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Multilateralism's Life-Cycle

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Multilateralism's Life-Cycle

Harlan Grant Cohen

Introduction

Global and multilateral efforts to provide global public goods, manage global commons, and protect fundamental values have had a rough couple of years. A new U.S. President has expressed his intention to withdraw the United States from the multilateral Paris Agreement on climate change.¹ Citizens of the United Kingdom voted to leave the European Union (“Brexit”). Following popular opinion,² the United States has expressed its intent not to move forward with the Trans-Pacific Partnership (TPP),³ itself a rejection of the more global approach to trade reflected in the World Trade Organization (WTO). The White House has, instead, promised to transfer its focus to bilateral trade deals.⁴ South Africa, Gambia, and Burundi expressed their intent to withdraw from the Rome Statue creating the International Criminal Court (ICC). Although South Africa and Gambia have since rescinded their withdrawal,⁵ Burundi has followed through,⁶ and the pressures on other African states to withdraw have not abated. A President in the Philippines openly flouts international human rights obligations and has threatened withdrawal from a variety of institutions including the United Nations.⁷ Reading the near daily alerts of threatened withdrawals, it would be fair to worry that the current global system is unraveling.

Of course, the news has not all been bad for these global efforts. China has expressed its support for the Paris Agreement and other global institutions.⁸ China also continues to negotiate its own mega-regional trade agreement in Asia – the Regional Comprehensive Economic Partnership (RCEP).⁹ While the United States has moved on from TPP, its onetime partners in the agreement have continued to talk,¹⁰ and may have reached an agreement.¹¹ And the threatened

· Gabriel M. Wilner/UGA Foundation Professor in International Law, University of Georgia School of Law. Thank you to Tim Meyer, Melissa J. Durkee, and Dan Bodansky and participants at the Annual Meeting of the European Society of International Law for helpful conversations, thoughts, and critiques. Thank you also to Victoria Barker and Lauren Brown for serving as research assistants and willing sounding-boards.

¹ Michael D. Shear, *Trump Will Withdraw U.S. From Paris Climate Agreement*, N.Y. TIMES, June 1, 2017.

² Anuska Ashthana, et al., *UK Votes to Leave EU After Dramatic Night Divides Nation*, GUARDIAN, June 24, 2016.

³ Nicky Woolf, et al., *Trump to Withdraw from Trans-Pacific Partnership on First Day in Office*, THE GUARDIAN, Nov. 22, 2016.

⁴ William Mauldin, *Trump's Big Gamble: Luring Countries Into One-on-One Trade Deals*, THE WALL STREET JOURNAL, Jan. 27, 2017.

⁵ Norimitsu Onishi, *South Africa Reverses Withdrawal From International Criminal Court*, N.Y. TIMES, Mar. 8, 2017.

⁶ Jina Moore, *Burundi Quits International Criminal Court*, N.Y. TIMES, Oct. 27, 2017.

⁷ *Philippines President Threatens to Quit 'Stupid' UN in Foul Mouthed Tirade Over War on Crime*, TELEGRAPH, Aug. 21, 2016.

⁸ *China's Xi Pledges to Support Paris Climate Agreement*, AL JAZEERA, May 9, 2017.

⁹ Richard Javad Heydarian, *This is How a Superpower Commits Suicide*, WASH. POST, November 13, 2017; Jennifer Amur, *4 Things to Watch Now That the U.S. has Withdrawn from TPP Trade Deal*, WASH. POST, January 23, 2017.

¹⁰ Motoko Rich, *The Trade Deal Trump Killed, is Back in Talks Without U.S.*, N.Y. TIMES, July 14, 2017.

withdrawals from the ICC by members of the African Union (aside from Burundi) may never come about.

How should we understand these events? It is extraordinarily difficult to conceptualize broad trends while they are still ongoing, and trying to identify broad trends from the wide range of events mentioned, let alone to explain them, is a perilous task. Many different lines could be drawn through such a wide range of events/datapoints, revealing very different stories about the world, including perhaps, that these events are not connected at all. Moreover, many of these events seem highly contingent; a few votes in one direction or another in certain countries might radically alter our perception of these trends. All of this said, global negotiating dynamics do seem to be changing.¹² Multilateralism seems to have lost at least some of its appeal to some states, and it is worth exploring what phenomena may be sapping the strategy of its vigor.

This essay explores the possibility that multilateralism and multilateral institutions have a life-cycle. This is not how we normally think about institutional arrangements and choices. Certainly, debates rage over the shape global arrangement should take from unilateral to bilateral to regional or global. But those debates usually focus on fitting tools to goals. We rarely think of these choices as time-bound, that particular strategies may ripen or spoil or have expiration dates. To the extent we do imagine such arrangements developing over time, we often fall into progress narratives in which global solutions build upon themselves, in which bilateral arrangements beget regional ones, regional ones beget global multilateral ones, and multilateral solutions should and will deepen over time.

In fact though, current events highlight another possibility: that institutional strategies and arrangements have life-cycles, that as the world adapts to those arrangements, the effectiveness of those solutions or strategies may change, even wane. Institutional arrangements transform negotiating dynamics, creating new realities that bring different challenges and require different solutions.

