," *Harvard International Law Journal* 19, 1 (Winter 1978).

feel at least a twinge of discomfort at driving illegally through a red light at an empty intersection. Behavior that was originally only a matter of egoistic self-interest is now buttressed by widely shared norms. \*\*\* A pattern of behavior initially established by economic coercion or force may come to be regarded as legitimate by those on whom it has been imposed. Usage leads to shared expectations, which become infused with principles and norms.

### 5. Knowledge

The final variable used to explain the development of regimes is knowledge. Like usage and custom, knowledge is usually treated as an intervening, not an exogenous, variable. In an earlier study Ernst Haas, a prominent exponent of the importance of knowledge, defined knowledge as "the sum of technical information and of theories about that information which commands sufficient consensus at a given time among interested actors to serve as a guide to public policy designed to achieve some social goal."<sup>26</sup> In another essay Haas points to the potentialities inherent in a stance of "cognitive evolutionism," which emphasizes sensitivity to the consequences of the generation of new knowledge.<sup>27</sup> Knowledge creates a basis for cooperation by illuminating complex interconnections that were not previously understood. Knowledge can not only enhance the prospects for convergent state behavior, it can also transcend "prevailing lines of ideological cleavage."<sup>28</sup> It can provide a common ground for both what Haas calls mechanical approaches (most conventional social science theories) and organic approaches (egalitarianism and various environmentally-oriented arguments).

For knowledge to have an independent impact in the international system, it must be widely accepted by policy makers. \*\*\* Without consensus, knowledge can have little impact on regime development in a world of sovereign states. If only some parties hold a particular set of beliefs, their significance is completely mediated by the power of their adherents.

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<sup>26</sup> Ernst Haas, "Why Collaborate? Issue-Linkage and International Regimes," *World Politics* 32, 3 (April 1980), pp. 367-68.

<sup>27</sup> [Ernst B. Haas, "Words Can Hurt You; Or, Who Said What to Whom about Regimes," *International Organization* 36, 2 (Spring 1982).]

[<sup>28</sup> Haas, "Why Collaborate?," p. 368.]

The two most prominent exogenous variables are egoistic self-interest, usually economic, and political power. In addition, diffuse values and norms such as sovereignty and private property may condition behavior within specific issue-areas. Finally, usage and custom and knowledge may contribute to the development of regimes.

#### CONCLUSION

\*\*\* The Grotian perspective \*\*\* sees regimes as a pervasive facet of social interaction. It is catholic in its description of the underlying causes of regimes. Interests, power, diffuse norms, customs, and knowledge may all play a role in regime formation. These causal factors may be manifest through the behavior of individuals, particular bureaucracies, and international organizations, as well as states.

The structural realist orientation is \*\*\* more circumspect. The exemplar or standard case for the realist perspective does not include international regimes. Regimes arise only under restrictive conditions characterized by the failure of individual decision making to secure desired outcomes. The basic causal variables that lead to the creation of regimes are power and interest. The basic actors are states. \*\*\*

[Modified structural orientations] reject a narrow structural analysis that posits a direct relationship between changes in basic causal variables and related behavior and outcomes, and denies the utility of the regime concept. \*\*\* However, the basic parametric constraints for these analyses are identical with those applied by more conventional structural arguments. The basic analytic assumptions are the same. Arguments that treat regimes as intervening variables, and regard state interests and state power as basic causal variables, fall unambiguously within the structural realist paradigm. A more serious departure from structural reasoning occurs when regimes are seen as autonomous variables independently affecting not only related behavior and outcomes, but also the basic causal variables that led to their creation in the first place. \*\*\*

## The Demand for International Regimes

Robert O. Keohane

We study international regimes because we are interested in understanding order in world politics. Conflict may be the rule; if so, institutionalized patterns of cooperation are particularly in need of explanation. The theoretical analysis of international regimes begins with what is at least an apparent anomaly from the standpoint of Realist theory: the existence of many “sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actor expectations converge,” in a variety of areas of international relations.

This article constitutes an attempt to improve our understanding of international order, and international cooperation, through an interpretation of international regime formation that relies heavily on rational-choice analysis in the utilitarian social contract tradition. I explore why self-interested actors in world politics should seek, under

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certain circumstances, to establish international regimes through mutual agreement; and how we can account for fluctuations over time in the number, extent, and strength of international regimes, on the basis of rational calculation under varying circumstances.

