Democracy-Enhancing Multilateralism

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Abstract International organizations are widely believed to undermine domestic democracy. Our analysis challenges this conventional wisdom, arguing that multilateral institutions can enhance the quality of national democratic processes, even in well-functioning democracies, in a number of important ways: by restricting the power of special interest factions, protecting individual rights, and improving the quality of democratic deliberation, while also increasing capacities to achieve important public purposes. The article discusses conflicts and complementarities between multilateralism and democracy, outlines a working conception of constitutional democracy, elaborates theoretically the ways in which multilateral institutions can enhance constitutional democracy, and discusses the empirical conditions under which multilateralism is most likely to have net democratic benefits, using contemporary examples to illustrate the analysis. The overall aim is to articulate a set of critical democratic standards appropriate for evaluating and helping to guide the reform of international institutions.

Many scholars and popular commentators assert that international organizations undermine democracy. Global governance, they argue, is distant, elitist, and technocratic. Debates over multilateralism are increasingly waged between critics, who point to the ways in which international institutions undermine domestic democratic processes, and defenders, who stress pragmatic benefits. In this article we challenge this conventional framing of the issue.

We do so by arguing that participation in multilateral institutions—defined broadly to include international organizations, regimes, and networks governed

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by formal international agreements—can enhance the quality of domestic democracy. To be sure, some instances of multilateralism have undemocratic implications, but multilateralism can also enhance domestic democracy in a number of important ways. Involvement with multilateral institutions often helps domestic democratic institutions restrict the power of special interest factions, protect individual rights, and improve the quality of democratic deliberation, while also increasing capacities to achieve important public purposes. Under some plausible circumstances international cooperation can thus enhance the quality of democracy even in reasonably well-functioning democratic polities.

Our argument proceeds in four steps. In the first section, we discuss conflicts and complementarities between multilateralism and democracy, summarizing current criticisms of multilateralism. In the second section, we outline a working conception of constitutional democracy on which our analysis is based, highlighting three democracy-enhancing constitutional functions: off-setting factions, protecting minority rights, and enhancing the quality of democratic deliberation. We point out, however, that fulfilling these constitutional functions can come at some cost to a fourth strand of democracy, participation. In the third section, we elaborate theoretically and illustrate empirically the ways in which multilateral institutions can, on balance, enhance constitutional democracy. The fourth section discusses the empirical conditions under which multilateralism is most likely to have net democratic benefits, using further contemporary examples to illustrate our analysis. The final section offers our conclusions.

Overall, we seek to articulate critical democratic standards appropriate for evaluating and helping to guide the reform of international institutions. We maintain that multilateral institutions may (and frequently do) enhance the workings of domestic democracy in established democracies. Yet insofar as the activities of multilateral institutions degrade the quality of democracy, they should be criticized, reformed when possible, and only accepted when the countervailing benefits clearly outweigh the democratic costs.

Multilateralism Versus Democracy?

Do multilateral institutions threaten domestic democracy? Many analysts believe so. Global governance may realize important goals, says political scientist Dahl, but its bureaucratic character, separation from domestic democratic institutions, and lack of participation by ordinary citizens undermine democratic accountability and deliberation.[1] Yale law professor Rubenfeld contrasts international organizations that are "bureaucratic, diplomatic, technocratic—everything but democratic" with the U.S. Constitution, enacted through a uniquely democratic "process of pop-

1. Dahl 1999.

ular deliberation and consent."[2] Public law scholar Rabkin speaks for many conservatives when he argues that multilateral institutions are illegitimate due to their elite-driven agendas and lack of explicit democratic delegation and direct popular accountability.[3]

Redressing a perceived "democratic deficit" has become a central issue among Europeans as well. Many in the European Union (EU), the contemporary world's most extensive and ambitious multilateral institution, share the view of sociologist Dahrendorf, himself a former European Union Commissioner, that internationalization "almost invariably means a loss of democracy."[4] The Laeken Declaration of 2001, which officially launched the EU's recent and contentious effort to promulgate a "constitution," identified the major internal challenge as that of bringing the EU "closer to its citizens" and providing "better democratic scrutiny" over its activities.[5]

Critics charge that international law and multilateral institutions allow elites to bypass the onerous processes of persuasion and consensus-seeking that democracy requires. Unelected nongovernmental organizations and special interest advocacy networks operate across borders and lobby for new rules, sometimes without normal legislative deliberation and formal lawmaking. Commitments made through the treaty power may be expanded incrementally through the operation of international legal processes, without being ratified at home. In these ways and others, multilateral institutions enable internationalists to evade the consent of democratic publics.

Although critics from right and left both worry about the influence of unelected elites, their precise concerns differ. Conservatives in the United States criticize human rights lawyers, activist judges, and environmental groups for seeking to import "progressive" foreign standards—limiting the death penalty, or extending protections for homosexuals, for example—without running the gamut of normal legislation.[6] They focus on the distinctive and (they claim) superior quality of U.S. democracy and emphasize the right of Americans to decide for themselves. Euroskeptics fear that unelected European bureaucrats and courts will "harmonize" regulations in ways that are antithetical to national traditions and values. The left, by contrast, worries less about foreigners or public bureaucracies than about the influence of corporate interests, arguing that corporate elites use multilateral organizations such as the World Trade Organization (WTO) to protect their profits at the expense of core domestic concerns, such as health, safety, social welfare, and environmental quality.[7]

Supporters of multilateralism tend either to concede these points or simply ignore them, seeking instead to justify multilateralism on pragmatic grounds, or on prin-

2. Rubenfeld 2004.
3. See Rabkin 1998, 45; and Rabkin 2005, 244–48.
4. Dahrendorf 1999, 16.
5. Ludlow 2002, 215–33.
6. See Rabkin 1998 and 2005.
7. See Braithwaite and Drahos 2000; and Wallach and Woodall 2004.

cipled grounds unrelated to domestic democracy.[8] Delegation and pooling of sovereignty, they assert, allows democratic polities to achieve policy goals together that none could realize alone. Without reciprocal cooperation, governments cannot reach domestic goals such as slowing global warming, liberalizing the international economy, integrating communication systems, combating terrorism, and regulating multinational corporations. Some pragmatists go further, arguing that a measure of insulation from democratic pressures is often required for national governments to achieve economic integration.[9]

This is the state of the current debate: critics of multilateralism point to the ways in which international institutions undermine democracy; defenders respond by stressing pragmatic benefits. Clearly this simple dichotomy contains some truth: there can be tensions among democratic costs and pragmatic benefits of multilateralism, and such tensions need to be managed. Yet we believe that the "multilateralism versus democracy" framework also restricts the debate, obscuring as much as it illuminates. Scholarly and public discussion needs to be broadened. In particular, those who accuse multilateralism of degrading democracy overlook important ways in which international institutions can enhance democracy. Critics overlook the democracy-enhancing potential of multilateralism because their criticisms rest on three related fallacies.

The first fallacy is that unfettered legal sovereignty is a necessary prerequisite of democracy. Some critics of multilateralism argue that only externally unfettered sovereignty properly represents a state's collective capacity and obligation, as a democratic political community, to make its own decisions regarding its law.[10] We disagree. Following Chayes and Chayes, we maintain that in the modern world, one of the most important elements of legal sovereignty is that it confers on national communities the power to enter into binding international legal agreements granting states reciprocal influence over each other's policies.[11] States affected by the policies of a foreign government gain influence over those policies, in exchange for surrendering some domestic discretion. Since such interstate arrangements are crucial for citizens to achieve security, welfare, and other legitimate public purposes, refusing to delegate some authority to multilateral institutions represents a self-defeating and arbitrary restriction on national democratic deliberation. Far from restricting and degrading national democracy, the constitutional option of pooling and delegating sovereignty in this way expands the scope of democratic choice and improves democratic control over policies

8. Buchanan and Powell (forthcoming) have argued that some liberal cosmopolitans seek to justify multilateral institutions on the grounds that they enhance global justice.

