Chapter One

Power and Global Governance

This chapter elaborates several Foucaultian concepts which are used analytically in the thesis. The first section introduces non-Foucaultian concepts of power and governance and explains why these are inadequate. It then outlines Foucaultian constructivism, focusing on concepts such as power, power/knowledge and archaeologies and genealogies of discourse, and argues that these are useful for analysing the emergence and framing of the ‘problematique’ of the governance of plant genetic resources. Key aspects of the Foucaultian ‘methodology’ which are elaborated in this chapter and ‘applied’ in subsequent chapters, include the following: an analysis of the ‘author function’; detailed historical analyses of macro- and micro-level practices and institutions; an identification of influential norms and ethical statements, the conditions conducive to the emergence of particular discourses and discursive formations, and commonly held views of the world; and a demonstration of examples of fluid, condensed and pastoral power.

This chapter also assesses the similarities and differences between a Foucaultian constructivist approach, and realist, neorealist and liberal institutional approaches to global governance. It suggests that the study of multiple sites of power in genealogical approaches is distinct from other schools’ focus on structural and state-centred power. There has been a greater recognition of non-state actors within liberal institutionalism in recent years, however. This chapter argues that there are some similarities between the concept of ‘learning’ in liberal institutional theory, and the creation of disciplined subjectivities and social movements’ political cultures using Foucaultian concepts, although Foucaultian constructivism does not assume pervasive rationality as a characteristic of actors’ behaviour. Analyses of epistemic communities within liberal institutionalism are also in some ways consistent with Foucault’s work on power/knowledge and his assessments of authors and experts’ ‘function’ in constituting discursive fields.

Power in realist and neorealist institutionalism

In contrast to Foucaultian concepts about the fluidity of power and the importance of power/knowledge in constituting interests and changing subjectivities, more orthodox theories in international relations take power and interests as given. This section will outline two approaches — realism and neorealist institutionalism — and explain why these are not preferred over Foucaultian constructivism.

In traditional or classical realism, power is a central concept. State power is exercised rationally in the pursuit of a rarely problematised ‘national interest’. State power ranges from ‘great power’ or superpower strength, through middle and small
powers, to micro-states, with the smallest states being the weakest and least able to bargain effectively to promote their interests. Power is understood to be the capacity to exert influence or change behaviour. Some commentators see the current distribution of power in the international system as unipolar, with the United States in a pre-eminent position. All states, whatever their size and capacity, are considered pre-occupied with political vulnerability, competition, conflict and threats, and seek to promote their security through the acquisition of various forms of power (military, economic and social). States’ behaviour is seen to embody ‘state-of-nature’ individualism, including its insecurities and competitive tendencies. Dominant states are thought to be pre-occupied with revisionist threats to the international order, although these are usually seen to emanate from other states rather than more complex processes such as unsustainable consumption patterns and global ecological degradation. In realist political economy, weak states rely on mercantilist policies and strategies within international institutions in an attempt to redress their relative weakness. This is said to have occurred in the 1970s when weak states promoted the ‘new international economic order’. This type of argument could also be raised to explain state behaviour concerning plant genetic resources in the FAO and the CBD, although this is discounted in Chapter Four and Five.

Traditional realism derives largely from writers such as Thucydides, Machiavelli, Hobbes, Carr and Morgenthau. Morgenthau was particularly emphatic in distinguishing realism from normative and legalistic approaches to international relations, arguing that objective ‘constants’ in the global system included a prudent and pervasive rationalism amongst foreign policy-makers, national interest defined in terms of power which is asserted as appropriate in the prevailing political and cultural context, and units of action which are states but may include larger configurations. Domestic politics are less important than relative power within the international system. Morgenthau suggested that where normative considerations could be used to explain international behaviour, this may only be a pragmatic rationalisation for other actor-specific motivations, and in any event would be subordinate to national interest and state power considerations. This approach suggests that the United Nations was effectively paralysed for most of the Cold War period because of the prevailing balance of power in the international order.

Realists tend to agree on several other assumptions. These are that the

international system is anarchic, with states being independent sovereign entities interacting in the absence of structurating normative constraints, that states are coherent units and the primary actors of importance in the international system, and that inter-state co-operation or power balancing can maintain stability within the system. Furthermore acts of war and self-defense are legitimate where the use of force is necessary and proportionate to the threat facing the security of the state. Realism tends to assume recurrent truths or laws about the international system although state forms may be historicised. Realists suggest that states’ rationalist calculations are comparative, and that actions are taken following consideration of possible gains and losses, since states’ primary considerations concern survival and well-being. This discourse also assumes that societal security, based on the security of national identity, and domestic order and stability, is co-terminous with the security of the territorial state. Realists also suggest that since institutions are only based on the self-interested assessments of influential states, they have no independent effects on state behaviour.6

Realism is an inadequate framework for various reasons. It does not adequately explain how state interests are constituted, and does not accord adequate recognition to normative considerations, although the ‘English school’ international society approach characterised by Bull’s work, is better in this respect.7 A norm in international relations and international law is a standard, rule, obligation or duty which is widely accepted as binding,8 and the breach or threatened breach of which is likely to bring sustained international pressure for corrective action. International norms define behaviour which is expected and required by the international society of states at any given time. International normative co-operation is evident when the member states of the UN negotiate resolutions and decisions under international agreements, develop work programs and monitor their implementation. Non-state actors are often involved. Most international instruments open with preambular paragraphs which consider agreed norms, reaffirm commitments, emphasise responsibilities, recall instruments, and express deep concern about pressing issues. The development of national plans or strategies or the passage of legislation is a common mechanism for the domestic or regional implementation of agreed international norms and principles. Monitoring of compliance and the implementation of many resolutions and reports occurs within the UN with follow-up reports, mid-term reviews, and other assessments. These processes effectively create archives of normative statements and standards which can be asserted politically by UN members, NGOs and other commentators seeking to progress, comment or block an issue or approach at whatever level. But realism cannot account adequately for the influence of such normative considerations, as it sees struggles for

8 In order for state practice to be considered customary law, states manifesting opinio juris, must consider that they are bound to behave consistent with an international law norm: Lotus Case (1927) PCIJ Ser A No.10; North Sea Continental Shelf Cases 1969 ICJ Rep.
power as the basis of inter-state co-operation.

Thus realism cannot explain inter-state co-operation in the absence of power-balancing considerations. The political economy of biotechnology cannot be explained by traditional realism. It is characterised by the dominance of a few major transnational agribusiness and pharmaceutical corporations, and both public and private sector research and development activities involve transnational collaborative agreements. Realism also gives inadequate attention to transnational institutional and non-governmental discourses and activities which can influence the formulation of ‘the national interest’. Realism does not appreciate the variable extent to which domestic and transnational organisations in civil society can be integrated within state-society complexes, or the complexity of state formations.

A variant of classical realism, structuralist neorealism, is exemplified in the works of Kenneth Waltz and Robert Gilpin. Waltz develops an international system-level theory of structural balances of power under conditions of anarchy; Gilpin sees long cycles in history with political and economic instability tending to follow hegemonic decline. This approach also gives little credence to the influence of institutions and norms on international behaviour, beyond analysing norms and policy preferences based on power and interest for leading hegemonic states. The international system creates its own constraints largely independent of domestic forces. Material considerations tend to have paramountcy over ideational or constructed perceptions, and it is assumed that the basic features of the international system endure. Neorealism sees relative state power, and international coercion or incentives as the constituting influences in changing state behaviour, rather than norms being determinative. For example, neorealist ‘hegemonic-stability’ regime theorists argue that when hegemons decline in power, multilateral co-operative institutions weaken and may become unstable. This is also not currently a dominant approach in international environmental politics and global governance, and it is clearly inconsistent with the approach taken in this thesis. Neorealism fails to appreciate the significance of normative transformation and the political implications of such change. It cannot explain new forms of political community such as local-global networks, the international significance of domestic or transnational political movements or the reducing significance of traditional military conceptions of security and power. These issues can be better addressed with Foucaultian constructivism.

