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The Rise of International Regime Complexity

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Abstract:

The signature feature of 21st century international cooperation is arguably not the regime but the regime complex. A regime complex is an array of partially overlapping and nonhierarchical institutions that includes more than one international agreement or authority. The institutions and agreements may be functional or territorial in nature. International regime complexity refers to international political systems of global governance that emerge because of the co-existence of rule density and regime complexes. This article highlights insights and questions that emerge from the last fifteen years of scholarship on the politics of international regime complexity, explaining why regime complexes arise, what factors sustain them, and the range of political effects regime complexity creates. Our conclusion explains why in a Post-American world order, the trend of international regime complexity will likely accelerate.

International institutions and international law have grown—dramatically--by accretion. A century ago, the international system was lightly institutionalized. Today, there are more than 2400 intergovernmental organizations,¹ 37,000 organizations engaged in international politics,² and some 200,000 international agreements.³ Given their sheer numbers, it is unsurprising that there is often overlap and conflict among these myriad institutions. This growing institutional density is not simply a striking numerical phenomenon: it poses a challenge to conventional theories of international cooperation and has spurred the development of new concepts in international relations. Scholars have struggled to understand how the proliferation of international rules and agreements—typically referred to in the international relations

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¹ The number is based on data from 2003, and it includes international bodies and subsidiaries and emanations of international bodies (Drezner, 2013: 284).

² See: https://www.uia.org/yearbook?qt-yb_intl_orgs=3#yearbook_pages-page_yb_faq-0. The definition of international organization is extensive.

³ (Hathaway & Shapiro, 2017: xviii).

literature as “regimes”—affects law and politics.⁴ The leading conceptualization is *regime complexity*, which describes the congeries of agreements and rules that intersect with regard to a particular issue or set of issues, and conceptualizes how the complexity of rules and institutions can, in and of itself, shape the politics of cooperation.

The idea of a regime complex—a set of overlapping and perhaps even contradictory regimes which share a common focus—was developed by a new generation of scholars examining the intersection of international law and international relations.⁵ And it has since been deployed by a variety of scholars studying multidimensional problems ranging from environment and migration to intellectual property and security. For relatively simple problems—straight-forward coordination games like the air traffic control system—one generally does not need the concept of a regime complex to understand state behavior. But few modern problems can be reduced to or resolved via a simple coordination regime, especially if problems are multidimensional, if solutions generate global distributional effects, or if state preferences diverge markedly.

In the past 15 years the literature on regime complexes has grown dramatically. To be sure, scholars had long been aware that international institutions develop in path-dependent ways, and that previous sets of arrangements are sometimes nested within, and affect politics within, more encompassing international institutions. We also have long known that countries select whether to address existing or new problems by considering a range of potential international accords and venues, and that diplomats craft deals by linking benefits and side-payments within and across international fora.

Nonetheless, driven in part by the increasing dominance of game theory, it had become the practice in the international relations literature to theorize about cooperation largely in terms of states creating discrete regimes to govern discrete problems.⁶ While this approach rendered international cooperation more analytically tractable, the dense and growing array of existing agreements and institutions means that it is increasingly inaccurate and distortive to imagine cooperation as if actors are proceeding on a blank slate. Instead, many scholars recognize that it is essential to focus on how the overlapping and sequential nature of international commitments in itself shapes the politics of cooperation, the interpretation of agreements, and the decisions of actors operating within and around regime complexes.

This article first introduces the concept of international regime complexity. We restate and clarify the definition, emphasizing the key role that absence of hierarchy plays. The challenge

⁴ See e.g. (Keohane, 1983).

⁵ As we describe below, the concept was first introduced by Raustiala and Victor (2004) and significantly extended by Alter and Meunier (2009). Earlier work exploring institutional overlaps and intersections include (Aggarwal & Fogarty, 2005, Aggarwal, 1998, Rosendal, 2001, Young, 1996).

⁶ This approach emerged in the 1980s when rationalist scholars began to apply game theory to understand international cooperation (Krasner, 1983, Oye, 1986). Rational design literature added a focus on the bargaining context (e.g. the number and interests of negotiating parties), theorizing how the “problem structure” and “bargaining context” combined to produce variation in the design of international regimes. See (Koremenos, 2016, Koremenos et al, 2001).

of international regime complexity is not simply that international regimes are pre-existing, crowded, and layered, but especially that there is no agreed upon means to assert a hierarchy when rules or decisions backed by different institutions conflict. The absence of hierarchy also influences the strategy of different actors, and introduces dynamism into the politics of cooperation. State and private actors understand that within a regime complex, decisions made in one forum can be influenced, revised or undermined by decisions and politics within a parallel or overlapping domestic or international forum.

Next we highlight insights that emerge from the last fifteen years of scholarship on the politics of regime complexes. Not all of this scholarship expressly links itself to international regime complexity, but it is (implicitly) premised on the same basic insights. We focus on two issues in particular. We first consider why regime complexes arise, and what factors sustain them. We then turn to the range of political effects they create: distributional effects, forum shopping, and the like. Our conclusion discusses the future of international regime complexity in a Post-American world order.

What is an international regime complex? What is international regime complexity?

In 2004 Kal Raustiala and David Victor coined the term “regime complex,” defining it as “an array of partially overlapping and nonhierarchical institutions governing a particular issue-area” (Raustiala & Victor, 2004: 278-9). A set of “elemental regimes” converged and overlapped in a given problem space, yielding a regime complex—which may have been, but more often was not, an intended outcome. Karen Alter and Sophie Meunier then built on this definition, emphasizing the fact that a “regime complex” introduces significant “rule complexity.” Alter and Meunier argued that “although rule complexity also exists in the domestic realm, the lack of hierarchy distinguishes international regime complexity, making it harder to resolve where political authority over an issue resides” (Alter & Meunier, 2009: 13).⁷ Recognizing that litigants and states had become adept at working across different fora to promote their objectives, both groups of scholars emphasized the shortcomings of examining political processes and outcomes within a single venue. Without considering how dynamics occurring in parallel and overlapping regimes were related, and influenced choices, much was missed.

In the years since, the concepts of “regime complexes” and “regime complexity” have become commonplace. Scholars increasingly analyze a given topic or problem by mapping the complex of relevant agreements, identifying the key institutions and their relationships to each other, and tracing the ways regime complexity generates new and distinctive political outcomes. Yet as a number of scholars have noted, the original concept of regime complexity lacked sufficient clarity. We agree with this criticism, yet prior efforts to further specify the term has generated conceptual murkiness and eliminated features that are essential to the concept. The definition we offer here adds clarity, better justifies the inclusion of the key components, and distinguishes regime complexes and regime complexity from cognate ideas.

