International Law and International Relations

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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.[4]

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1. 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

[4] I am indebted to Albert Fishlow for clarifying this point for me.

have been clear what puzzles needed to be solved by an actor-oriented behavioral theory.

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This analysis follows the tradition of microeconomic theory by focusing on constraints and incentives that affect the choices made by actors.[5] We assume that, in general, actors in world politics tend to respond rationally to constraints and incentives. Changes in the characteristics of the international system will alter the opportunity costs to actors of various courses of action, and will therefore lead to changes in behavior. In particular, decisions about creating or joining international regimes will be affected by system-level changes in this way; in this model the demand for international regimes is a function of system characteristics.

This article therefore employs a form of rational-choice analysis, which I prefer to term "constraint-choice" analysis to indicate that I do not make some of the extreme assumptions often found in the relevant literature. I assume a prior context of power, expectations, values, and conventions; I do not argue that rational-choice analysis can derive international regimes from a "state of nature" through logic alone.[6] This paper also eschews de-terministic claims, or the *hubris* of believing that a complete explanation can be developed through resort to deductive models. To believe this would commit one to a narrowly rationalistic form of analysis in which expectations of gain provide both necessary and sufficient explanations of behavior.[7] Such beliefs in the power of Benthamite calculation have been undermined by the insufficiency of microeconomic theories of the firm – despite their great value as initial approximations – as shown by the work of organization theorists such as Simon, Cyert, and March.[8]

[5] Stimulating discussions of microeconomic theory can be found in Martin Shubik, "A Curmudgeon's Guide to Microeconomics," *Journal of Economic Literature* 8 (1970): 405–434; and Spiro J. Latsis, "A Research Progrmme in Economics," in Latsis, ed., *Method and Appraisal in Economics* (Cambridge: Cambridge University Press, 1976).

[6] I am indebted to Alexander J. Field for making the importance of this point clear to me. See his paper, "The Problem with Neoclassical Institutional Economics: A Critique with Special Reference to the North/Thomas Model of Pre–1500 Europe," *Explorations in Economic History* 18 (April 1981).

[7] Lance E. Davis and Douglass C. North adopt this strong form of rationalistic explanation when they argue that "an institutional arrangement will be innovated if the expected net gains exceed the expected costs." See their volume, *Institutional Change and American Economic Growth* (Cambridge: Cambridge University Press, 1971).

[8] Two of the classic works are James March and Herbert Simon, *Organizations* (New York: Wiley, 1958); and Richard Cyert and James March, *The Behavioral Theory of the Firm* (Englewood Cliffs, N.J.: Prentice-Hall, 1963).

Rational-choice theory is not advanced here as a magic key to unlock the secrets of international regime change, much less as a comprehensive way of interpreting reality. Nor do I employ it as a means of explaining particular actions of specific actors. Rather, I use rational-choice theory to develop models that help to explain trends or tendencies toward which patterns of behavior tend to converge. That is, I seek to account for typical, or modal, behavior. This analysis will not accurately predict the decisions of all actors, or what will happen to all regimes; but it should help to account for overall trends in the formation, growth, decay, and dissolution of regimes. The deductive logic of this approach makes it possible to generate hypotheses about international regime change on an *a priori* basis. In this article several such hypotheses will be suggested, although their testing will have to await further specification. We shall therefore be drawing on microeconomic theories and rational-choice approaches heuristically, to help us construct nontrivial hypotheses about international regime change that can guide future research.

The use of rational-choice theory implies that we must view decisions involving international regimes as in some meaningful sense voluntary. Yet we know that world politics is a realm in which power is exercised regularly and in which inequalities are great. How, then, can we analyze international regimes with a voluntaristic mode of analysis?

My answer is to distinguish two aspects of the process by which international regimes come into being: the imposition of constraints, and decision making. Constraints are dictated not only by environmental factors but also by powerful actors. Thus when we speak of an "imposed regime," we are speaking (in my terminology) of a regime agreed upon within constraints that are mandated by powerful actors.[9] Any agreement that results from bargaining will be affected by the opportunity costs of alternatives faced by the various actors: that is, by which party has the greater need for agreement with the other.[10] Relationships of power and dependence in world politics will therefore be important determinants of the characteristics of international regimes. Actor choices will be constrained in such a way that the preferences of more powerful actors will

[9] For a discussion of "spontaneous," "negotiated," and "imposed" regimes, see Oran Young's contribution to this volume.