**Liberal institutionalism and states**

Liberal institutionalism, in contrast to realist and neorealist approaches, attempts to address a relatively new (twentieth century) feature of the international system: the extensive institutionalisation of co-operative activity. Unlike realism and neorealism, this approach does not assume that institutions are mere epiphenomena and have no significance independent of members’ relative power and influence. But liberal institutionalism nevertheless is significantly different from Foucaultian constructivism because the former assumes that states interact in a rational manner. Liberal institutionalists examine complex interdependencies and seek to explain how and why rules, norms, and procedures are rationally agreed to by states in relation to an issue area. Liberal institutionalists tend to assume that self-interested aggregates of individual actors (with states being the primary actors), interact in the international system according to capabilities, incentives and constraints, and reach decisions by rationally pursued consensus. This mirrors the classic positivist view in international law that states create international norms by reaching consent on the content of a rule in the exercise of rational voluntarism.13

Liberal institutionalists argue that sets of rules and procedures developed by and between states can acquire a life of their own, and can have interactive effects, depending on the relative distribution of power and interests within and without the institution.14 ‘Regime’ used to be a more commonly used term than institutions or governance, but institutionalism is currently the ascendant term. Krasner, one of the more conservative regime theorists, defines regimes as the set of implicit or explicit ‘principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue area’.15 Regimes can constrain states’ short-range self-interest and can influence long-term policies, with regime injunctions being the focal point around which actors’ interests converge. Keohane defines an institution as ‘a general pattern or categorization of activity’ or ‘a particular human-constructed arrangement, formally or informally organized’. Institutions involve ‘persistent and connected sets of rules that prescribe behavioural roles, constrain activity, and shape expectations’.16 To Keohane, institutions matter because they can influence governments’ behaviour. They may affect the incentives and costs facing states and they may shape states’ understandings of their roles and others’ motivations and interests.17 The sorts of benefits that states’ assess rationally, when determining their

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co-operation within institutions, include lower transaction costs, increased access to information, increased credibility concerning commitments, the creation of focal points for co-ordination, and the facilitated operation of reciprocity.\(^{18}\)

Liberal institutionalism suggests that states make rational decisions about their relations with other states in situations of constraint, scarcity and competition. These assumed characteristics of international relations — constraint, scarcity and competition — are rarely problematised within liberal institutionalism. Many taking this approach tend to analyse interactive co-operation amongst actors in given issue areas, ‘consistent with a conservatively adaptive attitude towards the existing structures of world order’, rather than analysing longer-term normative contexts.\(^{19}\) But this approach does suggest that because states are rational actors, regimes are not merely epiphenomena, and can influence international outcomes. Various factors influence the extent to which states will enter regimes and comply with them. International legal and political co-operation is dependent on rational calculations and perceptions of common interest.\(^{20}\) This is seen as a constant feature in the Westphalian inter-state order. Within liberal institutionalism, constraints on agency can include assessments of transactions costs and benefits, social forces such as nationalism and ideas of national interest, sovereignty, military and economic power, public attitudes, incomplete knowledge, and the effectiveness of institutions.\(^{21}\) But these constraints do not alter the fundamental assumption that states are rational egoists who will co-operate to the extent that it serves common and unilateral interests, and state power.\(^{22}\) Liberal institutionalism makes assumptions about ‘the structure of utility functions and the formation of expectations’, the importance of context, and the limitations on the cognitive capacity of decision-makers.\(^{23}\) The level of monitoring, surveillance and verification, the strength of the sanctions facing subject parties, and the acceptance of intellectual and socio-political norms and rationales embodied in the regime, can also influence the strength and effectiveness of a regime.\(^{24}\) The availability of benefits which can accrue to states from co-operation, including the identification of focal points and information, lower transaction costs, reduced incentives to cheat, and the provision of reciprocal benefits are also important.

Within liberal institutionalism, Young argues that analysts assume that parties act as self-interested ‘autonomous’ negotiators, but not necessarily in a utilitarian sense. Keohane is more utilitarian. Young suggests that regime formation is often


\(^{22}\) Keohane and Martin, ‘The promise of institutionalist theory’, at pp.39, 42.

\(^{23}\) Keohane, ‘International institutions: two approaches’, p.381.

characterised by integrative (or productive) bargaining over a few identified key issues on a 'contract curve or negotiation set', with parties often linking negotiating positions with other contemporaneous events. Young also suggests that institutional bargaining is most likely to succeed where negotiating parties have their aspirations for equitable outcomes met, clear and simple solutions and effective compliance mechanisms are available, the negotiating context is one of crisis or exogenous shock, and effective leadership or international entrepreneurship emerges. Young and Osherenko have undertaken a large collaborative research project which tests a range of hypotheses about regime formation. The hypotheses are concerned with states’ behaviour and role and include power-based hypotheses, interest-based hypotheses, and knowledge-based hypotheses. Knowledge-based hypotheses (examining scientific knowledge and values) were found to be significant in four natural resource or environmental case studies. List and Rittberger have also examined various explanations for regime formation. These included co-operation to resolve conflicts over particular issues, game-theory models, normative-institutional factors, epistemic communities and systemic factors including power configurations and the density of transactions amongst relevant actors. They concluded that no explanation of itself adequately accounted for the formation of environmental regimes. Normative-institutional factors and epistemic communities were supportive conditions rather than primary causes of regime formation.

These hypotheses and findings are not scrutinised further in the thesis for various reasons. The first is that the primary aim is to explore and ‘apply’ Foucaultian constructivist methodologies which assesses institutional outcomes in power/knowledge and political terms. A related reason is that liberal institutionalists’ typology of power, interest and knowledge as distinct categories of causative factor is inconsistent with the approach taken in the thesis. Their assumption of unitary state action is also inconsistent with Foucaultian constructivism. It is also inconsistent with well-recognised separations of executive, judicial and legislative power in many liberal democratic jurisdictions, and where the exercise of any or all of these forms of power may have international political implications. International norms and principles can have differential effects within states, and are heeded to differing extents by different arms of governments. The suggestion that states assess decisions in terms of means and ends also leaves little room for serious analysis of discourses and the discursive delimitation of options, the power of political movements, culture-specific preferences, changing norms, historically-conditioned roles and supportive or marginalising tendencies within formal and/or informal coalitions of political actors.


Foucault and power

Foucault’s approach to the location of power was referred to briefly in the introduction. But to reiterate: to Foucault, power is ubiquitous, fluid, and exercised in all sorts of social struggles — both those which reproduce social alignments and which seek to change them. Foucault sought to understand ‘the movement and clashes of historical practices that would impose or resist structure ... the endless power political clashes of multiple wills’. Foucault criticised overemphasis on juridical power (such as inherent in constitutions and sovereignty) and Marxists’ assessments of ‘the state apparatus’. He said that analyses of power ‘necessarily extend beyond the limits of the state’ because the state can only operate on the basis of already existing power relations:

[...] the state is superstructural in relation to a whole series of power networks that invest the body, sexuality, the family, kinship, knowledge, technology and so forth. True, these networks stand in a conditioning-conditioned relationship to a kind of ‘metapower’ which is structured essentially around a certain number of great prohibition functions; but this metapower with its prohibitions can only take hold and secure its footing where it is rooted in a whole series of multiple and indefinite power relations that supply the necessary basis for the great negative forms of power.

He also referred to ‘grass-roots’ power and ‘fine-meshes of the web of power’, exemplifying his view that power does not emanate from the sovereign or other hierarchic structures, but is rather manifest in multiple sites and in various ways. It also has variable effects. Power can be exercised to influence the actions of others, and can be hierarchical, concentrated and dominating, such as when exercised through governmental instruments, techniques and procedures. Or it may be dispersed, such as when individuals affect other individuals’ actions or resist the exercise of others’ power. But much of Foucault’s later work focused on the governance of individuals through their own personal ethics, and this was based on analyses of how those ethics or subjectivities were formed. In this sense, power is constitutive and can be empowering. Foucault’s genealogies of discourse and ethics are discussed below. He also analysed the pastoral power of non-state actors, and the interlinkages between power and knowledge. He argued that power is exercised through power/knowledge and through the discursive construction and representation of issues. Subjectivities and political identities are constituted by discourses and social practices. What is considered ‘truth’ is constituted by networks of power relations and formations of discourse.

Foucault’s views on power contrast with the range of views within realism and liberal institutionalism, which see states as the most powerful actors in world politics,
and fundamentally driven by innate human insecurities or rationalities which are extrapolated to the level of the state is discussed in the Introduction.\textsuperscript{33} Foucaultian approaches also contrast with neorealistic approaches which see the relative distribution of power amongst states at the global level as fundamentally determinative of international political outcomes.

Foucault’s views on power and subjectivities are relevant to global governance although Foucault did not address international issues in any depth. To the extent that discourses have coalesced into ‘hard’ international law, they may embody norms which are considered binding on states. But international law also includes many framework instruments which are binding, yet without mandatory obligations, as well as soft law instruments of a non-binding character which include ethical standards and principles. The influence of international law on domestic or municipal law is primarily determined by the common law and constitution of each state and thus may vary from direct incorporation, to non-incorporation without express legislative action. The common law and constitution may influence the extent to which particular arms of government are constrained by international law as the effect of international law on military, executive, legislative and judicial power is dependent on municipal law and domestic politics. Although municipal law cannot be a defence to non-compliance with treaty obligations and customary law also binds states even in the absence of treaty ratification, these forms of constraint are less important to Foucaultian analyses than the internalisation of norms, the modification of practices by diverse actors, and the many other techniques of governance exercised by international institutions. The monitoring, reporting, funding, conferencing, meeting, and interneting: these are modalities of governance of more interest in Foucaultian approaches.