⁷ Parallel ideas were developed in the legal literature as well, most notably (Helfer, 2004).

Key components of regime complexity

A regime complex is a compound institution composed of elemental institutions. Our focus is on *international* regime complexes, which must therefore include international elements.⁸ The first aspect of our definition generates a regime complex; the second and third aspects generate regime complexity.

An array of elemental institutions with an authority claim for a particular issue area or territory. The exact number of institutions is not significant; the larger point is that more than one set of rules or actors may plausibly claim to govern an issue. The array can be composed of functional regimes (e.g. The World Health Organization, UNAIDS, the Gates Foundation), and/or regional regimes (the African Union's initiative to address AIDS). As the AIDS examples indicate, the array can include both public and private elemental regimes. We do not need to pre-define whether the rules within a regime complex conflict, because the very fact that institutions' memberships, mandates and rules overlap creates the stage on which substantive or interpretive conflicts can emerge. While conflict may be more likely when memberships across institutions varies, divergent rules and understandings can also emerge because institutions have different mandates. For example, even if the state membership is identical, an international institution with an economic mandate, a staff of economists, and regular interactions with industry is likely to make different decisions or interpret the same rules differently compared to institution with an environmental mandate and extensive participation by civil society groups.

Absence of hierarchy among elemental regimes. International regimes are authority structures making authority claims. As David Lake has argued, the issue of hierarchy is intrinsic to authority-- to who can claim a right to rule; that is, a legal or a legitimated power over an issue or over a subordinated actor (Lake, 2009: 17-19). Regime complexity is, at its core, about how diverse elemental institutions establish overlapping and (potentially) rival authority claims regarding international governance. The larger point is that an absence of hierarchy among institutions and rules is the key political feature of a regime complex—the feature that drives the critical dynamics and strategic interactions that characterize politics within a regime complex.⁹

The lack of hierarchy means that there is no way to definitively resolve questions about which rules, norms, or decision-making procedures take precedence. Moreover, states can create

⁸ In this essay we refer to "regime complexity" solely with regard to the international level. The concept can be applied to the domestic context, but with a significant difference: the presence of hierarchy in the domestic setting allows for far greater alignment of rules and greater ability to adjudicate between differing elemental regimes. As we discuss further below, it is the absence of hierarchy which is critical to many of the dynamics of a regime complex at the international level.

⁹ Orsini et. al. replace the hierarchy requirement with a requirement that institutions interact, arguing that "In our definition, interaction replaces the condition of nonhierarchical relations among the elemental regimes, an ambiguous and unnecessary feature of the former definition." (Orsini et al, 2013: 31). We believe the lack of hierarchy is central and that regime complexes do not necessarily require interaction—what matters is that there is overlapping authority.

new, partially overlapping agreements or institutions that may rival only some elements of existing agreements. These elements may or may not have a legal foundation. For example, security studies scholars see the density and overlap of security arrangements as politically consequential even if the arrangements are not constituted as legal agreements (Buzan, 2003, Hofmann, 2011). Also, for scholars interested in a particular category—such as refugees— the issue is not simply that regimes overlap, but that relevant actors are located in different agencies, with differing mandates, memberships and dynamics—and therefore different sources of, and modalities of, authority (Betts, 2013).

International agreements can certainly seek to establish hierarchy. For example, article 103 of the UN Charter states that the Charter is supreme to other treaties; likewise, the principle of *jus cogens* demands that certain legal principles trump all others; and the European Union’s Court of Justice insists that European Community law and human rights obligations trump conflicting international law. Just stating these three ideas together reveals that while hierarchy may be asserted, such claims can and often are contested internationally (Alter, 2018).¹⁰ By contrast, hierarchy can be established in the domestic context because there is an agreed upon means to resolve conflicting rules and claims, be it via judicial review, legislative action or an election.¹¹

Systems Effects. Precisely because more than one institution is involved in addressing a given policy issue, a regime complex generates systems effects that shape actor strategies and decision-making within elemental regimes (Jervis, 1997). In complex systems changes in one part can affect other parts (Paravantis, 2016: 53-6). It follows that even if institutions and policy-makers prefer to segment issues into distinct categories, overlap and interaction are inevitable.¹² If energy policy implicates the environment, and environmental concerns affect energy policy politics, then the two are inextricably linked and interactive. Nonetheless, scholars of international relations “often fail to seriously consider systems populated by international institutions” (Orsini et al, 2013: 27). As Gehring and Faude observe, “regime complexes establish interinstitutional competition among functionally overlapping institutions as a systemic feature that influences the operations of their elemental institutions. While competition may lead to open conflict and turf battles, it may also produce a well-established division of labor among the elemental institutions.” (Gehring & Faude, 2013: 120). We will return to this issue when we address the politics and effects of regime complexity.

A definitional restatement. A regime complex is an array of partially overlapping and nonhierarchical institutions that includes more than one international agreement or authority. The institutions and agreements may be functionally- or territorially- defined. Regime complexity refers to international political systems of global governance that emerge because of the co-existence of rule density and regime complexes.

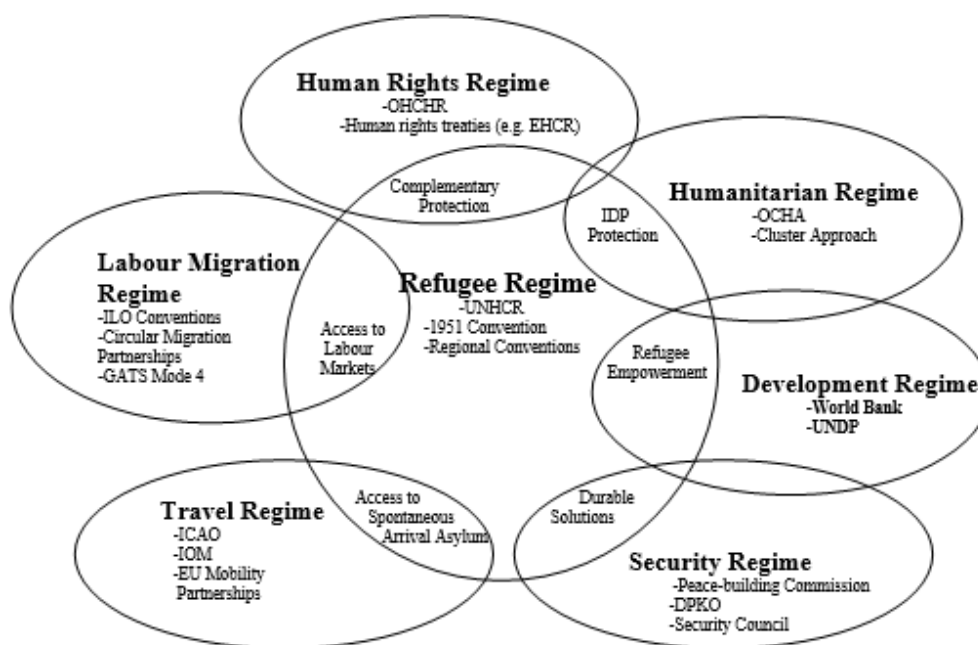
¹⁰ The Kadi case, adjudicated by the Europe’s Tribunal of First Instance and Court of Justice, brought these three competing legal claims into contention (De Burca, 2010).

