

INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

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PART I

INTERNATIONAL REGIMES THEORY:
DOES LAW MATTER?

I

Structural Causes and Regime Consequences: Regimes as Intervening Variables

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DEFINING REGIMES AND REGIME CHANGE

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Regimes can be defined as sets of 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.

This usage is consistent with other recent formulations. Keohane and Nye, for instance, define regimes as "sets of governing arrangements" that include "networks of rules, norms, and procedures that regularize behavior and control its effects."¹ Haas argues that a regime encompasses a mutually coherent set of procedures, rules, and norms.² Hedley Bull, using a somewhat different terminology, refers to the importance of rules and institutions in international society where rules refer to "general imperative principles which require or authorize prescribed classes of persons or groups to behave in prescribed ways."³ Institutions for Bull

¹ Robert O. Keohane and Joseph S. Nye, *Power and Interdependence* (Boston: Little, Brown, 1977), p. 19.

² Ernst Haas, "Technological Self-Reliance for Latin America: The OAS Contribution," *International Organization* 34, 4 (Autumn 1980), p. 553.

³ Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (New York: Columbia University Press, 1977), p. 54.

help to secure adherence to rules by formulating, communicating, administering, enforcing, interpreting, legitimating, and adapting them.

Regimes must be understood as something more than temporary arrangements that change with every shift in power or interests. Keohane notes that a basic analytic distinction must be made between regimes and agreements. Agreements are *ad hoc*, often “one-shot,” arrangements. The purpose of regimes is to facilitate agreements. *** As interest and power change, behavior changes. Waltz’s conception of the balance of power, in which states are driven by systemic pressures to repetitive balancing behavior, is not a regime; Kaplan’s conception, in which equilibrium requires commitment to rules that constrain immediate, short-term power maximization (especially not destroying an essential actor), is a regime.⁴

Similarly, regime-governed behavior must not be based solely on short-term calculations of interest. Since regimes encompass principles and norms, the utility function that is being maximized must embody some sense of general obligation. One such principle, reciprocity, is emphasized in Jervis’s analysis of security regimes. When states accept reciprocity they will sacrifice short-term interests with the expectation that other actors will reciprocate in the future, even if they are not under a specific obligation to do so. This formulation is similar to Fred Hirsch’s brilliant discussion of friendship, in which he states: “Friendship contains an element of direct mutual exchange and to this extent is akin to private economic good. But it is often much more than that. Over time, the friendship ‘transaction’ can be presumed, by its permanence, to be a net benefit on both sides. At any moment of time, though, the exchange is very unlikely to be reciprocally balanced.”⁵ It is the infusion of behavior with principles and norms that distinguishes regime-governed activity in the international system from more conventional activity, guided exclusively by narrow calculations of interest.

A fundamental distinction must be made between principles and norms on the one hand, and rules and procedures on the other. Principles and norms provide the basic defining characteristics of a regime. There may be many rules and decision-making procedures that are consistent with the same principles and norms. *Changes in rules and decision-making*

⁴ Kenneth Waltz, *Theory of International Relations* (Reading, Mass.: Addison-Wesley, 1979); Morton Kaplan, *Systems and Process in International Politics* (New York: Wiley, 1957), p. 23; Kaplan, *Towards Professionalism in International Theory* (New York: Free Press, 1979), pp. 66–69, 73.

⁵ Fred Hirsch, *The Social Limits to Growth* (Cambridge: Harvard University Press, 1976), p. 78.

procedures are changes within regimes, provided that principles and norms are unaltered. *** *Changes in principles and norms are changes of the regime itself*. When norms and principles are abandoned, there is either a change to a new regime or a disappearance of regimes from a given issue-area. ***

Fundamental political arguments are more concerned with norms and principles than with rules and procedures. Changes in the latter may be interpreted in different ways. For instance, in the area of international trade, recent revisions in the Articles of Agreement of the General Agreement on Tariffs and Trade (GATT) provide for special and differential treatment for less developed countries (LDCs). All industrialized countries have instituted generalized systems of preferences for LDCs. Such rules violate one of the basic norms of the liberal postwar order, the most-favored-nation treatment of all parties. However, the industrialized nations have treated these alterations in the rules as temporary departures necessitated by the peculiar circumstances of poorer areas. At American insistence the concept of graduation was formally introduced into the GATT Articles after the Tokyo Round. Graduation holds that as countries become more developed they will accept rules consistent with liberal principles. Hence, Northern representatives have chosen to interpret special and differential treatment of developing countries as a change within the regime.