9. Rodrik (2007, 200) speaks of an "international trilemma," according to which integrated national economies, nation states, and mass politics cannot be simultaneously maintained. Such a trilemma implies that democracies have more difficulty than nondemocracies in imposing domestic policies that promote integration with the world economy.

10. See Nagel 2005a and 2005b; and Rabkin 2005.

11. Chayes and Chayes 1995; on sovereignty more generally, see Krasner 1999.

that actually affect citizens, as long as procedures adhere to basic democratic standards.

The claim that multilateralism degrades democracy rests on a second fallacy as well: the unwarranted assumption that existing domestic institutions always adhere to high democratic standards. Most critics of multilateralism idealize domestic political institutions. Yet in classically sovereign national democracies, existing mechanisms such as elections and other forms of political representation and deliberation often contain biases, imperfections, and weaknesses. Involvement with multilateral institutions could help to correct some of these flaws.

The most important reason why critics overlook the potential for multilateralism to improve the functioning of democracy lies in a third fallacy. Critics typically conflate the ideal of "constitutional democracy" with maximizing direct popular participation. Such a participatory definition of democracy gives intuitive force to the claim that "distant" international organizations undermine democracy. Yet popular participation is only one among a number of political values to be balanced in a well-ordered constitutional democracy. Other normatively important objectives include the suppression of faction, minority inclusion, and deliberation—ideals that are sometimes, as we show below, promoted by multilateral institutions. Before moving on to this empirical analysis, we examine these ideals more closely.

Constitutional Democracy as Democracy

Popular elections are essential to democracy. Electoral selection endows representatives with a powerful claim to democratic legitimacy. Institutions remote from direct electoral authorization can be good for democracy, but they would not be democratic without the constraint of periodic elections for lawmakers. Modern democracies cannot and do not function in a legal vacuum: contemporary democracies are *constitutional democracies*.

Constitutional structures establish the framework within which a democratic system can flourish and endure. Most fundamentally, constitutional arrangements enhance the ability of the people to rule themselves by ensuring periodic, fair elections. Democratic deliberation and decision-making require prior agreement on settled rules to establish elections, to determine eligibility for voting and for service in office, to define the responsibilities of various elected officials, and to govern the appointment of nonelected officials.[12]

Yet the management of elections is only the beginning. To characterize modern democracies simply as electoral or "majoritarian" would be misleading. In contemporary democratic polities, much politics is deliberately insulated from direct majoritarian control. Constitutional democracies employ popular majority voting

12. See Ely 1980; Holmes 1995, chap. 5; Przeworski 1999; and Eisgruber 2001.

only during particular phases of a complex process. Since unchecked majority rule can be majority tyranny, in constitutional democracies a wide variety of constraints, authorized by supermajority requirements, are designed to check what simple majorities can do. Government becomes more rather than less democratic, for example, when nations ensure that minority interests are fairly attended to and the equal rights of minorities protected.

Other institutional mechanisms also bolster democratic rule. Arbitrary actions of government, which could instill fear of free expression, must be limited by the rule of law, a wide variety of rights, and impartial enforcement mechanisms. Even when fairness to minorities or impartiality is not at stake, democratic institutions need to be both fair and capable of taking account of reliable information. Competing public institutions, and a system of checks and balances including legislative bicameralism, politically independent courts, and agencies with specialized expertise, can help ensure that policy choices are defended against robust criticism, and that errors are identified and corrected. Democracy requires that the powerful are held in check by the prospect that abuses of power will be detected and publicized, which implies public access to information. Elected representatives and other public officials must be constrained to defend their policy choices publicly. Deliberation helps ensure that the public can live with political choices over the long haul.

We adopt a constitutional conception of democracy because well-designed constitutional constraints enhance democracy, understood as the ability of the people as a whole to govern itself, on due reflection, over the long run.[13] Constitutional and statutory constraints can contribute to the improvement of democracy in three ways that are directly relevant to our democratic defense of multilateral institutions: by combating special interests, protecting rights, and fostering robust public deliberation. As we will show in the section below, multilateralism can have similar democracy-enhancing effects.

Combating Special Interests

Constitutional procedures can make democracy more inclusive by directing policy toward the public good of the community as a whole, rather than the special interests of particular factions. James Madison's solution to the problem of faction, embodied in the United States Constitution, was to establish representative government within an "extended republic" encompassing a much larger territory and a greater variety of interests: "Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a

13. For a valuable account of the relationship between democracy and liberal constitutionalism, see Holmes 1995.

common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other."[14]

In systems formally governed by simple majoritarianism, special interests can often capture policy by constructing enduring relationships with administrative agencies and politicians. While many circumstances facilitate capture of policy by special interests, political scientists and policy analysts generally agree that such capture is particularly likely where benefits and costs are asymmetrically distributed such that majority interests are diffuse, uncertain, or far in the future, while special interests are concentrated, certain, or current.[15]

Under some conditions, delegation to an agent not directly answerable to the public has proven itself an effective instrument to achieve the long-run public interests of a broad constituency. Constitutional democracies have created independent central banks and have in some cases delegated substantial authority for the review of both legislation and administrative decisions to courts. In situations involving a public good that no individual group has an incentive to provide on its own, the resulting policy may be more representative of diffuse general interests and majority preferences that pass the test of public deliberation than policies enacted through more directly majoritarian processes.[16]

Protecting Individual and Minority Rights

Across the globe, legitimate domestic democracies regularly, and increasingly, also create checks and balances, allow minority vetoes at some points, deliberately overrepresent small groups, and, most importantly, delegate the enforcement of individual rights to courts and other nonparticipatory bodies.

Such nonmajoritarian institutions for rights protection sometimes constrain democracy in the interests of justice, but they can enhance constitutional democracy. The enumeration and enforcement of minority and individual rights precommits members of a polity to guarantee a minimum level of protection to each citizen. Deliberate departures from simple majoritarian decision making can better protect the interests of minorities, rendering democratic politics more inclusive and reasonable. Rights provide for more equitable political representation in cases where policies favored by majorities would impose unjust burdens on vulnerable individuals and minorities. Many rights—in addition to voting rights—are essential to meaningful democratic participation and debate: without rights of free speech, assembly, and privacy, as well as freedom of the press, individuals and groups would be unable to form and express their views freely and confidently on public matters, thereby rendering elections a charade. In addition, the free expression of minority perspectives improves democratic deliberation by helping ensure that

14. Hamilton, Madison, and Jay 1961, 83.
15. See Olson 1965; Dahl 1956, 128–32; Lowi 1969; and Schattschneider 1960.
16. See Fischer 1995; and Stewart 1975.

minority voices are heard and minority interests respected, resulting in policy more likely to represent broad public interests.[17]

Fostering Collective Deliberation

Democracy stands for governance on the basis of arguments and evidence that have been tested in public with a wide range of information. When policies are adopted deliberately—after sufficient discussion, debate, and the sifting of reasons and evidence, including from experts—they are more likely to be policies that people are prepared to live with. Simple majoritarian institutions may inhibit sound collective deliberation by inhibiting the generation and distribution of information, criticism, and expertise. Nonelectoral, "depoliticized," and specialized institutions may both improve the knowledge base on which decisions are made, and deter the deployment of false claims, enhancing democracy's deliberative capacity. For this reason, among others, all modern democracies insulate certain classes of such institutions from direct electoral contestation via constitutional mandates, statutory guidance, requirements of technical expertise, and more intermittent public oversight. Often such institutional forums function with robust requirements for evidence assessment, contestation, deliberation, and reason-giving.[18] Citizens appear to be satisfied with this result, as illustrated by consistent poll results across Organization for Economic Cooperation and Development (OECD) democracies showing that insulated institutions such as courts, bureaucratic agencies, national executives, and the military are better liked and more trusted than legislatures and elected politicians.[19]

The Participatory Strand of Democratic Value

The participatory dimension of democracy is one widely recognized strand of democratic value. This strand is enhanced when publics clearly authorize important institutional changes. It is also enhanced by relationships of periodic direct accountability, as manifested in regularly scheduled elections. And it is enhanced when government is kept close to the people, which allows opportunities for actual participation, so that citizens themselves participate in making the law, serving on committees, or speaking at hearings, as in ancient Athens and New England town meetings.[20]