¹¹ Hierarchy even in well-functioning domestic systems is sometimes contested; our point is merely that is far more secure and established than in the international context.

¹² The inherent connection among these domains is why we do not have to require interaction for a regime complex—substantive clashes of rules and rival claims of authority are unavoidable.

Examples of different types of regime complexes are offered below. Figure 1 identifies the refugee regime complex; figure 2 the global biodiversity regime complex. The territorial judicial and institutional complex of regional integration regimes in Africa is the subject of Figure 3. Although the labels in Figure 3 correspond to regional courts, the larger point is that these courts are associated with regional institutions that can enact policies pertaining to security, trade, development and human rights protection. Figure 3, which excludes global institutions that might also substantively overlap (e.g. the World Trade Organization or the International Criminal Court) helps us see how individual states may be part of nominally free-standing institutions, each with its own 'supreme' legal rules but no agreed-upon manner of adjudicating among them.

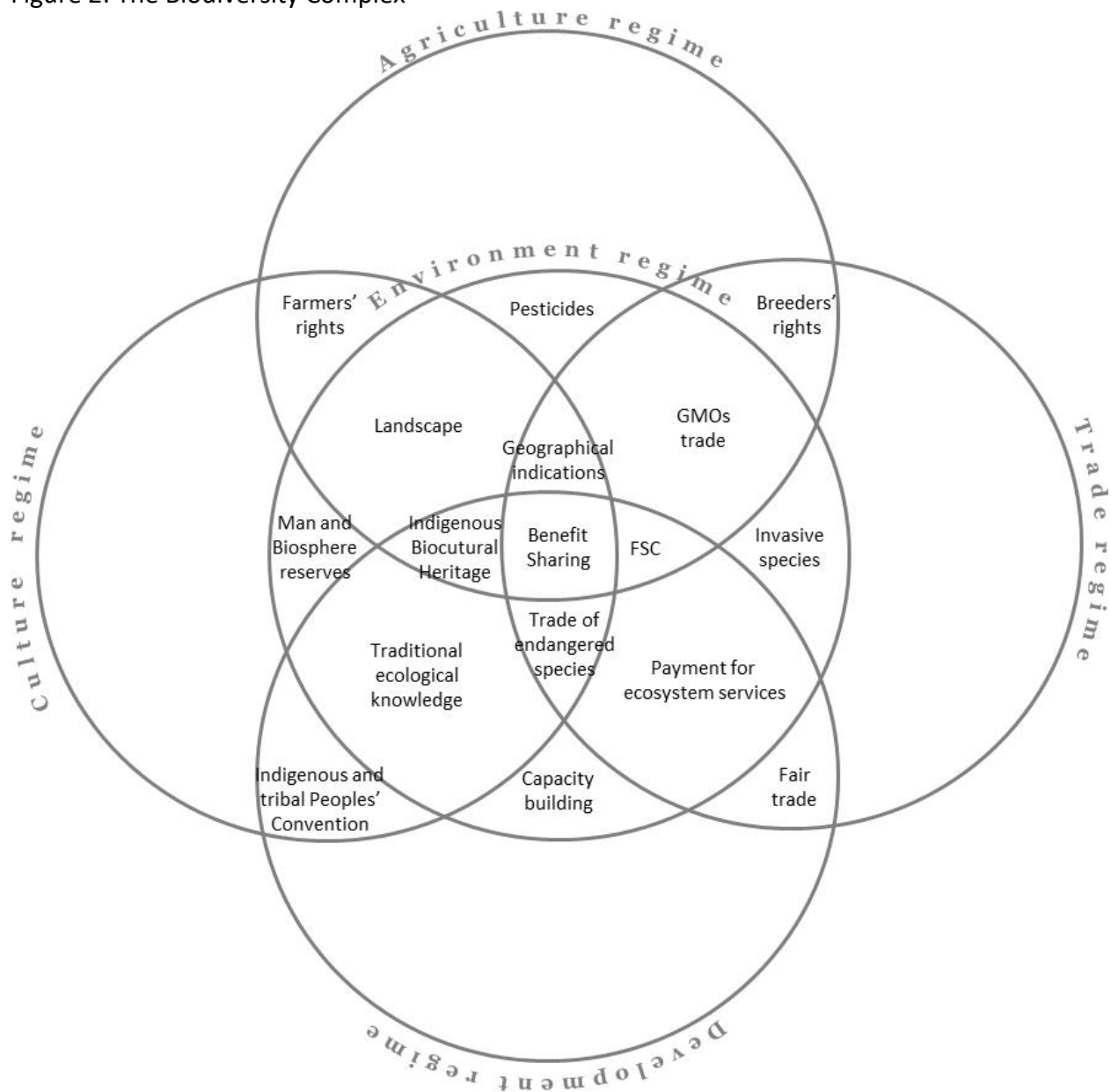
Figure 1: The Global Refugee Regime Complex



DPKO = Department of Peacekeeping Operations of the UN Secretariat; ECHR = European Convention on Human Rights; EU = European Union; GATS = General Agreement on Trade in Services; IASC = Inter-Agency Standing Committee; ICAO = International Civil Aviation Organization; IDPs = internally displaced persons; ILO = International Labour Organization; IOM = International Organization for Migration; OCHA = Office for the Coordination of Humanitarian Affairs; OHCHR = Office of the High Commissioner for Human Rights; RCPs = regional consultative processes; UNDP = UN Development Programme.