Previous work on this subject in the rational-choice tradition has emphasized the “theory of hegemonic stability”: that is, the view that concentration of power in one dominant state facilitates the development of strong regimes, and that fragmentation of power is associated with regime collapse.<sup>1</sup> This theory, however, fails to explain lags between changes in power structures and changes in international regimes; does not account well for the differential durability of different institutions within a given issue-area; and avoids addressing the question of why international regimes seem so much more extensive now in world politics than during earlier periods (such as the late 19th century) of supposed hegemonic leadership.<sup>2</sup>

The argument of this article seeks to correct some of these faults of the hegemonic stability theory by incorporating it within a supply-demand approach that borrows extensively from microeconomic theory. The theory of hegemonic stability can be viewed as focusing only on the supply of international regimes: according to the theory, the more concentrated power is in an international system, the greater the supply of international regimes at any level of demand.<sup>3</sup> But fluctuations in demand for international regimes are not taken into account by the theory; thus it is necessarily incomplete. This article focuses principally on the demand for international regimes in order to provide the basis for a more comprehensive and balanced interpretation.

<sup>1</sup> See especially Robert O. Keohane, “The Theory of Hegemonic Stability and Changes in International Economic Regimes, 1967–1977,” in Ole R. Holsti, Randolph Siverson, and Alexander George, eds., *Changes in the International System* (Boulder: Westview, 1980); and Linda Cahn, “National Power and International Regimes: The United States and International Commodity Markets,” Ph.D. diss., Stanford University, 1980.

<sup>2</sup> Current research on the nineteenth century is beginning to question the assumption that Britain was hegemonic in a meaningful sense. See Timothy J. McKeown, “Hegemony Theory and Trade in the Nineteenth Century,” paper presented to the International Studies Association convention, Philadelphia, 18–21 March 1981; and Arthur A. Stein, “The Hegemon’s Dilemma: Great Britain, the United States, and the International Economic Order,” paper presented to the American Political Science Association annual meeting, New York, 3–6 September 1981.

<sup>3</sup> The essential reason for this (discussed below) is that actors that are large relative to the whole set of actors have greater incentives both to provide collective goods themselves and to organize their provision, than do actors that are small relative to the whole set. The classic discussion of this phenomenon appears in Mancur Olson Jr., *The Logic of Collective Action: Political Goods and the Theory of Groups* (Cambridge: Harvard University Press, 1965).

Emphasizing the demand for international regimes focuses our attention on why we should want them in the first place, rather than taking their desirability as a given. I do not assume that “demand” and “supply” can be specified independently and operationalized as in microeconomics. The same actors are likely to be the “demanders” and the “suppliers.” Furthermore, factors affecting the demand for international regimes are likely simultaneously to affect their supply as well. Yet supply and demand language allows us to make a distinction that is useful in distinguishing phenomena that, in the first instance, affect the desire for regimes, on the one hand, or the ease of supplying them, on the other. “Supply and demand” should be seen in this analysis as a metaphor, rather than an attempt artificially to separate, or to reify, different aspects of an interrelated process.<sup>4</sup>

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#### I. SYSTEMIC CONSTRAINT-CHOICE ANALYSIS: VIRTUES AND LIMITATIONS

The argument developed here is deliberately limited to the *systemic* level of analysis. In a systemic theory, the actors’ characteristics are given by assumption, rather than treated as variables; changes in outcomes are explained not on the basis of variations in these actor characteristics, but on the basis of changes in the attributes of the system itself. Microeconomic theory, for instance, posits the existence of business firms, with given utility functions, and attempts to explain their behavior on the basis of environmental factors such as the competitiveness of markets. It is therefore a systemic theory, unlike the so-called “behavioral theory of the firm,” which examines the actors for internal variations that could account for behavior not predicted by microeconomic theory.

A systemic focus permits a limitation of the number of variables that need to be considered. In the initial steps of theory-building, this is a great advantage: attempting to take into account at the outset factors at the foreign policy as well as the systemic level would lead quickly to descriptive complexity and theoretical anarchy. Beginning the analysis at the systemic level establishes a baseline for future work. By seeing how well a simple model accounts for behavior, we understand better the value of introducing more variables and greater complexity into the analysis. Without the systemic microeconomic theory of the firm, for instance, it would not

<sup>4</sup> I am indebted to Albert Fishlow for clarifying this point for me.