Delegating divisible sovereignty: Sweeping a conceptual minefield

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Abstract Delegating sovereignty to international organizations (IOs) is both increasingly common and controversial. I address the sources of current controversies in three claims. First, although alleged otherwise, sovereignty is eminently divisible. From practice, indivisibility should not be a barrier to delegating to IOs. Second, it is intuitive that longer chains of delegation will be more likely to fail. Yet, it is not the length of the chain per se that matters as whether identifiable conditions for successful delegation are satisfied. Third, although "delegation" is often used to refer to both, *delegating* and *pooling* sovereignty are distinct activities. Much of the concern with IOs is really about pooling rather than delegating sovereignty.

Keywords Sovereignty · International organizations · Principal-agent theory · Delegation · Pooling

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Delegating authority to international organizations (IOs) has recently been attacked by observers on the right and left. Conservatives, especially in the United States, charge that delegating authority to a supranational body or agency violates the Constitution. Certain powers, it is maintained, cannot be transferred to other parties. Even delegating partial authorities to IOs can lead to a lack of accountability and, ultimately, the decline of constitutional order. Conversely, progressives claim that delegating authority to a supranational body creates a democratic deficit and, in the

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limit, undermines the sovereign state that remains the most promising arena for liberal politics. At the extremes, right and left are joined in the claim that sovereignty is necessary for an authentic and accountable sphere of political action. Granting greater authority to IOs is anathema to both extremes, even while it is cautiously supported by moderates and is, indeed, slowly emerging "on the ground" in real ways.[1]

In this essay, I do not attempt to rebut fully critics of this evolving trend. Rather, I aim only to clarify analytic issues common to critics on both the left and right—to sweep a conceptual minefield, as it were.[2] After a brief review of the state of international relations theory and the critiques of delegation, I make three points of, I believe, general importance, each developed in a separate section below.

First, although often claimed otherwise, sovereignty is eminently divisible. Critics who assert the need to preserve or protect state sovereignty mistake a principle or myth for practice. Even though critics claim that dividing sovereignty will lead to a slippery slope down which it will erode even further, we have nearly four centuries of experience with disaggregating sovereignty into many forms. Yet, the principle is as robust today as ever. From practice, indivisibility or the fear of the slippery slope should not be barriers to delegating sovereignty to IOs.

Second, it is intuitive that "longer" chains of delegation will be more likely to fail. This intuition underlies much of the concern with democratic accountability. Since IOs are more "distant" from actual voters within countries, they will be more likely to abuse the authority they are granted and become rogue agents that act against the wishes of the citizens who remain their ultimate principals. Thus, anti-globalists criticize the independence of the World Trade Organization (WTO), just as nationalists worry about the United Nations or International Criminal Court usurping their rights. Yet, it is not the length of the chain of delegation per se that matters so much as whether identifiable conditions for successful delegation between the principal and multiple agents are satisfied. Although accountability is difficult to achieve and a real concern, delegation to IOs is *not* inherently more problematic or always more likely to fail than delegation to other types of agents in other settings.

Third, although the term "delegation" is often used to refer to both, *delegating* sovereignty to an IO agent and *pooling* sovereignty in an IO are analytically different activities. At the very least, delegating and pooling sovereignty pose distinct strategic problems for states and require different institutional solutions. In delegating to IOs, states grant an organization contingent authority to perform certain limited tasks. In pooling authority within IOs, states transfer the authority to make binding decisions from themselves to a collective body of states within which they may exercise more or less influence. Much of the concern with IOs is really about pooling rather than delegating, but the distinction is often lost in popular debate and even academic analysis.

1 The Minefield: IOs as Actors and the Problem of Delegation

In international relations, IOs have mostly been studied as institutions, or sets of rules that constrain and empower member states and serve to facilitate interstate

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[1] For examples, see the substantive chapters in Hawkins et al. (2006b), Pollack (2003), and Gould (2006).

[2] I borrow the phrase from Levy (1994).

cooperation.[3] This has been an extremely robust and fruitful approach for understanding interstate behavior as well as war, peace, economic openness, environmental cooperation, and other outcomes of world politics. In recent years, however, there has been renewed attention to IOs as actors in their own right. This was an important line of inquiry in the immediate post-World War II years, culminating in the study of transnational relations in the 1970s (Keohane and Nye 1977). Nonetheless, studying IOs as actors was overshadowed by the neoliberal institutionalist research program of the 1980s and 1990s (Keohane and Martin 2003). Prompted by the growth of the European Union, and especially the obviously important role of the European Commission, as well as the importance of "globalist" organizations like the WTO and International Monetary Fund (IMF), new attention is being placed on IOs as more or less autonomous and influential actors or agents in world politics.

There are two complementary strains of contemporary theorizing that conceive of IOs as agents. One constructivist line of inquiry extends the early bureaucratic politics model, first developed in the 1970s, to the international level.[4] In the primary study in this vein, Barnett and Finnemore (2004) examine the socially constructed cultures that bureaucrats within the IMF, the United Nations High Commissioner for Refugees, and the peacekeeping offices at the United Nations bring to their organizational tasks. The bureaucratic structures and philosophies of these IOs that both facilitate and limit their organizational competence are analogous to the standard operating procedures and bureaucratic politics of Allison's (1971) models II and III. Barnett and Finnemore demonstrate, for instance, that their disciplinary training as economists as well as organizational routines structure how employees of the IMF understand their proper roles and mandates and eventually came to intervene in the domestic economies of member states in ways that were explicitly ruled out by the organization's founders. In the view of Barnett and Finnemore, there is little doubt that the bureaucrats within the IMF qua organization are consequential.