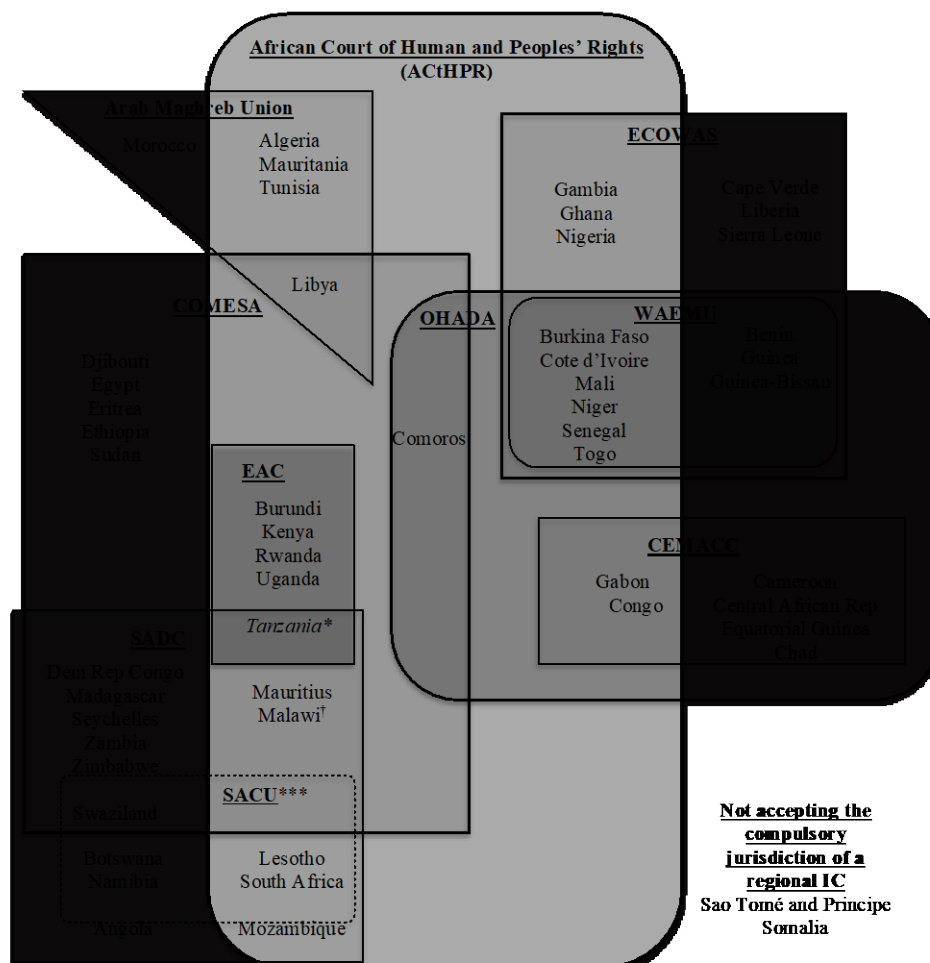
Source: Betts A. 2013. Regime complexity and international organizations: UNHCR as a challenged institution. *Global Governance* 19: 69-81 at 73.

Figure 2: The Biodiversity Complex



Source: Morin J-F, Louafi S, Orsini A, Oubenal M. 2016. Boundary organizations in regime complexes: a social network profile of IPBES. *Journal of International Relations and Development* at 7.

Figure 3: African Judicial Complex (focused on regional courts)



*Note: Tanzania is a member of ACtHPR, EACJ, and SADC but not COMESA

** Court not yet in operation. See the book's appendix for more on the African Maghreb court.

*** Southern African Custom's Union (SACU) lacks a court, but it sets the customs rules and rates for trade between its members

ACtPHR- African Court of People and Human Rights; CEMAC- Central African Monetary Community; COMESA- Common Market of Eastern and Southern Africa; EACJ- East African Community Court of Justice; ECOWAS- Economic Community of West African States; OHADA- Organization for the Harmonization of Corporate Law in Africa; SADC- Southern African Development Community Tribunal; SACU-Southern African Custom's Union

Source: Alter KJ. 2014. The New Terrain of International Law: Courts, Politics, Rights. Princeton N.J.: Princeton University Press at 99.

Cognate Forms of Global Governance. Scholars have introduced a number of other related organizational concepts that are increasingly relevant in international politics but can be distinguished from regime complexes.

Networks are structures that emerge via the interactions of actors who operate within a universe. In social network theory, 'nodes,' meaning patterned interactions, emerge as

individuals select who they interact with. Network nodes do not necessarily involve formal relationships or claims to authority, though they can, as the large literature on transgovernmental regulatory networks demonstrates. Transgovernmental regulatory networks typically comprise domestic regulators who engage in information exchange, share best practices, and even collaborate on enforcement actions (Raustiala, 2002, Slaughter, 2004, Slaughter, 2017). But they generally do not assert authority internationally or as a group and their claims of authority are rarely rival.¹³ These networks can overlap with and form part of a regime complex, but typically are far more narrow and are distinctive in their domestic basis of authority.

Transnational legal orders, by contrast, are typically more encompassing than regime complexes. They include the norms, actors and organizations that order the understandings and practices of law across jurisdictions (Halliday & Shaffer, 2015: 7-11). This concept captures how informal and non-state actors as well as formal institutions jointly construct systems of normative ordering. These systems may or may not become part of global governance, but they nonetheless structure global interactions.

Regime complexes differ from both networks and transnational legal orders in that they collectively constitute what is ultimately a public international entity. The largely formal, legal nature of the elemental units allows them to claim an authority that can reshape a network or supplant transnational legal orders constructed by private entities. Their public nature also introduces an expectation about political accountability. In this respect, authority claims and authority contestations are always central to a regime complex.

Regime complexity is also different from the older and complementary literature on complex interdependence. In 1977 Robert Keohane and Joseph Nye observed that rising interdependence was transforming international relations. What they called “complex interdependence” involved an increased role for non-state actors and transnational politics, the emergence of multiple channels of interaction where issues were not hierarchically ordered, and the replacement of power politics in the form of military coercion with a different form of cooperation politics, where power operated differently (Keohane & Nye, 1977).¹⁴ Their concept was designed to contrast “complex interdependence” with realism, and both were constructed as ideal types bounding a spectrum upon which actual politics occurred. In the intervening decades interdependence has not lessened, and indeed the global playing field has become far more crowded, populated by myriad pre-existing institutions and rules. Regime complexes can be understood as real world phenomena that can exist anywhere along the realism-complex interdependence continuum, and they can become a mode of institutional change wherein

¹³ In rare cases where domestic authority is asserted extraterritorially, the respective members of a network may assert competing authority claims.

¹⁴ Complex interdependence was not necessarily cooperation-inducing. As Keohane and Nye later wrote, “In analyzing the politics of interdependence, we emphasized that interdependence would not necessarily lead to cooperation, nor did we assume that its consequences would automatically be benign in other respects.” (Keohane & Nye, 1987: 730)

cooperative agreements become revised or unseated by political moves within the regime complex.

Why govern global issues via regime complexes?