Democracy is an internally complex ideal, and the strands of democratic value may pull in different directions. Assessing whether multilateral institutions enhance democracy requires complex judgments about the impact of new institutions on democratic values that may compete. Domestic constitutional institutions and multi-

17. Ely 1980, 76.
18. See Buchanan 2004; Macedo 1990; Holmes 1995; Dorf and Sabel 1998; and Pettit 2000.
19. See data cited in Moravcsik 2006. (original source: *Eurobarometer* 56 (2), Oct./Nov. 2001).
20. See Mansbridge 1980; and Ober 2005.

lateral institutions may make government more inclusive—more respectful of minority rights and more attentive to minority interests—and so more genuinely reflective of the interests or good of the public as a whole, and in these ways enhance democracy. But at the same time, such mechanisms may attenuate popular control and so undermine a different strand of democratic value.[21]

The core claim of the constitutional conception of democracy is that rule by the people can be enhanced, on balance, by complex procedural requirements such as checks and balances, and by institutions that are relatively remote and only indirectly accountable to the people, such as constitutional courts and central banks. It would be a mistake to view constitutionalism as antidemocratic because of attenuation of the participatory strand of democracy if it enhances other strands such as combating factions, protecting minority rights, and improving the quality of deliberation. In some circumstances, the results may be clearly positive—for example, when there is no degrading of the popular dimension or the gains on the other dimensions seem clearly to outweigh minor losses in participation. On the other hand, we do not assume that constitutionalism always enhances democracy. Under other conditions, its impact may be negative, and in still others it may be ambiguous whether improvements in the control of factions, protection of minority rights, and deliberativeness outweigh decreases in participation. The balance of these factors involves empirical issues, to which we now turn.

Democracy-Enhancing Multilateralism

We have shown that real-world democracy is best understood as constitutional democracy, in which much of politics is deliberately insulated from direct majoritarian control. Existing, seemingly highly legitimate, democratic systems make extensive use of insulated institutions. We turn now to our core argument that multilateral institutions can, and often do, bolster democracy by enhancing such domestic constitutional mechanisms. Empirical evidence shows that multilateralism helps combat dominant factions, protects vulnerable minorities, and enhances democracy's epistemic virtues.

Combating Special Interests

Of the numerous constitutional domains in which the interests of broad groups are particularly apt to be overwhelmed by pressure from more powerful, self-conscious, and concentrated special interests, trade policy is among the most prominent. Control of minority factions is thus a central issue of trade policy. Trade generally creates aggregate gains, but it also creates losers. In some situations, the losers

21. It is worth remembering that the value of direct participation to individual citizens seems likely to decline steeply as one moves from the small scale of the ancient Greek polis or the nineteenth-century New England township to that of large modern cities and nation-states.

may have just claims for compensation or other ameliorative action, and we believe that in such situations both national governments and international organizations may have obligations to respond to these claims, and in fact sometimes seek to meet them.[22]

Often, however, the losers from trade liberalization, such as local import-competing firms, have no valid claims to special treatment or compensation. In general, trade restrictions create dead-weight losses for the society as a whole, as well as globally, so there should be a presumption against claims for protection. Yet in the competitive struggle of interest group politics, concentrated and well-organized losers from trade liberalization often dominate diffuse and less-organized winners from liberal trade, such as consumers and future exporters. The history of U.S. trade policy in the first third of the twentieth century illustrates the proposition that, in the absence of effective institutional checks, domestic trade policy is apt to be driven by well-organized special interests (Madisonian "factions") that have no claim to protection based on considerations of justice or the public good.[23]

Across the globe, democratic societies have responded by placing greater control over the trade agenda into the hands of more insulated leaders with a broader and longer-term mandate—who are generally likely to support the interests of diffuse majorities on trade issues. Where this is the case, multilateral institutions may further improve the ability of national democracies to represent the diffuse interests of democratic publics.[24] Consider first the case of the United States. From the start, the U.S. Constitution sought to promote an open commercial republic, free of protectionist policies among states. It did so by giving the power to regulate commerce among the states to Congress, and by requiring states to extend to citizens of other states whatever "privileges and immunities"[25] they extend to their citizens. Still, after the Civil War, U.S. trade policy was, with brief exceptions, protectionist. Congressional log-rolling increased levels of tariff protection, in a process that reached its apogee with the record-high Smoot-Hawley tariff of 1930.[26]

Since the enactment of the epochal Reciprocal Trade Agreements Act of 1934, U.S. trade policy has been based on the principles of liberalization and reciprocity. The primary institutional response has been to structure the process of negotiation and adjudication so as to empower diffuse coalitions of liberalizing interests. Among the decisive domestic mechanisms have been enhanced presidential power,

22. See Scharpf 1999.

23. Schattschneider 1935.

24. We treat liberal trade as contingently desirable, as we believe it has generally been for most of the past half century. Selective protectionist measures might be defended as in the public interest, especially at early stages of economic development (see Rodrik 1997) but protectionism cannot be justified as a general practice. As noted below, however, tradeoffs between trade liberalization and other values (such as environmental protection or labor rights) may exist, and trade liberalization has no claim to absolute priority.

25. See Hamilton et al., 1787 (*Federalist* #22 by Hamilton); and Article IV of the Constitution of the United States of America.

26. Schattschneider 1935.

recognition of international adjudication, and negotiation through international institutions with norms of reciprocity and nondiscrimination. Multilateral trade norms and institutions altered domestic practices—generally enhancing executive and judicial power, reshaping the incentives of legislators, and shifting the salience of issues—so as to empower previously powerless diffuse interests.[27]

International organizations reinforce this system, and their effects are in some respects similar to those for which the founders of the American republic hoped when they moved important aspects of governance up from the state level to a higher national level. Multilateral institutions such as the General Agreement on Tariffs and Trade (GATT), WTO, and North American Free Trade Agreement (NAFTA) provide mechanisms by which democratic publics can limit the influence of minority factions by committing in advance to a set of multilateral rules and practices that reflect broad public interests. Three international elements have been particularly important.

First the establishment of a *principle of reciprocity* in trade negotiations underscores that in the modern world, the way for a nation to get other nations to reduce their trade barriers is to reduce its trade barriers for its goods. This gives domestic producer groups a greater incentive to mobilize to counteract domestic protectionist groups, thereby encouraging liberal trade through tacit international coalitions.[28] A parallel norm of antidiscrimination has further limited the ability of domestic special interests to construct bilateral protectionist coalitions of their own.[29] These principles were made explicit in 1947 under the GATT and then again more recently under the WTO.

A second crucial mechanism is that the use of bilateral and multilateral forums to negotiate trade liberalization shifts control over the domestic trade agenda into the hands of the executive branch, which represents a broader national constituency than individual members of U.S. House of Representatives and Senate. By bringing back a finished trade deal, the president sets the domestic agenda—a power the executive has tended to use to empower diffuse free-trade interests. This logic underlay the 1934 trade act, which delegated to the president wide authority to cut tariffs on a reciprocal basis, with immediate and long-term liberalizing effects.[30] It similarly underlay the formation of the Special Trade Representative's Office in the 1970s—an institutional innovation Winham has linked with Madison's core constitutional concern to control factions.[31] Until recently, Congress has fre-

27. Haggard 1988.
28. See Gilligan 1997; and McGinnis and Movsesian 2000, 539–40.
29. Finlayson and Zacher 1983.
30. Bailey, Goldstein, and Weingast 1997.
31. Winham says of insulated U.S. procedures originally implemented to negotiate the GATT Tokyo Round: "The process of consulting with constituents was extended widely through [committees] in order to receive a fair representation of all interests . . . The [negotiation] was a modern example of the Madisonian principle of republican government . . . the government controls the people, but the people control the government." Winham 1980, 392–93.