This insight suggests a seeming paradox: that the anti-globalist turns described above are a reflection not of multilateralism's failures, but of its successes. The great multilateral institutions of the post-World War II world—the General Agreement on Tariffs and Trade (GATT) and the WTO, the United Nations, human rights treaties, the Rome Statute of the International Criminal Court—reflected efforts to increase and spread global wealth, stability, and peace (among other goals). And while much work remains to be done, these institutions have in many ways succeeded. Wealth and power are now widely dispersed across the world.¹³ Human rights remain under serious threat (in some places, more than before¹⁴), but institutions have developed tools that can be effective, at least some of the time.¹⁵ Success, however, has fundamentally changed the calculus of individual states, and in turn, their views of global goals and multilateral

¹¹ Shawn Donnan, *Long Live the TPP — Pacific Trade Pact Survives Largely Intact*, FINANCIAL TIMES, November 13, 2017.

¹² See José E. Alvarez & Benedict Kingsbury, *AJIL at 111*, 111 AJIL 1, 2-3 (2017).

¹³ See *infra* text at notes 41-47.

¹⁴ See Ingrid Wuerth, *International Law in the Post-Human Rights Era*, 96 TEX. L. REV. (forthcoming 2017).

¹⁵ See, e.g., Gráinne de Búrca, *Human Right Experimentalism*, 111 AJIL 277, 303-04 (2017); Pamela Quinn Saunders, *The Integrated Enforcement of Human Rights*, 45 N.Y.U. J. INT'L L. & POL. 97 (2012).

strategies. The success of multilateralism may have made that strategy more difficult over time.¹⁶

The success of post-World War II mass multilateralism, this essay argues, has had four profound and intertwined effects on global negotiating dynamics, which together should shift and may be shifting states away from that strategy. The first is true global multipolarity.¹⁷ Current global institutions were founded against a backdrop of unipolarity, bipolarity, or even tripolarity. It is fair to ask whether those institutions are mere reflections of earlier power relations that no longer exist, whether existing global institutions are compatible with true multipolarity.

Multipolarity highlights a second effect of success: the diminishing value of issue linkages. When one or a few wealthy, powerful states dominate the international order, they can demand much more of others. In return for access to markets or security, the United States, the Soviet Union, the European Union could demand that other states sign up to rules in which those others states had little to no interest. True multipolarity though radically diminishes the force of those linkages. Smaller states no longer “need” the more powerful ones in the same way. They may be powerful or wealthy enough to hold out for better deals. They may have greater relative regional power that offsets losses in dealing with traditional global powers. And, the wider dispersion of power means that the more traditional powers now face competition. No state is essential.

This second effect combines with a third – the increased effectiveness of these institutions – to further change global negotiating dynamics. For states with little interest in particular institutions, greater effectiveness means greater cost. If the value of linkages decreases while the costs of membership increase, states may have little incentive to remain. For other states, effectiveness results in real benefits, increasing the value of membership. This though can make it easier for certain states to free-ride on the regime, betting that they can benefit from the global goods the regime produces, even as they seek special benefits at everyone else's expense.

Fourth and finally, multipolarity and success may change what states fundamentally want out of these negotiations, increasing focus on relative as opposed to absolute welfare. In an era of massive wealth and power disparities, all states can focus on the absolute gains of global agreements. Raising the welfare of the poorest serves the interests of the wealthy, and the poorest want only to better their position. Multipolarity, however, changes that dynamic. Studies in behavioral economics have shown that people often care more about relative wealth than absolute. At the international level, the United States worries about its shrinking wealth relative to China or Mexico, questioning trade agreements that, while valuable to the United States, give their rivals to large a share of the growing pie.¹⁸ President Trump complains openly

¹⁶ None of this is meant to suggest that multilateralism's success is *the* cause of any current backlashes. Each of these multilateral regimes has its own complex narrative, and the crises these regimes face are specific to them. In any given case, the factors noted here may not be the dominant sources of regime discontent. Instead, this essay highlights a series of structural effects of multilateralism's success that *can* undermine a multilateral regime.

¹⁷ Whether multilateralism actually “caused” multipolarity is impossible to say. It is fair to say that the wider dispersion of wealth and power it represents was among the desired effects of post-World War II multilateralism and that multipolarity might thus be seen as a sign of multilateralism's success.

¹⁸ *Trade, at what price?*, THE ECONOMIST, Apr. 2, 2016.

about how little other members of the North Atlantic Treaty Organization (NATO) are paying for their defense.¹⁹ China and India, worried about the environment, worry equally that new environmental rules will burden them more than others, hurting their relative global position.²⁰

The events listed above may thus best be described as the growing pains of an increasingly mature, successful, global system. But if multilateralism's success makes further multilateralism more difficult, those seeking to solve global problems and provide global public goods face a quandary. The last part of this essay thus suggests some ways forward. Again paradoxically, as multilateral institutions deepen, the best strategies to achieve global solutions may be ones that encourage competition rather than foster cooperation. Regional, club, and national strategies may need to pick up where multilateralism leaves off.

A few notes on the terms used in this essay. Multilateralism, the primary focus of this discussion, describes a problem-solving strategy or organizing principle. It describes the choice to include, involve, and gain the agreement of as many states as possible to solve global problems or produce global benefits. In this sense, multilateralism is a relative concept. While multilateralism connotes a number larger than one (unilateralism) or two (bilateralism), it can't be boiled down to a specific number or geometry of states. The twelve (or now eleven) state negotiations of the TPP look like multilateralism when compared to bilateral trade deals; it looks like multilateralism's antithesis when compared to the 164 members of the WTO. The same can be said of the relationship between regional human rights arrangements and the broader United Nations-sponsored international one. Instead, multilateralism describes a preference—a belief that, all things being equal, broader more inclusive regimes would best solve the problems at hand, whether functionally or normatively.