Global problems increasingly overlap and intersect. As new problems emerge on the international agenda, they often are fit into preexisting institutions and agreements. As the preceding figures demonstrate, the resulting regime complexes can be quite multifaceted. As a result of this complexity, new cooperative efforts rarely occur on a blank slate. Global governance solutions thus must take one of two approaches: 1) international actors can attempt to create an encompassing regime that can address all dimensions of the problem; 2) international actors can accept that policy solutions will be crafted, coordinated, and implemented within a larger regime complex. For reasons we will explain, while the first option might be more efficient and effective, it is rarely the solution adopted.

To govern via regime complexity may at times be a deliberate choice (the benefits of which we discuss further below). But in a deeper sense a regime complex is often an almost-inevitable result of broader trends in world politics that make regime complexity almost unavoidable. Numerous, interrelated factors converge to generate and sustain regime complexity:

- *Density*: the wide range of agreements and institutions—today in the tens of thousands—makes overlap and conflict increasingly inevitable in a wide range of issue-areas. Indeed it is hard to address new or existing problems without, perhaps inadvertently, treading on a set of agreements or policies an existing regime has previously enacted (Raustiala, 2013).
- *Accretion*: Relatedly, adding new institutions can be easier than changing or dismantling existing institutions. When faced with a problem that existing institutions are not adequately addressing, or if proposed solutions are contentious, it can be easier to create a new institution than work within an existing one. For example, even though the World Health Organization has existed since 1948, in 2000 states created the Global Fund to Fight AIDS, Tuberculosis and Malaria to provide a more flexible, private sector-oriented alternative. One might even say that inertia contributes to accretion, since rationalizing and streamlining existing institutions with entrenched interests and bureaucracies can be costly.
- *Power shifts over time*: International institutions often reflect the power structure of the past; they are slow to change and serve to lock in temporary advantages. The UN, the IMF, and the World Bank, for example, all give special roles to the United States and its European allies that today poorly reflect existing power realities. Consequently, rising powers may prefer to create a new institution, where their influence may be higher, than seek to reform an existing one (de Burca et al, 2013: 735, Ikenberry & Lim, 2017). We return to this issue in the article's conclusion.
- *Preference changes*: Whether because of anticipated shifts in relative power or in domestic politics, powerful actors may become unhappy with existing rules and

structures (as the recent election of US President Trump, or the recent Brexit vote, demonstrate). States may then choose to “regime shift,” or create or empower a new venue where they can circumvent opposition or impose their preferred policies (Helfer, 2004). Domestic politics and institutional capture may accentuate such preference changes (Urpelainen & Graaf, 2015)

- *Modernity*: Adherents of systems theory see modernity as generating complexity, which in turn creates an unavoidable demand for specialization and functional differentiation, and thus a proliferation of governance structures (Zürn & Faude, 2013). Many new international political issues—the problem of cyber security, the proliferation of non-conventional military methods, problems generated by climate change—arguably reflect how modernity in itself continually generates new cooperative challenges that call for new governance mechanisms.
- *Representation and voice goals*: Stakeholders may seek to create a forum where their voices can be heard—or heard more clearly (Auld & Green, 2012), leading to a proliferation of new bodies. The expansion of participation in many international institutions—in particular the dramatic rise in the access of non-state actors and the recent trend of multistakeholder governance in areas such as global health, internet governance, and sustainability and environment—have accentuated these tendencies (Berman, 2017, Raustiala, 2016, Tallberg et al, 2013).
- *Local governance*: States may prefer regional organizations and policies that will prioritize local issues and be staffed with local officials, yet the mandates and policies of these regional institutions often intersect with existing functional regimes that have a global remit. For example, the emerging sentiment in Africa that mass atrocities should be prosecuted within Africa, as demonstrated by the trial of former Chadian leader Hissne Habré, which was conducted to avoid extradition to Belgium, and the addition of the Malabo Protocol which, if adopted, will confer on the African Court of Human and Peoples’ Rights an international criminal law jurisdiction, overlap and intersect with the ambit of the International Criminal Court. (Sirleaf, 2017).

While multiple forces propel regime complexity, scholars have pointed to several benefits to governing via a regime complex. These benefits may also sustain regime complexity. A regime complex can generate flexibility and allow for experimentation (De Búrca et al, 2014, Keohane & Victor, 2011). The multiplicity of institutions may present more opportunities for more actors to become involved in the political process, and increase the likelihood that solutions, however partial, are actually generated and implemented (Kuyper, 2014, Murphy & Kellow, 2013). Competition within regime complexes may be productive in that it encourages innovation and responsiveness, and competition can facilitate the supply of new resources as well as cost and burden sharing (Gehring & Faude, 2013). Also, the best way to adequately address a multi-dimensional challenge may be to divide yet coordinate tasks across actors within a regime complex. Especially where there is no political consensus for a policy, regulating an issue via a regime complex can allow for policy advances despite resistance (Keohane & Victor, 2011).

The literature on regime complexes has also noted the many downsides to this institutional form. To master the relationship among rules and institutions within a regime complex takes

substantial knowledge on the part of the relevant actors. The multiplicity of institutions and rules can be confusing and hard to navigate. Certain goals and objectives can fall through the cracks between institutional mandates and policies, and it can be very hard to revise or rebalance international rules that are anchored in a multiplicity of institutions, each with its own members and priorities (Ahrne et al, 2016).

While regime complexity is not the sole reason why global governance institutions are unable to satisfactorily address many ills in the world today, regime complexity does make it harder for individuals to understand which actors, institutions, and rules apply; it is more difficult for any one institution to assert authority with respect to issues that fall under their domain; and it is more difficult to hold national and global institutions accountable for outcomes. Yet for these very reasons regime complexity may yield political benefits. Political leaders can claim credit for being part of institutions that on paper help address vital public problems. They can then blame the global institutions for failing to address the problem, and the institutions can themselves shift blame onto each other. Also, once an international commitment becomes inconvenient, or if a government fails in its effort to modify existing rules in their desired direction, the government can then regime shift—move its efforts and focus to another elemental regime in the complex that is more amenable. So long as the government is adhering to one international legal obligation, it can insist that its obligations under institution X do not allow it to do what critics may call for under regime Y.