The thesis argues that while a range of stakeholders exercise power, this occurs primarily through the agency of organisations such as NGOs, universities, corporations and business associations, treaty secretariats and other international institutions, and government agencies concerned with natural resource management and industry policies.

\textit{Power and archaeologies and genealogies of discourse}

It should also be noted at the outset, that Foucault’s books, and other published materials such as lectures and interviews, are not an entirely consistent and coherent body of concepts and analytical tools. Nor did Foucault purport to prescribe a ‘methodology’ for others to follow. His works are particularly complex, and often opaque, and his interests and emphases changed over time. Foucault’s works tend to be categorised as falling within his archaeological and genealogical periods, although there are some similarities between works produced during both. His genealogical period

produced *The History of Madness, The Birth of the Clinic, The Order of Things*, and *The Archaeology of Knowledge*.\textsuperscript{34} These books examine discursive practices and epistemes. Epistemes are like world-views — structures of thought and reason which are common within a historic period.\textsuperscript{35} They provide analyses of discursive fields by ascertaining the historical specificities of their occurrence. They suggest why it is that particular statements gain ground at the expense of others, and why it is not possible for some approaches to issues to be taken seriously within prevailing discursive formations.\textsuperscript{36} Foucault described historically situated fields of knowledge as ‘discursive formations’ — being formations which enabled particular discourses to become known and taken seriously. He argued that power produces fields of knowledge, but that knowledge also presupposes and constitutes power relations. Therefore power and knowledge are inter-linked and mutually constitutive. Foucault’s archaeologies included more analyses of the conditions that were conducive to the emergence of particular discourses than did his genealogies. Such conditions alluded to in the thesis include the development of the field of molecular biology, world population and natural resource trends which are variously constructed, and the institutional status of technoscientific solutions to environmental challenges.

Foucault explained the distinction between archaeologies and genealogies during lectures at Berkeley in 1983. Archaeologies involve analyses of events or sets of events and discourses. Access to knowledge, and thought, is only possible through discourses. Archaeologies define the field from which genealogies can later be drawn. Genealogies show how discourses and events have determined our present and ourselves, including our knowledge practices or relationship to others. A genealogy, including analyses of subjectivities and internalised norms, follows after archaeological analysis.\textsuperscript{37}

Foucault suggested that genealogies showed how ideas were ‘willed to truth’ through the works of ‘authoritative authors’ who perform an ‘author function’. This ‘author function’ or discourse function, legitimated the ownership, classification, circulation, dispersal, valorisation and appropriation of discourses.\textsuperscript{38} On the other hand, Foucault was not interested in canonising particular authors, and agreed with Nietzsche that knowledge also evolved by chance, surprises, and through argument and competition.\textsuperscript{39} Following Nietzsche, Foucault also suggested that genealogies do not seek to uncover linear progress in history, nor the origins of particular discourses:

\begin{itemize}
\item \textsuperscript{35} Foucault, *The Archaeology of Knowledge*, p.191.
\item \textsuperscript{36} Foucault, *The Archaeology of Knowledge*, pp.27-28.
\item \textsuperscript{37} ‘Crampton, J. <jcrampto@osf1.gmu.edu>, ‘Archaeology versus Genealogy: ‘Foucault on the care of the self’ lectures at Berkeley April 12 and 19, 1983’, History of the Present (HoP-L), <HOP-L@YORKU.CA>, 27 Feb 2000.
\item \textsuperscript{38} M. Foucault, ‘What is an author?’ in *The Foucault Reader*, pp.101-120 at pp.107-110.
\item \textsuperscript{39} M. Foucault, ‘Nietzsche, genealogy, history’ in *The Foucault Reader: An Introduction to Foucault’s Thought*, pp.76-100 at p.78.
\end{itemize}
A genealogy of values, morality, asceticism, and knowledge will never confuse itself with a quest for their 'origins', will never neglect as inaccessible the vicissitudes of history. On the contrary, it will cultivate the details and accidents that accompany every beginning.  

The main bodies of philosophy, norms, literature and campaign material which comprise the ‘discourses’ which are analysed throughout the thesis are examined in Chapter Two. This is a contemporary overview. More detailed historical examinations (or archaeologies and genealogies of discourse) are provided in Chapters Three, Four and Five. Chapter Six focuses more on the potential use of coercive power to secure intellectual property rights and trade law reform (both north v. south and south v. north) rather than on knowledge/power.

Power and subjectivity or the diffusion of ideas and learning

Foucault suggested that power/knowledge and political identities (or subjectivities) were historically contingent, and constituted by sciences and their social practices (such as medicine), systems of regulatory power, and long-standing social discourses such as philosophy and religion. He explored the constitution of subjects within an historical framework. He did not study ideologies, but ‘problematiques’, such as madness, illness and sexuality, and the social practices by which they were constituted. He suggested, as with archaeologies, that genealogical readings of discourses show how they were formed in spite of systems of constraint, and what their specific norms and conditions of appearance, growth and variation were. He also examined the normative guides which were used by ‘subjects’ to assess their behaviours and to constitute themselves as ‘ethical subjects’ within particular cultural contexts and historical periods.

There are some parallels between Foucault’s approach to discourse and subjectivity and constructivist approaches in the international relations discipline which draw on Anthony Giddens’ ‘structuration’ theory to analyse the ‘structurating effect’ of institutions. This has been explained by Wendt as involving co-determination, with agents and structures being mutually constituted yet ontologically distinct. Agents are conceptualised in terms of the relationships by which they are defined, and social structures are seen to exist through the actions of the agents and practices which constitute and reproduce them. As noted above, Foucault saw the agent-structure debate in terms of textual creation and recreation, suggesting that agents are constituted by the definitions and qualities ascribed to them, and which they reproduce or react against. Discourses are the context within which action takes place. Foucault suggested that discursive power produced human beings as agents, but also as bearers of the power by which they were rendered ‘normal’ subjects. Subjects do not exist prior to

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40 Foucault, ‘Nietzsche, genealogy, history’, at p.80.
discourses but are constituted by and can be empowered or marginalised by them.

This somewhat complex theoretical point is explored in several chapters. The agency-structure debate is shown to be relevant to an analysis of the impact of social movements and non-state actors on states and their mutually constituting interactions with global discourses, as explored further in Chapter Three. Discourses and norms can shape and influence macro- and micro-level interactions and subjectivities. They also contribute to the social structuring of human and institutional behaviour, particularly when states and other actors internalise norms, or bring their policies, legislation and practices into compliance with the norms and standards that discourses convey. The constitutive effect of global discourses in producing significant social change is examined in Chapter Three. In other chapters the constitutive effect of state-centred security discourse is examined, particularly in relation to addressing the problem of genetic erosion.

Foucault also applied the term ‘genealogy’ to intellectual and popular memories which could be used strategically in ongoing struggles. This use of ‘popular memories’ is relevant to the construction of politicised social identities, which are often essentialised. Through genealogies of struggle and popular memory, it is possible to demonstrate how identities come to be constructed. For example, the assertion of subject status as ‘gendered women’ in political practice can be seen as a constructed and historicised identity, an assertion of socially-located commonality to underpin a stronger political presence in political fora or other contexts. However, both post-modern feminism and critical race theory have unsettled the notions of unitary subjectivity and coherent identities which are found in liberal humanism and liberal feminism. Post-modern and post-structural ‘critical’ approaches highlight diversity and difference and problematise universalist categories. This critical approach suggests that indigenous peoples and women are not homogeneous social groups. Chapter Five suggests that this development is not yet reflected in international legal instruments concerned with human rights, the environment and the political identities of indigenous peoples and women, however.

Various academics have anticipated the splintering effect that critical approaches may have for social movements based on identity. Goetz argues that ‘women in development’ agendas should not be abandoned because of criticisms of privileging ‘women’, and urges instead that analysts focus on post-structural situatedness in the social with its relational/shifting/positional perspectives. Williams argues similarly that minority or gendered perspectives are not singular or essential, but are situational. She uses the example of the various possible identities: ‘male, Catholic, upper-middle-class black, upper-middle-class generic, upper-middle-class academic’ and argues that which one is relevant depends on the situation.44 This is the approach taken in the thesis.
recognises that the social movement of ‘gendered women’ is global, and linked clearly with the four major international human rights conferences sponsored by the UN on gender issues in the last two decades or so. The feminist movement involves identity assertions which take (and define) gender ‘as a political point of departure, as a motivation for action, and as a delineation of one’s politics’. The capacity for agency, choice of immediate identity, and self-identification is recognised in this approach. Chapter Three also suggests that the identity category and unitary subjectivity of ‘indigenous peoples’ in human rights fora draws on European Enlightenment self-determination discourse, as well as indigenous peoples’ constructions of their historical experiences.