[10] For a lucid and original discussion based on this obvious but important point, see John Harsanyi, "Measurement of Social Power, Opportunity Costs and the Theory of Two-Person Bargaining Games," *Behavioral Science* 7, 1 (1962): 67–80. See also Albert O. Hirschman, *National Power and the Structure of Foreign Trade* (1945; Berkeley: University of California Press, 1980), especially pp. 45–48.

be accorded greater weight. Thus in applying rational-choice theory to the formation and maintenance of international regimes, we have to be continually sensitive to the structural context within which agreements are made. Voluntary choice does not imply equality of situation or outcome.

We do not necessarily sacrifice realism when we analyze international regimes as the products of voluntary agreements among independent actors within the context of prior constraints. Constraint-choice analysis effectively captures the nonhierarchical nature of world politics without ignoring the role played by power and inequality. Within this analytical framework, a systemic analysis that emphasizes constraints on choice and effects of system characteristics on collective outcomes provides an appropriate way to address the question of regime formation.

Constraint-choice analysis emphasizes that international regimes should not be seen as quasi-governments – imperfect attempts to institutionalize centralized authority relationships in world politics. Regimes are more like contracts, when these involve actors with long-term objectives who seek to structure their relationships in stable and mutually beneficial ways.[11] In some respects, regimes resemble the "quasi-agreements" that Fellner discusses when analyzing the behavior of oligopolistic firms.[12] In both contracts and quasi-agreements, there may be specific rules having to do with prices, quantities, delivery dates, and the like; for contracts, some of these rules may be legally enforceable. The most important functions of these arrangements, however, are not to preclude further negotiations, but to establish stable mutual expectations about others' patterns of behavior and to develop working relationships that will allow the parties to adapt their practices to new situations. Rules of international regimes are frequently changed, bent, or broken to meet the exigencies of the moment. They are rarely enforced automatically, and they are not self-executing. Indeed, they are often matters for negotiation and renegotiation; as Puchala has argued, "attempts to enforce EEC regulations open political cleavages up and down the supranational-to-local continuum and spark intense politicking along the cleavage lines."[13]

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[11] S. Todd Lowry, "Bargain and Contract Theory in Law and Economics," in Warren J. Samuels, ed., *The Economy as a System of Power* (New Brunswick, N.J.: Transaction Books, 1979), p. 276.

[12] William Fellner, *Competition among the Few* (New York: Knopf, 1949).

[13] Donald J. Puchala, "Domestic Politics and Regional Harmonization in the European Communities," *World Politics* 27,4 (July 1975), p. 509.

2. THE CONTEXT AND FUNCTIONS OF INTERNATIONAL REGIMES

Analysis of international regime formation within a constraint-choice framework requires that one specify the nature of the context within which actors make choices and the functions of the institutions whose patterns of growth and decay are being explained. Two features of the international context are particularly important: world politics lacks authoritative governmental institutions, and is characterized by pervasive uncertainty. Within this setting, a major function of international regimes is to facilitate the making of mutually beneficial agreements among governments, so that the structural condition of anarchy does not lead to a complete "war of all against all."

The actors in our model operate within what Waltz has called a "self-help system," in which they cannot call on higher authority to resolve difficulties or provide protection.[14] Negative externalities are common: states are forever impinging on one another's interests.[15] In the absence of authoritative global institutions, these conflicts of interest produce uncertainty and risk: possible future evils are often even more terrifying than present ones. All too obvious with respect to matters of war and peace, this is also characteristic of the international economic environment.

Actors in world politics may seek to reduce conflicts of interest and risk by coordinating their behavior. Yet coordination has many of the characteristics of a public good, which leads us to expect that its production will be too low.[16] That is, increased production of these goods, which would yield net benefits, is not undertaken. This insight is the basis of the major "supply-side" argument about international regimes, epitomized by the theory of hegemonic stability. According to this line of argument, hegemonic international systems should be characterized by levels of public goods production higher than in fragmented systems; and,

[14] Kenneth N. Waltz, *Theory of International Politics* (Reading, Mass.: Addison-Wesley, 1979).

[15] Externalities exist whenever an acting unit does not bear all of the costs, or fails to reap all of the benefits, that result from its behavior. See Davis and North, *Institutional Change and American Economic Growth,* p. 16.