Multilateralism is thus distinct both from the multilateral institutions that may reflect or embed that strategy and from the dispersion of state power in the system (polarity). Preferences for multilateralism may be embedded in the design of particular multilateral institutions; the WTO and the United Nations, for example, establish/dictate multilateral fora and decisionmaking processes. If states' preference for multilateralism wanes, those processes may become less effective, grind to a halt, or fall into disuse as states seek out other strategies in other fora. Nonetheless, other aspects of the multilateral institution may survive, or even thrive. Even as states look to regional agreements to deepen economic integration,²¹ the WTO continues on,

¹⁹ David E. Sanger and Maggie Haberman, *Donald Trump Sets Conditions for Defending NATO Allies Against Attack*, N.Y. TIMES, July 20, 2016.

²⁰ See, e.g., Jonathan Zasloff, *Choose The Best Answer: Organizing Climate Change Negotiation in the Obama Administration*, 103 NW. U. L. REV. COLLOQUY 330, 333 (2009); Lavanya Rajamani, *The Climate Regime in Evolution: The Disagreements That Survive the Cancun Agreements*, 5 CARBON & CLIMATE L. REV. 136, 138 (2011) (“Developing countries, in particular Brazil, South Africa, India and China (BASIC) are reluctant to accept global goals for emissions reductions in the absence of an acceptable and equitable burden sharing arrangement. In their view, without such an arrangement, these goals will translate into effective limits on their development.”); *Catching up with China*, THE ECONOMIST, Oct. 10, 2015.

²¹ ...or threaten the WTO more directly, see Gregory Shaffer, Manfred Elsig, and Mark Pollack, *The Slow Killing of the World Trade Organization*, THE HUFFINGTON POST, November 17, 2017, 06:52 pm ET, available at https://www.huffingtonpost.com/entry/the-slow-killing-of-the-world-trade-organization_us_5a0ccd1de4b03fe7403f82df.

providing support, with the support of its members, for existing agreements.²² In fact, as will be explained below, it may be an institution's ability to perform its existing functions well (or well-enough) that makes unilateral efforts or non-multilateral negotiations of further commitments more attractive.²³ And as scholars of regime complexity have observed, it may be easier to layer new institutions and arrangements on top of old ones than to replace them completely.²⁴

Similarly, multilateralism is distinct from polarity. There may be some structural relationships between the choice of negotiation strategy and the shape of power relations. As will be explored below, multilateralism may be easier to pursue in a unipolar world, where it may be more attractive to both the dominant power and others. By contrast, multipolarity may pose distinct challenges to multilateralism.²⁵ Some scholars have suggested that polarity may itself follow cycles or patterns as states adapt to the power wielded by others.²⁶ That said, as multilateralism is in part ideological—a *belief* in broader, more inclusive solutions—power dispersions are not entirely dispositive. A dominant state may prefer to wield its power either unilaterally or to leverage its power in bilateral relations.²⁷ Competing states may believe that only multilateral efforts will solve the problems they see or create the benefits they seek.²⁸

It is also important to clarify the meaning and limits of the life-cycle metaphor. The metaphors of “cycles” or stages are often used to describe purported “laws” of development. The business cycles described by political economists, for example, imply an element of inexorability, with periods of expansion, crisis, recession, and recovery doomed or blessed to repeat indefinitely.²⁹ So too Marxist stages of development³⁰ suggest a single inexorable trajectory for the world. To the extent to which business cycles suggests that success naturally creates conditions that lead to crisis and failure, there is an analogy to life-cycles of multilateralism described here. But the image of a life-cycle is meant to describe something different—not the inexorable repetition of the cycle, but the natural life of an organism. By life-cycle, I mean to suggest a process of change over time that might follow some common patterns but which will also be different for

²² One obvious factor in both the continued survival of an institution and its ability to adapt in the face of the forces described here is the relative perceived value it continues to generate for its members. The more value it seems to produce, the stronger it will likely be.

²³ See *infra* text at notes 91-96 (describing the potential for free-riding).

²⁴ See Karen J. Alter & Kal Raustiala, *The Rise of International Regime Complexity*, ANN. REV. L. & SOC. SCI., forthcoming 2018, at 10, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3085043.

²⁵ See *infra* text at notes 60-88.

²⁶ See, e.g., Barry R. Posen, *Emerging Multipolarity: Why Should We Care?*, CURRENT HISTORY 347 (2009); KENNETH WALTZ, THEORY OF INTERNATIONAL POLITICS (1979).

²⁷ See John Gerard Ruggie, *International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order*, 36 INT'L ORG. 379, 381-82 (1982) (distinguishing the trade liberalizing preferences of 19th Century British Empire from the mercantilist views of the 17th Dutch Empire).

²⁸ See Alexander Wendt, *Anarchy Is What States Make of It: The Social Construction of international Politics*, 46 INT'L ORG. 391 (1992).

²⁹ See, e.g., JOSEPH A. SCHUMPETER, HISTORY OF ECONOMIC ANALYSIS (1954); ARTHUR F. BURNS & WESLEY C. MITCHELL, MEASURING BUSINESS CYCLES (1946). Some scholars have suggested that business cycles themselves (not analogies to them) may explain shifts internationally between cooperation and competition. See, e.g., James Cassing, Timothy J. McKeown, & Jack Ochs, *The Political Economy of the Tariff Cycle*, 80 AM. POL. SCI. REV. 843 (1986).

