Lectures #9
23 October 2018
Copyright: Ronald B. Mitchell, 2018

# Institutional formation and design: review of readings as basis for interpreting them within course model

## Young and Osherenko – institutional formation

### Argument about the effect of following sets of factors on likelihood that an international institution will form

### Interest-based explanations

#### Leadership – there has to be a leader, who can be structural, entrepreneurial, or intellectual

#### Institutional terms must be:

##### Equitable/fair – acceptable to all – usually common obligations

##### Salient – must be simple

##### Effective compliance mechanisms – but simple

##### Integrative bargaining

##### Veil of uncertainty

##### DISconfirmed hypotheses

###### All parties involved

###### High (or low) priority on all agendas

###### Technical nature

### Power-based explanations

#### Forming an institution must be in the interests of the powerful states in the system

#### Hegemony: a single powerful state provides the pressure and material resources for institutional formation. General hegemony or issue-specific hegemony

#### Other constellations of power: symmetric distribution of power or bipolarity

### Knowledge-based explanations

#### Knowledge and values must be shared – agreement about facts and goals has to happen before can agree about institutions.

#### Consensus helps here.

#### Epistemic community: scientific group pushing for the consensus of knowledge and getting it accepted from the bottom up

### Contextual factors

#### Broad shifts in underlying values and ideas

#### Major political changes

#### Crises and shocks – also in “interest-based” explanation

### Process

#### Substitution effects: Not only one of these factors – various ways institutions can form

#### Interaction effects: various factors can “work together” to make institutional formation likely

## Koremenos et al. – institutional design

### Four assumptions of institutional design from Koremenos et al (780ff)

#### States are rational and design institutions to advance their joint interests

#### Future gains are large enough to support cooperation

#### International institutions are costly to be involved in

#### States are risk averse and worry about costs of creating or changing institutions

### Two major obstacles to institutional formation

#### Distribution problems -- getting agreement about how to distribute costs and benefits

#### Enforcement problems -- getting agreement about how to address fear and lack of trust

### Enforcement vs. Management distinction

### Power matters in terms of what rules are agreed to: “More generally, the rules of any institution will reflect the relative power positions of its actual and potential members, which constrain the feasible bargaining space” {Keohane, 1988 #1628, 387}.

### Institutions are “sticky” -- they persist “after hegemony”: “Surely the General Agreement on Tariffs and Trade (GATT), the International Monetary Fund (IMF) and the United Nations are not optimally efficient, and they would not be invented in their present forms today; but they persist” {Keohane, 1988 #1628, 389}.

### Hypotheses with DV in ALL CAPS and IVs in hypotheses under each

#### Membership rules (MEMBERSHIP): (move toward bilateral) when

##### Restrict membership if severe enforcement problems – if cheating likely, address it by keeping likely cheaters out

##### Restrict membership if uncertainty about preferences – if not sure what “type” others are, only invite those who are clearly the “right” type in

##### INCREASE membership if severe distribution problems – helps allow fairer distribution among many actors

#### Scope of issues covered (SCOPE)

##### Scope increases with lots of actors with different/heterogeneous interests – broaden what the institution includes so can make trades among actors with different preferences

##### Scope increases with distribution problems: allows for linkage to address distribution

##### Scope increases with enforcement problems: also allows for linkage to address enforcement

#### Centralization of tasks (CENTRALIZATION)

##### Increases with uncertainty about behavior: monitoring

##### Increases with uncertainty about state of world: pooling information to address knowledge/epistemic problem

##### Increases with number: more actors mean more need for coordination among them

##### Increases with severity of enforcement problem

#### Rules for controlling the institution (CONTROL): don’t address in class

#### Flexibility of arrangements (FLEXIBILITY)

##### Flexibility increases with uncertainty about state of world: need to allow states to adapt

##### Flexibility increases with severity of distribution problem: if one-time distribution is a problem, then allow to renegotiate over time

##### Flexibility decreases with number: if many parties, don’t want rules changing all the time

# Institutional formation

## Dependent variable: Does international institution exist or not?

## *Institutions form when* powerful *actors responsible for a problem become convinced that a situation is* suboptimal *and that taking action to resolve it is* in their interests

## How does this occur: when / under what conditions will those actors recognize problem and, therefore, make the effort to get institutions to form?