Changing subjectivities are a theme for most chapters in the thesis. Chapter Four examines changing ideas about plant genetic resource conservation, and access and benefit sharing, and how these influenced plant genetic resource conservation policy within the FAO. The next chapter outlines contending arguments about the valuation of plant genetic resources and Chapter Four explores how these have influenced negotiations within the CPGR/CPGRFA. Chapter Three explores the mutually constituting, but uneven, interactions between human rights discourse, political agency and subjectivity. It also argues that resistance to discourses and agency can be a potential source of legal and political change. Numerous normative guides and ethical statements are referred to in the thesis. These include declaratory statements, guidelines and best-practice approaches issued by NGOs, academics and international institutions, and the pro-IPR position taken by most stakeholders. This exploration suggests that normative change arising from reactions against colonial experiences are requiring political actors to govern plant genetic resources with more sensitivity to the rights of indigenous peoples and developing countries. This is introduced in the next chapter, and elaborated further in Chapters Three and Five. Chapter Six also explores the potential influence of changing IPRs on scientists’ subjectivities.

**Power, resistance and the boundaries of knowledge**

Foucault’s genealogical works were more concerned with discourses, and how discourses created particular forms of subjectivity, than were his archaeological works. The latter were more concerned with discursive formations, although there were many overlaps in these two categories of his work. As noted in the introduction, discourses can be understood as language statements linked to social practices, which, when embodied within institutions, can be constitutive of ‘regimes of truth’ and exclusive boundaries of normalcy that define and delimit the range of perspectives constituting legitimate debate. Discourses can be created by, and productive of agents of knowledge (or knowledge brokers). Discourses can also legitimate practices, social

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positions, and the exercise of power, but they do not necessarily lead to hegemony, since power is dispersed across complicated and heterogeneous networks, and between and amongst contending discourses. Discourses can be ‘regulated internally’ through debates and commentaries, and externally by ‘access controls’.\textsuperscript{47} They manifest disciplinary power, in that legitimate and illegitimate concepts and norms can be created or constituted by them. Discursive practices include exclusionary practices, and norms and values in a range of fields which, following epistemic ‘ruptures’ displace other discourses and practices.\textsuperscript{48}

This concept of commonly-held epistemic views of the world, or inter-subjective understandings and constructed realities, can also be found in the works of several other critical, reflectivist and constructivist theorists.\textsuperscript{49} The concept is explored in several ways in the thesis. In Chapter Five, the exclusion of biological weapons and non-proliferation issues from debates about technology transfer and access to genetic resources, suggests an episteme of optimism about the potentialities of biotechnologies. The inability of ‘traditional knowledge’ to be taken seriously until norms of ‘racial equality’ and property rights were better recognised in influential jurisdictions is explored in Chapters Three and Five. In Chapter Five the conceptual and political boundary between ‘indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity’ and ‘indigenous peoples’ is explored. In Chapter Six, the exclusion of human rights norms from free trade discourse and governance by the WTO reflects a powerful episteme of utilitarianism and comparative advantage, as discussed in Chapter Six. The explanation which the thesis offers for the variable nature of the discourses which are dominant or excluded from particular international institutions derives not from rationalist liberal explanations of the logic of jurisdictional divisions, but rather from power/knowledge and boundaries which are inherent in governance institutions.

The plural nature of political power in contemporary global governance is further amplified in Foucault’s view that dynamic social interactions and contested power/knowledge are more characteristic of contemporary times than discursive hegemonies. Foucault suggested that power conflicts contribute to the development and reorganisation of knowledge, with political practices able to transform the conditions amenable to the emergence and functioning of particular discourses.\textsuperscript{50} This thesis agrees with Foucault’s approach. It demonstrates that sustainable development, security and human rights discourses often contend for the right to frame an issue, and conflicts

over these discursive claims influence the construction of the issues at stake. For example, the tension between self-determination discourse and state-centred security discourses is examined in Chapter Four. None of the discourses examined in the thesis are shown to be hegemonic. Rather, support for one discourse may be constrained by the political influence and implications of another. Moreover, the scope and content of most discourses is highly contested.

Agency, responsiveness and resistance needs to be accounted for within genealogies, because institutions and discourses are not wholly determining, and to argue so would be circular structuralism. Some of Foucault’s critics suggest for example that his approach denies or precludes the agency of individual human subjects. But one of Foucault’s aims was to unsettle coherent and stable identities and subjectivities. He suggested that resistance to identity construction could be liberating, and that the disruption of continuation and stability could liberate ‘divergence and marginal elements’. He also referred to physical (existential) political resistance and to living alternatively. Therefore the criticism about the denial of agency can be met if negotiation, mediation and uneven receptivity amongst the subjects of discourses are explored, as well as the capacities of diverse social actors to promote change and transformation.

Foucault did recognise that when ‘subjects’ articulated views contrary to those voiced within power/knowledge networks they were articulating a ‘counter-discourse’ and were practically engaged in a political struggle — a ‘theory-as-practice resistance’, or more-simply put, were ‘talking back’. This suggests that the diverse locations from which such actors can ‘speak’ and the diverse practices of resistance which they may pursue, can effectively disrupt the circularity of constituting discourses. Resistant practices may be influenced by cultural codes or any of a range of contending discourses, but this does not detract from the importance of signifying and representational practices, or the counter-discursive effects of human agents. He also suggested that power/knowledge networks might be usefully combined with local struggles and strategies to effect social change. For the purposes of this thesis, if NGOs and social movements promote a counter-discourse, or oppositional and critical positions in relation to dominant discourses, and if they are inspired by academic or intellectual critique, they are engaging in Foucaultian ‘theoretico-active’ resistance.

52 Litfin, Ozone Discourses, p.22.
Thus critics who see discursive structures as necessarily determinative, are overstating the circularity of Foucault’s approach. This is explored particularly in Chapter Three, where the continuing constitutive effects of human rights discourse is explored. The promotion of Farmers’ Rights, as explored in Chapter Three, is another example of resistant discourse. Developing countries’ successful legal challenges to extra-territorial United States’ environmental law is examined in Chapter Six. These are all examples of ‘talking back’ or discourse as practice resistance to asserted power/knowledge.

The broad-based nature of the human rights movement, and the utility of Foucaultian concepts in analysing it, also weakens the criticism that Foucault privileged the role of the intellectual in social change and gave insufficient attention to non-intellectual activities and daily life/common-person resistance. The criticism that Foucault privileged intellectualism is not sustainable. In the wake of the May 1968 riots in France, for example, Foucault argued that ‘the masses’ did not need intellectuals to articulate their concerns and mobilise resistance, and that intellectuals should realise that they were embedded in a system of power which rendered popular discourses less authoritative, and which rendered the intellectual an instrument of power. Foucault suggested that intellectuals should struggle against the forms of power that transform them into objects and instruments of ‘knowledge, truth, consciousness and discourse’; in effect to create counter-discourses against power.

In addition, Foucault saw ‘subjugated knowledges’ as a potential source of social critique. They are those blocs of knowledge which have tended to be concealed within systematised and functionalist theories, and considered inconsequential. Foucault argued that it is through the re-emergence of these low-ranking and popular knowledges, these disqualified knowledges, that criticism performs its work. He said:

Let us give the term genealogy to the union of erudite knowledge and local memories which allows us to establish a historical knowledge of struggles and to make use of them today ... to entertain the claims to attention of local, discontinuous, disqualified, illegitimate knowledges against the claims of a unitary body of theory which would filter, hierarchise and order them in the name of some true knowledge and some arbitrary idea of what constitutes a science and its objects.

The thesis is concerned with local knowledges that have had little recognition until the last couple of decades. As Chapters Three and Four suggest, traditional knowledges are being elevated from their former status as ‘subjugated knowledges’. The thesis argues that indigenous peoples’ common demands for recognition of the value of their customary practices, self-determination, and the capacity to share in the benefits of the exploitation of customary natural/cultural resources (where locally sanctioned), has been constituted by human rights discourse in combination with local

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struggles to reclaim land and self-determination. Local histories, cultures and traditions are also constructed and re-constructed in this process. It also argues that indigenous peoples’ representatives may essentialise their constituencies by emphasising their traditional knowledges and epistemologies of natural and cultural resources, but social change is also often recognised.\textsuperscript{61} This is explored in Chapters Three and Four.