The obvious alternative to a regime complex is an encompassing institutional solution. For many normative theorists and for critics of existing international institutions, creating new encompassing institutions may be the best, if not the only way to address existing imbalances in power, to allocate international responsibility to protect individual rights, and to provide greater democratic input, and therefore to make global governance more legitimate (Held, 2003, Pogge, 1992). In many situations, however, this approach will fail. States may prefer the ambiguity and political flexibility that international regime complexity creates, or states with blocking power may prefer the status quo set of rules, responsibilities and voting procedures in comparison to proposed alternatives. Also, because the density of the global governance ecosystem is so high, any attempt to define a particular problem—to in essence bring together shared set of issues and create a single regime to govern a given space—is likely to replicate the regime complex problem in so far as new institutions will almost inevitably overlap with preexisting elemental regimes.¹⁵

¹⁵ Semi-encompassing solutions are not impossible. The United Nations Convention on the Law of the Seas agreement, for example, was the subject of protracted and difficult negotiations but provides a comprehensive set of rules. Yet even UNCLOS left issues such as managing fishing stocks and resolving territorial claims unaddressed—and here other actors and institutions play a role, from the International Convention for the Regulation of Whaling to the Straddling Fish Stocks accord to the Permanent Court of Arbitration, which decided the recent challenge to China's claims in the South China Sea. The law of the sea, moreover, is largely a set of rules developed over centuries and relatively stable. For newer issues, which may also feature greater scientific and regulatory complexity, even if states preferred an encompassing solution—an open question we will address further below—achieving this aim is very difficult. In short, the solution of creating an encompassing regime is clearly the exception rather than the rule.

While regime complexes are often inevitable, this does not mean choice and intentionality do not play a role. Sometimes “regime complexity can emerge almost inadvertently, because new policymakers in powerful states have a limited knowledge of prior legal rules passed by their predecessors (Mallard, 2014: 447). Yet states are often central to the creation of regime complexes (Morin & Orsini, 2014), and may deliberately create alternative forums or engage in “strategic inconsistency” (Raustiala & Victor, 2004: 298). And as noted above, regime complexity also arises because newly empowered actors whose voice was excluded or diminished when the regime was created may either spur the creation of new elemental regimes or work within existing regimes to block or divert decisions that do not reflect their preferences.

In short, there are powerful tendencies in contemporary world politics that push toward the development or growth of regime complexes. If the reality of contemporary global governance is that regime complexes are here to stay, then there is little point in lamenting the problems that complexity generates. Since most global issues will be governed by a complex of institutions, scholars today ought to seek to understand which institutions are part of a regime complex, how states and other actors act within it, and what tools, resources and strategies can be used to coordinate and orchestrate change toward desired goals. In addition, this discussion of the advantages and disadvantages demonstrates that there is no unidirectional effect of regime complexity. Instead, the impact may vary by issue, but also as a result of convergent, divergent or evolving state preferences.

Political Effects of International Regime Complexity

The fundamental reality of regime complexity is instability. Given the absence of hierarchy, a decision taken in one part of regime complex can be unsettled, undermined or replaced by decisions and actions within another part of the complex. This reality structures actor behavior and political outcomes in a number of important ways. Mapping these effects has been a key agenda for the regime complex literature.

Winners and Losers

Regime complexity can advantage those with greater resources. More powerful and wealthy states can more readily send multiple delegations to multiple international meetings. Powerful actors can hire expensive lawyers and experts. Regime shifting and contested multilateralism are also strategies most easily deployed by the powerful. And, as with extensive regulatory regimes at the domestic level, the most powerful actors are often advantaged by increased complexity. Given that the powerful have long dominated world politics, and regime complexity likely advantages those who are more powerful, does regime complexity actually change anything with regard to the distributional impact of cooperation?

Daniel Drezner argues that regime complexity dampens the leveling effects of traditional multilateral institutions, bringing the politics of international cooperation back to a more realist world. Challenging the pillars of cooperation politics—the attractive force of a focal point, the sense of obligation and legitimacy associated with adhering to rule-based agreements, and the ability of monitors to identify and punish violators—this argument claims that rising regime complexity actually increases the prevalence of power-based outcomes (Drezner, 2013: 289). Similarly, Eyal Benvenisti and George Downs argue that “by creating a multitude of competing institutions with overlapping responsibilities, fragmentation provides powerful states with the opportunity to abandon—or threaten to abandon—any given venue for a more sympathetic venue if their demands are not met.” (2007: 597). More options, in short, gives those with power more leverage.

Other scholars assert that politics within a regime complex advantages may benefit less-powerful actors. Alter and Meunier argue that regime complexity heightens the role of experts advising governments and IOs (Alter & Meunier, 2009: 16). Johnson argues it increases the autonomy of international civil servants because regime complexity provides more pathways for international civil servants to navigate around obstructions generated by states (Johnson, 2014). Others assert that nonstate actors can become skilled navigators of a regime complex (Orsini, 2013); that private authorities can interject their expertise by defining problems, advising governments, or acting as monitors of implementation and compliance (Auld & Green, 2012); that international organizations can act as organizers and managers (Margulis, 2013) (Lesage & Van de Graaf, 2013) and that “orchestrators” can potentially break the hold of the powerful by elevating the importance of international mediators (Abbott et al, 2014).

While some legal scholars worry that regime complexity contributes to a fragmentation that undermines the authority of international law, a number of scholars have argued that this fragmentation can enhance accountability by furthering fruitful contestation about legal rules (Alter, 2018, Benvenisti & Harel, 2017, Peters, 2017). Different voices and perspectives can more readily articulate alternative visions and showcase their validity and effectiveness (De Búrca et al, 2014, Hakimi, 2017).

The question of who wins and who loses is of perennial interest in international relations, but the larger challenge presented by regime complexity is that problem solving becomes less straightforward for all actors. If international cooperation began from a blank slate, then any problem could in principle be solved by bringing the relevant group of actors to the table to create a solution.

The existence of a regime complex also provides greater scope for strategic behavior by all actors—weak and strong—and a far more variegated and challenging bargaining terrain. Few international and transborder issues today start from a blank slate. Instead, a range of actors benefit from, or merely feel more comfortable with existing arrangements. These actors may demand compensation or concessions before they cede current rights and authority claims to a new arrangement.

Also, as we discuss further below, this complexity undermines accountability. Real people may be harmed by opening national markets to foreign goods, by overfishing, or by a decreasing supply of essential medicines, but in a world where policy is shaped via regime complex, it becomes harder to figure out who should be held accountable for this harm, and how to hold those actors accountable. The powerful may still be advantaged by this new reality, but they too will face political challenges wrought by regime complexity.

Strategizing within Regime Complexes: Forum shopping, regime shifting, contested multilateralism

International relations scholars have long been interested in how states select, work across, or create new institutions to achieve their policy aims (Aggarwal, 1985, Aggarwal, 1998, Jupille et al, 2013). Legal and policy scholars have also long been interested in forum shopping-- the practice of litigants strategically selecting among potential dispute settlement venues (Busch, 2007, Helfer, 1999, Mondré, 2015, Pauwelyn & Salles, 2009). These strategies exist wherever there is more than one institution that can make a policy decision or adjudicate a case. Whereas the interest in strategy is not new, the literature inspired by regime complexity examines how the absence of hierarchy within a regime complex shapes actor strategies.