## Harmony – no institution needed

## Conflict of “deadlock” type: institutions won’t emerge unless relevant actors preference rankings change or are changed by an outside actor who has a vested interest in the outcome

## Exogenous shocks or crises:

### WWII: Genocide Convention (1948); US and Bretton Woods institutions; France and Germany see threat of war in Europe and so develop EU institutions

### Developed states being convinced that AIDS epidemic is a problem

### Oil spills and oil pollution treaties

## Consensus and somewhat-shared concern about shape/definition of problem and taking action in their interests

### At least some governments must care enough to take some action on it

### Dutch must convince French that Rhine pollution is a problem

### Antarctica and potential emerging conflict over resources

## Leadership matters

### Monet/Schuman in EU case; Tolba in ozone case; Jody Williams and landmines

### Often leadership is what helps create pressure and thereby consensus that problem exists and what the problem is

## Contextual factors may foster institutional formation

### LRTAP as way to cooperate during Cold War

### End of Cold War fosters many agreements

## Theoretical predictions (from hardest to negotiate to easiest to negotiate)

### Upstream/downstream problems: engagement problems -- getting upstream state to join

### Normative problems: engagement problems as well -- getting states one wants to influence to join

### Collaboration problems: distribution AND enforcement problems -- deciding who must adjust AND how to reassure and ensure compliance

### Positive externalities plagued by incapacity: engaging capable states and convincing that benefits of assistance outweigh costs

### Coordination problems: can involve hard distribution problems -- deciding who must adjust and pay the costs of adjusting

### Epistemic problems: coordinating and standardizing research efforts

# Institutional design

## International cooperation can occur without using international treaties/conventions/agreements

### State-based: informal agreements among states (e.g., territorial seas), hegemony

### World Conservation Union (IUCN) as combination of states and non-state actors

### Corporate regimes (ISO, TOVALOP/CRISTAL)

### FSC - NGOs and MNCs working together

### NGOs: NGO activism that targets states (HR, environment); NGO programs transcending the state (health care), scientists and scientific panels

## Dependent variableS: What features exist in international institutions that are created? How does type of solution reached depend on type of problem being addressed. This is the “problem structure elements as IVs and institutional design as DVs” part of the course.

## DV overview (things that vary across institutions that form)

### Institutional Type: regulatory, procedural, programmatic, generative

### Membership

### Primary rule system

### Information system

### Response system

## Institutional type

### Regulatory: "prescribe actions that regime members are expected to take or to refrain from in more or less well-defined situations" [Young, 1999 #4298, 28]. Establish rules and then administer them. E.g., arms control agreements, many trade agreements, Montreal Protocol.

#### Coordination, collaboration, and upstream/downstream problems that do not have knowledge or normative problems intertwined lead to regulatory institutions

### Procedural: establish "procedures to allow parties to make collective choices on a regular basis" [Young, 1999 #4298, 29]. Expect to devise new rules or make new decisions regularly over time. Agreements are mainly about creating decision-making structures rather than delineating rules. E.g., alliances like NATO, European Union constitutional treaties, OPEC, fisheries agreements, especially necessary under conditions of uncertainty.

#### Epistemic/knowledge problems and uncertainty about future state of world leads to procedural institutions

### Programmatic: efforts "to pool resources to undertake projects that for one reason or another cannot be carried out on a unilateral basis" [Young, 1999 #4298, 29-30]. E.g., IMF and WB but also IPCC E.g., EMEP coordination of scientific efforts, nuclear safety and oil pollution liability and compensation funds, joint development zones to develop an oil well or gas field, deep seabed mining under UNCLOS.

#### Positive externalities plagued by incapacities lead to programmatic institutions

### Generative: develop "distinctive social practices where none previously existed" [Young, 1999 #4298, 31]. E.g., human rights agreements (but these also share regulatory mode), UNESCO efforts to promote national scientific programs (Finnemore), Great Lakes Water Quality Agreement that generated community of concerned actors. Declarations and statements of principle.

#### Normative problems lead to generative institutions

#### Fits well with constructivist ideas that institutions are not creating rules so much as defining norms and identities that, over long periods of time, alter what states see as appropriate. Its not the particular rules that are adopted, but the fact that states want to be "economically liberal," or "green", or "not a human rights abusing state" or not "violating the norm against the use of weapons of mass destruction"

### Variation across these corresponds to Koremenos’ “flexibility” variable

#### Generative/procedural/programmatic (flexibility planned in – generative is even framework/protocol; procedural – decide the rules later; programmatic – decide what to fund and what not to fund)

#### Regulatory (less flexible though not totally inflexible): Opt out clauses, exit strategies, renegotiation clauses

## Membership: Who needs to be involved to resolve problem?

### Capacity predictions

#### Limited membership: if some actors can prevent others from engaging in bad behavior, membership will be limited to those who can do so, e.g., export control regimes, OPEC

### Incentive structure predictions

#### Limit membership: large enforcement problems will make more likely to restrict membership to partners likely to comply. E.g., don't offer alliances to everyone, only to those who seem likely to reciprocate.