quently delegated "fast track" negotiating authority to the president, which forecloses postnegotiation amendments as conditions for ratification.[32]

A third and final element is *impartial international adjudication*, centered on the WTO Appellate Body, a quasi-judicial entity, whose members are chosen by member governments, which is authorized to declare national measures GATT-illegal. During the decade since the formation of the WTO, the Appellate Body has notably extended its authority, promoting further liberalization of the trade regime. Its rulings create a salient and legitimate standard around which domestic free trade interests can organize. Under the WTO the dispute settlement procedure has been heavily used: during the forty-six years of the GATT system, 535 complaints were filed (an average of less than twelve per year), whereas during the first eight years of the WTO system, 269 complaints were filed (over thirty-three per year). Many of its rulings have been on important issues, requiring powerful trading blocs such as the EU and the United States to rescind or revise their measures.[33]

Critics protest, correctly, that multilateral institutions are typically dominated by rich, powerful countries and that their rules can sometimes be used to thwart the popular will. With respect to the former point, it is well-documented that the formation of the WTO was highly coercive, as the wealthy countries imposed rules on poorer ones.[34] The second point is more germane to this article's argument about the effects of multilateralism on *domestic democracy*. Decisions on two prominent issues are often cited as showing the antidemocratic bias of GATT and the WTO. In 1991 a GATT panel sought to overturn a U.S. law designed to protect dolphins from unnecessary mortality as a result of tuna fishing. The panel in effect declared that "no country may restrict imports in any manner for the purpose of protecting the environment outside its own jurisdiction."[35] The other issue involved provisions of the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPs) protecting the intellectual property rights of pharmaceutical firms. These provisions have been criticized for raising drug prices, putting life-saving drugs for diseases such as AIDS out of the reach of millions of people in poor countries.

Yet in both of these cases a public outcry led to a reversal of policy. Environmentalist protests in the United States and elsewhere ensured that the tuna-dolphin decision was never implemented. Moreover, a WTO Appellate Body decision in October 1998 on a similar case involving protection of sea turtles from nets designed to catch shrimp, was much more favorable to environmental protection. One authority wrote: "The Appellate Body appeared to respond to charges that

32. Admittedly, some agencies to which the president delegates trade authority can be captured by special interests, but such agencies, such as the Commerce Department and the International Trade Commission, are also subject to constraints from the multilateral trade regime.

33. See Steinberg 2004; and Goldstein and Steinberg 2007.

34. Steinberg 2002.

35. Parker 1999, 46–47.

the WTO's dispute settlement process is trade-biased," by making the WTO's approach to environmental regulations much more permissive.[36] The uproar over the drug-related intellectual property provisions led to a declaration issued in November 2001 in conjunction with the launching of the Doha Round that significantly relaxed their impact.[37] It is reasonable to conclude that multilateral institutions can sometimes be used in undemocratic ways, but when the consequences of such bias are publicized, political pressure from mobilized groups in well-functioning democracies can often correct it.

Furthermore, worries about multilateral rules are often exaggerated—because multilateral systems are in practice more decentralized than it is often thought. The oft-criticized WTO Appellate Body ruling against restrictions on genetically modified food, for example, seems to strike a defensible balance. Democratic publics in, say, the EU may refuse to import and consume genetically modified foods even in the absence of scientific evidence that they are unsafe, but must compensate states whose products are excluded from European markets. The system imposes a penalty for regulations that lack a solid scientific justification, which helps to protect a liberal global trading system and encourage technological innovation, which can have important nutritional benefits for poor people around the world.[38] At the same time, the system affords member states considerable flexibility in choosing how to respond. Those who continue to doubt the healthfulness of genetically modified food are encouraged to renew their search for sounder evidence; should it emerge, European restrictions would become legal within the WTO. On balance, therefore, we concur with those who view modern international trade adjudication as "broadly consistent with a democracy-reinforcing jurisprudence."[39] This is not to deny, however, that relationships between rich and poor countries may be highly asymmetrical or that multilateral institutions may often incorporate a prorich bias.[40]

The EU is an even more ambitious multilateral institution. Such an expansive pooling of sovereignty in the world's most successful international organization

36. Shaffer 1999, 508. Even Singer, a critic of the WTO's distinction between trade restrictions targeting product quality (authorized) and those targeting processes (generally not authorized), admits that "perhaps the decision in the sea turtle case . . . is evidence that since Seattle the WTO has become more sensitive to criticism of its environmental record." Singer 2002, 68. The timing of the basic decision, a year before the protests surrounding the Seattle meetings of November 1999, suggests deeper sources of responsiveness.

37. See Wilkinson 2006, 122; and Winham 2005, 112.

38. Production of genetically modified foods is increasing rapidly in developing countries. For data, see the *Economist* (London), 23 February 2008, 81.

39. McGinnis and Movsesian 2000, 601.

40. Woods 2006. Our focus in this article is not on these asymmetrical interstate relationships but on the effects of multilateralism on domestic democracy, particularly in wealthy democratic countries. One way to think of this is to distinguish between "horizontal" issues of democratic equality among individual agents, and "vertical" issues of the relationships between democratic publics and rulers. This article does not address the horizontal question of whether the international system is undemocratic because powerful countries dominate weak ones. Our focus is instead on the vertical question: whether multilateralism degrades or enhances the ability of publics within democracies to control their governments.

deserves close scrutiny, which the EU has received from critics and defenders of multilateralism, and those who criticize the EU's supposed "democratic deficit." Three salient characteristics of EU trade policy underscore our thesis about the utility of international organizations in combating domestic factions.

First, the EU has functioned for decades, much in the same way as the WTO, to "strengthen the executive" in European member states in the negotiation of reciprocal policy trade liberalization and its implementation. National executives have represented the more diffuse interests favoring economic liberalization against entrenched domestic protectionist factions.[41] Adjudication by national courts and the European Court of Justice has similarly undermined the power of domestic firms to exploit consumers and competitive producers—as, for example, in the landmark *Cassis de Dijon* case, striking down spurious health-based restrictions on the importation of foreign liquor.

Second, the evolution of the EU since the single market initiative of the 1980s demonstrates that the logic of empowering diffuse general interests against special interests is not limited to trade policy alone. EU regulation has expanded to other areas with a similar structure of interests, including environmental policy, central banking, and the management of foreign aid. There is scant evidence to support the widespread belief that the EU as a whole is undermining national social welfare provision.[42] Rather, EU policies promoting economic liberalization only partially offset a pervasive tendency among European national polities to offer levels of social protection and labor market rigidity in favor of "insiders" (pensioners and older high-wage workers)—policies that are, largely for demographic and fiscal reasons, unsustainable. In this way, too, the EU can be seen as balancing (though not directly combating) short-sighted special interests.

Consider one final policy arena. Various scholars have argued that multilateral organizations may have advantages over particular governments when it comes to fulfilling the public's wishes with respect to foreign aid. Rodrik has pointed out that multilateral agencies such as the World Bank not only constitute what amounts to an aid-giving cartel, increasing donor influence, but may be better than national governments at providing information, which helps governments and publics monitor aid recipients.[43] Milner goes further to argue that multilateral aid agencies help to solve a domestic principal-agent problem. Donor governments may be tempted to use foreign aid to advance their political interests, whereas domestic publics are more interested in addressing the needs of the people of recipient countries, as indicated by their inclination toward humanitarian assistance. Publics find it difficult to monitor their governments but place greater trust in multilateral aid organizations that are accountable to their member states collectively rather than

41. Moravcsik 2002. A notable exception, namely the Common Agricultural Policy, proves the proverbial rule—farming is a case in which a special interest successfully dominates national electoral politics in every OECD national democracy, and the EU is too weak to combat it.

42. Scharpf 1999, 156–86.

43. Rodrik 1995.

to particular governments.[44] Milner's analysis suggests that when publics are less favorable toward foreign aid, governments allocate a greater proportion of their aid multilaterally.

