

Politics in between the Cracks: Transdomestic Policy beyond the Domestic-Foreign Divide

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Paper tabled for panel 3.13 at the ECPR General Conference in Budapest on September 9, 2005.

Please contact the author at mschaper@gvpt.umd.edu for comments and suggestion. At this point, this is the sketch of an idea that needs further discussion and refinement.

Abstract

Traditional classifications of domestic, foreign, and intermestic policy are somewhat limited in dealing with a number of modern regulative phenomena that do not stop at national borders. Analysts have applied the labels of “domestic foreign” and “foreign domestic” policy. Yet, labels as such are oftentimes only applied in an ad-hoc fashion without considering the implications of policies beyond the domestic-foreign divide. In this paper I lay out a way to characterize such policies and explore the theoretical and practical implications of these policies where the targets of regulation and policy-making processes are (deliberately) disjointed. This paper is not about domestic sources of foreign policies but rather about policies that are targeted into the borders of another sovereign and at the same time are formulated as domestic policies. In its simplest form, these policy types can be arranged in a 2x2 table:

Figure 1: Categories of policies

Impact Nature	Domestic arena	Foreign arena
Domestic	Domestic policy	Transdomestic policy (domestic foreign)
Foreign	Boomerang policy (foreign policy that targets your own domestic arenas)	Foreign policy (deliberately external)

Transdomestic policy defies the traditional policy categories: policies appear to be domestic in nature, yet their deliberate effects occur within the borders of another sovereign state. This quality leads to unusual implications for state sovereignty. Little or no concerns exist for the state in which these policies are devised, and the state in which the policies will have their effect have little or no influence on the policy-making process. Infringement of state B’s sovereignty comes at no cost to state A; state B meanwhile suffers from an infringement on its sovereignty with little or no means of remedying it. Whether it is foreign domestic or domestic foreign policy is a question of perspective: for A it is domestic foreign, i.e. domestic policy with effects elsewhere; for B it is foreign domestic.

Furthermore, foreign people in state B have no voice in this domestic policy process unless they can forge transnational coalitions with domestic partners in state A.

Boomerang policy is targeted at regulating behavior at home. However, it is formulated and implemented as foreign policy. Policy-makers may pursue this option if traditional domestic regulation would come at high political cost, or if domestic veto players make it impossible to regulate in a purely domestic fashion.

Introduction

While conducting research on environmental standard-setting for export credit agencies (ECAs), I found the traditional categories of domestic and foreign policy insufficient to grasp some of the dynamics I was encountering in the international harmonization of these environmental standards. Also, these labels lacked to adequately categorize these standards as either domestic or foreign policy. In ECA politics environmental regulations are formulated as domestic policy but they are targeted into the domestic sphere of another state. A survey of the literature showed that much has been written about transnational politics (i.e. non-state actors in international politics¹) and intermestic policy (i.e. policies with both domestic and foreign aspects²), but I could not locate any literature that addressed the phenomenon I am concerned with. This paper represents an initial attempt of laying out my thinking on the issue in hope of generating discussion and feedback on this idea.

This paper is organized in four sections. The first lays out the basic idea. In the second section a short case study of environmental standard-setting for export credit agencies provides the context in which I stumbled across the phenomenon of transdomestic policy. The third part consist of two case studies to illustrate what I mean by “boomerang policy” – the other non-traditional category in my classification of policies by nature and impact. The final one is a short conclusion

The idea

The classification of goods, according to access to them, into “common”, “public”, “patented”, and “private” goods (see figure 1) may provide a lens through which to look at the different kinds of policies I am interested in: purely domestic, purely foreign, transdomestic (domestic foreign), and boomerang (foreign domestic). While these goods are classified based on excludability and depletability, the policies may grouped according to the dimensions of nature and location of

¹ See for example:

Kaiser, K. (1971). "Transnational Politics: Toward a Theory of Multinational Politics." International Organization 25(4): 790-817.

Keohane, R. O. and J. S. Nye, Eds. (1971). Transnational Relations and World Politics. Cambridge, MA, Harvard University Press.