³⁰ See, e.g., Karl Marx, *Preface to a Contribution to the Critique of Political Economy*, reprinted in THE MARX-ENGELS READER 3-6 (Robert C. Tucker, ed., 2nd Ed. 1978) (outlining Marx's notion of “historical materialism”).

different individuals and different species. Things are born, mature, and decline, but the exact forms those stages take may differ. At different stages of maturity, different challenges may emerge, some the natural result of maturation itself. And as organisms die, they give way to something new,³¹ though the new organism may carry forward the DNA of its forebears as it develops in new directions. Even as multilateral institutions may wane, the rules and processes they created will likely continue on as part of the unilateral or bilateral or “minilateral”³² efforts that replace or displace them. Moreover, while life-cycles too suggest repetition, our interest is often less in the way things stay the same than in the way organisms individually adapt to those common, repeated forces.³³ So too here, our interest is in the forces unleashed by multilateralism’s success and the room (or lack there of) left for adaptation.

One final preliminary note: the forces suggested in this essay are not meant to be determinative. Current pressures on multilateral institutions reflect highly contingent events (e.g., domestic political outcomes) that may only be partly related to global institutions. The structural forces this essay identifies should instead be seen as common background pressures against which contingent events will play out. Sometimes, actors or events will exploit them or make them worse, stoking centrifugal forces within the system. At other times though, actors and events will help these institutions stave off these pressures. Actors may find new sources of multilateral value for states, may reinforce the ideological commitment to multilateral solutions, or embed multilateralism in domestic law and politics.³⁴ External crises may boost the once-waning value of multilateral cooperation. Structure is not destiny. Like aging though, it may be a reality we all need to face.

The Rise of Multipolarity

The arrival of multipolarity has been prophesized for some time. In the United States, Secretary of State Madeline Albright³⁵ and Vice-President Joe Biden have at various points talked of the arrival of a multipolar world.³⁶ In 2008, the U.S. National Intelligence Council’s Global Trends series predicted “a global multipolar” international system by 2025.³⁷ China’s President Xi Jinping has spoken positively of a shift to multipolar world, describing the shift as a feature of

³¹ ...with the notable exception of the immortal jellyfish, *Turritopsis dohrnii*.

³² See, e.g., CHRIS BRUMMER, *MINILATERALISM: HOW TRADE ALLIANCES, SOFT LAW AND FINANCIAL ENGINEERING ARE REDEFINING ECONOMIC STATECRAFT* (2014).

³³ In this sense, the idea that organizing principles like multilateralism may have life-cycle might be at one with studies of international law as an autopoietic system, which suggest that the system will adapt to such forces by pushing towards different methods of organization when such seem necessary. See, e.g., Anthony D’Amato, *Groundwork for International Law*, 108 *AJIL* 650 (2014); Anthony D’Amato, *International Law as an Autopoietic System*, in *DEVELOPMENTS OF INTERNATIONAL LAW IN TREATY MAKING* 335 (Rudiger Wolfrum & Volcker Roeben, eds. 2005); GUNTHER TEUBNER, *LAW AS AN AUTOPOIETIC SYSTEM* (1993).

³⁴ See *infra* text at notes 120-122.

³⁵ See Elizabeth Dickinson, *New Order: How “the multipolar world” Came to Be*, *FOREIGN POLICY*, Oct. 15, 2009 (cataloguing the various references to multipolarity).

³⁶ *Id.*

³⁷ U.S. NATIONAL INTELLIGENCE COUNCIL, *GLOBAL TRENDS 2025: A TRANSFORMED WORLD* (2008).

Chinese policy.³⁸ And just last January, European Council President Donald Tusk noted the shift.³⁹ Over this period of time, countless journalists and academics have predicted, promoted, described, or bemoaned the shift.⁴⁰

And the facts on the ground back up these assertions. Many numbers and studies can be cited to demonstrate the widening dispersion of wealth and power, but the World Bank’s 2011 Global Development Horizon’s report, “Multipolarity: The New Global Economy” is emblematic.⁴¹ “Emerging and developing countries’ share of international trade flows has risen steadily, from 26 percent in 1995 to an estimated 42 percent in 2010,” the World Bank observed. “Much of this rise has been due to an expansion of trade not between developed countries and developing countries, but among developing countries.”⁴² “Similarly,” the report continues, “more than one-third of foreign direct investment in developing countries currently originates in other developing countries.”⁴³ “Emerging economies have also increased their financial holdings and wealth. Emerging and developing countries now hold three-quarters of all official foreign exchange reserves (a reversal in the pattern of the previous decade, when advanced economies held two thirds of all reserves)...”⁴⁴

As the report summarizes:

By 2025, six major emerging economies—Brazil, China, India, Indonesia, the Republic of Korea, and the Russian Federation—will collectively account for more than half of all global growth. Several of these economies will collectively account for more than half of the global growth rate. This new global economy, in which the centers of growth are distributed across both developed and emerging economies, is what GDH 2011 envisions as a multipolar world.⁴⁵

Since 2011, there has been an overall downturn in global trade, putting pressure on many developing states.⁴⁶ Nonetheless, the general dispersion of economic power has continued. By 2016, Christine Lagarde, Managing Director of the International Monetary Fund could report that “as a group, emerging and developing economies now account for almost 60 percent of global GDP, up from just under half only a decade ago.”⁴⁷

This dispersion of economic power is changing alliances and partnerships. Along with its One Belt, One Road initiatives in Eurasia, China has developed an ambitious program of

³⁸ See, e.g., Jane Perlez, *Leader Asserts China’s Growing Importance on Global Stage*, N.Y. TIMES, Nov. 30, 2014 (quoting Xi saying, “The growing trend toward a multipolar world will not change”).