Speakers for the Third World, on the other hand, have argued that the basic norms of the international economic order should be redistribution and equity, not nondiscrimination and efficiency. They see the changes in rules as changes of the regime because they identify these changes with basic changes in principle. There is a fundamental difference between viewing changes in rules as indications of change within the regime and viewing these changes as indications of change between regimes. The difference hinges on assessments of whether principles and norms have changed as well. Such assessments are never easy because they cannot be based on objective behavioral observations. "We know deviations from regimes," Ruggie avers, "not simply by acts that are undertaken, but by the intentionality and acceptability attributed to those acts in the context of an intersubjective framework of meaning."⁶

Finally, it is necessary to distinguish the weakening of a regime from changes within or between regimes. *If the principles, norms, rules, and*

⁶ John Ruggie, "International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order," *International Organization* 36, 2 (Spring 1982), p. 380.

decision-making procedures of a regime become less coherent, or if actual practice is increasingly inconsistent with principles, norms, rules, and procedures, then a regime has weakened. Special and differential treatment for developing countries is an indication that the liberal regime has weakened, even if it has not been replaced by something else. The use of diplomatic cover by spies, the bugging of embassies, the assassination of diplomats by terrorists, and the failure to provide adequate local police protection are all indications that the classic regime protecting foreign envoys has weakened. However, the furtive nature of these activities indicates that basic principles and norms are not being directly challenged. In contrast, the seizure of American diplomats by groups sanctioned by the Iranian government is a basic challenge to the regime itself. Iran violated principles and norms, not just rules and procedures.⁷

In sum, change within a regime involves alterations of rules and decision-making procedures, but not of norms or principles; change of a regime involves alteration of norms and principles; and weakening of a regime involves incoherence among the components of the regime or inconsistency between the regime and related behavior.

DO REGIMES MATTER?

*** The first attempt to analyze regimes thus assumed the following set of causal relationships (see Figure 1.1).



FIGURE 1.1

Regimes do not arise of their own accord. They are not regarded as ends in themselves. Once in place they do affect related behavior and outcomes. They are not merely epiphenomenal.

The independent impact of regimes is a central analytic issue. The second causal arrow implies that regimes do matter. However, there is no general agreement on this point, and three basic orientations can be distinguished. The conventional structural views the regime concept [as] useless, if not misleading. Modified structural suggests that regimes may matter, but only under fairly restrictive conditions. And Grotian sees

⁷ Iran's behavior may be rooted in an Islamic view of international relations that rejects the prevailing, European-derived regime. See Richard Rosecrance, "International Theory Revisited," *International Organization* 35, 4 (Autumn 1981) for a similar point.

regimes as much more pervasive, as inherent attributes of any complex, persistent pattern of human behavior.

*** The conventional view argues that regimes, if they can be said to exist at all, have little or no impact. They are merely epiphenomenal. The underlying causal schematic is one that sees a direct connection between changes in basic causal factors (whether economic or political) and changes in behavior and outcomes. Regimes are excluded completely, or their impact on outcomes and related behavior is regarded as trivial.

*** Structural orientations conceptualize a world of rational self-seeking actors. The actors may be individuals, or firms, or groups, or classes, or states. They function in a system or environment that is defined by their own interests, power, and interaction. These orientations are resistant to the contention that principles, norms, rules, and decision-making procedures have a significant impact on outcomes and behavior.

Nowhere is this more evident than in the image of the market, the reigning analytic conceptualization for economics, the most successful of the social sciences. A market is characterized by impersonality between buyers and sellers, specialization in buying and selling, and exchange based upon prices set in terms of a common medium of exchange.⁸ Max Weber states that in the market “social actions are not determined by orientation to any sort of norm which is held to be valid, nor do they rest on custom, but entirely on the fact that the corresponding type of social action is in the nature of the case best adapted to the normal interests of the actors as they themselves are aware of them.”⁹ The market is a world of atomized, self-seeking egoistic individuals.

The market is a powerful metaphor for many arguments in the literature of political science, not least international relations. The recent work of Kenneth Waltz exemplifies this orientation. For Waltz, the defining characteristic of the international system is that its component parts (states) are functionally similar and interact in an anarchic environment. International systems are distinguished only by differing distributions of relative capabilities among actors. States are assumed to act in their own self-interest. At a minimum they “seek their own preservation and, at a maximum, drive for universal domination.”¹⁰ They are constrained only by their interaction with other states in the system. Behavior is, therefore,

⁸ Cyril Belshaw, *Traditional Exchange and Modern Markets* (Englewood Cliffs, N.J.: Prentice-Hall, 1965), pp.8–9.