Willets, P., Ed. (1982). Pressure Groups in the Global System: The Transnational Relations of Issue-Oriented Non-Governmental Organizations. New York, St. Martin's Press.,

Risse-Kappen, T., Ed. (1995). Bringing Transnational Relations Back in: Non-State Actors, Domestic Structures and International Institutions. Cambridge, Cambridge University Press.,

Sikkink, K. (1998). "Transnational Politics, International Relations Theory, and Human Rights." PS: Political Science and Politics 31(3): 516-523.,

Tarrow, S. (2001). "Transnational Politics: Contention and Institutions in International Politics." Annual Review of Political Science 4: 1-20.,

Steinberg, P. F. (2001). Environmental Leadership in Developing Countries: Transnational Relations and Biodiversity Policy in Costa Rica and Bolivia. Cambridge, Mass., MIT Press.,

Keohane, R. O. (2002). Power and Governance in a Partially Globalized World. London, Routledge.,

Risse, T. (2002). Transnational Actors and World Politics. Handbook of International Relations. W. Carlsnaes, T. Risse and B. A. Simmons. London, Sage Publications: 255-274.

² See for example: Manning B. (1977). “The Congress, the Executive and Intermestic Affairs: Three Proposals”. Foreign Affairs, 55: 306-24.

intended impact.

Figure 1: Categories of goods

	Excludable	Non-excludable
Depletable	Private good	Common good
Non-depletable	Patented good	Public good

Figure 2: Categories of policies

Impact	Domestic arena	Foreign arena
Nature		
Domestic	Domestic policy	Transdomestic policy (domestic foreign)
Foreign	Boomerang policy (foreign policy that targets your own domestic arenas)	Foreign policy (deliberately external)

The obvious question when stumbling across such a void in the literature is: “does it matter?” I contend that it does. Most prominent is the issue of sovereignty, i.e., to what extent do these different kinds of policies affect the sovereignty of the state in which they originate and which they have their effect. In a second step, these sovereignty concerns become policy-relevant: states are more likely to engage in international agreements that pose little threat to their national sovereignty than in those that require sovereignty sacrifices.

Also of concern is the question of voice in the policymaking process. States’ “voice” can be subsumed under the sovereignty heading. However, those affected by regulation may or may not have an opportunity to bring their concerns to the table.

Domestic policy is the easiest candidate: origin and effect are located in the same polity and thus domestic policy does not pose any challenge to sovereignty.

Foreign policy is the other classic example: states devise policies that are intended to influence the behavior of other sovereign nation-states. Though by its very definition the goal is interference with the sovereignty of another nation-state, it is usually deemed acceptable as long as these policies follow the traditional rules of diplomacy. Interactions that include non-state actors – a.k.a. transnational politics – can be included under this heading as well. Those affected by regulation have a voice within their own state to the same extent as they are provided with voice in domestic policy-making. Be it in a pluralistic or in a corporatist setting, they can exert influence in foreign policy as highlighted by Putnam’s³ two-level game metaphor.

Transdomestic policy, on the other hand, defies these traditional categories: policies appear to be domestic in nature, yet their deliberate effects occur within the borders of another sovereign state. This quality leads to unusual implications for state sovereignty. Little or no concerns exist for the state in which these policies are devised, and the state in which the policies will have their effect has little or no influence on the policy-making process. Infringement of state B’s sovereignty

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Putnam, R. D. (1988). "Diplomacy and Domestic Politics: The Logic of Two -Level Games." International Organization 42(3): 427-460.

comes at no cost to state A; state B meanwhile suffers from an infringement on its sovereignty with little or no means of remedying it. Whether it is foreign domestic or domestic foreign policy is a question of perspective: for A it is domestic foreign, i.e. domestic policy with effects elsewhere; for B it is foreign domestic.

Furthermore, foreign people in state B have no voice in this domestic policy process unless they can forge transnational coalitions with domestic partners in state A.

Boomerang policy is targeted at regulating behavior at home. However, it is formulated and implemented as foreign policy. Policy-makers may pursue this option if traditional domestic regulation would come at high political cost, or if domestic veto players make it impossible to regulate in a purely domestic fashion.