The obvious critique of this approach is the same as that leveled against Allison's models II and III, namely that it is insufficiently strategic (Bendor and Hammond 1992). Although it characterizes bureaucrats as purposeful in seeking to maximize their autonomy and in pursuing their organizationally defined interests, the approach assumes de facto that states do not seek to counter opportunism by actors they at least nominally oversee and control. The approach largely fails to consider that autonomy may be endogenous, that states may select individuals of particular types to help accomplish their goals, and that what appears to be opportunistic action by organizationally-bound bureaucrats may be permitted or even encouraged by state members because it suits their interests. Rather than taking the dominance of economists within the IMF for granted, as do Barnett and Finnemore for instance, it may be that states intentionally populate the organization with economists precisely because their disciplinary training is likely to promote certain kinds of policy preferences that states favor. Indeed, as in the case of conservative central bankers,

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[3] This is the hallmark of neoliberal institutionalism. The founding work is Keohane (1984). For reviews, see Keohane and Martin (1995) and Martin and Simmons (1998). On neoliberal institutionalism relative to other paradigms in the field, see Katzenstein et al. (1998).

[4] On bureaucratic politics, see Allison (1971) and Halperin (1974).

states may select economists with more extreme policy preferences so as to enact policies that they favor in the long run but cannot themselves enact in the short run.[5] If so, states might protest the actions of the IMF as "too extreme" and it would appear that the bureaucrats were acting beyond their mandate in any particular case—suggesting at least at the rhetorical level that the bureaucrats had escaped control and were following an organizational interest against the wishes of dominant states. This often appears to be the case. But we are then left with the paradox of states continuing to fund and delegate authority to actors that are manifestly opportunistic. It seems unlikely that states would tolerate such rogue actors over the long term.

The second contemporary approach applies Principal-Agent theory as developed in economics and American politics to the study of IOs.[6] This has been an enormously profitable approach in explaining the organization and success of firms as well as the structure and functioning of government bureaucracies. By analogy, the IAEA is to the United Nations Security Council what the EPA is to the U.S. Congress: in both cases, a bureaucratic agent is delegated limited authority to perform certain actions (but not others) from a collective principal.

Stripped of its particularities, the PA approach focuses on the relationship between a principal that makes a conditional grant of authority to an agent that is empowered to act on its behalf.[7] It is precisely because bureaucrats are self-seeking with guile and often possess hidden information or take hidden actions that principals will seek to design carefully oversight and control mechanisms to limit opportunism by their agents. Delegation creates the possibility of more efficient policy implementation or even better policies than the principals themselves could enact (Hawkins et al. 2006a: 12–20). Yet principals must weigh these policy gains against the direct costs they must always incur of monitoring and controlling their agents and the indirect costs they frequently incur of slack or opportunistic behavior by agents they succeed in controlling only imperfectly. The PA approach does not imply that bureaucrats are always tightly controlled by their principals. Indeed, if delegation is more efficient, but oversight and enforcement are costly, principals may be willing to tolerate substantial shirking by their agents. Rather, the approach turns our attention to how principals optimize across the benefits provided by specialized agents and the direct and indirect costs they inevitably incur when delegating.

These two approaches, while distinct in the literature, are easily synthesized (see Tierney and Weaver in progress). The PA approach tells us when and where agents are likely to be autonomous, but relatively little about what the bureaucrats are likely to do with their independence. Constructivist accounts of bureaucratic interests fill in this gap, even as they have trouble accounting for variations in agent autonomy. A synthesis also suggests that agents may strategically manipulate their current independence to increase their future autonomy (Hawkins and Jacoby 2006). To fully comprehend how agency matters in IOs, it is necessary to examine the complete strategies available to both principals and agents.

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[5] On selection of extremists to solve credibility problems, see Rogoff (1985) and Lohmann (1992).

[6] For applications to IOs, see Hawkins et al. (2006b), Martin (2000), Tallberg (2002), Pollack (2003), and Nielson and Tierney (2003).

[7] For a definition of delegation, see Hawkins et al. (2006a, esp. p.7), and Section 3 below.

These analytic issues in international relations theory intersect with real world debates over delegation to IOs, and particularly the questions of democratic accountability and U.S. constitutional law. The analytic questions of what gets delegated to whom, how tightly controlled agents are by their principals, and what agents are likely to do with the autonomy they receive are central to debates over whether IOs can be held accountable and whether delegation is consistent with constitutional requirements. The key difference is that where these remain research questions for analysts, critics of delegation have already arrived at answers, oftentimes prematurely.

The question of democratic accountability has been raised most forcefully in the case of the European Union, but it also figures in the demands of anti-globalization protestors for reform of the WTO, IMF and World Bank.[8] Critics charge that these IOs are increasingly powerful and beyond the control of citizens. Supporters claim that states remain in control, but that some compromises in their sovereignty are necessary to achieve superior outcomes. There are many dimensions to the debate, but two issues figure prominently. First, both critics and supporters confuse delegation of authority to and pooling of authority in IOs, which I discuss in Section 4. Second, critics of delegation assume implicitly that the length of the delegation chain linking individuals (principals) to actual decision makers (agents) is necessarily longer and more likely to fail when they involve IOs. This is the focus of Section 3.

