

**Abbot, K. W. and D. Snidal (2000). "Hard and Soft Law in International Governance."
International Organization.**

Abbot and Snidal develop a typology of legalized international arrangements, classifying them along three dimensions: Obligation, Precision, and Delegation. They define "hard law" as legally binding arrangements that have all three of these qualities, and "soft law" as those arrangements which are weakened along one of these three dimensions. Different actors (here, firms, states, and activists) prefer different arrangements in different situations. Each type of law has advantages and disadvantages; often soft law is preferred to hard law. As law becomes "harder," from no law (purely political arrangements) to hard law, it reduces transaction costs, increases credibility of commitments, expands (domestic and international) political strategies, and increases incomplete contracting problems. But it restricts actors' behavior and sovereignty, increases negotiation costs, and decreases flexibility in the face of uncertainty. A&S argue that soft law can be an optimal end state in some circumstances, as opposed to a transient situation.

I. Contracts and Covenants: rationales for hard law

A. Introduction

"States enter into contracts to further interests; they enter into covenants to manifest normative commitments." (p.11) Contracts are interest-based; covenants, norm-based. A&S contrast rationalist to constructivist accounts, then argue that this is a false dichotomy anyway, since both are usually involved in any legal arrangement.

B. Credible Commitments

States (and other actors) need to make credible commitments to private parties at home, abroad, and other states. Precision constrains "self-serving auto-interpretation" (p.16) and increases credibility through limiting interpretation; delegation of interpretation does the same. Legalization also increases costs of renegeing through reputational costs, and (modestly) enhances enforcement capacity (esp. w/hard law- e.g. EU, WTO) It legitimizes retaliation, often becomes part of domestic law, mobilizes domestic groups, and strengthens norms. It creates and is created by an epistemic community of international lawyers.

Thus states should use hard law 1) when "benefits of cooperation are great but the potential for opportunism and its costs are high." 2)"to increase the credibility of commitments when non-compliance is difficult to detect" (p.21), 3)when forming clubs (NATO, EU), since this provides an ex ante sorting device, and 4)when looking to commit domestic agencies.

C. Reducing transactions costs

Hard legalization decreases the managerial costs of applying and elaborating rules, as well as enforcement costs. This is caused by increased precision, which decreases the cost of interpretation, and delegation, which specifies procedures for dispute resolution.

D. Modifying Political Strategies

Legalization modifies both political strategies with respect to international agreements and domestic groups. A&S "hypothesize broadly that states will be more likely to seek hard legalization when the political strategies it offers are advantageous to them." (p.27)

E. Handling Problems of Incomplete Contracting

Delegation is particularly useful for dealing with incomplete contracting problems, since then other bodies can handle interpretation of law for the particular contract(s).

II. The Advantages of Soft Legalization

A. Contracting Costs

Adoption of hard law is costly, because it requires much more ex ante negotiation of details, so states and other actors may prefer soft law.

B. Sovereignty Costs

1. The Nature of Sovereignty Costs

Legal obligations decrease sovereignty in three ways: by increasing the potential for inferior outcomes, decreasing authority in particular issue-areas, and general diminution of sovereignty. A&S follow Krasner 99 and explain how legal agreements can impinge on Westphalian and other kinds of sovereignty (although legalization can increase sovereignty in some cases, e.g. marginal states)

2. Sovereignty Costs and Issue Type

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Sovereignty costs vary by issue; e.g. they are much higher in areas related to national security than others; in political economy areas, technical agreements have low costs, while other issues (such as trade) have higher costs.

C. Uncertainty

The future being ultimately unpredictable, states often will prefer a less binding agreement in order to cope with future uncertainty.

D. Soft Law as a Tool of Compromise

1. Compromise at a Point in Time

By allowing for agreement on some issues and disagreement on others which can be worked out later, soft law allows for some legalization.

2. Compromise over Time

Soft agreements help ameliorate commitment problems by enmeshing states in a framework; small concessions now for "impatient states" can be balanced with soft legal arrangements that can harden over time.

3. Compromise Between the Weak and the Strong

Soft law allows for compromise between weak and strong states; strong states gain by embodying their advantage in rules, while weak states gain from certainty and credibility in legalized agreements.

III. The Role of Private Actors

Private groups (including interest groups, epistemic communities, and NGOs) affect legalization.

A. Pluralist interactions

Variations in domestic politics produce wider variations in national preferences than models assume. (p.61)
Different groups will have different preferences over the degree of legalization in the three dimensions of Obligation, Precision, and Delegation.

B. Public Choice

Government officials will make international arrangements in order to maximize reelection, individual power, etc.

C. Statism

"Government preferences are determined by factors such as national self-preservation and independence, relations with other states, the nature of individual issue areas and prevailing ideas and norms, as well as domestic politics." (p.66)
Governments allow private groups to affect agreements as long as it does not interfere with these factors.

IV. Conclusion

States make tradeoffs between the benefits of hard legalization (see above) and the costs it entails. Soft legalization balances state and private interests, handles uncertainty, and accommodates power differentials. Int'l politics and law are intertwined. States prefer precision to obligation, and obligation to delegation (in general).

Note

Throughout the article, A&S categorize various institutions on their three dimensions. Below are some that I noted.

OPD EU, WTO
Opd NPT
OP- SALT, arms control
Op- Vienna Ozone
op- GATT 47
-Pd OECD and IAEA recommendations
-Pd Helsinki Final Act
-pd UN specialized agencies
-p- Rio (Environment + Development)

Opd Cooperation between weak + strong states
-P- Activists' preference