This kind of policy has little implication for state sovereignty but it poses significant challenges to voice and legitimacy. If groups that are to be regulated possess enough voice to block domestic regulation, regulating them by means of a foreign policy detour questions the legitimacy of such policy. The boomerang path may be chosen for two reasons: (i) other institutional channels are employed in foreign policy making than in domestic policy making and thus the veto players are out of the game or (ii) the relevant veto players are mostly concerned with domestic policy and do not monitor foreign domestic policy developments as closely. However, once a policy commitment with another international actor exists, it is more difficult to undo than domestic regulation.

These categories are analytic in nature. Any of them can have effects both at home and abroad. The question is where the deliberate or target effects occur and how the policy is formulated.

While emerging literature on policy diffusion and regulatory convergence is a fascinating topic, it is not of central importance to my argument. The defining characteristic of transdomestic policy includes the intentional regulation in a different polity by means of domestic policy. Domestic regulations that diffuse by means of market forces or regulatory adoption, or domestic regulations that converge around an ideal type, are still domestic policies in nature. Even if EU regulation of biotechnology has a strong impact on the U.S. market, it remains a domestic EU policy as long as it is intended to regulate goods on the EU and not the U.S. market. U.S. farmers may adapt their choice of crops to ensure marketability in the EU and thus EU policy may profoundly shape U.S. modes of agricultural production; the policy still remains a domestic policy targeted at EU food markets.

If international agreement is to be reached over policies in these ideal categories, agreement will most easily occur in foreign policy as it requires international cooperation by definition. Most difficult is the harmonization of domestic policies. Transdomestic policy falls in between these extremes: because it is domestic policy that is to be harmonized, harmonization does infringe the freedom of the regulating state to devise its own policies. However, since the effects of these policies are located in another nation-state they do not have to be of concern to the regulator and thus agreement is simpler than it would be in the case of traditional domestic policy. Boomerang policy that is devised in a way which minimizes impact in other polities with potential veto power, should face the fewest international obstacles.

A Case of Transdomestic Policy: Environmental Standards for ECAs

Export credit agencies (ECAs) are government facilities that provide domestic exporters with access to finance for exported goods and services. They play an important tool in providing exporters with access to emerging markets in high-risk countries, especially developing and transition countries. Transactions with firms in these countries often bear political risks that commercial insurers are not willing to cover. Yet, most firms cannot afford to embark on such transaction without some insurance against non-payment to gain financing from banks. Governments fill this void by acting as a bank of last resort and providing domestic exporters with export credits or by providing insurance against political and some commercial risk in the form of export credit guarantees.

Up to recently most of these agencies operated without environmental conditionalities attached to their operations. The first ECA to establish a comprehensive set of environmental policies was the U.S. Export-Import Bank (ExIm) in 1995. Since then the United States has successfully sought international harmonization of these standards leading to the OECD Common Approaches on Officially Supported Export Credits and the Environment of December 2003.⁴

Primary concern of these environmental standards are large-scale infrastructure projects in developing and transition countries. With their environmental standards ECAs regulate the environmental criteria a project abroad needs to fulfill if exports to this project are to be covered by the ECA. Exporters are required to document environmental impact assessments that have been conducted in planning the project and ECAs reserve the right to decline an application for support if they deem the environmental performance of the project in question as insufficient.

These standards are domestic regulations that are aimed at domestic exporters. Yet, their impact occurs elsewhere: environmental conditions in another polity are being regulated. Furthermore, since the exporters need to make environmental impact information available to their ECA, project sponsors need to conduct environmental impact assessments, even if their domestic regulations do not provide for such a requirement. By means of these environmental standards, advanced industrialized countries project their environmental regulations into other polities.

In most states, these rules were devised without input from those polities in which the standards have the most direct impact. Similarly, the international negotiations on harmonization of these standards were conducted in the context of the OECD without consulting the recipient countries. Turkey is among the states represented in the OECD Export Credit Group because it operates its own ECA. Yet, Turkey is also recipient country of numerous ECA-supported project. As such, the Turkish delegation was opposed to standards established in 2001 and in 2003. Both times it felt its interests as recipient country threatened by them.