\textit{Pastoral power and governance by non-state actors}

Foucault has been criticised for not addressing ‘condensed’ structural and sovereign/legal/juridical power sufficiently, because of his insistence on the dispersed nature of power. But in many ways Foucault did address condensed power. He examined juridical and disciplinary power and power/knowledge. As Hunt’s creative defence argues, Foucault’s accounts of institutions such as prisons, asylums and the professions were examinations of condensed power.\textsuperscript{62} One can also use his approach to demonstrate the constitutive effect of liberal discourses in empowering non-state actors such as private sector corporations and civil society within democracies and global politics, and in examining their contribution to global governance. Rose, for example, has argued that the rise of liberalism as a political philosophy inaugurated new linkages between state governance, expertise, and truth. Professional associations and knowledgeable experts became integrated with state policy-making, and authority became increasingly diffuse. Individual projects of self-mastery contributed, to produce in combination with expert knowledges, political freedom as a form of individual subjectivity, in liberal states.\textsuperscript{63} That political freedom underpins the capacity and legitimacy of civil society’s lawful activities, as well as legitimating the influence of industry associations in promoting industry views. The influence of these types of stakeholders, and the relative power they exercise, are explored in the thesis. The next chapter outlines the various discourses a range of stakeholders promote.

NGOs are enmeshed in the complex of institutions, procedures, tactics and strategies of international governance. Their activities are legitimated through the UN Charter’s recognition of consultative status for NGOs, and more general accreditation processes for attendance at meetings, recognition within other legal instruments, as well as through various institutional programs which involve NGOs in partnership arrangements. Corporations are also increasingly recognised as governance actors in the sustainable development field, as discussed below.

Foucault’s views on pastoral power as a component of governance are relevant here because they can be extended to the governance exercised both by states and NGOs. Foucault used the metaphor of shepherds and their flocks to describe the pastoral functions of governing entities, as were performed by a range of organisations

\textsuperscript{61} See this concern in, for example: D.J. Buege, ‘The ecologically noble savage revisited’, \textit{Environmental Ethics}, vol.18, no.1, 1996, pp.71-88.


in European forms of governance during the seventeenth and eighteenth centuries. Foucault linked the emergence of pastoral power to Christian discourses which had been declining in influence in its ecclesiastical institutional form, but which had spread widely in non-institutional forms.\(^{64}\) It was also linked to the decline of hereditary status under Feudalism and the impact of the Reformation in problematising the individual.\(^{65}\)

In eighteenth century Britain, for example, policing functions extended beyond maintaining peace and civil order to include many welfare and neighbourly functions, and such ‘policing’ was often performed by philanthropists and civic-minded citizens. This pastoral welfare was intended to aid the needy but also to serve the greater good of society, and continued over time to be incorporated within the welfare functions of modern governments and funding programs.\(^{66}\) This rationality of governance constitutes a moral purpose for the state which relies in part on non-state actors for its realisation. Foucault also saw this rationality of governance as premised on ideas about security and domestic welfare.\(^{67}\) These examples are sufficient to answer the criticism that Foucault did not address condensed power adequately because they show that discourses can confer legitimacy and power on particular social actors.

That NGOs and civil society are actors of growing importance within global governance is recognised by a wide range of non-Foucaultian commentators. These are mentioned here not for the purpose of arguing that a Foucaultian approach inevitably leads to different conclusions about the nature and location of non-state power. Rather they are mentioned because they show that other commentators are in effect agreeing with Foucault, that power is increasingly non-state-centred. For example, Wapner has argued that the activities of global civil society are able to alter and shape widespread behaviour by using cultural, social and economic networks. Non-state forms of governance can effect widespread change because states do not have a monopoly over the instruments that govern human affairs.\(^{68}\) Hempel has also explored this diffusion of political authority. He has argued that changes in ecology and in political economy flowing from increasing trade and investment leads to a devolution of power and authority away from the nation state and toward greater reliance on supranational, regional and local levels of governance, with an increasing role for NGOs. He argues that political institutions are ‘glocal’, that is, reflecting both global and grassroots implications of a biosphere in crisis and an economy straining to expand world markets.\(^{69}\) Lipschutz also predicts that civil society, organised via networks, alliances, coalitions and projects, both local and global, is likely to acquire increased functions and co-ordinating powers for environmental management alongside states and

\(^{66}\) Hindess, Discourses of Power: From Hobbes to Foucault, pp.118-123.
\(^{67}\) Gordon, ‘Governmental rationality: an introduction’, p.35.
\(^{68}\) P. Wapner, Environmental Activism and World Civic Politics, SUNY Press, Albany, 1996, pp.6-7.
governments. He defines governance as a ‘capacity to get things done without the legal competence to command that they be done’. Gordenker and Weiss similarly include non-state actors in their definition of governance: those ‘efforts to bring more orderly and reliable responses to social and political issues that go beyond capacities of states to address individually’. These and other NGOs’ power is strengthened through issue-specific coalition building and joint publications. The internet enables caucusing to occur prior to meetings and this can enhance influence. Some international lawyers have been less willing to recognise the changing role of non-state actors, partly because they do not have formal legal personality.

NGOs currently warrant a central place in any analysis of global governance because many have a global presence and operate with extensive international networks. Their contributions to global governance tend to be welcomed by most commentators. The most active NGOs working on genetic resources policy tend to be ‘northern’ and ‘western’, although there are some exceptionally active ‘indigenous’ NGOs based in G-77 countries. IPOs and gender-focused NGOs are introduced briefly in the section below on human rights.

One of the most influential organisations in global environmental governance is a quasi-NGO — the World Conservation Union (the International Union for the Conservation of Nature and Natural Resources). It has had an important influence on debates over biodiversity conservation and genetic resources policy. Established in 1948, the Union has played a key role in conceptualising and promoting sustainable development discourse. It has instigated and influenced the negotiation and implementation of many global and regional international environmental treaties and its categories of protected areas and endangered species are recognised in many countries. This has been an extraordinary contribution. In 1998, its members included 74 states, 110 government agencies and 743 NGOs, spanning 138 countries. Because of its government membership it is a quasi-NGO. The IUCN’s six global commissions have a combined membership of more than 10,000 volunteer scientists and lawyers. These commissions work in project teams and action groups, and promote community participation in biodiversity conservation and the sustainable management of habitats.


and natural resources.\textsuperscript{74} In addition to producing or contributing to global conservation strategies in 1980,\textsuperscript{75} 1991\textsuperscript{76} and 1992,\textsuperscript{77} the IUCN contributed to background papers on \textit{in situ} conservation for the FAO.\textsuperscript{78} It has provided significant technical assistance to developing countries on genetic resource policy development.\textsuperscript{79} The IUCN’s contribution to the evolution and implementation of the CBD is discussed in Chapter Five. The IUCN was also integral to the development of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and was its secretariat under contract to the United Nations Environment Program, from 1973 until mid-1984.\textsuperscript{80} In 1999 the IUCN was recognised as an official observer in the UN General Assembly.\textsuperscript{81}

The World Resources Institute (WRI) has also been closely involved in the development of global policy and national projects concerned with plant genetic resource conservation and use. Kenton Miller and Walt Reid moved from the IUCN to the WRI but continued their work on biodiversity conservation.\textsuperscript{82} The WRI, formed in 1982, is an independent not-for-profit corporation based in Washington D.C.. In September 1999 it had a staff of 125 from 20 countries. Its work program focuses on four basic themes: biological resource stewardship; atmospheric protection; sustainable enterprise; and sustainable development paths. The WRI is funded by private foundations, corporations, individuals, government agencies, and other cooperating organizations. It also has a Corporate Council with annual contributions of between US$10,000 and $100,000 for member corporations.\textsuperscript{83}

The WWF is the other most influential global organisation on plant genetic resource issues. The WWF is committed to protecting endangered spaces and species,
promoting co-management of natural and cultural resources, and responding to global threats to the environment. Formed in 1961, it has sponsored more than 2,000 projects in 116 countries. Its annual budget of US$300 million has exceeded that of both the United Nations Environment Program and the World Conservation Union. In 1996, WWF claimed 4.7 million supporters in a global network active in 96 countries. Its series of publications and policy documents on access to genetic resources have been influential internationally, and are discussed below in the section which profiles proponents of a high valuation for plant genetic resources. WWF and the IUCN have also been particularly active on co-management and indigenous peoples’ rights.