In all of these situations multilateral organizations assist domestic publics to achieve goals that they would otherwise have difficulty realizing. We are not arguing, however, that institutions to promote more liberal trade are democracy-enhancing merely because they protect the objective interests of most people by preventing dead-weight losses from protectionism. That would be government "for the people" but not necessarily "by the people" or "of the people." While constitutional democracy in our conception emphatically does not imply that the government should act as the majority prefers at any given time (that is, it is not government by poll or plebiscite), the essence of democracy is that in the long run, after due deliberation, the people rule. It would therefore be undemocratic for an elite multilateral institution, cosmopolitan and working in what its members considered the good of all, to override repeated demonstrations of informed, rights-regarding, fairly represented popular will. This would be benign technocracy, perhaps, but not democracy. We insist, however, that properly authorized multilateral institutions, such as other commonplace constitutional institutions, may be justified in imposing checks, constraints, and corrections on majorities that are not well-informed, rights-regarding, or fairly represented. In such cases, proper policy outcomes cannot be read directly from expressions of public preferences. Instead detailed analysis of political behavior is required to identify the underlying public purposes that the system should be representing, and complex constitutional design is generally required to realize corresponding outcomes.[45]

United States membership in the WTO passes this test, since it was endorsed by a joint resolution of Congress, after extensive public debate, in 1994 and reaffirmed by the defeat of Senator Robert Dole, who opposed it, for the presidency in 1996. EU institutions have repeatedly been endorsed by national legislatures and occasionally in public referenda, although there are clear signs of public dissatisfaction with the EU in several countries and individual strands of "stealth supranationalism" by European elites are appearing, which may deserve criticism on democratic grounds.[46]

In summary, the empowerment of general interests is by no means an automatic result of the involvement of multilateral institutions. Publics may be insufficiently involved in fundamental decisions, and after such decisions are made, collusion between special interests and multilateral institutions is also possible. The interests that are prioritized by multilateral institutions may be factional ones, and diffuse interests may be undermined. Our claim here is limited to the proposition

44. Milner 2005.

45. This may seem controversial but it is not. A basic lesson of both modern political science and modern public choice analysis is precisely that there is rarely a 1:1 correlation between public preferences and public policy outcomes, even in direct democratic systems. See Dahl 1956; and Sen 1970.

46. Majone 2005.

that such institutions can enhance democratic processes with respect to trade policy in powerful states such as the United States and the members of the EU. The constraints that they impose on majorities within countries often serve as precommitments that make co-operation for mutual benefit possible. While particular rules may be badly designed, or may themselves be biased in favor of special interests, the proper remedy is, in general, to open the process to a fuller public discussion and to revise the rules rather than to remove the multilateral constraints. Removing constraints would thwart both public preferences and public interests by enabling special interests in each country to enact protective measures at the expense of exporters elsewhere and of their own publics.

Protecting Individual and Minority Rights

In constitutional democracies, institutions exist to protect the interests of vulnerable minorities and individuals against infringement by the state or by factious majorities. This function is increasingly, though hardly exclusively, carried out by courts.[47] Yet domestic protections in sovereign democracies are invariably imperfect and uneven—particularly in newer or quasi-democracies.[48] Where this is the case, multilateral institutions may improve such protections.

Nearly all advanced industrial democracies have signed multilateral treaties that enumerate human rights and establish international adjudication—thereby helping to protect human rights and fundamental minority interests. The recent spread of *ex post* constitutional review for human rights across Western nations—in nearly all of which there is no such indigenous tradition—has been largely a function of such multilateral commitments.

The most-developed system has evolved under the European Convention on Human Rights (ECHR), which now governs forty-six countries from Russia to Iceland. Since 1960, its Court of Human Rights has issued more than 8,000 judgments and continues to do so at an accelerating rate. In 80 percent of these cases, the plaintiff has won, and compliance is widely viewed as effective. Judgments have been enforced against torture in Northern Ireland, discrimination against homosexuals in the British military, privacy rights violations in Switzerland, arbitrary detention in Russia and several other former Soviet states, restriction of religious rights in Moldova, and incarceration of journalists in Turkey, among other violations.[49]

Weaker systems for the protection of human rights exist in the Americas and Africa, and under UN auspices. Multilateral organizations have sought to publi-

47. The history of civil rights in the United States demonstrates that during times of war and national emergency, these judicial protections have not always been effective, but over time, the rights of many minorities in the United States have become more secure. Stone 2004.

48. Issacharoff 2007.

49. Blackburn and Polakiewicz 2001.

cize and reduce the incidence of gender violence.[50] The International Labor Organization and the World Bank have developed standards and practices designed to protect the rights and interests of indigenous peoples.[51] Inspection panels associated with the World Bank and regional development bank have helped direct attention to minority interests that have been neglected in domestic political processes leading to the design of development projects.

The effectiveness of international treaties and organizations to protect human rights is contested.[52] But there is substantial evidence that their effects are strongest in newer democracies and democratizing states. In these countries, the new political leadership may have an incentive to reinforce domestic efforts to protect human rights by making commitments that involve multilateral institutions, which may impose sanctions against a reversion to bad practices or at a minimum increase the damage to the reneging government's reputation.[53]

As noted, human rights regimes are by no means always effective. However, most multilateral activity on human rights is designed to be protective, not to restrict such rights. It may often be ineffective and may occasionally backfire; but usually its pressures operate in the direction of support for human rights.

Unfortunately, however, this is not always the case. In the wake of the terrorist attack on the World Trade Center in September 2001, the UN Security Council enacted antiterrorist resolutions requested by the United States, requiring states to freeze the assets of named individuals or institutions believed to be associated with terrorism. Placement on the list results from closed proceedings of the UN Sanctions Committee, and many states around the world give automatic effect to these decisions. Individuals who are thus deprived of their property and means of livelihood are afforded none of the prior administrative or legal safeguards normally afforded to accused persons.[54] In Europe, about 450 individuals and institutions have had their assets frozen. With respect to the basic Security Council sanctions regime set out in Resolution 1267, the European Court of First Instance has deferred to the Security Council, leaving only diplomatic recourse. However, in December 2006 the court annulled a EU decision taken to implement the financial measures called for in Security Council Resolution 1373, on the grounds that maintenance of a list of persons covered by sanctions required state discretion, and that members of the EU carrying out this task must conform to the European law of fundamental rights.[55] While it is common and sometimes legitimate to suspend (or amend) due process guarantees when national security is threatened, the Security Council here seems to be facilitating the migration of antidemocratic norms. Punishing individuals without fundamental due process protections, includ-

50. Merry 2006.
51. Kingsbury 1999.
52. See Hathaway 2002.
53. See ibid.; Moravcsik 2000; Simmons 2007; and Hafner-Burton, Mansfield, and Pevehouse 2008.
54. Scheppele 2006, 360.
55. Lehnardt 2007. For an earlier analysis, see Kumm 2006.

ing the right to confront charges and evidence in an impartial forum, subjects individuals to arbitrary treatment, and deprives the entire society—or in this case, the whole world—of the opportunity to learn about the decisions being made in its name, including whether those being punished are actually guilty.[56]

Our discussion of human rights illustrates the value of having clear criteria for assessing the performance of multilateral institutions. When multilateral institutions push in the direction of human rights protection, even weakly, they are democracy-enhancing. When they restrict human rights or provide legitimacy for governments to do so, they degrade the quality of democracy. On the whole during the past few decades, with respect to human rights, multilateral institutions have been democracy-enhancing. But internationally as domestically, eternal vigilance is the price of liberty.

Fostering Collective Deliberation

Liberal constitutional democracies are designed expressly to generate and disseminate information, correct errors, and improve policies and practices. For all their intrinsic epistemic advantages, however, individual democracies can utilize information, expertise, and debate even more effectively when they participate in multilateral institutions and networks. To be sure, some dismiss the possibility that critical insights from abroad can improve the truth-seeking potential of our domestic political institutions and even portray openness to overseas experience and insight as a betrayal of the U.S. constitutional tradition.[57] We regard such criticisms as both misguided and misinformed. The wider scope, greater diversity, expert staffs, and political insulation of multilateral forums can enhance the epistemic basis of political decision making by expanding the range of information available to national politicians and publics. Furthermore, the reporting requirements of international treaties and organizations require governments to reorganize themselves in ways that may enhance the influence of individuals and bureaucratic units that are more sympathetic to external views, even in authoritarian countries such as China.[58] When information and critical insights are generated and utilized more effectively, democracy is improved.