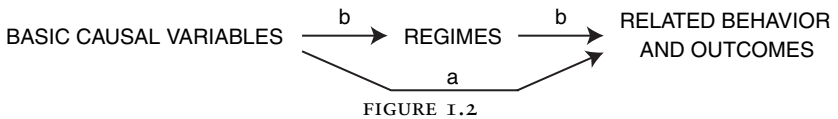
⁹ Max Weber, *Economy and Society* (Berkeley: University of California Press, 1977), p. 30.

¹⁰ Waltz, *Theory of International Relations*, p. 118.

a function of the distribution of power among states and the position of each particular state. When power distributions change, behavior will also change. Regimes, for Waltz, can only be one small step removed from the underlying power capabilities that sustain them.¹¹

The second orientation to regimes is modified structuralism.^{***} Authors start from a conventional structural realist perspective, a world of sovereign states seeking to maximize their interest and power.^{***}

In a world of sovereign states the basic function of regimes is to coordinate state behavior to achieve desired outcomes in particular issue-areas.¹² Such coordination is attractive under several circumstances.^{***} If, as many have argued, there is a general movement toward a world of complex interdependence, then the number of areas in which regimes can matter is growing. However, regimes cannot be relevant for zero-sum situations in which states act to maximize the difference between their utilities and those of others.^{***} Pure power motivations preclude regimes. Thus, the second orientation, modified structuralism, sees regimes emerging and having a significant impact, but only under restrictive conditions. It suggests that the first cut should be amended as in Figure 1.2.



For most situations there is a direct link between basic causal variables and related behavior (path a); but under circumstances that are not purely conflictual, where individual decision making leads to suboptimal outcomes, regimes may be significant (path b).¹³

The third approach to regimes^{***} reflects a fundamentally different view of international relations than the two structural arguments just described.^{***}

¹¹ *Ibid.*, especially chapters 5 and 6. This conventional structuralist view for the realist school has its analog in Marxist analysis to studies that focus exclusively on technology and economic structure.

¹² Vinod K. Aggarwal emphasizes this point. See his "Hanging by a Thread: International Regime Change in the Textile/Apparel System, 1950-1979," Ph.D. diss., Stanford University, 1981, chap. 1.

¹³ The modified structural arguments are based upon a realist analysis of international relations. In the Marxist tradition this position has its analog in many structural Marxist writings, which emphasize the importance of the state and ideology as institutions that act to rationalize and legitimate fundamental economic structures.

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While the modified structural approach does not view the perfect market as a regime, because action there is based purely upon individual calculation without regard to the behavior of others, the third orientation does regard the market as a regime. Patterns of behavior that persist over extended periods are infused with normative significance. A market cannot be sustained by calculations of self-interest alone. It must be, in Ruggie's terms, *embedded* in a broader social environment that nurtures and sustains the conditions necessary for its functioning. Even the balance of power, regarded by conventional structural realist analysts as a purely conflictual situation, can be treated as a regime.¹⁴ The causal schema suggested by a Grotian orientation either closely parallels the first cut shown in Figure 1.1, or can be depicted as in Figure 1.3.

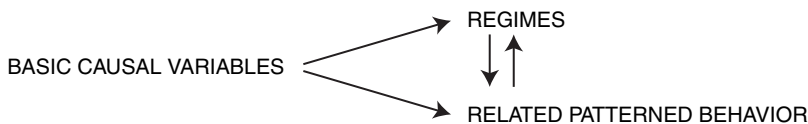


FIGURE 1.3

Patterned behavior reflecting calculations of interest tends to lead to the creation of regimes, and regimes reinforce patterned behavior. *** States are (rarified) abstractions. Elites have transnational as well as national ties. Sovereignty is a behavioral variable, not an analytic assumption. The ability of states to control movements across their borders and to maintain dominance over all aspects of the international system is limited. Security and state survival are not the only objectives. Force does not occupy a singularly important place in international politics. Elites act within a communications net, embodying rules, norms, and principles, which transcends national boundaries.

This minimalist Grotian orientation has informed a number of theoretical postulates developed during the postwar period. Functionalism saw the possibility of eroding sovereignty through the multiplication of particularistic interests across national boundaries. Karl Deutsch's 1957 study of integration, with its emphasis on societal communication, made a distinction between security communities and anarchy.¹⁵ Some authors associated

¹⁴ Bull, *The Anarchical Society*, chap. 5.

¹⁵ See Arend Lijphart, "The Structure of the Theoretical Revolution in International Relations," *International Studies Quarterly* 18, 1 (March 1974), pp. 64-65, for the development of this argument.

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.¹⁶ 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

¹⁶ Keohane and Nye, *Power and Interdependence*, especially chap. 8.