The previous section explained how the very creation of a regime complex may be an intentional strategy to circumvent political opposition, or to level what new powers might see as a tilted playing field within existing regimes. Within an existing regime complex, regime shifting describes the attempt to alter the status quo ante by moving treaty negotiations, lawmaking initiatives, or standard setting activities from one international venue to another (Helfer, 2004: 14). The regime shifting literature tends to focus on policy change strategies, such as the effort to increase or decrease levels of protection for intellectual property rights or textiles by moving policy-making across international legal venues (Aggarwal, 1985, Helfer, 2004). These modes of forum-shopping become more available as the number of elemental regimes addressing a given topic grows.

The concept of “contested multilateralism” describes similar behavior but with a larger scope. In contested multilateralism, actors unhappy with existing institutions “combine threats of exit, voice, and the creation of alternative institutions to pursue policies and practices different from those of existing institutions” (Morse & Keohane, 2014: 386). An example is the Trans Pacific Partnership (TPP). The TPP sought greater liberalization of trade among its members and was widely seen as an effort to exclude China. President Trump abandoned the TPP, but in ironic twist TPP is now moving forward without the US. Meanwhile, China is trying to create its own Asia-based trading system via the Regional Comprehensive Economic Partnership, and it created the Asian Infrastructure Investment Bank as a counterweight to the traditional Bretton

Woods institutions. Although the United States sought to undermine the Asian Investment Bank, the bank pledged 1.7 billion dollars in loans in 2016, the bank's first year of operation.¹⁶

How these different trade and investment regimes will intersect remains to be seen. If China also succeeds in creating an alternative trading order, whether via the TPP or Regional Comprehensive Economic Partnership, China's new international institutions could provide an attractive albeit less inclusive alternative to the World Trade Organization, which would still exist yet fade in political significance. We return to this question in the conclusion, but whatever happens, we can predict that contestation and strategic action will be central to the resulting regime complex.

An Enlarged Focus on Practices

Whereas the IR literature is traditionally state-centric, the "practice turn" in international relations examines how a variety of state and non-state actors strategize and affect regime complexes, employing a more micro and sociological perspective. The larger idea is that practices of individual actors are based in norms that constitute social meanings and structure political interactions.¹⁷ To focus on practices is to see how individual actions reflect, constitute and reify scripts, valorizing certain behaviors and constituting structural social realities (Goodale & Merry, 2007).

Scholars are now studying practices in multiple political systems, both international and national. A regime complex, however, is not just any system; it is composed of elemental institutions that operate at multiple levels. As such, regime complexes are the terrain of experts, firms, NGOs, technocrats, and lawyers, actors that cannot avoid pursuing their goals in multiple venues, and thus actors that specialize in navigating and shaping outcomes within these multilayered systems. The practice turn studies how these actors interact to influence outcomes with respect to specific politics, and how they structure understandings about what a given rule means. This encapsulates Alter and Meunier's idea that regime complexes generate "small group" dynamics because actors repeatedly interact across the elemental regimes (Alter & Meunier, 2009: 18-19) and the Bourdieusian notion that fields of expertise are constructed by actors who repeatedly jockey to influence the meanings and direction within the field (Madsen, 2011: 263-5). Examples of this literature include scholarship on the construction of transnational law and legal authority around the world (Alter et al, 2018, Dezalay & Garth, 2011, Huneus & Madsen, Forthcoming), and actors involved in promoting and protecting human rights (Goodale & Merry, 2007, Huneus et al, 2011).

¹⁶ See: Sara Hsu "How China's Asian Infrastructure Investment Bank Fared its First Year" *Forbes* Jan. 14 2017 available at: <https://www.forbes.com/sites/sarahsu/2017/01/14/how-chinas-asian-infrastructure-investment-bank-fared-its-first-year/>

¹⁷ The practice turn aims to go beyond a focus on behavior. Alder and Pouliot explain "[p]ractices are competent performances. More precisely, practices are socially meaningful patterns of action, which, in being performed more or less competently, simultaneously embody, act out, and possibly reify background knowledge and discourse in and on the material world." (Adler & Pouliot, 2011: 4). For our purposes, we do not need to worry if something is a "practice" or an "action" or a "behavior."

To be sure, the practice turn in IR is not entirely driven by the reality of regime complexity. Equally important is a growing desire to displace the materialist focus on incentives and outcomes with greater emphasis on the importance of social meanings. But nonetheless, the proliferation of regime complexes in world politics disrupts the linear narrative that practice-oriented scholars find wanting. In the linear narrative, there is a “cooperation problem” that actors come together to solve, leading these actors to “rationally design” a regime that reflects their competing interests, after which the cooperative solution gets implemented as intended. This narrative fails to capture how a broad range of actors construct and redefine meanings associated with existing regimes as they seek to affect the world in which they live. The elemental institutions that comprise the biodiversity regime complex, for example, may not have, as their primary objective, the goal of constructing a solution to the problem of biodiversity. A broad range of actors will nonetheless work within existing structures to protect biodiversity.

The Management of Regime Complexes

Because elemental institutions within a regime complex do not have an unquestioned governing authority, they cannot impose a single solution on diverse actors. Abbott et al coined the term “orchestration” to focus on the variety of ‘softer’ techniques that international institutions deploy to coordinate policy across institutions and to use intermediaries to inspire change designed to address collective problems (Abbott et al, 2015). Orchestrators are, by definition, intermediaries who encourage other actors to coordinate their policies. Because orchestrators have neither the direct authority to command their target audience nor coercive tools at their disposal, they must rely on persuasion, education, carrots, and the like.

Other scholars employ different words for the same idea. For example, Alexander Betts conceives of the UN High Commissioner on Refugees as a “challenged institution” because it depends on intermediaries with different priorities and agendas to realize its aims (Betts, 2013). Tana Johnson considers how international civil servants build connections within other international bureaucracies, and how they also seek to mobilize non-state actors (Johnson, 2014). In a similar vein, the concept of “global experimentalism” provides a new lens to view flexibility and review provisions of international agreements, as well as the variation that arises when different institutions adopt divergent strategies to achieve a shared goal. Enthusiasts of the global experimentation lens also find virtue in providing more access to global and local policy-making and thus in creating greater accountability (De Búrca et al, 2014).

Scholars have also focused on how groups work within regime complexes to promote, contest, or block policy change. Blocking change is easier than promoting change; meanwhile contestation is a normal response to political constraints generated by growing international authority (Zurn et al, 2012). For example, Alter and Meunier examined how regime complexity complicated the resolution of what was otherwise a fairly straight-forward trade dispute (Alter & Meunier, 2006); Mark Pollack and Greg Shaffer examined the multi-forum fight over

genetically modified foods that generated a global stalemate, leading producers of these products to focus on capturing individual markets (Pollack & Shaffer, 2009); Hale et al generalized the focus on contestation and gridlock in a book that examined the rising set of challenges to international cooperation across security, trade and the environment (Hale, 2013). These various studies suggest that global problems may not be managed as such, rather ‘outcomes’ may emerge as actors strategize how to proceed given the impossibility of states coming together to create an agreed upon collective policy.