Generalizing the problem of democratic accountability, anti-globalists decry the loss of sovereignty through delegation and argue that only within sovereign states is a truly authentic politics possible.[9] In this view, a unique feature of the post-Cold War world is the undermining of state sovereignty, captured in reflectivist critiques of the inviolable and indivisible nature of sovereignty.[10] Particularly important, in this approach, is that the loss of sovereignty invites new forms of external intervention, which corrupt politics both within the targets of that intervention but also in the interveners. Absent a world government that can effectively aggregate public desires and control the behavior of all, the most efficacious arena for progressive politics remains the sovereign state. Only within such self-contained polities, it is claimed, can popular will eventually bind and limit political power. Although their shouts and street demonstrations lack the thoughtfulness of the academic critics, this is in essence the same position taken up by the anti-globalization protestors, who in assaulting the WTO, IMF and other international organizations implicitly call for a return of effective policy-making to national bodies where a more "balanced" constellation of interests—and especially progressive interests—are expected to have influence. In actuality, however, sovereignty has always been divisible and limited by international law and restrictions imposed by other countries; sovereignty has never been what its advocates claim it to be, an argument developed in the next section below.

Delegating to IOs also raises particular issues in U.S. constitutional law. The "new sovereigntists," a label coined by their critics, are concerned to maintain the integrity

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[8] On the democratic deficit in Europe, see among others, Held (1996), Moravcsik (2004), and Schmitter (2000).

[9] On sovereignty and progressive politics, see Bickerton et al. (2006). For a similar argument, focusing more directly on limits on intervention, see Thompson (2006).

[10] Reflectivist critics of sovereignty include Ashley (1986), Ruggie (1993), and Wendt (1992, 1999).

and sanctity of the Constitution unencumbered by international law, organizations, or even norms.[11] In their view, the primacy of the Constitution requires that all treaties be non-self-executing and judges should neither appeal to nor cite international law or the laws of other countries in their opinions.[12] At root, the concerns of the new sovereigntists stem from the special and exceptional role of the Constitution in American society (Spiro 2002: 201). Without a common ethnic, religious, or other unifying heritage, the Constitution rivals perhaps only the flag as the national symbol and political touchstone of the United States, and in the views of many conservatives it should not be subordinated in any way to foreign actors or law.

Like those who decry the lack of democratic accountability in Europe and IOs more generally, however, the new sovereigntists assume uncritically that chains of delegation that extend to international agents are necessarily more fragile and confuse delegation with pooling of sovereignty. The new sovereigntists also assume, however, that sovereignty is indivisible, and that any delegation to an IO inevitably weakens the whole. In this view, delegations of sovereignty threaten to bring down the entire edifice of the Constitution. Not only will agents escape control, but they will use their autonomy to intrude further on the Constitution.

At the extremes, then, the new sovereigntists and the anti-globalists join in a defense of the classic notion of sovereignty. Not only do the new sovereigntists assume that longer delegation chains produce less political accountability and confuse delegations and pooling of sovereignty, but like the anti-globalists, they call for a return to a sovereignty that never was. Rather than asking how delegations of sovereignty to international bodies can be effectively controlled, they call for a return to a national and indivisible sovereignty without recognizing that such a regime never existed—and is probably even less attainable today than at any time in the past. In short, critics of delegating authority to IOs on both the left and right share important assumptions that themselves require critical analysis.

2 Divisible Sovereignty

The principle of sovereignty is said to have been established in the Peace of Westphalia (1648)—itself composed of the Treaties of Münster and Osnabrück. In affirming the principle of *cuius region, eius religio* (whose kingdom, his religion), first articulated in the Peace of Augsburg (1555), the victors gathered at Westphalia are widely understood to have elevated secular rulers to positions of ultimate authority in their realms and secured the dominance of political authority over other possible authorities, especially that of the universal church. As described by Leo Gross (1948), Westphalia is the "majestic portal" through which the age of sovereign states supposedly arrived.

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[11] On the new sovereigntists, see Bradley and Goldsmith (1997, 2000), Goldsmith and Posner (2006), Rabkin (2004, 2005), and Yoo (1999), and; the term was first used, I believe, by Spiro (2000, 2002).

[12] It is now a well-settled principle of U.S. foreign relations law that customary international law is federal common law (Bradley and Goldsmith 1997, esp. p.822). Because customary international law thus trumps enacted state law, under the supremacy clause, and can be applied by courts even in the absence of Congressional authorization, this so-called modern position is, in the views of the new sovereigntists, wrongly argued and decided.

In what John Agnew (2005) calls the "classical position," Westphalian sovereignty is assumed to be indivisible.[13] Wherever ultimate authority is vested—be it in a king or the people—there can be only a single sovereign or ultimate authority within any political community. The idea of indivisible sovereignty originates with Jean Bodin, writing in 1576, who concluded that if sovereignty was absolute it could not be divided between branches or levels of government or between different actors. Sovereignty by its very nature, he claimed, could only be vested in a single person or institution within a political community (reprinted in Brown et al. 2002: 273). This view was echoed by other theorists, especially Hugo Grotius, the Dutch legal theorist who wrote in *De Jure Bellli ac Pacis* (1625) that "sovereignty is a unity, in itself indivisible" (quoted in Keene 2002: 43–44).