³⁹ James Kanter, *Trump Threatens Europe’s Stability, A Top Leader Warns*, N.Y. TIMES, Jan. 31, 2017.

⁴⁰ See, e.g., William Burke-White, *Power Shifts in International Law: Structural Realignment and Substantive Pluralism*, 56 HARV. INT’L L. J. 1 (2015); CHARLES A. KUPCHAN, *NO ONE’S WORLD: THE WEST, THE RISING REST, AND THE COMING GLOBAL TURN* (2012); PAUL KENNEDY, *THE RISE AND FALL OF THE GREAT POWERS* (1987).

⁴¹ WORLD BANK, *GLOBAL DEVELOPMENT HORIZON 2011: MULTIPOLARITY: THE NEW GLOBAL ECONOMY* (2011).

⁴² *Id.* at 1.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 3.

⁴⁶ UNCTAD, *KEY STATISTICS AND TRENDS IN INTERNATIONAL TRADE 2015* (2015).

⁴⁷ Christine Lagarde, *The Role of Emerging Markets in a New Global Partnership for Growth*, U. MARY., Feb. 4, 2016, https://www.imf.org/en/News/Articles/2015/09/28/04/53/sp020416#P26_3019.

infrastructure investment in Africa.⁴⁸ China is also now actively wooing traditional U.S. allies.⁴⁹ Australia, Canada, and various European states joined the China-sponsored Asia Infrastructure Investment Bank, despite United States opposition.⁵⁰ And the dispersion of power is not limited to economics. India and China have both been projecting their military power into the Indian Ocean, with India establishing a base in the Seychelles and China establishing one in Djibouti (where the United States already has a base).⁵¹ The Economic Community of West African States (ECOWAS) has taken on a significant military and peacekeeping role in West Africa.⁵² As Charles Kupchan has observed, “the landscape is one in which power is diffusing and politics diversifying.”⁵³

In some ways, this new multipolarity might seem like the fulfillment of the mission of post-World War II multilateralism,⁵⁴ which promised to secure freedom and security⁵⁵ while growing and spreading wealth.⁵⁶ But even if it might have been desired or predicted, this multipolarity is, nonetheless, something new in the post-World War II world. The major multilateral institutions that were born and grew up in that world did so against very different power structures. Bipolarity dominated early on, with the United States and Soviet Union dominating their spheres and competing for allies.⁵⁷ The latter part of the period has often been described as unipolar, with the United States the one and only superpower.⁵⁸ At various other points, one or another state or group of states has emerged as an alternative pole on some issues, whether the non-aligned states, the European Union,⁵⁹ or China.

Political scientists have studied the different shapes into which differing numbers of poles pull the international system.⁶⁰ For the purposes of this essay, the key distinction though is a relative

⁴⁸ Winslow Robertson & Lina Benabdallah, *China Pledged to Invest \$60 Billion in Africa. Here's What That Means*, WASH. POST, Jan. 7, 2016.

⁴⁹ Jane Perlez, *China Showers Myanmar With Attention, as Trump Looks Elsewhere*, N.Y. TIMES, July 19, 2017.

⁵⁰ *China-Led AIIB Approve 13 New Members, Canada Joins*, REUTERS, Mar. 23, 2017.

⁵¹ Peter Harris, *How to Live in a Multipolar World*, NAT'L INTEREST, Jan. 3, 2016.

⁵² *Building Peace in West Africa*, AFRICA RENEWAL, April 2004.

⁵³ KUPCHAN, *supra* note 40, at 3.

⁵⁴ The current multipolarity is, of course, the product of many converging historical events, in which multilateral institutions have played but a role. While it would perhaps go too far to suggest that multilateralism “caused” the current multipolarity, it would be fair to say that multipolarity was a desired outcome and that multilateral institutions played a role in encouraging and fostering it.

⁵⁵ See, e.g., UN Charter, Preamble (including as goals, to “promote social progress and better standards of life in larger freedom,” and “to maintain international peace and security”); International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 UNTS 171, Preamble (recognizing that “the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”).

⁵⁶ See, e.g., Marrakesh Agreement Establishing the World Trade Organization, Preamble, 1867 UNTS 187; (“Recognizing . . . that there is need . . . to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade”).

⁵⁷ See, e.g., Kenneth Waltz, *The Stability of a Bipolar World*, 93 DAEDALUS 881, 888 (1964).

⁵⁸ See, e.g., Robert Jervis, *Unipolarity: A Structural Perspective*, 61 WORLD POL. 188, 190 (2009); G. John Ikenberry, *Institutions, Strategic Restraint, and the Persistence of American Postwar Order*, 23 INT'L SEC. 43 (1998-1999).

⁵⁹ See, e.g., Andrew Moravcsik, *Europe: Rising Superpower in a Bipolar World*, in RISING STATES, RISING INSTITUTIONS: CHALLENGES FOR GLOBAL GOVERNANCE 151 (Alan S. Alexandroff & Andrew F. Cooper eds., 2010).