Multilateral institutions' capacity to improve the quality of domestic democratic deliberation is particularly well-documented with respect to global environmental assessments. The scientific process by which the impact of ozone-depleting chemicals was assessed played a major role in creating widespread consensus on the need to phase out such chemicals. As Parson writes, "scientific assessments can exercise important influence on policy … by authoritatively resolving scien-

56. The right to an individualized hearing—requiring the government to respond in an impartial forum to individuals' grievances when applying the law to them—can be understood as a right to democratic participation. See Eylon and Harel 2006.

57. See Rubenfeld 2004; and Rabkin 2005.

58. Johnston 2008.

tific questions that have come to be accepted as crucial determinants of the seriousness of the issue."[59] A recent review of global environmental assessments concludes that the influence of such assessments "flows from the process by which it creates knowledge rather than from the reports it may produce.... The effectiveness of assessment processes depends on a process of co-production of knowledge between assessment producers and potential assessment user groups."[60]

The Intergovernmental Panel on Climate Change (IPCC), formed under UN auspices in 1988, is the most highly publicized global environmental assessment project. The IPCC involves governments, who approve the summary reports for policymakers and provide legitimacy for its work, but its core activities are run by networks of scientists. The IPCC has issued four assessment reports, each drawing on a comprehensive survey of contemporary research, and each heavily peer-reviewed. Over the past twenty years, the IPCC has provided the most authoritative information on climate change available to policymakers and has done so in a way that is highly salient—as demonstrated by the extensive media coverage of its Fourth Assessment Report in 2007 and its receipt, along with Al Gore, of the 2007 Nobel Peace Prize[61]

Most international organizations work less as binding decisionmakers than as sites for transnational and transgovernmental networks involving nongovernmental organizations in policymaking and linking national officials and quasi-public bodies with their foreign counterparts for the purpose of joint decision making, coordination, or information sharing.[62] Whereas critics often emphasize the extent of diversity and disagreement on the global stage, political communities with similar political systems and levels of economic development typically face many similar (and rapidly changing) problems. Multilateral institutions and networks offer forums in which proposals for solutions and "best practices" can be debated. The decentralized and divided structure of international organizations means, contrary to critics, that they generally meet higher standards of transparency and justification by reason-giving than most national systems.

Studies of the EU's comitology and Council structures, for example, where national officials prepare legislation and oversee rulemaking, reveal extremely high levels of information, expertise, and reason-giving—in large part precisely because discussions take place among competent experts in insulated forums.[63] Even where formal decisions are not taken, multilateral institutions and networks can help spread "best practices" in regulatory governance. Decentralized governance means that innovations that appear in one or a few countries can be helpful in solving similar problems elsewhere; multilateral organizations provide a routine way to share such innovations. Analyses of "best practices" show that countries adopt pragmatic sug-

59. Parson 2003, 266.
60. Mitchell et al. 2006, 324.
61. For the report, see Intergovernmental Panel on Climate Change 2007.
62. See Slaughter 2004; Tarrow 2005; and Slaughter and Zaring 2006, 220.
63. Joerges and Vos 1999.

gestions (often "second best" rather than "best") and that the resulting process can upgrade the practices of laggards and promote a higher average level of governance.[64] Sabel and Zeitlin[65] describe an array of such complex, multilevel arrangements for decentralized but coordinated EU rulemaking—the EU's "Open Method of Coordination" being the best known. This process does not require policy harmonization but rather seeks to promote learning by establishing common objectives, developing comparable metrics for assessing progress, and setting benchmarks for good performance. According to Sabel and Zeitlin, the resulting networks more fully exploit detailed local knowledge, are more flexible and adaptive than centralized bureaucracies, and are transparent and accountable enough to be as democratic in actual operation as more traditional regulatory hierarchies.

Several other international organizations generate information and specify standards or best practices in policy areas central to the world economy. The Basel Committee on Banking Supervision, meeting under the auspices of the Bank for International Settlements, is a transgovernmental regulatory network, which, in partnership with the Bank for International Settlements, "generates global public goods of information and expertise," not otherwise available.[66] The International Organization of Securities Commissioners (IOSCO) coordinates research by its members on securities regulation.[67] The Organization for Economic Cooperation and Development (OECD) is home base for a vast network of working groups, expert groups, and conferences, which involve approximately 40,000 individuals.[68] Its high-profile reports on economic and policy trends help inform policymakers and publics worldwide. The Financial Action Task Force (FATF), based in the OECD, has developed effective assessments to assist countries in combating criminal and terrorist money laundering.

The value of multilateral cooperation to generate information, assess arguments, and to subject national viewpoints to external criticism, may be greatest when threats to national security quell critical voices at home. At just these times, however, it may be most tempting to discount dissenting voices from abroad. Consider the role played by the UN Security Council in authorizing recent military interventions. The Security Council can perform a screening function, alerting politicians and publics at home and abroad whether an international consensus exists in favor of a particular military intervention. Governments that work through the Security Council and abide by its decisions thus demonstrate "restraint and a willingness to cede some control, something a more threatening 'type' would not be willing to do. This reassures third-party states, which are in turn less likely to retaliate politically and to oppose intervention."[69] States that refuse to abide by

64. Zaring 2006.
65. Sabel and Zeitlin 2007.
66. Barr and Miller 2006, 22.
67. Slaughter 2004, 54.
68. Salzman 2005, 218.
69. Thompson 2006, 236.

Security Council decisions send potentially threatening signals, suggesting questionable motives or faulty justifications. Such signals can be useful to publics at home and abroad.[70]

Finally, judiciaries around the world increasingly seek to learn from each others' experience.[71] From the time of Chief Justices of the United States John Jay and John Marshall to the present, Supreme Court justices—from across the political spectrum—have cited foreign cases and materials, including works of legal commentary, philosophy, history, and literature.[72] In recent years, however, vitriolic criticisms have been leveled at those U.S. Supreme Court justices who consult the decisions of foreign and international courts in interpreting the U.S. Constitution. Justices Antonin Scalia and Clarence Thomas describe "[t]he Court's discussion of these foreign views" as "meaningless" but also "[d]angerous dicta"; "this Court . . . should not impose foreign moods, fads, or fashions on Americans."[73] A chorus of prominent legislators, public officials, and commentators agree.[74]

There is a sensible discussion to be had about which sorts of borrowing are most useful, and also about the weight to be accorded to foreign sources.[75] No one claims that foreign rulings are legally binding in the United States.[76] In opposing a blanket prohibition on judges citing foreign legal materials when interpreting the constitution, we point to the value of doing so: for empirical evidence about how proposed rules might function in practice, for a valuable perspective on the reasonableness of American practices (such as applying the death penalty to juveniles or the mentally retarded[77]), in order to correct misimpressions about the uniformity of moral opinion (as in the Texas sodomy case[78]), or simply to see

70. The U.S. government notably failed to take advantage of multilateral deliberation before invading Iraq. Reports from UN inspectors, as well as the refusal of several democratic governments whose states were represented on the Security Council to support the invasion, could have been viewed as helpful signals, but were not so viewed by the administration of George W. Bush or by the media and public at the time.

71. Slaughter 2004, chap. 2.

72. See Calabresi and Zimdahl 2005; Parrish 2007; and Koh 2004.

73. *Lawrence*, 123 S. Ct. 2472 (2003); 2595, Scalia dissenting.

74. See Parrish 2007; and Kersch 2005.

75. See the measured support given to the practice in Parrish 2007 and the generally measured criticisms of the practice in Calabresi and Zimdahl 2005.