Toward a More Robust Research Agenda

The early regimes literature focused scholarly attention on discrete cooperation challenges. Analysts tended to first map the problem structure—meaning the cooperation challenges and relevant actors that pertain to a particular issue (Raustiala, 2000: 400-5). Identifying the problem structure was a crucial first step that helped scholars theorize about the solution structure. A rich and impressive literature resulted, but as we have shown, the focus on discrete problems often distorted reality.

The lens of regime complexity provides a way to pull back and see the larger picture, so as to more effectively understand—and analyze—how a series of elemental institutions and regime complexes mutually affect each other. But the regime complexity literature has tended to prioritize conceptual and theoretical development over the goal of identifying clear empirical and conceptual insights. While scholars have mapped regime complexes (see e.g. figures 1 and 2 above) they have done much less to demonstrate, interpret, and explain how operating within a regime complex shapes politics and political outcomes. There are many ways to tackle the lacunae in the current scholarship; here we offer a few suggestions.

- *Detailed case studies of actor strategies and institutional evolution that are linked to empirical outcomes.* The idea that regime complexes exist and are significant for understanding international politics and cooperation problems is now widely accepted. What is less clear is how specific outcomes result from the reality of regime complexes and regime complexity. Although scholars have begun to describe actor strategies within a regime complex, it remains much less clear how actor strategies and institutional developments flow and are shaped by the fact of regime complexity. More attention to the processes through which regime complexes shape actor strategies and outcomes would help validate and generalize—or not—existing theoretical claims while also helping to generate new hypotheses about how regime complexity is transforming international politics and international law.
- *Sequencing.* Studies of regime complexity could consider more systematically how sequencing matters to better understand what occurs when a policy space gets occupied by one, and then another institution in the complex. Would a different sequencing in the layering of international regimes lead to a different outcome? Are there first mover advantages, and perhaps disadvantages to first addressing a policy issue within one institution rather than another? Once a new international body is

created to address a problem, such as the problem of refugees, are the other international institutional and state obligations to help refugees then decreased (or more easily avoided)? If we think of cooperation pathways, are there also deviations and dead ends that regime sequencing creates?

- *Institutional survivalism.* If the path of least resistance is (at least sometimes) institutional expansion by accretion, which in turn generates increased rule and institution density, what are the strategies and examples to counter this trend? Our discussion on the rise of regime complexity noted the many downsides to governance via regime complexes. Can we build better theories about when and where a regime complex gets “rationalized” in favor of a specific elemental regime—or new regime? Can we theorize about when regime complexity contributes to order and structure, perhaps short of clear hierarchy, and when it does not? More generally, beyond the straightforward issue of coordination regimes, where all that is needed is some kind of focal point, where do we not see regime complexes?
- *Policy and normative solutions.* How can political actors be held accountable in a world of regime complexity? Henry Kissinger supposedly said “who do I call when I want to call Europe?,” suggesting that no single identifiable office or actor was in charge of “Europe.”¹⁸ The calling Europe problem is easy in comparison to the question of who and what do I call to address problems, or complain about solutions, generated by the global market for goods, services, money, ideas, weapons, and pollution, when these issues are governed by a regime complex.

Conclusion: Accelerating Regime Complexity in a Post-American World

The international system is a crowded space. For over a century states have been creating international organizations and for even longer they have been negotiating international agreements. The intense phase of institution-building and international law-making that commenced in the wake of the Second World War and accelerated after the end of the Cold War accentuated the trends toward regime complexity. Today there are, by any reasonable measure, hundreds if not thousands of international regimes. This multiplicity and density inevitably yields overlap and conflict.

Even before President Trump raised myriad questions about the commitment of the United States to the existing multilateral world order, new powers were actively working to supplant the dominance of international institutions that—in their view—reflected outdated power dynamics and disproportionately benefited American and European interests. In Latin America, populist leaders were trying to create regional alternatives to American free trade institutions (Arenas-García, 2012, Sanahuja, 2012). In Eastern Europe, Russia has been trying to create a Eurasian alternative to the European Union (Stoddard, 2012, Tsepkalo, 1998). China originally

¹⁸ Like many great quotes, this one is probably apocryphal: See Gideon Rachman, Kissinger Never Wanted to Dial Europe, Financial Times, July 22 2009 <https://www.ft.com/content/c4c1e0cd-f34a-3b49-985f-e708b247eb55>

focused on Asian alternatives, but given the American retreat in many parts of the world Chinese leaders appear to be setting their sights on a more global strategy.

China's ascension as a global superpower may represent a new era of regime complexity because unlike past rising powers, China is becoming a superpower against the backdrop of a very thickly-institutionalized international order. Rather than recast existing institutions, China will likely seek—as it has already done with the creation of the Asian Infrastructure Investment Bank—to engage in “counter-hegemonic” institution-building (Ikenberry & Lim, 2017). American and European actors may then proceed in turn, so that we may find balancing and counter-balancing cooperative endeavors. These trends will only exacerbate the complexity dynamics we have described in this essay.

Power is being redistributed in other ways as well. In many areas of global governance multilateral cooperation is giving way to multi-stakeholder cooperation. The remarkable expansion of access to non-state actors in many international institutions has added a host of new voices to an already crowded mix (Tallberg et al 2013). This phenomenon not only renders cooperation within many institutions more complicated; it spurs the creation of new forums that better reflect the increased role of private actors.

The signature feature of 21st century international cooperation, in short, is arguably not the regime but the regime complex. In this essay we have reviewed the burgeoning literature on regime complexity and detailed the many ways scholars have begun to explore both the causes and the consequences of the rise of the regime complex. At a minimum, regime complexity provides scholars with a novel and fruitful lens to understand how states and other actors interact in the densely-institutionalized contemporary environment. In its broadest form, a focus on international regime complexity is less a line of research than a new conceptualization of the international politics of cooperation, one that updates and complements complex interdependence as a lens to view international cooperation politics.

In the Post-American international order the politics of cooperation may increasingly reflect a growing and destabilizing competition among different regimes and regimes complexes. Because interdependence is in no way diminished, and because the international arena is now crowded with institutions and agreements, both the pitfalls and advantages of regime complexity may become magnified. As global markets and political power shift to Asia these dynamics will only grow—and the future political playing field will be defined by the challenges generated by the contestation and increasingly difficult coordination of international regimes.

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