Many of the most active NGOs have academics or highly qualified staff or they may promote ‘expert’ views. For example, Henk Hobbelink, a Dutch agronomist, has published books on the potential impacts of substitute biotechnology products on Third World commodity exports. He founded Genetic Resources Action International (GRAIN), a reputable international NGO based in Spain. GRAIN promotes sustainable management and use of agricultural biodiversity, with a focus on developing country farmers’ local knowledge and control over genetic resources. Its position on many issues is similar to that of the Rural Advancement Foundation International (RAFI).

RAFI, formed in 1977, is one of the most active NGOs concerned with the socio-economic and political implications of IPRs, biotechnologies and their impact on rural societies, food security, and agricultural biodiversity. RAFI’s founder and Executive Director, Pat Roy Mooney, has been an activist on IPRs and plant genetic resources for more than twenty years. RAFI’s literatures denounce ‘biopiracy’, emphasising the ‘unjust enrichment’ reaped by multinational corporations following the creation of IPRs over products or processes to which indigenous peoples’ and local communities’ customary practices and knowledges have contributed. They also assess the possible impacts from northern agrobiotechnology developments on southern agriculturalists. RAFI has NGO consultative status with FAO, ECOSOC, and UNCTAD and attends many inter-governmental meetings as observers. It convenes international working groups on issues, has established a ‘Biotech Early Response Unit’ and has been a member of a project advisory committee within the International Board for Plant Genetic Resources (IBPGR).

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84 Holdgate, The Green Web: A Union for World Conservation, p.216.
87 See Seedling, GRAIN’s quarterly newsletter, backpage.
Many of the NGOs active on IPR and biodiversity conservation issues are based in developing countries. For example, the Third World Network (TWN), a not-for-profit international NGO, works on development and North-South issues. The TWN conducts research, participates in meetings and seminars, publishes popular and academic materials, and is engaged in pedagogics and networking. The TWN collaborates with the G-77 and the South Centre in Geneva. The M.S. Swaminathan Research Foundation based in India has published numerous monographs, consultancy reports and other material on plant genetic resource issues. Another activist research institute in India working on the protection of biodiversity, indigenous knowledge and peoples’ rights is the Research Foundation for Science, Technology and Ecology. Its director is Dr Vandana Shiva, a physicist, philosopher, ecofeminist, and prolific author. She also works closely with RAFI, GRAIN and the TWN.90 The African Centre for Technology Studies publishes numerous academic monographs on genetic resource issues. The influence of one of its former members of staff, Dr Calestous Juma, is noted in Chapter Five.

In addition to these large non-government actors there is a plethora of smaller NGOs working on gene technology issues. They have diverse priorities including agriculture, seed saving, patenting, food labelling, moratoriums, and public education. NGOs particularly concerned about food and food labelling issues include Consumers International, the Consumers Union, the Women’s Environmental Network (UK), Pesticide Action Network (PAN), Organic Consumers Association (USA), the Friends of the Earth Campaign for Real Food (UK), Campaign for Food Safety (Formerly Pure Food Campaign) (USA) and the Gene-Ethics Network. NGOs campaigning against gene technologies, genetically modified (GM) crops, and in favour of organic farming in the agricultural sector include the Soil Association (UK), ActionAid, Genetic Concern (Ireland), and The Pesticides Trust (UK). The biosafety debate is introduced further below, and in Chapter Five.

The exercise of pastoral power is explored at various stages of the thesis. The next chapter outlines the positions taken by many non-state actors in accord with their perception of promoting ‘good’ and briefly notes some of the project work they undertake. Chapter Five provides a brief case-study of the World Conservation Union’s

contribution to the development of the Andean Pact’s sub-regional regime concerning access to genetic resources and benefit-sharing. Chapter Five also notes briefly WWF’s involvement in facilitating the implementation of the CBD.

Some NGOs specialise in monitoring compliance with international wildlife trade instruments, providing funding and advice to parties, and publicising the illegal wildlife trade. The Trade Records Analysis of Fauna and Flora in Commerce (TRAFFIC), for example, is one NGO particularly active on wildlife trade issues, including the trade in endangered plants. It was formed by WWF and the IUCN. It monitors the international wildlife trade and makes recommendations to the CITES secretariat and parties accordingly. The CITES other ‘technical partners’ include the IUCN and the World Conservation Monitoring Centre (WCMC). The WCMC is an independent not-for-profit organisation that has more than 15 years experience in the field of biodiversity conservation. It provides information, data management and capacity-building services to a wide range of international inter-governmental and non-governmental organisations. The WCMC was established by the IUCN, WWF and the United Nations Environment Program (UNEP). The WCMC is the Secretariat’s consultant for the management of the computerised database of CITES trade statistics.91 One example of the type of project that NGO partners can undertake within the CITES framework is a study of the trade in medicinal plants in Europe. The project was to be carried out and funded by the CITES Scientific Authority of Germany, jointly with the Medicinal Plants Specialist Group in the IUCN’s Species Survival Commission and TRAFFIC.92

Transnational corporate activities and their environmental impacts have been relatively under-assessed in the governance literature, although state-corporate, and corporate-NGO strategies and partnerships for sustainability are attracting increasing attention.93 The International Chamber of Commerce and the Business Council on Sustainable Development suggest that they will play an essential role in any transition to a sustainable future,94 and some of the largest NGOs are developing partnerships to ensure it.

The internationally networked corporate sector has representation at many international meetings just like NGOs representing not-for-profit organisations. However, often corporate NGOs have the added advantage of significantly more

political leverage because of the pre-eminence of economic security and economic growth discourse for most governments. There are relatively few global associations that are active on plant genetic resource issues. The International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL) has membership of forty-four organisations involved in plant breeding, representing more than one thousand companies. Its membership is spread over thirty-one developed and developing countries, with most being developed.\(^{95}\) The Global Industry Coalition (GIC) represents more than 2,200 companies in more than 130 countries.\(^{96}\) Several key transnational coalitions of trade associations are active on intellectual property issues relevant to biotechnologies. These include the International BioIndustry Forum, which has members associations from Europe, Japan, the United States and Canada.\(^{97}\) The International Intellectual Property Alliance is an umbrella organisation of eight trade associations, the Pharmaceuticals Manufacturers Association, the Chemical Manufacturers Association, National Agricultural Chemicals Association and the Intellectual Property Owners Inc.\(^{98}\) The U.S.-based Intellectual Property Committee (IPC) worked with the Japanese Federation of Economic Organisations (Keidanren) and the European Union of Industrial and Employers’ Confederations (UNICE) to develop a consensus position on the intellectual property reforms it advocated during the Uruguay Round of international trade negotiations, as discussed in Chapter Six. The IPC includes representatives of more than ten leading multi-national corporations. Keidanren is a private, non-profit organisation representing many Japanese corporations, while UNICE represents 33 industrial and employer federations from 22 countries.\(^{99}\) The role of the Rockefeller Foundation and several major agribusiness corporations is noted in Chapter Four.

This thesis thus confirms the important role that scientists, academics and NGO representatives often play in domestic and international public and private sector advisory processes. Their contributions include public and private sector research and report writing, and participation in committees, expert panels, workshops and roundtables. Non-state actors participate in international meetings and conferences, can be members of government delegations, and/or lobby government negotiators. They may work in and with the secretariats of inter-governmental institutions. The extent to

\(^{95}\) International Association of Plant Breeders for the Protection of Plant Varieties, ‘What is ASSINSEL?’, accessed from <http://www.wordseed.org/~assinsel> 14 December 1999. Members are based in the following countries: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Croatia, Czech Republic, Denmark, Finland, France, Germany, Netherlands, India, Ireland, Israel, Italy, Japan, Kenya, Norway, New Zealand, Poland, Slovakia, South Africa, Sweden, Switzerland, United Kingdom, United States.


\(^{97}\) Europabio, Japan Bioindustry Association (JBA), Biotechnology Industry Organisation (BIO) (US) and Industrial Biotechnology Association of Canada, respectively.


which experts can contribute to state policy-making is partly dependent on the nature of
the state and the politics of the governments in which the experts are located. The
developed/developing state status is also important as experts and NGOs may be less
able to access funding to attend international meetings as easily as can developed
country NGOs — but this depends on the level of UN interest and voluntary funds
which are made available for particular issues.