#### Limit membership: restrict membership in response to uncertainty about preferences: E.g., EU only admits new members after they demonstrate trustworthiness.

#### Inclusive membership: allow all members if large distribution problems. More members allow more integrated bargaining.

#### Inclusive membership: allow all members if symmetric problem, e.g., collaboration OR coordination, in which resolution of problem requires that everyone contribute.

## Primary rule system characteristics

### Ambitiousness and “Depth of cooperation”– interests of actors involved

#### Deep: Collaboration problems on which states have STRONG aspirations

#### Deep: Upstream/downstream problems

#### Deep: Positive externalities plagued by incapacity

#### Shallow: Collaboration problems on which states have WEAK aspirations

#### Shallow: Coordination problems

#### Shallow: Epistemic problems

#### Shallow: Normative problems

### Vague/specific and violation tolerance – how strong are interests in resolution

#### Bans vs. limitations: strong norms against behavior will lead to bans; weak norms or competition between norms will lead to limitations

#### Broad or limited scope: stronger norms lead to narrower scope -- shouldn't have to link behavior to anything else, since it is already mala in se. BUT, alternatively, strong norms may lead actors to bring as much to bear as possible on the problem.

#### Enforcement school: very specific rules that distinguish allowed from disallowed behavior -- "bright lines"

#### Management school and violation tolerance: Depends on "acceptable level of compliance" -- if low level of compliance is acceptable, then hortatory/aspirational rules are fine, as with HR. if high levels of compliance are required, then more careful rules are in order.

### Type of rules

#### Proscriptions or prescriptions (Human Rights: Thou shalt not vs. Thou shall)

#### Incentive concerns

#### Capacity development issues

### Scope –broad/narrow (what’s in/what’s not)

#### Dynamic scope of issues: arranged to allow expansion or specifically delimited

#### How to define the boundaries of the problem

##### Trade: all trade

##### Environment and HR: individual issues one at a time

##### Security: by type of weapon

#### Broad or limited scope: broad scope more likely with large distribution problems in any sort of game, including coordination, collaboration, upstream/downstream, suasion. Linkage (broader scope) allows surmounting distribution problems -- can make mutually valuable trades. In suasion problems, Martin argues that issue linkage (whether negative or positive) is likely as a way to get other states to contribute when they have no natural incentives to.

#### Broad or limited scope: broad scope more likely with upstream/downstream and collaboration and far less with coordination. No need for linkage to address enforcement problems in latter case.

### Common vs. differentiated obligations: Are underlying behaviors that cause problem reciprocal or not? That is, are all relevant states potential perpetrators and victims or not?

#### If so, common obligations and reliance on retaliatory noncompliance as the response.

##### Coordination problems

##### Collaboration problems

##### Normative problems

#### If not, differentiated obligations and reliance on linkage across issues as part of response

##### Upstream/downstream problems

##### Epistemic/knowledge problems

#### Predictions: Differentiated obligations if some have capacity and some don't, e.g., Positive Externalities Plagued by Incapacity, then expect two types of rules for different states treated as "donors" and "recipients" a la IMF, WB, WHO and AIDS, etc. but also ozone agreement

##### Types of obligations: Allocation of costs and benefits: Krasner pointing out that allocation of satellite slots and of electromagnetic spectrum has been based on usage, which gives those with power legitimate rights to continue using what they stole. "First come first serve" rules won out over sovereign equality rules (Krasner 1991, 352). Initial allocation/distribution of property rights through usage determines the outcomes.

#### Predictions: differentiated obligations if countries differ in their incentives to comply and support for resolving the problem, allow different types of membership with different rules. WB/IMF allow different contributions; Montreal Protocol has 10 year grace period; Climate Change agreement has a "select a reduction rate" rule even for developed countries

## Information system characteristics

### Strength of information system

#### Strong system

##### Collaboration problems IF inherent transparency is low: "states will demand extensive information on others' behavior, since undetected defection will be costly for those who continue to cooperate" (Martin in SM, 42).