⁶⁰ See, e.g., Jervis, *supra* note 58; Posen, *supra* note 26; Ikenberry, *supra*, note 58; Waltz, *supra* note 26.

one: the more limited the number of poles, or the more the system is dominated by a limited number of powerful players, the more limited the negotiation options for less powerful ones. Less powerful states will have fewer partner options and less negotiating leverage. Moreover, polarity is relative. Depending on the issue, power may be dispersed differently, among different or different numbers of states. And what may look like unipolarity, bipolarity, or tripolarity for the global system, may feel like something else for specific states. The bipolar-era of the Cold War would have looked to many less powerful states like unipolarity; given a particular set of policy preferences, a state really had one possible partner for negotiations. Western European states had no other option on trade than to negotiate with the United States. (Some states may have tried to play the United States and Soviet Union off of one another, sometimes with success, but life in the Non-aligned Movement was difficult to maintain, as either great power could simply decide that an insufficiently loyal ally was already in the other camp.) Similarly, if two powerful states or group of states generally agree on policy (e.g. a consensus between the United States and European Union), they may look like a single negotiating pole to less powerful states. The key difference here seems to be between more limited and less limited numbers of poles. When power is less widely dispersed, each state negotiating with the poles will have the less negotiating leverage, and the policy preferences of the poles will win out more often. As power is more widely dispersed, negotiating leverage becomes more widely dispersed, increasing the leverage of less powerful states and decreasing that of the more powerful ones. More diverse policy preferences will be reflected in negotiations and in agreements.

It has always been assumed that multipolarity would change global negotiating dynamics. But the focus has been almost entirely on the role the new great-ish powers would play.⁶¹ On the one hand, Brazil, Russia, India, China, and perhaps South Africa (the BRICs states) would use their newly attained leverage to push against North Atlantic dominance of global institutions, holding out for deals and rules more in line with their preferences. On the other, gaining wealth and power from global institutions as a whole, these states would become more invested in them, more likely to try to bend them to their will than undermine them entirely. With more, diverse, powerful states invested in these regimes, these regimes might actually become more, rather than less stable.

What this essay suggests is that the impact of true multipolarity may be more fundamental, unleashing dynamics that might unravel the very fabric of global, multilateral institution-building.

The Decreasing Value of Linkages

The optimistic assumption about existing multilateral institutions is that the states that have joined them and ratified the underlying agreement genuinely “wanted” to be a part of them. States may have fought hard during the negotiating process, standards might have been watered down or changed to bring along stragglers, but those fights and concessions serve as proof that the states involved were seriously weighing the costs and benefits of membership. When states have ratified these agreements it is because they have decided that as a matter of state policy, the

⁶¹ See Burke-White, *supra* note 40.

benefit of the agreement outweighs the sovereignty costs associated with binding those states' hands.⁶²

But what if this hard-fought consensus is nothing more than a mirage created by prior power dynamics? What if the perceived benefit of the agreement for states is not the global good it seeks to provide but the good will of the institution's sponsors that ratification might seem to buy?

Issue linkages are usually discussed in explicit terms. States may specifically link ratification of one particular agreement with access to some other, different benefit. The European Union has explicitly linked membership in the customs union with membership in the European Convention on Human Rights.⁶³ The European Union has also linked special trade benefits for states outside the Union to compliance with specific policies to prevent drug trafficking.⁶⁴ These sorts of linkages undoubtedly play a role in corralling straggler states into various global agreements, but the assumption is that it would simply be too expensive for sponsor states to rely entirely on these extra-regime incentives. Most states will have to accept the benefit of that regime itself as sufficient if truly global institutions are to succeed. Thus, many linkages are within the agreements themselves. Within the Trans-Pacific Partnership, for example, the United States linked market access to compliance with the Convention on the International Sale of Endangered Species.⁶⁵ And the WTO itself is such an agreement. By treating most of the agreements under the WTO umbrella as part of a single undertaking that all members must accept, market access is effectively linked with rules regarding health and safety regulations and intellectual property, among many others.⁶⁶ A state cannot get one without agreeing to the others.

Explicit linkages may also play a role in compliance, though the effectiveness of these cross-regime linkages has been questioned. Reputation-focused theories of compliance suggest that a negative reputation for compliance can make other desirable agreements less likely or most costly; states will demand more in negotiations from a state known not to respect its agreements. The effect is to force states to consider not only the costs of non-compliance with one agreement, but the costs of non-compliance for negotiating other different, future ones as well.⁶⁷ While such reputational considerations undoubtedly play a role in compliance calculations, there has always been some question whether noncompliance with agreements in one issue area can be consistently linked with negotiations in others.⁶⁸ Do states that violate their human rights agreements really have a harder time negotiating trade agreements? While states may consider

⁶² See Barbara Korememos, et al., *Rational Design of International Institutions*, 55 INT'L ORG. 761 (2001) (describing assumptions)

⁶³ See Consolidated Versions of the Treaty on the European Union and the Treaty on the Functioning of the European Union, Oct. 26, 2012, 2012 (P 0001) 0390.

⁶⁴ Appellate Body Report, *European Communities—Conditions for the Granting of Tariff Preferences to Developing Countries*, WT/DS246/AB/R (adopted April 20, 2004).

⁶⁵ Rachel Bale, *How the Trans-Pacific Partnership Will—and Won't—Protect Wildlife*, NAT'L GEO. Nov. 5, 2015.

⁶⁶ See, e.g., Peter K. Yu, *The RCEP and Trans-Pacific Intellectual Property Norms*, 50 VAND. J. TRANSNAT'L L. 673, 738 (2017) (describing intellectual property obligations as part of WTO's "single undertaking"); Markus Wagner, *Regulatory Space in International Trade Law and International Investment Law*, 36 U. PA. J. INT'L L. 1, 27 (2014) (describing how the Uruguay round's "single undertaking" impacted members' regulatory space).