Depending on the size, status and expertise of NGOs, they may have expert staff
or work more as knowledge-brokers. Litfin defines knowledge brokers as
‘intermediaries between the original researchers, or the producers of knowledge, and
the policy-makers who consume that knowledge but lack the time and training
necessary to absorb the original research’. NGO with consultative status with
ECOSOC can attend UN meetings and request permission to make interventions, can
obtain a grounds pass to enter the buildings where UN meetings are held, have access to
UN documents, and have greater opportunities to raise matters with government
delegates, other NGOs and UN staff. Accredited NGOs and other observers can
circulate publications, lobby, and seek media coverage in an attempt to influence policy
development. They can also input informally into treaty deliberations through
conference and workshop output, meetings and submissions. Meetings of the Global
Biodiversity Forum (GBF) may be particularly influential on plant genetic resource
issues. These are convened regularly by a range of collaborating organisations,
including major NGOs, smaller local organisations, convention secretariats and other
international organisations. These GBFs tend to address the themes of the inter-
governmental meeting they precede, and are intended to complement inter-
governmental processes by generating debate and progress on key issues, by facilitating
the airing of a broader range of perspectives, and by encouraging partnerships amongst
stakeholders. The formal and informal communications between the GBF convenors
and the CBD secretariat have ensured that any major NGO concerns about policy
directions and priorities have been conveyed to the CBD Secretariat. The CBD
Executive Secretary has acknowledged the assistance received from networks of
institutions and individuals with expertise and commitment to the objectives of the
Convention.

But ‘expertness’, particularly within UN environmental bodies, is no longer the
exclusive preserve of those with professional credentials or the support of a state or
well-funded NGO or corporation and discourses are reproduced by more than experts
and NGOs. These bodies are still undoubtedly influential, but increasingly since the
1980s indigenous people[s] and local communities are recognised as social actors in
international instruments and NGO policy documents having relevant local and
traditional knowledge for environmental governance purposes.
pluralities of knowledge have gained legitimacy as the ecological catastrophes that modernisation has wrought have become popular public knowledge, and norms of ‘racial’ equality have become more widely constitutive, as demonstrated in Chapter Three. Evolving international norms have been particularly important. One of the norms which has underpinned a growing recognition of the rights of indigenous peoples, is the norm of non-discrimination on the basis of ‘race’. Many commitments in international environmental treaty law, particularly since the early 1990s, are consistent with this norm, even though the particular activities recommended may not have the status of norms. For example, many governments have agreed at several meetings associated with the CBD, that indigenous and local communities’ traditional knowledge should be given the same respect as any other form of knowledge in the implementation of the Convention. Why and the extent to which IPOs and NGOs active on traditional knowledge issues are increasingly involved in the global governance of plant genetic resources are explored further in Chapters Three and Five.

‘Learning’ and international institutions

Both Foucaultian constructivism and liberal institutionalism recognise the power of knowledge-based networks. There are some similarities between the concept of ‘learning’ in liberal institutional theory and the creation of disciplined subjectivities and social movements’ political cultures drawing on Foucault’s work. Liberalism suggests that norms can be internalised, and interests redefined through ‘learning’. ‘Learning’ is one explanation given for regime formation and maintenance, and it necessarily involves research on epistemic networks, knowledge brokers, learning by a range of actors including institutions and states, and knowledge dispersal and feedback loops within political institutions and constituencies. Constructivism rather analyses the constitution of subjectivities through discourses, and suggests that identities are not often subject to rational or conscious control. Discontinuity, fragmentation and contradiction are also emphasised more in Foucaultian constructivism.

The influence of epistemic communities and the power/knowledge issue within liberal institutionalism may well be compatible with Foucault’s work on power/knowledge and the status of authors and experts. Institutionalists suggest that epistemic communities are instrumental, time and space-bound phenomena which respond to...
diverse issues in international affairs. Epistemic communities have been defined as ‘a network of professionals with recognised expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue area’. They can be politically empowered by their claims to expertise and motivated by their shared norms, principles, causal beliefs, and common policy enterprise. The numbers of people involved may be small — ‘typically under thirty-five people’. Epistemic communities can become strong actors at a national and international level. Their information may be sought by other politicised actors (and not just states), responsibilities may be delegated to them, and their views may be diffused transnationally through conferences, journals, collaborative research, and networking. Epistemic communities may be influential with institutional decision-makers in national bureaucracies and international secretariats. Epistemic communities can articulate cause-and-effect relationships, define interests, frame issues and linkages between issues, propose or formulate policies, assist with coalition-building, and work as ‘knowledge-brokers’ for the international promotion of policy-options. To the extent that ideas are diffused and accepted within the international system, epistemic communities are involved in a rational teaching/learning situation.

This literature suggests that international co-operation can be driven by the collective beliefs of transnationally-organised networks of knowledge-based communities as well as by state power, and that new international instruments can be negotiated even in the absence of a leading state. It suggests that international actors can learn and take new approaches to the many complex issues requiring technical and considered responses, and that epistemic communities can offer advice to those actors. The extent of epistemic communities’ influence is in turn predicated on the nature of the ‘structurating’ political and cultural characteristics of relevant states and institutions. Peter and Ernst Haas have suggested that epistemic communities will only be influential if the values of dominant decision-makers and epistemic communities concur, and if technical consensual knowledge exists which can be intersubjectively evaluated by secretariats, governments, and their advisory experts. In the absence of technical consensus, knowledge claims lack legitimacy and authority for

107 Adler and Haas, ‘Conclusion: epistemic communities, world order and the creation of a reflective research program’, p.380.
109 Adler and Haas, ‘Conclusion: epistemic communities, world order and the creation of a reflective research program’, at p.386.
110 Haas, ‘Obtaining international environmental protection through epistemic consensus’, p.349.
111 Adler and Haas, ‘Conclusion: epistemic communities, world order and the creation of a reflective research program’, at p.371.
decision-makers.\textsuperscript{112} Those communities which offer compromise positions to negotiating actors have been found to be more influential, and communities have not necessarily served the interests of a hegemonic power in the international system.\textsuperscript{113}

Haas suggests that epistemic communities are specific collections of individuals which can acquire institutional power and who share principles and beliefs.\textsuperscript{114} He asserts that the research methodology for demonstrating the impact of epistemic communities is painstaking but not complex. It involves identifying community membership, determining the community members’ principles and causal beliefs, tracing their activities and demonstrating their influence on decision-makers over time, identifying alternative credible outcomes that were foreclosed as a result of their influence, and exploring alternative explanations for decisions taken.\textsuperscript{115}

Foucaultian analyses can accommodate ‘learning’ analyses. Using Foucaultian approaches, analysts have described the disciplining and pedagogic techniques used by institutions to encourage compliance.\textsuperscript{116} International institutions ‘teach’ when they are involved with workshops, conferences and informational sessions, monitoring and reporting, and promote compliance with norms through disciplining resolutions, funding work programs, and other processes. These can provide positive learning experiences for participants, just as some of Foucault’s later work on techniques of governmentality which emphasised education for self-regulation and responsible autonomy, were intended to answer critics who saw nihilism and despair in his analysis of disciplining power.\textsuperscript{117} The role of teaching ‘experts’ is also recognised in international law. The writings of independent experts may come to be recognised as a source of international law over time. Sources of law include international treaties, international custom as evidence of a general practice accepted as law, the general principles of law recognised by civilised states, and judicial decisions. The teachings of the most highly qualified publicists of the various countries are a subsidiary means for the determination of the rules of law.\textsuperscript{118} This latter category may be relevant to expert writings as authoritative discourses which have constitutive effects within a Foucaultian approach. Chapter Five explores this teaching/learning/pedagogic strategy of governance in most detail, and in relation to governance by the CBD, but does not examine alternative legal texts as sources for interpreting the CBD.

\textsuperscript{113} Adler and Haas, ‘Conclusion: epistemic communities, world order and the creation of a reflective research program’, at pp.383-384.
\textsuperscript{115} Haas, ‘Introduction: epistemic communities and international policy coordination’, p.34.
\textsuperscript{117} C. Gordon, ‘Governmental rationality: an introduction’, p.4.
\textsuperscript{118} Statute of the International Court of Justice, Art. 38.
Power, inter-state negotiations and inter-state co-operation

Foucaultian constructivism uses different analytical tools from liberal institutionalism to analyse the effects of power in international negotiations. Liberal institutionalism tends to assess incentives, constraints, costs and benefits, and often uses prisoner’s dilemma game theory as an explanatory tool. Foucaultian constructivists prefer to use discourse theory. For example, Ashley, one of the first generation of critical theorists in the international relations discipline, suggests that state identities are primarily constituted in terms of national power, and that the discourse of political realism is constitutive of that reality — a reality made and re-made ‘in the regularized practices, techniques, and rituals of realist power politics’.\footnote{Ashley, ‘The geopolitics of geopolitical space: toward a critical social theory of international politics’, p.406. See also D. Campbell, Writing Security: United States’ Foreign Policy and the Politics of Identity, Manchester University Press, Manchester, 1992.} Several constructivist case-studies share this state-centricity. Several suggest that international norms can play a fundamental role in how states are socially constructed and interact, and that such norms are not simply weak constraints on more fundamental national interests.\footnote{See for example: A. Klotz, Norms in International Relations: The Struggle Against Apartheid, Cornell University Press, Ithaca, 1995.} In this thesis the influence of state-centred security discourse is noted on several occasions. These include the risks genetic erosion pose for economic-security, the potential biotechnologies offer for economic growth, the need to protect biodiversity for environmental and food security within states, the recognition of contracting parties in the case-study instruments, national reporting obligations and country-driven applications for state and multilateral donor funding.