This classical view of Westphalian sovereignty is now much disputed. Revisionist scholars have searched in vain for Gross's mythic gateway to the modern world (Krasner 1993; Osiander 2001). Even the treaties of Münster and Osnabrück themselves contained numerous violations of the nascent principle of sovereignty, and it is now clear that what was actually agreed at Westphalia and codified in the treaties is substantially different from the received wisdom. It is the myth of Westphalia, rather than Westphalia itself, on which today's understanding of the principle of sovereignty rests.

Most important, recent research has shown that the principle of sovereignty is frequently violated in practice—an outcome that Krasner (1999) has termed "organized hypocrisy." Restrictions in the treaties of Münster and Osnabrück on a sovereign's treatment of religious or ethnic minorities, for instance, persisted long after Westphalia. In the Treaties of Utrecht (1731) and Paris (1763), France ceded its territories in Canada while Great Britain—the victor in these struggles—agreed that Catholic subjects in the former French colonies would have the same rights as those in England. The Treaty of Versailles (1919), which created several new states in Eastern Europe out of the defunct Austria-Hungarian and Ottoman empires, imposed a host of restrictions (unevenly enforced) on how the new sovereigns would treat their minorities. The Austrian State Treaty (1955), returning sovereignty to that defeated state, once again contained protections for minority rights (Krasner 1999: 81, 90–87). Although human rights obligations are often seen as a recent development in international politics (Keck and Sikkink 1998), they are in many ways a continuation and expansion of the minority rights guarantees of earlier times. The universal terms in which human rights claims are now cast is new of course, and this universality is a primary concern of the new sovereigntists (see especially Bradley and Goldsmith 1997: 831–833 and 840–841), but the practice of restricting how states treat their subjects is part of a longer pattern of infringements on the principle of sovereignty. Since the end of the Cold War, moreover, states have begun

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[13] Given the weight of evidence against the classical position, as described below, few contemporary analysts would agree with this central tenet as a statement of empirical fact. Nonetheless, the classical position remains the foundation for all theories of international relations that assume anarchy as the defining characteristic of the system. Among the many, see Keohane (1983, 1984), Mearsheimer (2001), Oye (1985), and Waltz (1979). For critiques of the classical position, see Agnew (2005), Lake (1996, 1999, 2003). Among the new sovereigntists, Rabkin (2005, esp. 53–54) explicitly defends the indivisibility of sovereignty as necessary for a liberal state.

to assert the right to intervene forcibly in countries where governments cannot protect their citizens—from the US-led multinational force in Somalia (1992/93) to the French expedition to the Congo (2003)—or actively abuse their citizens, as in NATO's occupation of Kosovo to protect the Albanian Muslims from the Serb majority in the remnants of Yugoslavia; practices that concern the anti-globalists. Yet, this too is a change in degree not in the kind of foreign control exercised by external actors (Finnemore 2003; Marten 2004).

The inconsistency between the principle and practice of sovereignty was recognized early. Grotius, after agreeing with Bodin on its indivisible nature, immediately acknowledges that when discussing sovereignty, "a division is sometimes made into parts designated as potential and subjective." He then enumerates several examples where the conferral of sovereignty was not absolute but, in fact, divided. Most important, Grotius recognizes that unequal treaties can, in practice, lead to a division of sovereignty that favors the superior party, observing that "He who has the vantage in a treaty, if he is greatly superior in respect to power, gradually usurps the sovereignty properly so-called." Although based in power, Grotius also recognizes that unless the weaker party resists, over time "the part of the weaker passes over into the right of ruling on the part of the stronger...then either those who had been allies become subjects, or there is at any rate a division of sovereignty" (quoted in Keene 2002: 44–45, 49).

Later legal theorists repeated and amplified Grotius' practical observation, especially when they were forced to confront the variety of forms of limited sovereignty that lay outside Europe (Dickenson 1972; Fenwick 1974; Willoughby and Fenwick 1974). Indeed, Henry Sumner Maine, a late nineteenth century legal theorist, writes that "The powers of sovereigns are a bundle or collection of powers, and they may be separated one from another. Thus a ruler may administer civil and criminal justice, may make laws for his subject and for his territory, may exercise power over life and death, and may levy taxes and dues, but nevertheless he may be debarred from making war and peace, and from having foreign relations with any authority outside his territory." Other legal scholars of the period agreed. Claiming that "international law has suffered for a long time from the theory of the indivisibility of sovereignty," Hersch Lauterpacht still maintained in 1940 that "from the point of view of international law, sovereignty is a delegated bundle of rights.... [and] therefore divisible, modifiable, and elastic" (quoted in Keene 2002: 108). As noted by these theorists, especially those concerned more with practice than principle and the world as a whole rather than just Europe, sovereignty is in reality readily divisible and has, in fact, often been divided between levels within states and between states.

Although the divisibility of sovereignty may seem obvious when looking at state practice, the principle of indivisibility remains strongly held, as witnessed by the importance of the assumption of anarchy in international relations theory.[14] In part, this is because of the dominance of a formal-legal approach to authority which denies the existence of hierarchies negotiated outside any lawful relationship (Lake 2003, in progress). Equally important, scholars have overlooked the political projects behind the intellectual construction of indivisibility. The idea of sovereignty, and the

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[14] See footnote 13 above.

presumption of indivisibility, was born with the modern state. Bodin, Hobbes, and other contemporaries asserted the principle of sovereignty in the midst of profound conflict and, eventually, transformation. They wrote, in part, to justify the creation of a central authority in the wake of domestic unrest and civil war and to legitimate and propagate a centralized secular state against the internal remnants of feudalism and the external vestiges of the universal church. It was their experience and, more fervently, their hope that centralized and ultimate authorities would bring stability and order to their world. In this way, the principle of sovereignty that these early thinkers developed—and which we today have largely inherited—was never meant as a description of practice nor as a foundation for a positive theory of international politics but as a normative ideal in the service of state-building (Tuck 1993).