⁶⁷ See, e.g., Andrew Guzman, *HOW INTERNATIONAL LAW WORKS: A RATIONAL CHOICE THEORY* (2007).

⁶⁸ See Rachel Brewster, *The Limits of Reputation on Compliance*, 1 INT'L THEORY 323 (2009).

other states' reputation for compliance in their negotiations, they may assume that the drivers of non-compliance in one issue area aren't really relevant to compliance in another. An autocratic regime may have an easier time complying with its trade agreements (it may not have to worry about divided government or popular opinion) than with its human rights agreements. A liberal democracy may face the opposite pressures. There has also been some question how states value the reputational costs of each instance of noncompliance.⁶⁹ In many cases, doubt about the actual reputational cost may guarantee that in the calculus of non-compliance, the cost of potential issue linkage is set so low that it has little effect on the state's decision.

At the point of ratification though, assigning even a small value to potential issue linkages might be enough to incentivize states to join a multilateral agreement. In contrast to the optimistic view above, we might imagine most multilateral attempts to provide global goods as of relatively low salience to the great majority of states. Orbiting a core of key states driving the negotiations, may be a much larger set of states for whom the issues discussed simply aren't that important. Leaders in many countries, not just poor or unstable ones, may have relatively short time horizons. Solving global goods problems may not be high on their list of priorities. If those short time horizons make the value of joining small, they also make the costs of complying small as well. Many states may see any negative reactions to potential noncompliance as a distant problem to be solved by a future government. This concern has been raised, for example, regarding ratifications of human rights agreements.⁷⁰ The question is why illiberal states with poor human rights records would join human rights treaties at all, given how difficult (and unlikely) it would be for them to comply. One answer is that they can benefit from the positive vibes associated with the news of ratification, while discounting the costs associated with any future noncompliance and its associated consequences.⁷¹

Realists have argued that global institutions are mere reflections of hegemonic policies.⁷² One need not be a realist though to worry that multilateralism actually masks hegemony. Various scholars have studied the apparent emergence of global or regional scripts.⁷³ States seem to adopt policies, create institutions, and join agreements in patterns that can be explained only as attempts to mimic states with which they hope to be associated.⁷⁴ This phenomenon is often described in sociological terms: state leaders are socialized to views of what the "right" sort of states do and wish to be seen as part of that club.⁷⁵ But this phenomenon can also be explained in terms of incentives and issue linkages. States adopt these positions because there are benefits to being in the club – club goods available to like-minded or like-behaving states not readily

⁶⁹ See *id.* at 328-30; See Rachel Brewster, *Unpacking the State's Reputation*, 50 HARV. INT'L L.J. 231, 244 (2009).

⁷⁰ See BETH A. SIMMONS, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* 77 (2009).

⁷¹ *Id.* at 80.

⁷² See Ruggie, *supra* note 27, at 381 (describing view).

⁷³ See Martha Finnemore, *Norms, Culture, and World Politics: Insights from Sociology's Institutionalism*, 50 INT'L ORG. 325 (1996).

⁷⁴ Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 DUKE L. J. 621 (2004).

⁷⁵ Beth Ann Simmons, *Treaty Compliance and Violation*, 13(1) ANNUAL REV. POL. SCI. 273 (2010) (explaining that "compliance with certain international environmental agreements can be expensive for industry, at least initially. Where violators can be excluded from certain international 'club goods,' however, compliance rates can be improved.").

available to others.⁷⁶ Following the script and joining the agreement may make other desirable deals more likely. Departing from the script or failing to join may make other deals that much more difficult. The script tells the story of a set of implicit linkages between certain behaviors and club benefits.

In an era of limited poles, the combination of low policy salience and high discount rates may make the limited, ephemeral value of positive vibes or good will valuable enough to tip the scales in favor of mass ratification. There's probably also a tipping point, a number of ratifications that establish ratification as part of the script. The Rome Statute may reflect some of these realities. There has been some debate as to whether state ratifications of the Rome Statute were sincere,⁷⁷ with empirical studies of ratification patterns suggesting a variety of different, sometimes contradictory explanations.⁷⁸ It is possible though that many of the states now reconsidering their relationship with the ICC had little interest in the ICC when they ratified the statute. Instead, recognizing that the ICC was unlikely to turn its attention to them in the short term, they willingly accepted the positive vibes associated with ratification. Once a critical mass had ratified, other less-than-interested states might have felt pressure not to be seen among the supposed "outlaw" states unwilling to submit themselves to global rules. Ratification may have seemed a small cost to pay not to be branded a "rogue" state. Early on, Canada and European states did lobby other states to ratify and worked hard together with NGOs and others to make ratification part of a global script.⁷⁹ With the United States and other opponents of the ICC apparently content to remain silent on these effort,⁸⁰ ratification might have seemed to carry only good will benefits. States also did seem to ratify in regional clusters and in relatively rapid succession,⁸¹ both suggesting strategic rather than normative considerations.⁸²

Multipolarity though radically changes the value of these explicit and implicit linkages. Where the linkages have been explicit, as for example at the WTO, changes in the relative distribution of wealth may make it easier for states to renegotiate the basic deal. Renegotiating existing deals is difficult at the WTO, but the BRICs have been successful in changing the deal going forward, essentially blocking the developed state agenda during the Doha rounds. Most renegotiation of trade though is happening outside the WTO, where states are seeking their own best deals

⁷⁶ *Id.*

⁷⁷ See Leslie Vinjamuri, *The International Criminal Court and the Paradox of Authority*, 79 L. & CONTEMP. PROBS. 275 (2016). Beth Ann Simmons and Allison Danner, *Credible Commitments and the International Criminal Court*, 64 INT'L ORG. 225 (2010).