76. Scalia is right to point out, for example, that it makes little sense to cite the fact that other countries have adopted Miranda-style rules requiring police to warn suspects of their rights, unless we also know whether they have adopted some version of the "exclusionary rule" that excludes evidence obtained by the police without a warning; see Dorsen 2005, 519–41.

77. The juvenile death penalty case is *Thompson v. Oklahoma*, 487 U.S. 815, 830 (1988). Justice John Paul Stevens's plurality opinion looked to prohibitions on the execution of minors by Western European nations and even the Soviet Union to characterize "civilized standards of decency." For an invocation of overwhelming disapproval abroad with regard to the execution of the mentally retarded see *Atkins v. Virginia*, 536 U.S. 304, 316 n.21 (2002).

78. In *Lawrence*, Justice Anthony Kennedy cited various judicial decisions, including by the European Court of Human Rights, and legal reforms, in order to correct false claims of uniform disapproval of homosexual conduct, in the lower courts and in the reigning Supreme Court precedent, *Bowers v. Hardwick*, 478 U.S. 186 (1986).

how similar legal systems have dealt with similar problems. More broadly, an external viewpoint can help to identify unexamined assumptions, or to cast one's convictions in a critical light.[79]

Long before the development of today's trans-governmental networks, the U.S. Declaration of Independence sought to display "a decent respect to the opinions of mankind," and Madison, in *Federalist No. 63*, testified to the wisdom of attending to informed opinion abroad:

> An attention to the judgment of other nations is important to every government . . . [I]n doubtful cases, particularly where the national councils may be warped by some strong passion or momentary interest, the presumed or known opinion of the impartial world may be the best guide that can be followed. What has not America lost by her want of character with foreign nations; and how many errors and follies would she not have avoided, if the justice and propriety of her measures had, in every instance, been previously tried by the light in which they would probably appear to the unbiased part of mankind?[80]

These sentiments perfectly cohere with constitutional democracy's commitment to governance based on inclusive interests, sound evidence, and due deliberation.

It is important to note that we are not recommending turning decision making over to unaccountable experts working in obscure and nontransparent multilateral institutions. Such processes would not pass tests of transparency and accountability that are crucial to assuring the legitimacy of multilateral institutions. They would be likely, furthermore, to lead to the capture of decision making by special interests, a practice that we have criticized above. Nor do we recommend that societies automatically adopt what other societies view as "best practices"; what is appropriate for one society may not be so for another. What we do recommend, however, is a process of public deliberation that is increasingly open to the views of outsiders, both those who are affected by national public decisions and those who may have insights to contribute from their distinct experience. Public deliberation cannot be fully informed until the citizens of a nation have learned all they can from others.

Conditions for Democracy-Enhancing Multilateralism

We have shown that multilateral institutions can, like constitutional institutions, help control special interest domination, make democracy more inclusive by protecting individual and minority rights, and foster collective deliberation. At the same time, we acknowledge that multilateral institutions may attenuate direct electoral control and may themselves be captured by special interests, or operate in a

79. Jackson 2005.
80. Hamilton, Madison, and Jay 1787, 382.

nontransparent and unaccountable fashion. An assessment of whether any given multilateral institution enhances or degrades democracy must therefore be based on an analysis of whether, on balance, international cooperation improves these four aspects of constitutional democracy—control over factions, minority rights, epistemic quality, and participation—as compared to existing domestic practices.

If we have effectively made the case that multilateralism can be democracy-enhancing, it would be worthwhile to consider further empirical research to specify the conditions under which this benign result—or the reverse—will ensue. In this article we limit ourselves to one general observation, one broad proposition about the empirical implications of our account, and three specific conjectures about the conditions under which we expect multilateralism to be democracy-enhancing.

The general observation is that compared to most democratic states multilateral institutions are weak. Particularly with respect to relatively large and powerful states, and those whose views are part of the international mainstream, domestic democracy effectively cannot be overridden by multilateralism. States may embrace multilateralism, but it cannot be forced on them. Most multilateral institutions enjoy relatively little autonomy. For financial, coercive, or administrative resources, they depend on states. Even in the most highly developed international institutions, such as the EU, nearly all decisions are taken by unanimous or supermajoritarian consent of national governments (often bolstered by informal consensus practices). In extreme cases, governments have the de facto ability not to comply or to withdraw from agreements. Publics remain loyal to their own states rather than to multilateral institutions. The dependence of multilateral institutions on major states guarantees their ultimate accountability to those states, and, where these states are democratic, to the publics of these states.

Furthermore, international institutions are not substitutes for states, but typically play complementary roles. To implement decisions, governments generally rely on national parliaments and national officials, with a substantial "margin of appreciation" to tailor specifics to national particularities. The EU espouses a norm of "subsidiarity," by which decisions are supposed to be made at the lowest feasible level; and the International Criminal Court is enjoined by its charter to practice complementarity with domestic courts—that is, to defer to judgments of such courts that observe general principles of due process. The choice, therefore, is not between international cooperation and domestic autonomy, but between complementary activities of international and domestic institutions, on the one hand, and uncoordinated state action, on the other.[81]

Our broad proposition about the observable implications of our argument is as follows: In areas of the highest priority to the public, where relevant publics are very highly organized and attentive, multilateralism will tend to be subject to more directly participatory democracy, whereas where publics are less organized and attentive, nonparticipatory mechanisms will be used.

81. For this formulation we are grateful to one of the anonymous reviewers for this journal.

A major source of factional power, we have shown above, is the failure of diffuse majorities to mobilize around nonsalient issues. In such cases, publics, in their general deliberations, will prefer to channel decisions through more distant, insulated political institutions: that is, through constitutional or multilateral mechanisms. Shared values of constitutional restraint help to explain both why democracies create constitutional restraints and why they create and accept the constraints entailed by multilateral institutions.

The implications of this proposition are testable. One of them is that we should expect to see a selection effect across issues. Domestically, democratic electorates resist delegating certain issues to specialized bodies not subject to democratic control—for example, issues of taxation, social welfare, health care, education, immigration, and infrastructural spending. We should expect the same issues to remain subject to national control. Likewise, the same issues that are delegated to specialized bodies at home are likely to be delegated to multilateral institutions: central banking, human rights protection, civil prosecution, constitutional and dispute adjudication, and technical regulation.[82]

More broadly, we should expect to see levels of participation vary across issues—with similar practices adopted at the multilateral and domestic level. Limitations on popular participation, as we have shown, can be democracy-enhancing when they constrain factions, protect minority rights, and improve the epistemic quality of democracy. Shared values and practices of constitutional restraint help to explain why democracies create such limitations. We should therefore expect to see similar institutional designs at the transnational level and domestic levels, with the greatest autonomy from direct democratic control occurring on similar sorts of issues. This is indeed what we observe in areas such as central banking, constitutional adjudication, human rights protection, civil prosecution, trade liberalization, and technical regulation—where participation is limited for normatively sound reasons.

The two empirical propositions about cross-issue variation in the form of multilateral institutions presented above are broadly applicable, and tell us much about the basic scope of global governance today. In the spirit of promoting further debate and research, we offer three more specific conjectures about the conditions under which the democracy-enhancing effects of multilateral institutions are most likely to outweigh the costs to participatory self-government that they may impose.[83] In seeking to specify conditions under which we expect multilateralism to be democracy-enhancing, we differentiate clearly between effectiveness and democracy. Practices that might be desirable on grounds of effectiveness, and be justified by the pragmatic defense of multilateralism that we discussed at the beginning of this article, could nevertheless fail the test of enhancing democ-

82. Moravcsik 2008.

83. We are grateful to two referees, and the IO editors, for insisting that we attempt at least a partial statement of the conditions under which we expect multilateralism to enhance domestic democracy.

racy. Demonstrating merely that multilateralism leads to more effective governance does not constitute evidence for our argument.