Similarly, in the contemporary world, the principle of indivisibility is also asserted as part of the state building process against the vestiges of colonialism, on the one hand, and against tribe, group, clan or other sub- or transnational loyalties on the other. Just as the early European states had to be consolidated in the face of competing feudal and religious loyalties, so must the new states created since 1945 overcome continuing allegiances to former colonial rulers and alternative forms of authority. Beset by these competing demands, these often weak states have depended for much of their legitimacy on the Westphalian conception of sovereignty and especially the principle of indivisibility. Sometimes lacking the ability to govern their territories effectively, a traditional requirement for recognition by other sovereign states, these "quasi-states," as Jackson (1990) terms them, cling to and promote the notion of "juridical sovereignty" to justify their rule (see also Boone 2003, Herbst 2000).

That the claim to indivisible sovereignty has always been part of a larger state-building project implies, obviously, that alternative principles and practices were not only possible but actually existed. One does not need to argue for such claims unless they are contested. Indivisibility was asserted in opposition to plausible rival principles—especially the heteronomy of feudal states without a single authoritative apex, in the age of Bodin and Hobbes, and colonialism and group loyalties, in the contemporary era. In practice, sovereignty is all too divisible. We ought not to mistake political programs for reality.

If sovereignty is divisible and, in practice, has frequently been divided, the appeal to classical sovereignty that underlies both the new sovereigntists and anti-globalists is greatly weakened. If in the past when interactions between states were both slower and less dense states failed to recognize or respect each other's exclusive jurisdiction, there is far less reason to expect that they would do so today. In turn, if sovereignty is divisible, there can be no principled reason why it cannot be delegated in parts to IOs today, as has been done in the past. States may choose not do delegate authority for good cause, two possibilities for which are discussed below. But appeals to an artificial and politically-charged principle should not bar states from delegating sovereignty to others if they so desire.

Moreover, fears of a slippery slope by which delegations of sovereignty today will encourage habits of delegation in the future—or create agents who will "steal" greater authority in the future—appear similarly unfounded.[15] States have been delegating limited forms of sovereignty since the concept originated without

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[15] Rabkin (2005, esp. 69) most explicitly makes this argument about the slippery slope.

apparent harm to themselves or the robustness of the principle. Indeed, given the rise of the notion of juridical sovereignty, the affirmation of the rights to self-determination and the independence of states in the United Nations Charter, and the creation of over 100 new states since 1945, it could be argued that the principle of sovereignty is healthier now than at any time in modern history.[16] Rather than divisions leading to a deterioration of sovereignty, the trend appears to be headed in the opposite direction toward greater respect for sovereignty.[17] Like Mark Twain, reports of the death of sovereignty appear premature. If delegations of sovereignty cannot be prohibited in principle and have not led to further deteriorations in authority in practice, the case against delegating to IOs must rest on a lack of democratic accountability, to which we now turn.

3 Delegation Chains and Democratic Accountability

A "chain" of delegation involves multiple stages in which the same authority is delegated from one actor to another. Formally, "delegation is a conditional grant of authority from a principal to an agent that empowers the latter to act on behalf of the former" that is limited in time and scope and is revocable by the principal (Hawkins et al. 2006a: 7). In the simplest case of two "links," the originating or "ultimate" principal (P_1) delegates to an agent (A_1), who in turn becomes a principal (P_2) and delegates to a second agent (A_2). In practice, delegation chains can be quite long.

It is a commonly held political principle that delegated authority cannot itself be delegated.[18] Intuitively, and perhaps embodied in this principle, it would seem that the potential for agency slack is very much greater the longer the delegation chain; that is, agents in longer delegation chains are less accountable to their principals. Yet, applying a simple principal-agent model of delegation with asymmetric information allows us to sharpen this intuition and define more precisely when and why delegation will "fail," by which I mean that agents will take actions that make the principal worse off than if the delegation had not occurred.[19] In this

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[16] On the robustness nature of statehood in the contemporary world, see Kahler (2002).

[17] This is especially true if we include the various formal and informal empires of the nineteenth century in the baseline for comparison.

[18] Classic statements are *Federalist 78* (Hamilton et al. 1961) and Wright (1922 [1970]: 95–126). For modern discussions, see Fisher (1994) and Stewart (1975). Rabkin (2005: 68) repeats this claim.

[19] Conversely, delegation succeeds when it makes the principal better of than not delegating. This definition of success or failure, though controversial, has the virtue of clarity. Some may want to claim that delegation in which the agent shirks is less successful than some idealized case in which shirking is not possible, but this then draws us into trying to identify how much shirking occurs—a notoriously difficult enterprise—and into comparing how much shirking actually occurs versus how much shirking "should" have occurred. By defining the success or failure of delegation relative to a status quo without delegation— or by the ex post standard of whether knowing what it now knows, the principal would choose to delegate anyways—avoids what would otherwise be endless debates over degrees of shirking, but at the price of a less refined measure of success. Others may want to equate agent discretion with failure, but this would be wrong. Sometimes principals grant discretion to agents precisely when they cannot enact politically efficient policies themselves. Dispute resolution, for instance, must be delegated to agents with high levels of discretion that insulate them from political manipulations by antagonistic principals. Epstein and O'Halloran (1999) provide the most theoretically and empirically rigorous treatment of discretion, but are careful not to reduce this complex notion to success or failure.

section, I seek to make two linked points, in reverse order. Delegation to IOs need not result in chains that are substantially longer than domestic chains of delegation. Moreover, it is not the length of the delegation chain that matters per se, but whether specifiable conditions for successful delegation hold. When these conditions obtain, acceptable (if not perfect) accountability is possible *even* in the case of long chains of delegation to IOs.