For many developing countries environmental concerns are secondary to the establishment of infrastructure. While it is generally accepted that donors have a say over what is acceptable or unacceptable in terms social and environmental externalities of development projects, this does

⁴ For a detailed account of these negotiations from a transatlantic perspective see Schaper, M. (2004). Export Promotion, Trade, and the Environment: Negotiating Environmental Standards for Export Credit Agencies Across the Atlantic. Berlin Conference on the Human Dimensions of Global Environmental Change "Greening of Policies - Policy Integration and Interlinkages". Berlin.

not apply to ECA supported projects. By definition, ECAs provide support at market or near-market conditions and supported projects are usually of a commercial nature or they are funded with little or no aid involved. As such it is not surprising that project sponsors and recipient country governments are concerned about their loss in autonomy and control if the exporting countries' ECAs require environmental impact assessments and potentially costly modifications to the projects' design despite compatibility with the recipient country's regulations. After all, costs that result from the compilation of assessments or from modifications to the projects are borne by the project sponsor or the recipient country.

Three Examples of Boomerang Policy

The German Environment Ministry's Role in EU Policy Making

The German Environment Ministry is a rather young department (established in 1986) and comparatively weak in comparison with well established departments – in terms of power as well as with regard to staff size. Since 1998, the Environment Ministry has been headed by the Green Jürgen Trittin who has pushed an ambitious environmental policy agenda. In particular, relations between the Environment and the Economics Ministry have been prone to conflict as a result. Many proposals for environmental regulations have met resistance from the mighty and industry-friendly Economics Ministry. As a response the Environment Ministry has increasingly promoted such environmental regulation on the EU level which it could not establish domestically.

Among the regulations now in effect Europe-wide that could not have been established domestically in Germany are the Environmental Information Directive and the limits on particulate matter established in the Air Quality Directive. The Environmental Information Directive runs counter to well established German regulatory traditions – especially the confidentiality of administrative processes. Particulate matter limits pose considerable difficulties for dense metropolitan areas and thus would have likely encountered opposition in Bundesrat if regulated domestically. Rüdiger Wurzel also includes EU regulations on dangerous chemicals and scrapped cars in this category of “EU policy measures which the BMU [Environment Ministry] would like to have adopted at the national level but failed due to resistance from powerful national actors such as the Economics Ministry and the Chancellor”⁵.

By supporting proposals in Brussels which could not have been passed domestically, the German Environment Ministry has employed boomerang policy to create regulations despite opposition to such rules at home.

A (mostly hypothetical) Case of Boomerang Policy: The EU and the SPS Agreement

In this example for boomerang policy I am probably bending the motivation of the EU quite a bit in making this a fitting case⁶. The SPS Agreement was negotiated parallel to the establishment of

⁵ Wurzel, R. K. W. (2004). Germany: From Environmental Leadership to Partial Mismatch. Environmental Policy in Europe: The Europeanization of National Environmental Policy. A. Jordan and D. Liefferink. London, Routledge: 107.

⁶ Mark Pollack's account of transatlantic trade disputes has a wealth of information on this and other trade issues: Pollack, M. A. (2003). The Political Economy of Transatlantic Trade Disputes. Transatlantic Economic Disputes: The EU, the US, and the WTO. E.-U. Petersmann and M. A. Pollack. Oxford, Oxford University Press: 65-118.

the World Trade Organization. Experiences under the General Agreement on Trade and Tariffs had shown that countries have tended to use sanitary and phytosanitary measures as a pretext for establishing import restrictions that otherwise would not have been compatible with GATT rules. The EU had benefited from these rules itself as some of its environmental and health-related import restrictions were considered non-tariff barriers to trade by the United States, but the US refrained from taking action on them as they were protected by the exemptions for sanitary and phytosanitary measures.

When the United States proposed to establish more restrictive requirements for the invocation of sanitary and phytosanitary measure in the early 1990s, the EU quickly endorsed the proposal and started working towards an international agreement on the issue. The result was the 1994 SPS Agreement.