First, multilateral institutions in which countries with well-functioning domestic constitutional democratic procedures predominate are more likely to function in such a way as to enhance domestic democracy than those dominated by nondemocracies. Since the establishment of multilateral institutions involves constitutional commitments that may attenuate subsequent democratic control, we might expect that the democratic standard for authorization will be particularly high—and this is indeed what we observe. Consent of each participant member state is required, and must be ratified using whatever domestic constitutional procedures it specifies: a parliamentary vote, occasionally a referendum, and never less than promulgation by an elected government. All other things equal, the more representative this process and the higher the standard of domestic democracy by which delegation took place, the more likely it will be to enhance domestic democracy in the future. Where, by contrast, representative governments represent the interests of powerful minorities, as in cases such as the nineteenth-century gold standard or the EU's Common Agricultural Policy, the resulting organizations are more likely to be captured by special interests.[84] This effect is even clearer at the extremes: cooperation among nondemocratic states—as in organizations like the Concert of Europe and the Holy Alliance of nineteenth-century Europe, or the Shanghai Cooperation Organization—is more likely to undermine domestic democracy.

Second, multilateral institutions that generate and involve civil society networks and organizations can thereby enhance transnational discussions, creating new forms of participation that may partially compensate for participatory forms that are lost. Tarrow has persuasively argued that transnational activists increasingly find in multilateral institutions "a 'coral reef' where they lobby and protest, encounter others like themselves, identify friendly states, and from time to time, put together successful global-national coalitions."[85] New forms of participation are arising, largely through the Internet, facilitated by multilateral organizations. Some multilateral organizations, such as the World Bank, have begun actively to engage civil society in quite institutionalized ways.[86] Insofar as domestic debates and deliberation are enhanced by these forms of transnational participation, multilateral institutions may thereby enhance democracy at home.

Third, the costs and risks of multilateralism for democracy are likely to be somewhat different between countries that are large and heterogeneous and those that

84. This assessment, a central part of the empirical research program we recommend, will require fine-grained empirical analysis. Note that among established democracies, more participatory domestic ratification procedures are not necessarily more likely to generate institutions that enhance domestic democracy, because—according to our central premise—one cannot infer the "democratic" (or even the representative) nature of the delegating procedures from the level of participation per se. Instead, in analyzing delegation, the analyst needs to replicate at the domestic level the sort of multi-dimensional analysis of democracy conducted here for international institutions.

85. Tarrow 2005, 219.

86. The World Bank Web site ⟨http://web.worldbank.org⟩ provides opportunities for civil society participation, including a Civil Society Policy Forum.

are small and homogeneous. Participation costs may be higher for small and homogeneous societies, in which national governments are closer to the people and levels of citizen satisfaction about the functioning of democracy tend to be higher than in their larger counterparts.[87] Smaller and more homogeneous societies may have more to lose in terms of citizen participation by shifting some decision making toward multilateral institutions. Participation represents only one strand of democratic value and most democracies are too large to place great weight on direct citizen participation in national-level policy deliberation. In these relatively large countries, the scope of government and the gap between government and citizen are already relatively large, so losses in the ability of individuals to participate directly will be less meaningful.[88] Yet it is worth emphasizing that this need not translate into a loss of accountability—also a democratic value, but one that should not be confused with participation. If we focus on accountability rather than participation, the risks of multilateralism may be lower in small, homogeneous societies because there it remains easier for publics to monitor both their own governments and multilateral organizations.[89] Small and homogeneous political communities may also stand to gain most in terms of faction control and rights protection. Since most multilateral organizations continue to offer opportunities for individual governments to exercise influence, citizens in smaller polities can exercise a consistently influential role—as they do, for example, in some smaller EU member states.

Conclusion

In this article we have challenged the conventional framing of the "multilateralism versus democracy" debate, in which critics point to the ways in which international institutions undermine domestic democratic processes, and defenders stress pragmatic benefits. We have stressed the ways in which multilateral institutions can enhance domestic constitutional democracy. Our discussion has shown that multilateral institutions can empower diffuse minorities against special-interest factions, protect vulnerable individuals and minorities, and enhance the epistemic quality of democratic decision making in well-established democratic states. Moving some forms of governance up to a higher level, insisting on elaborate mechanisms for public debate and criticism, and making use of impartial and expert decision-making bodies can improve democracy.

87. See Dahl and Tufte 1973; and Matsubayashi 2007.

88. Whether the age of a democracy is significant is an interesting subject for possible investigation. One could imagine that older democracies could lose out from multilateralism for the same reason that small and homogeneous democracies could be disadvantaged by it: the disruption of well-established and well-functioning patterns. But newer democracies could be more susceptible to adopting international norms and practices not suited to their cultures, as a result of not having had a chance to experiment over a period of time.

89. Grant and Keohane 2005, 32.

Our argument differs from that of the critics of multilateralism in three crucial ways. First, we focus on empowering publics to achieve important tasks, especially those of regulating private organizations, such as corporations and hedge funds, that have global or near-global scope. Empowering publics requires effective governance institutions, which in the world of the Internet and jet aircraft must themselves often be multilateral. National sovereignty is understood as a resource that can be delegated and pooled to that end. Second, we recognize the flaws of actual democracies in the contemporary world. They are subject to dominance by special interests and a parochialism of view, resulting from insufficiently wide deliberation among people with insufficiently diverse experiences and, sometimes, a misplaced view of the superiority of their own institutions and practices. Third, we are committed to constitutional democracy, not the populist version that identifies democracy with strict majority rule. Democracy requires that governments control factions, protect minority interests, and maintain the epistemic quality of deliberation. Multilateral constraints, like other constitutional constraints, can enhance the ability of publics to govern themselves and enact their deliberate preferences over the long term. "Widening the sphere," as Madison argued, can both inform popular preferences and improve outcomes.

Yet we are not apologists. We emphatically do not claim that multilateralism always enhances domestic democracy. To the contrary, the standards we have articulated for defending multilateral institutions on democratic grounds equally enable criticism of democracy-inhibiting multilateralism, should international institutions promote special interests, violate rights of minorities, diminish the quality of collective deliberation, or seriously degrade the ability of people to participate in governance without compensating democratic advantages. There are good reasons to be concerned that multilateralism can sometimes empower unaccountable elites—a tendency against which it is necessary to guard.[90] For example, the economic openness fostered by multilateralism is likely to be more beneficial to capital than labor in wealthy countries, exacerbating some forms of inequality.[91] The proliferation of governmental networks raises issues of accountability to those outside such networks, as Slaughter recognizes while praising the efficiency and effectiveness of network governance.[92] Multilateralism has advantages for democracy, which we have emphasized here, but to optimize its contributions we must also correct or compensate for its costs. Nevertheless, even if multilateralism is, on balance, only mildly supportive of democracy or even neutral, the net positive impact, taking account of the pragmatic arguments for it, may be significant.

90. This danger may be particularly acute in poor countries, dependent on multilateral institutions, with weakly developed institutions of domestic accountability. As Ericka Albaugh pointed out to us, in such countries external accountability (to multilateral financial institutions) may degrade domestic accountability.

91. Rodrik 1997.

92. Slaughter 2004.

A comprehensive analysis of the effects of multilateralism on democracy is beyond the scope of this article, but it is an essential task for future scholarship. Any such analysis should divide the idea of democracy into more specific normative principles, as we have done. One central implication of our normative conception for future research is that any such assessment of the capacity of multilateral institutions to promote these principles must be conducted in a deeply empirical manner: informed by the best available policy analysis and social science. Such an investigation would constitute a comparative institutional analysis informed by normative criteria such as those that we have put forward.

For those who believe in the value of democracy, such an analysis would have clear policy implications. Designers of new or reformed multilateral institutions should take their effects on democracy as seriously as their substantive effectiveness and efficiency. Showing that multilateralism can have pragmatic benefits is not necessarily sufficient to demonstrate that its domain should be extended: analysis of its impact on democracy is also essential. Those who believe in both democracy and international cooperation should seek to understand the conditions under which multilateralism does and does not promote democracy. Instead of attacking multilateralism as undemocratic, democratic internationalists should contribute to a new political science that explores how multilateral organizations can allow nations to achieve important goals, while enhancing rather than undermining democracy at home.

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