Posing a model of delegation in which agents propose policies that principals then accept or reject (an ex post veto), Lupia and McCubbins (1998) demonstrate that delegation will succeed when two general conditions hold: (1) the principal can correctly infer whether the agent's proposal is better or worse for her than the status quo (the knowledge condition), and (2) the agent has an incentive to make a proposal that is better for the principal than the status quo (the incentive condition). The knowledge condition is satisfied when a principal's prior knowledge is sufficient for her to distinguish whether or not a proposal is better for her than the status quo or she can learn enough to make the same distinction.[20] The incentive condition is satisfied only if the principal's ideal point is closer to the agent's ideal point than it is to the status quo and the agent gains more than the cost of making a proposal (C) if the principal chooses his proposal instead of the status quo (principal and agent have common interests), or the knowledge condition is satisfied and there exists a point that both the principal and the agent (after paying C) prefer to the status quo. If only one of the two conditions holds, the worst that can happen from the principal's perspective is that the status quo is retained. When neither condition is satisfied, the principal cannot hold the agent accountable for his actions and the agent has no incentive to increase the principal's welfare. In this case, agents may make proposals the principal accepts but that leave her worse off than the status quo; when this happens, we can conclude unequivocally that delegated has failed and the agent is not accoutable. All of these conditions, in turn, are open to manipulation and, thus, design by the principal. By screening possible agents, the principal can "hire" agents with preferences more similar to its own, or by using higher powered incentives, the principal can induce the agent to offer appropriate proposals (making it more likely that incentive condition is satisfied). By identifying and listening to third parties, the principal can also satisfy the knowledge condition more easily (Lupia and McCubbins 1998).

Applying this model to "longer" chains implies that delegation can succeed in the serial fashion described above if and only if each principal at each stage satisfies the knowledge and incentives conditions for its immediate agent. In our relatively "short" chain with two links above, if the conditions are met, A_2 chooses to make proposal, A_1/P_2 knows enough to whether to accept it (pass it on to P_1) or reject it (retain the status quo), and P_1 in turn knows enough whether to accept or reject it as well. If neither the incentive nor the knowledge condition is satisfied at any stage, delegation will fail. As above, if only one of the two conditions holds at any stage, the worst that can happen from P_1's perspective is that the status quo is retained. As long as the knowledge and incentive conditions are met at every link, delegation can succeed regardless of the length of the chain.

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[20] Lupia and McCubbins (1998) further specify the conditions for learning.

Satisfying the knowledge and incentive conditions at each link in a chain is, of course, an extremely demanding requirement, and one that becomes progressively less likely to be met as delegation chains become longer. Despite the difficulty of satisfying these demanding conditions for success, it is important to recognize that delegation is made through very long chains every day—in economic exchanges, in domestic politics, in our daily lives—which suggests that the problems are not insurmountable. Focusing on the knowledge and incentive conditions, however, sharpens the intuition behind claims that longer chains are more likely to fail: what matters is whether the knowledge and incentives conditions are met in the way described above. When faced with longer chains, in turn, the principal can invest more in aligning its agent's incentives with its own or in acquiring knowledge, up to a limit where the additional costs of monitoring and controlling its agents equal the gains from delegating authority to specialized agents.

Having refined the intuition and identified the conditions necessary for delegation to succeed, it remains an open question whether delegation chains involving or ending with IOs are actually longer than wholly domestic chains. Unlike the above, this question does not appear to have an analytic solution, but it is clear that no general conclusion can be sustained without detailed empirical investigation.

Principals, agents, and delegation itself are analytic concepts or analogies imposed by theorists to help classify and explain real world relationships. Principals and agents—and what constitutes an act of delegation—are defined by the analyst, not the parties themselves. This holds as well for the number of links in a delegation chain. It is possible to disaggregate many delegation acts into numerous parts, and thereby create longer chains. At one level, analysts might describe Congress as delegating the implementation of foreign aid policy to the Agency for International Development (USAID). At another level, however, it might be accurate to describe Congress as delegating to the president, who then delegates to his political appointees who direct USAID, who then delegate to senior staff, who then delegate to regional or country experts, who then delegate to USAID employees stationed abroad who first propose projects for funding. The actual delegation is the same in both cases, but the second chain is described as being much longer. What chain length we describe depends on the analytic purpose for which the description is being used. As always, analysts must make "bets" on which links—and how many— are salient to the question they are asking (Lake and Powell 1999: 13–16).

As analytic constructs rather than "real" entities, it is impossible to conclude that delegation chains that include IOs are always longer than chains that end with domestic agents. We can again describe Congress as delegating authority over elements of development aid to the World Bank by authorizing and appropriating funds that are transferred to that agent—a simple one link chain.[21] But as above, we could greatly multiply the apparent number of links by including a host of intermediate steps between the passage of legislation in the United States and the ultimate dispersal of aid in developing countries. To argue that one chain is longer than another refers far more to our analytic purposes than to any fixed or absolute trait of an act of delegation.