[16] Olson, *The Logic of Collection Action;* Bruce M. Russett and John D. Sullivan, "Collective Goods and International Organization," with a comment by Mancur Olson Jr., *International Organization* 25,4 (Autumn 1971); John Gerard Ruggie, "Collective Goods and Future International Collaboration," *American Political Science Review* 66, 3 (September 1972); Duncan Snidal, "Public Goods, Property Rights, and Political Organization," *International Studies Quarterly* 23,4 (December 1979), p. 544.

if international regimes provide public goods, by stronger and more extensive international regimes.[17]

This argument, important though it is, ignores what I have called the "demand" side of the problem of international regimes: why should governments desire to institute international regimes in the first place, and how much will they be willing to contribute to maintain them? Addressing these issues will help to correct some of the deficiencies of the theory of hegemonic stability, which derive from its one-sidedness, and will contribute to a more comprehensive interpretation of international regime change. The familiar context of world politics – its competitiveness, uncertainty, and conflicts of interest – not only sets limits on the supply of international regimes, but provides a basis for understanding why they are demanded.

Before we can understand why regimes are demanded, however, it is necessary to establish what the functions of international regimes, from the perspective of states, might be.[18]

At the most specific level, students of international cooperation are interested in myriads of particular agreements made by governments: to maintain their exchange rates within certain limits, to refrain from trade discrimination, to reduce their imports of petroleum, or progressively to reduce tariffs. These agreements are made despite the fact that, compared to domestic political institutions, the institutions of world politics are extremely weak: an authoritative legal framework is lacking and regularized institutions for conducting transactions (such as markets backed by state authority or binding procedures for making and enforcing contracts) are often poorly developed.

17 Keohane, "The Theory of Hegemonic Stability"; Charles P. Kindleberger, *The World in Depression, 1929–1939* (Berkeley: University of California Press, 1974); Mancur Olson and Richard Zeckhauser, "An Economic Theory of Alliances," *Review of Economics and Statistics* 48,3 (August 1966), reprinted in Bruce M. Russett, ed., *Economic Theories of International Politics* (Chicago: Markham, 1968). For a critical appraisal of work placing emphasis on public goods as a rationale for forming international organizations, see John A. C. Conybeare, "International Organizations and the Theory of Property Rights," *International Organization* 34,3 (Summer 1980), especially pp. 329–32.

18 My use of the word "functions" here is meant to designate consequences of a certain pattern of activity, particularly in terms of the utility of the activity; it is not to be interpreted as an explanation of the behavior in question, since there is no teleological premise, or assumption that necessity is involved. Understanding the function of international regimes helps, however, to explain why actors have an incentive to create them, and may therefore help to make behavior intelligible within a rational-choice mode of analysis that emphasizes the role of incentives and constraints. For useful distinctions on functionalism, see Ernest Nagel, *The Structure of Scientific Explanation* (New York: Harcourt, Brace, 1961), especially "Functionalism and Social Science," pp. 520–35. I am grateful to Robert Packenham for this reference and discussions of this point.

Investigation of the sources of specific agreements reveals that they are not, in general, made on an *ad hoc* basis, nor do they follow a random pattern. Instead, they are "nested" within more comprehensive agreements, covering more issues. An agreement among the United States, Japan, and the European Community in the Multilateral Trade Negotiations to reduce a particular tariff is affected by the rules, norms, principles, and procedures of the General Agreement on Tariffs and Trade (GATT) – that is, by the trade regime. The trade regime, in turn, is nested within a set of other arrangements – including those for monetary relations, energy, foreign investment, aid to developing countries, and other issues – that together constitute a complex and interlinked pattern of relations among the advanced market-economy countries. These, in turn, are related to military-security relations among the major states.[19]

Within this multilayered system, a major function of international regimes is to facilitate the making of specific agreements on matters of substantive significance within the issue-area covered by the regime. International regimes help to make governments' expectations consistent with one another. Regimes are developed in part because actors in world politics believe that with such arrangements they will be able to make mutually beneficial agreements that would otherwise be difficult or impossible to attain. In other words, regimes are valuable to governments where, in their absence, certain mutually beneficial agreements would be impossible to consummate. In such situations, *ad hoc* joint action would be inferior to results of negotiation within a regime context.

Yet this characterization of regimes immediately suggests an explanatory puzzle. Why should it be worthwhile to construct regimes (themselves requiring agreement) in order to make specific agreements within the regime frameworks? Why is it not more efficient simply to avoid the regime stage and make the agreements on an *ad hoc* basis? In short, why is there any demand for international regimes apart from a demand for international agreements on particular questions?