One could argue that the establishment of the SPS Agreement was against the EU's own international interest as this now enabled the United States to initiate WTO dispute settlement procedures against the EU whereas it could not do so before. Therefore, the EU should not have had an interest to negotiate such an agreement. However, DG Trade could have had an interest in using the SPS agreement to undermine domestic calls for environmental or health-related import restrictions. The SPS could have also helped to undo existing import restrictions that were the result of intense lobbying by activists. Revoking such measures can come at high political cost. However, having an international agreement and subsequent WTO proceedings as a forcing event may help to reduce political cost if regulators can point to the agreement and claim that they have no choice than to adapt domestic rules. If that was the case, the SPS Agreement indeed would be an excellent example for boomerang policy on behalf of the EU: unable to withstand criticism on its agriculture and trade policy brought forward by domestic critics, it decided to appease the domestic critics by establishing the policies demanded while working on an international agreement that would help undo these policies with little loss in legitimacy.

A Real Case of Boomerang Policy: African States and the Basel Convention on Hazardous Waste

The (partly hypothetical) EU-SPS is a good one insofar as the detour to the international arena was chosen in order to circumnavigate domestic opposition and veto-players. A real-world example where states have sought an international agreement to solve domestic problems is the role of the African states in negotiation the Basel Convention on Hazardous Waste⁷. However, this example is different from the hypothetical EU one in that regard that the agreement helped states to address administrative deficiencies rather than political opposition.

By the 1980s international trade in hazardous waste had grown into an uncontrollable dimension. Much waste was disposed of improperly by simply exporting it to developing countries. The high cost of proper disposal of hazardous waste created perverse incentives: waste generators were willing to pay much for the disposal of their hazardous waste and developing countries were accepting the waste and associated revenue. This created an optimal breeding ground for waste traders who were less interested in proper disposal than in high profit margins. The result was

⁷ For an insider's perspective on these negotiations see: Tolba, M. K. and I. Rummel-Bulska (1998). Global Environmental Diplomacy: Negotiating Environmental Agreements for the World, 1973-1992 Cambridge, Mass., MIT Press.

much waste being dumped improperly in developing countries.

Many African states lacked the administrative capacity to bring this waste trade under control and sought an international agreement that would ban the trade in hazardous waste and thus solve their problem on the supply side rather than on the demand side.

The Basel Convention did not establish the desired ban, but it did set restrictive rules that require the recipient state to consent to a shipment before it is being exported. Shortly after the Basel convention, African states negotiated an agreement among themselves that banned hazardous waste trade between African and non-African states.

Similarly, to the EU-SPS example, the African states in this case resorted to an international agreement to solve a domestic policy problem. What is different is the motivation: in the EU-SPS case it is (hypothetically) a way to work around political obstacles, in the hazardous waste case the motivation is a lack of political and administrative capacity to deal with the policy problem domestically.

Conclusion

These simple short case studies were used for illustration purposes only. I do not claim to have accurately reproduced either the events or the political contexts. The goal of this paper is to make a theoretical argument and encourage discussion on my idea.

If the concepts of transdomestic and boomerang policy are accurate and can be helpful analytically, the question looms why no one has thought of them before? On one hand this could be a result of the analytical categories we are concerned with; either we study domestic politics or we examine international relations. On the other, it could be a consequence of policy makers' conceptions of politics; it is either domestic or foreign. As a result of both common views we are left with an interpretation of how the world works which leaves out very interesting phenomena. Since these artificial divisions – both in the academic sphere and in the policy world – are mostly analytical categories, we need to ask how politics works and adapt our categories to this reality. Thus, it is obvious that we need to address domestic sources of foreign policy, foreign sources of domestic policies, and policies that are neither purely domestic nor purely foreign.

Much has been written about domestic sources of foreign policy – much of it on American foreign policy – and following Putnam's piece on two-level games scholars of domestic politics cannot ignore effects of the international level anymore. But this scholarship is still build on the exclusiveness of the domestic and foreign categories. It only asks about the policy arena, but not whether the regulatory arena may be disjointed from the policy-making one.