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[21] On delegation to the World Bank, see Lyne et al. (2006), Milner (2006), and Nielson and Tierney (2003).

Thus, even if longer delegation chains are more likely to fail strictly due to the laws of probability, it does not follow that delegation to IOs is more problematic than is delegation to other sorts of agents. Different agency relationships will be characterized by more or fewer links, depending on their purpose and design. Identifying the number of links is also a somewhat arbitrary task. We cannot conclude categorically that delegation to IOs always produces longer chains than similar domestic agency relationships.

The issue of accountability is real and important, and should not be minimized. But delegation to IOs can be accountable even to distant domestic publics. The issue for those concerned with democratic accountability—as are all the critics discussed above—is not whether delegations to IOs are always and everywhere more likely to fail, but rather the precise conditions in which a specific act of delegation occurs. This requires careful case-by-case analysis, rather than general condemnation.

4 Delegating Versus Pooling Sovereignty

In the literature on international organizations, and more so in popular discourse, the term delegation is often used in two related but distinct ways.[22] The more common usage is delegation as a hierarchical relationship in which an agent receives a conditional grant of authority to act for a principal under some specified conditions. As above, I will continue to refer to such relationships as delegation. A less common but not infrequent usage is delegation as collective decision-making at the interstate level, or where states are described as having delegated authority over a policy domain to the European Union, the WTO, or some other IO. This is more properly thought of as pooling sovereignty. Importantly, the strategic problem in each use is analytically distinct, but obscured unless careful attention is paid to the particular meaning of the term.

In delegation, a principal (or group of principals) hires an agent to perform some specified task(s). The grant of authority from the principal to the agent must be conditional and revocable, and the principal retains all residual rights of control including the right to veto actions by the agent either directly or indirectly by cutting funding or other means (Hawkins et al. 2006a). The key problems in such agency relationships are hidden information and hidden action by the agent, which if present allow the agent to act opportunistically. Under the conditions for success identified in the previous section, delegation will be welfare improving for both principal and agent.

When pooling sovereignty, a state transfers authority to a collective decision-making body, most typically an IO, to set policy in a given area. The transfer of authority can be conditional and revocable, or not, and the state can retain residual rights of control, or not. Clearly, the fewer the conditions, the harder it is to revoke

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[22] Pointing to just several recent works, by delegation Pollack (2003) refers primarily to an agency relationship, Bradley (2003) refers primarily to what I call here "pooling," and the authors in the various chapters in Goldstein et al. (2001) use both. Moravcsik (1998: 67) was one of the first to distinguish between delegating and pooling sovereignty. Although his definition appears to rule out the ex post veto by principals, his later clarifications and examples indicate that the veto is consistent with his conception of delegation.

authority, and the fewer the residual rights of control retained, the greater and more permanent the transfer of authority will be. But these differences do not distinguish between delegation and pooling. Rather, in pooling sovereignty, the strategic problem is not shirking but collective decision-making. Where previously a country might set policy at its own national "bliss point," policy is now made by a collective of member countries with varying preferences under a set of decision rules that may produce outcomes more or less distant from the state's preferred policy. Any individual state may be more or less happy with the collective decision, but this will be a function of the particular group of countries, their preferences, and the set of rules they use to determine policy. But even when a state is unhappy with a collective decision quite distant from its ideal point, it is inappropriate to think of the IO as shirking or "escaping" control. Rather, states may have perfect and complete information about others and the IO and still not see their preferences enacted into policy. Presumably, in pooling sovereignty, states are trading off between a unilateral policy closer to their preferences and a collective policy that is more efficacious in addressing some common problem. In pooling sovereignty within an IO, states are compromising to some extent on their ideal policy to get a policy that actually "works" and solves the problem before them. Pooling may be Pareto-improving, but it is still the case the individual states might desire a different common solution closer to their own ideals.[23]

At least two "grey areas" exist between delegating and pooling, and they may account for the common confusion between these terms. First, it is often the case that states charge IOs to propose solutions to common problems—trade liberalization, climate change, competition policy—over which they retain an ex post veto. The IO presents a proposal to states, which they can then accept or reject as their interests dictate. Even though the IO in this instance may reach a collective decision, that proposal is not binding without further action by the states. This remains a case of delegation, not pooling.[24] In this case, the strategic problem remains shirking and the conditions for successful delegation still apply. Pooling occurs only when the collective decision is binding for member states.

Second, states often pool sovereignty before delegating to an IO agent. One example among many is the states on the United Nations Security Council deciding (pooling) on a common policy and then delegating inspections of a country's nuclear reprocessing facilities to the IAEA (Brown in progress). In such situations, pooling before delegating introduces additional strategic complexities. In domestic acts of delegation, there is typically only one stage at which a collective principal pools "lower level" preferences and sets policy goals whose implementation may then be delegated to specialized agents. Voters, the ultimate principals in a democracy, elect

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[23] A domestic analogy helps illustrate this point. As a liberal democrat in a heavily republican Congressional district, I am typically very unhappy with the way my representative votes on legislation, but it would be inappropriate to say that he is shirking his responsibility when he follows the wishes of the majority of my neighbors. I am dissatisfied, and might wish to be a "dictator" who could send a representative to Congress who shares my political views, but however far my preferences are from my neighbor's I cannot say that delegation has "failed" in any meaningful sense. Better information and greater transparency cannot solve this problem.