Analyses of dispersed power and discourse is also brought to the study of inter-state negotiations in the case-study chapters of the thesis. Shapiro, Bonham and Heradstveit suggest that collective decision-making can be analysed by assessing the relative influence of various discursive practices where there are a variety of decision-makers who have variable impacts on the decision-making process. Rather than using an individualistic, psychological, cognitive map approach to the decision-making process, the authors investigated the ways by which discourses, configured as policy options, came to have dominance over competing discourses and policy options. Using a Foucaultian discursive frame of meaning, the authors suggest that there is no epistemological location independent of perceptions of it, and that such perceptions can be understood as ‘a kind of discursive package deal that is competing for adherents’.\footnote{M.J. Shapiro, G.M. Bonham and D. Heradstveit, ‘A discursive practices approach to collective decision-making’, International Studies Quarterly, vol.32, no.4, 1988, pp.397-419, at pp.400, 416.} Although their ‘discursive practices’ approach was applied in an analysis of intra-state negotiation in the first instance, using a case-study of oil drilling in Norway, it can also be applied to multilateral negotiations.

Conceiving of ‘understandings’ within a discursive rather than a psychological frame means that the attachment of a person to a point of view is a function of the acceptance — whether deliberate or unreflective — of an articulation of that point of view. An understanding is thus one among a variety of possible discursive practices within which policy choices are conceived, and
these practices can be thought of as preceding and comprehending any particular policy thinking in which an individual participant in the policy process may engage...

We see various ‘situations’ as reconstituted by the prevailing discursive practices, identified with the interpretations of some decision-makers or interested persons, competing for adoption. Within our discursive orientation, there is no ‘situation’ apart from the various construals and representations of it.122

This approach informs some of the analyses in later chapters. How coalitions of state delegations in international negotiations and meetings identify with discourses generated by academics, corporate actors and social movements is explored in Chapters Three, Four and Five. This exploration suggests that when issues are negotiated amongst states, the negotiating coalitions within the relevant multilateral institution may be ad hoc and transitory.

Fluid coalitions and other more stable coalitions of states negotiate within and outside the UN’s regional groups depending on the issues at hand. ‘Southern’ groups include AOSIS (Alliance of Small Island States), the Group of 77, the ‘Like-minded Group’, and Mercosur. ‘Northern’ groups include A-CAP, CANZ, the EU, the Group of 7, JUSSCANNZ, the OECD, the ‘Umbrella Group’, and WEOG. A significant number of groups include both donor and recipient states (North and South), including ASEAN (Association of South-East Asian Nations), the Cairns Group, the Miami Group, COBSEA (Coordinating Body on the Seas of East Asia), the Commonwealth, ESCAP (UN Economic and Social Commission for Asia and the Pacific) and SPREP (the South Pacific Regional Environment Programme).123

Influential discourses are produced by stakeholders from developed and developing states, and states in transition, and powerful coalitions can be formed across diverse UN groups and categories and transnationally amongst corporate, NGO and academic networks. Democratic and supposedly ‘hegemonic’ states have been defeated in their attempts to incorporate a social clause within the GATT/WTO Agreements. They succeeded on intellectual property rights, however. Thus the strength and effectiveness of ideas in effecting change has varied across several UN sites. But where G77 states have succeeded in having their agenda recognised in international instruments, the need for financial resources to implement the norms has been a consistent fetter on implementation. This will be demonstrated in Chapter Four in relation to Farmers’ Rights in the FAO. Thus the approach taken in the thesis differs from the Haas’ liberal institutional view that coalitions of democratic, hegemonic states, guided by ideas and information from universities, bureaucracies and advocacy groups, are most likely to lead other states and international institutions in ‘learning processes’.124

Foucault’s concepts of power fluidity and particularity are also relevant to the operation of many of the UN’s institutions because in each major area there are a multiplicity of organisations which may be working in a complementary or competitive

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123 See glossary.
way. In the human rights and sustainable development fields for example, there are scores of relevant UN bodies, and there is considerable overlap, duplication and lack of overall UN co-ordination.

The thesis will not pursue theoretical or practical questions about the effectiveness of individual negotiators involved in multilateral processes. If individuals regularly attend multilateral meetings they may build personal networks and loyalties to other participants and/or to issues which enables them to secure agreements or mobilise support more easily than newer participants, but a more important consideration is likely to be the ambit of the negotiating brief delegations take to international negotiations, and the discourse it represents. For example, Dr Tewolde Egziabher is the General Manager of the Environmental Protection Authority in Ethiopia, and has been actively involved in inter-governmental policy development about biosafety since 1991. He is the chairperson of the African group of delegates and was the chief negotiator for the Like-minded Group which comprises almost all developing countries involved at the biosafety negotiations in Cartagena in February 1999. Dr Egziabher also writes for and organises meetings with one of the most powerful G77 NGOs — the Third World Network. As such he is likely to be one of the most powerful G77 individuals on biosafety issues. But he has also been influential because of the position he represents, which has broad appeal to G77 states, for essentially normative and ideational reasons.

It is also not so important to examine individuals’ contributions because negotiations proceed according to the positions of negotiating groups and government briefs. For example, during the development of the biosafety protocol, after negotiations became seriously stalled, informal consultations were convened. Negotiating groups met in what was dubbed ‘the Vienna setting’. This meant that negotiations were conducted in roundtable format, with two spokespersons attending and representing each negotiating group, in an attempt to resolve differences.

The negotiating history of international instruments is important, however, for interpretation purposes. The international rules of treaty interpretation are specified in the Vienna Convention on the Law of Treaties. Under art. 31 treaties are to be interpreted according to their ordinary meaning and in good faith, with the context of its negotiation and its object and purpose aiding this interpretation. The relevant context also includes any agreement or other instrument relating to the treaty which was made between all parties in connection with the conclusion of the treaty, and accepted by the other parties as a related instrument. Other factors that may be taken into account


include any subsequent agreement between the parties regarding the interpretation of
the treaty or the application of its provisions, any subsequent practice in the application
of the treaty which establishes the agreement of the parties regarding its interpretation,
and any relevant rules of international law applicable in the relations between the
parties. Special meanings may also be given to terms if it is established that that the
parties so intended. The negotiating history of legal instruments, evidenced by their
travaux preparatoirs, are a justified supplementary source of evidence for interpretation
purposes to confirm an ordinary meaning or to resolve absurdity or ambiguity.\textsuperscript{128} So
inter-subjective understandings are a recognised component of international legal
interpretation. Norms and principles, and practices within the society of states, and not
just power, are important within international governance.

Conclusions

Foucaultian concepts of power/knowledge, and archaeologies and genealogies of
discourse are germane to an analysis of the role of diverse actors in global governance.
Foucault’s treatment of morality, subjectivity and pastoral power is particularly
appropriate for the processes by which professional associations and NGOs develop and
promote ethical guidelines and codes of conduct to regulate their activities.\textsuperscript{129} It is also
particularly relevant in explaining the influence of international norms in constraining
states’ behaviour under international law, since international law is not primarily based
on discipline and enforcement, but on consensual compliance with agreed normative
standards.\textsuperscript{130} Global governance is not just about states as actors in inter-state relations,
constellations of state power, and constraining political forces and aggregations of base
individual self-interest, as conventional realist analyses of international anarchy might
suggest.\textsuperscript{131} For this reason, rationalist governance theories which focus on cost-benefit
and game-theory calculations, and inter-state co-operation amongst self-interested and
self-maximising states according to capabilities, incentives and constraints, are noted
but not applied in this thesis.\textsuperscript{132} Rather the global governance approach which is used
recognises variable power — concentrated, coercive, normative and dispersed power —
and suggests that state-level power may be decreasing because the scope for
autonomous political action is increasingly constrained. As Agnew argues, history can
be analysed by examining the ‘changing spatiality of power’.\textsuperscript{133} This approach

\textsuperscript{133} Agnew, ‘Mapping political power beyond state boundaries: territory, identity, and movement in world politics’.
recognises the role of non-state actors and broader representational dynamics in the global political economy, as explored in the next chapter.
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