An answer to this question is suggested by theories of "market failure" in economics. Market failure refers to situations in which the outcomes of market-mediated interaction are suboptimal (given the utility functions of actors and the resources at their disposal). Agreements that

[19] Vinod Aggarwal has developed the concept of "nesting" in his work on international regimes in textiles since World War II. I am indebted to him for this idea, which has been elaborated in his "Hanging by a Thread: International Regime Change in the Textile/Apparel System, 1950–1979," Ph.D. diss., Stanford University, 1981.

would be beneficial to all parties are not made. In situations of market failure, economic activities uncoordinated by hierarchical authority lead to *in*efficient results, rather than to the efficient outcomes expected under conditions of perfect competition. In the theory of market failure, the problems are attributed not to inadequacies of the actors themselves (who are presumed to be rational utility-maximizers) but rather to the structure of the system and the institutions, or lack thereof, that characterize it.[20] Specific attributes of the system impose transactions costs (including information costs) that create barriers to effective cooperation among the actors. Thus institutional defects are responsible for failures of coordination. To correct these defects, conscious institutional innovation may be necessary, although a good economist will always compare the costs of institutional innovation with the costs of market failure before recommending tampering with the market.

Like imperfect markets, world politics is characterized by institutional deficiencies that inhibit mutually advantageous coordination. Some of the deficiencies revolve around problems of transactions costs and uncertainty that have been cogently analyzed by students of market failure. Theories of market failure specify types of institutional imperfections that may inhibit agreement; international regimes may be interpreted as helping to correct similar institutional defects in world politics. Insofar as regimes are established through voluntary agreement among a number of states, we can interpret them, at least in part, as devices to overcome the barriers to more efficient coordination identified by theories of market failure.[21]

[20] Of particular value for understanding market failure is Kenneth J. Arrow, *Essays in the Theory of Risk-Bearing* (New York: North Holland/American Elsevier, 1974).

[21] Helen Milner suggested to me that international regimes were in this respect like credit markets, and that the history of the development of credit markets could be informative for students of international regimes. The analogy seems to hold. Richard Ehrenberg reports that the development of credit arrangements in medieval European Bourses reduced transaction costs (since money did not need to be transported in the form of specie) and provided high-quality information in the form of merchants' newsletters and exchanges of information at fairs: "during the Middle Ages the best information as to the course of events in the world was regularly to be obtained in the fairs and the Bourses" (p. 317). The Bourses also provided credit ratings, which provided information but also served as a crude substitute for effective systems of legal liability. Although the descriptions of credit market development in works such as that by Ehrenberg are fascinating, I have not been able to find a historically-grounded theory of these events. See Richard Ehrenberg, *Capital and Finance in the Age of the Renaissance: A Study of the Fuggers and Their Connections*, translated from the German by H. M. Lucas (New York: Harcourt, Brace, no date), especially chap. 3 (pp. 307–333).

The analysis that follows is based on two theoretical assumptions. First, the actors whose behavior we analyze act, in general, as rational utility-maximizers in that they display consistent tendencies to adjust to external changes in ways that are calculated to increase the expected value of outcomes to them. Second, the international regimes with which we are concerned are devices to facilitate the making of agreements among these actors. From these assumptions it follows that the demand for international regimes at any given price will vary directly with the desirability of agreements to states and with the ability of international regimes actually to facilitate the making of such agreements. The condition for the theory's operation (that is, for regimes to be formed) is that sufficient complementary or common interests exist so that agreements benefiting all essential regime members can be made.

The value of theories of market failure for this analysis rests on the fact that they allow us to identify more precisely barriers to agreements. They therefore suggest insights into how international regimes help to reduce those barriers, and they provide richer interpretations of previously observed, but unexplained, phenomena associated with international regimes and international policy coordination. In addition, concepts of market failure help to explain the strength and extent of international regimes by identifying characteristics of international systems, or of international regimes themselves, that affect the demand for such regimes and therefore, given a supply schedule, their quantity. Insights from the market-failure literature therefore take us beyond the trivial cost-benefit or supply-demand propositions with which we began, to hypotheses about relationships that are less familiar.

The emphasis on efficiency in the market-failure literature is consistent with our constraint-choice analysis of the decision-making processes leading to the formation and maintenance of international regimes. Each actor must be as well or better off with the regime than without it – given the prior structure of constraints. This does not imply, of course, that the whole process leading to the formation of a new international regime will yield overall welfare benefits. Outsiders may suffer; indeed, some international regimes (such as alliances or cartel-type regimes) are specifically designed to impose costs on them. These costs to outsiders may well outweigh the benefits to members. In addition, powerful actors may manipulate constraints prior to the formation of a new regime. In that case, although the regime *per se* may achieve overall welfare improvements compared to the immediately preceding situation, the results of the joint process may be inferior to those that existed before the constraints were imposed.