[24] This is equivalent to Bradley's (2003) argument that delegation is not inconsistent with constitutional concerns as long as the decisions taken by the IO are not "self-executing."

representatives to the legislature, which then pools (through various rules and with more or less bias) the preferences of citizens into policy. The legislature may then choose to delegate implementation to an executive, directly to agencies, or even to municipalities and other lower levels of government. But importantly, there is only one "pooling point" at which a collective policy decision is being made. At the international level, by contrast, delegations to IOs often proceed through two pooling points: first, from citizens through their governments and, second, from governments through IOs, which then typically hire a professional staff to implement their decisions. In this more complex decision-making structure, an individual state faces both strategic problems, complicating the problem of inferring whether or not their interest is being served by delegation to an IO. If the staff does not ultimately implement policies in ways citizens desire, is this the product of shirking by opportunistic agents, the country's own extreme preferences distant from the collectively adopted policy, or perhaps both? The more uncertain voters—the ultimate principals—are about where the policy process fails, the less willing they will be to delegate or pool sovereignty.

The existence of this second pooling point is a key divergence between delegation within states and delegation to IOs. To return to the aid example above, from the perspective of American voters and their elected representatives, the main difference between delegating to USAID and the World Bank is not the number of bureaus between the appropriation of funds and the delivery of aid, or even the amount of knowledge and information they possess about their agents, but rather that the Bank's collective decision-making structure takes into account the policy preferences of states other than their own—even despite the disproportionate influence of the United States within the organization (Lyne et al. 2006). What Americans believe is shirking by overpaid Bank employees, may simply be a product of their large but still limited power to set policy within the organization. But precisely because it is difficult to distinguish between the two, Americans may be hostile to expanding the Bank's role and resources.[25]

The important point, however, is that shirking within agency relationships can be solved or mitigated by crafting better monitoring and enforcement mechanisms. By addressing the sources of hidden information and hidden action, states can design institutions that satisfy the knowledge and incentive conditions identified above. Pooling sovereignty, on the other hand, will always leave some states aggrieved. Institutions will affect how the preferences of the member states are aggregated into a collective decision, but unless national preferences are identical or the status quo is extreme, a policy that is more preferred by one state will typically be less preferred by at least one other. Institutions can minimize the bias in collective decision-making, and thereby minimize the aggregate dissatisfaction of states, but they cannot ultimately solve the problem of disparate preferences and collective choice inherent in pooling sovereignty.

This confusion between delegating and pooling sovereignty is evident in all of the critical approaches outlined above. Concerns about democratic accountability and constitutional protections relate more to pooled rather than delegated sovereignty. If

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[25] Milner (2006) argues that states delegate aid to multilateral development banks precisely when they do not trust their own governments to implement their policy preferences.

managed appropriately, delegations to IO can facilitate interstate cooperation and be welfare improving, but still be controlled by states and, in turn, their ultimate principals, their citizens. Pooled sovereignty typically creates a second pooling-point that may pull final decisions away from the goals desired by domestic actors. Here, the issue is not whether the IO is accountable in the sense of shirking, but whether affected groups are pleased with the policy choice made by the collective body of states. Anti-globalists, for instance, are unhappy with the collective decision-making of the WTO not because the staff has escaped the control of the member states but because the collective decision-making procedures of the organization work to favor freer trade and open markets, which they oppose. Similarly, the new sovereigntists criticize "delegation" but they are more concerned with collective decisions—pooled sovereignty—that then supersede domestic laws, and they are especially concerned about new international human rights laws that expand the body of individual protections beyond that currently guaranteed under the Constitution and which they often oppose on political and normative grounds. In all of these cases, the language of delegation can obscure as much as it reveals unless we pay close attention to usage. But by blurring the problems of delegating and pooling sovereignty under the generic heading of "delegation," critics may unduly limit possibilities for welfare-improving grants of authority to IOs that, because of their specialized expertise, may be able to perform certain defined actions better or more efficiently than states themselves.

5 Conclusion

Debates about the wisdom of delegating authority to IOs fracture over many issues, not all of them with an analytic root. In an otherwise complex and socially dense world of increasingly superficial and fleeting social relationships, people may simply prefer political processes to which they feel more directly connected, that are more "local" and permit more direct participation. Yet, some issues require interstate cooperation or a coordinated response, and delegating to IOs can facilitate the identification and negotiation of mutually preferred outcomes. States can also pursue their interests more effectively in some cases by delegating authority to an IO. It is hard to imagine that states could acquire the same information on the nuclear programs of others without the IAEA or some similar organization—or that information by one would be accepted as credible by the others. Likewise, delegating aid-giving to an IO is likely to reduce costly redundancies and limit the ability of borrowers to play donors off against one another. There are real advantages in some instances to delegating to IOs (Hawkins et al. 2006b).

In a globalizing world, peoples and states are faced with demands for greater international cooperation. IOs are not the solution to every problem. Yet, in considering when and where to delegate authority to an IO it is important to focus on facts and analysis rather than prejudices. Sovereignty is divisible, and dividing it in the past has not led to an inexorable erosion of the principle. IOs are not always less accountable than agents in other settings. And the inevitable problems that arise in pooling sovereignty are not the same as in delegating sovereignty—and should not spill over into a general indictment of the latter concept and practice. States must

remain vigilant about their interests and the actions of their agents. As the conditions for successful delegation make plain, ensuring that agents remain accountable is not easy. But being clear about the analytic issues involved is a necessary first step in deciding when and what to delegate and in then making delegation work.

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