##### Upstream/downstream problems IF inherent transparency is low, but closely link to response system

##### Normative problems: want to get information into system to support those doing good behavior and shame those doing bad behavior but not linked to response system (allow "natural" response system to work), e.g., Transparency International and corruption

##### Strong monitoring provisions: inherent transparency is low -- hard to get information about state of world, behaviors, or actor preferences. Centralized information is easier to get and more credible. IAEA case -- pooling efforts to avoid claims of bias and protect information that needs protecting while allowing access. Environmental problems where behaviors are diverse or diffuse and hard to see. Military problems where activities are ambiguous.

#### Weak system

##### Coordination problems -- unnecessary, defection will be visible and public and pre-announced

##### If behavior inherently transparent. Tariff and quota agreements (but NTB and subsidy agreements differ).

### Type of information system based on enforcement/management distinction

#### Centralization – inherent transparency, bilateral, multilateral/centralized like IAEA

#### Self-reporting OR Monitoring OR Verification

#### Enforcement school --

##### Careful monitoring except in unimportant "shallow" cases

##### Closely and automatically linked to response system of sanctions

##### Focused on demonstrating that noncompliance occurred -- adversarial, accusational approach a la SALT violations between US and Soviet Union

#### Management school --

##### Mechanisms/actors involved in information collection

##### Focused on generating transparency about state behavior but NOT linked to prompting a response, not about adversarial monitoring and verification

##### Focused on determining whether noncompliance occurred and what the reasons for noncompliance were

##### Careful monitoring if noncompliance is NOT acceptable, weak monitoring otherwise

##### Transparency works even without real sanctions -- "fear of discovery" matters more than fear of response.

## Response system characteristics

### Meta-issues: Reciprocity, Iteration and targeting of responses

### Type of response

#### Altering consequences

##### Deterrence: increase expected costs of violation

##### Remuneration: increase expected benefits of compliance

#### Altering opportunities

##### Generative: create new opportunities to comply

##### Preclusive: remove opportunities to violate

#### Altering perceptions

##### Cognitive: provide new information that changes perception of best choice

##### Normative: re-educate regarding values

#### Positive rewards: upstream/downstream problems and suasion (but see sanctions for suasion too)

#### Sanctions: collaboration, suasion also could use these

#### Sanctions on centralized or uncentralized basis: centralization increases with severity of enforcement problem. Easier and more likely to enforce if reputational effects for agency rather than individual states.

#### Sanctions: if mala in se (vs. mala prohibida) then sanctions almost the only option

#### Capacity enhancements or rewards: if broader problem is one in which explanation of bad behavior is not due to choice by actor engaging in bad behavior.

#### Enforcement school: Sanctions will be central, and automatic sanctions will be crucial, to deep cooperation OR, if not, then compliance will be low

#### Management school: Dialogue, "jawboning", persuasion and argument are important: Strong and well-used dispute settlement provisions

### Reciprocity of response

### Strictness of response – violation tolerance

#### Strong: Collaboration systems -- strong but reliant on retaliatory noncompliance, so may not need to be specified clearly

##### Linkage over time and across issues: "in collaboration problems, states should search for mechanisms to increase the shadow of the future in order to assure that the immediate costs associated with cooperation will be offset by the long-term benefits of mutual assistance" (Martin in SM, 42).

#### Strong: Upstream/downstream systems -- strong but reliant on positive rewards with both sides needing them to be specified clearly

#### Strong if strong incentives to defect in collaboration and upstream/downstream problems

#### Weak: Coordination problems -- no response necessary, will take care of itself

#### Weak: Epistemic/knowledge problems where goal is simply to

##### Get states to coordinate their research efforts or

##### Get information into system and response will take care of itself

#### Weak: Normative problems where existing norm is weak and goal is to establish and slowly build norm (shallow cooperation)

### When will "institutional crises" occur

#### Coordination problems will face crises only when exogenous factors (technology change) lead some state to want to challenge the existing status quo arrangements. And they will do so publicly and in advance. Martin (SM, 61-63)

#### Collaboration problems will face frequent crises because of ongoing incentives to defect. Crises will tend to occur when shadow of the future shortens or when states lack information about behavior of others. Martin (SM, 61-63)

#### Suasion problems will face crises when hegemonic power declines and so issue linkage used to support institutional rules is no longer powerful. Martin (SM, 61-63)