3. ELEMENTS OF A THEORY OF THE DEMAND FOR INTERNATIONAL REGIMES

We are now in a position to address our central puzzle – why is there any demand for international regimes? – and to outline a theory to explain why this demand exists. First, it is necessary to use our distinction between "agreements" and "regimes" to pose the issue precisely: given a certain level of demand for international agreements, what will affect the demand for international regimes? The Coase theorem, from the market-failure literature, will then be used to develop a list of conditions under which international regimes are of potential value for facilitating agreements in world politics. This typological analysis turns our attention toward two central problems, *transactions cost* and *informational imperfections*. Questions of information, involving uncertainty and risk, will receive particular attention, since their exploration has rich implications for interpretation and future research.

The Demand for Agreements and the Demand for Regimes

It is crucial to distinguish clearly between international regimes, on the one hand, and mere *ad hoc* substantive agreements, on the other. Regimes, as argued above, facilitate the making of substantive agreements by providing a framework of rules, norms, principles, and procedures for negotiation. A theory of international regimes must explain why these intermediate arrangements are necessary.

In our analysis, the demand for agreements will be regarded as exogenous. It may be influenced by many factors, particularly by the perceptions that leaders of governments have about their interests in agreement or nonagreement. These perceptions will, in turn, be influenced by domestic politics, ideology, and other factors not encompassed by a systemic, constraint-choice approach. In the United States, "internationalists" have been attracted to international agreements and international organizations as useful devices for implementing American foreign policy; "isolationists" and "nationalists" have not. Clearly, such differences cannot be accounted for by our theory. We therefore assume a given desire for agreements and ask: under these conditions, what will be the demand for international regimes?

Under certain circumstances defining the demand and supply of agreements, there will be no need for regimes and we should expect none to form. This will be the situation in two extreme cases, where demand for agreements is nil and where the supply of agreements is infinitely elastic and free (so that all conceivable agreements can be made costlessly). But where the demand for agreements is positive at some level of feasible cost, and the supply of agreements is not infinitely elastic and free, there may be a demand for international regimes *if* they actually make possible agreements yielding net benefits that would not be possible on an *ad hoc* basis. In such a situation regimes can be regarded as "efficient." We can now ask: under what specific conditions will international regimes be efficient?

One way to address this question is to pose its converse. To ask about the conditions under which international regimes will be *worthless* enables us to draw on work in social choice, particularly by Ronald Coase. Coase was able to show that the presence of externalities alone does not necessarily prevent Pareto-optimal coordination among independent actors: under certain conditions, bargaining among these actors could lead to Pareto-optimal solutions. The key conditions isolated by Coase were (a) a legal framework establishing liability for actions, presumably supported by governmental authority; (b) perfect information; and (c) zero transactions costs (including organization costs and costs of making side-payments).[22] If all these conditions were met in world politics, *ad hoc* agreements would be costless and regimes unnecessary. *At least one of them must not be fulfilled if international regimes are to be of value, as facilitators of agreement, to independent utility-maximizing actors in world politics.* Inverting the Coase theorem provides us, therefore, with a list of conditions, at least one of which must apply if regimes are to be of value in facilitating agreements among governments:[23]

(a) lack of a clear legal framework establishing liability for actions;

[22] Ronald Coase, "The Problem of Social Cost," *Journal of Law and Economics* 3 (October 1960). For a discussion, see James Buchanan and Gordon Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (Ann Arbor: University of Michigan Press, 1962), p. 186.

[23] If we were to drop the assumption that actors are strictly self-interested utility-maximizers, regimes could be important in another way: they would help to develop noms that are internalized by actors as part of their own utility functions. This is important in real-world political-economic systems, as works by Schumpeter, Polanyi, and Hirsch on the moral underpinnings of a market system indicate. It is likely to be important in many international systems as well. But it is outside the scope of the analytical approach taken in this article – which is designed to illuminate some issues, but not to provide a comprehensive account of international regime change. See Joseph Schumpeter, *Capitalism, Socialism, and Democracy* (New York: Harper & Row, 1942), especially Part II, "Can Capitalism Survive?"; Kari Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (1944; Boston: Beacon Press, 1957); and Fred Hirsch, *Social Limits to Growth* (Cambridge: Harvard University Press, 1976).