⁷⁸ While Beth Simmons and Allison Danner found that evidence that states ratified in order to make credible commitments to international justice, see Simmons and Danner, *supra* note 78, Terence Chapman and Stephen Chaudoin found that states most likely to ratify were those with the least reason to fear prosecution. Terence L. Chapman and Stephen Chaudoin, *Ratification Patterns and the International Criminal Court*, INT'L STUDIES QUARTERLY 1 (2012). Jay Goodliffe and Darren Hawkins found that the best predictor of Rome Statute ratifications was actually trade relations and security alliances. Jay Goodliffe and Darren Hawkins, *A Funny Thing Happened on the Way to Rome: Explaining International Criminal Court Negotiations*, 3 J. POLS. 71 (2009).

⁷⁹ DAVID BOSCO, ROUGH JUSTICE: THE INTERNATIONAL CRIMINAL COURT IN A WORLD OF POWER POLITICS 68 (2014).

⁸⁰ *Id.* at 68-69.

⁸¹ *Id.* at 69. See also the chronological list of states parties to the Rome Statute, https://asp.icc-cpi.int/en_menus/asp/states%20parties/Pages/states%20parties%20_%20chronological%20list.aspx.

⁸² See Simmons, *supra* note 70, at 90-92.

through bilateral and regional free trade agreements.⁸³ The fact that many of these free trade agreements may be technically illegal under WTO law (failing to meet the requirements of GATT Article XXIV),⁸⁴ but that virtually none have been challenged there,⁸⁵ could itself be thought of as a tacit renegotiation of the deal. States no longer have to accept the linkages embedded within the WTO's single-undertaking model.

But it's in the areas where the linkages were implicit that the impact of multipolarity is most radical and destabilizing. Under the global script model, the value of joining a multilateral agreement was very small, the possible promise of good will. That promise of good will becomes a rounding error in multipolar state calculus. Newly wealthy or empowered states have themselves more leverage of their own in negotiations, assets of their own to use in negotiating the deals they want. But even poorer, less powerful states have more leverage. They can play one set of partners off others, holding out for the deals that are truly in their best interests. Playing one screenwriter off the other, they can actually renegotiate some of the lines in their scripts.

As proof of the influence of global scripts, scholars have observed disconnects between states' external commitment and internal behaviors.⁸⁶ Such scholars have suggested that over time, the former may influence the latter, moving the states to actual compliance.⁸⁷ In the short term though, this observation recognizes the inherent instability of these commitments. Until internal behaviors or attitudes change, state commitments may be highly sensitive to external power shifts.

If the pessimistic story is true, then many global, multilateral institutions may either unravel or be gutted by multipolarity. The incentives to remain or comply may no longer be there. Keeping everyone together may require either sweetening the deal for each individual member (tacitly allowing non-WTO conforming FTAs) or decreasing the downside risk by weakening the overall agreement (accepting the views of African states on official immunity⁸⁸).

The Downside of Success

⁸³ See, e.g., generally Warren Maruyama, *Preferential Trade Arrangements and the Erosion of the WTO's MFN Principle*, 46 STAN. J. INT'L L. 177 (2010)

⁸⁴ See, e.g., Meredith Kolsky Lewis, *The Prisoners' Dilemma Posed by Free Trade Agreements: Can Open Access Provisions Provide an Escape?*, 11 CHICAGO J. INT'L L. 631, 646, n. 55 (2011) (observing that it is "evident that a great many FTAs" do not cover "substantially all trade" as required by GATT Article XXIV and citing European and Japanese FTAs as examples).

⁸⁵ See *id.* at 652-53.

⁸⁶ RYAN GOODMAN & DEREK JINKS, *SOCIALIZING STATES: PROMOTING HUMAN RIGHTS THROUGH INTERNATIONAL LAW 2013* (describing "isomorphism" and "decoupling").

⁸⁷ *Id.*

⁸⁸ See Max Du Plessis and Dire Tladi, *The ICC's Immunity Debate – The Need for Finality*, EJIL:TALK!, August 11, 2017, at <https://www.ejiltalk.org/the-iccs-immunity-debate-the-need-for-finality/>.

Paradoxically, the diminished power of linkages may be compounded by the increasing effectiveness⁸⁹ of these various multilateral institutions. For those states who had little interest in the institutions in the first place, and who perceive little short-term benefit from these institutions, the effectiveness of the institution is a cost. As the institutions take hold, states may see increasing pressure to come into compliance with the institutions' rules, whether on trade, human rights, investment protection, or criminal justice. States' chosen policies may face challenge at international organizations, in front of international courts and tribunals, and even in domestic courts. Costs associated with membership in a particular institution may range from economic sanctions, awards of compensation, judicial criticism, NGO shaming and pressure, to negative public opinion at home. Key, for the state receiving little perceived benefit from the institution, even bad publicity may be enough of a cost to make withdrawal seem reasonable, particularly if the costs of withdrawal seem low. African states considering withdrawal from the Rome Statute may have already crossed that threshold. Given other states' inconsistent commitment to the ICC, they may rightly see the costs of withdrawal will also be low. Venezuela too may have crossed that threshold with regard to the Inter-American Human Rights system.⁹⁰ Withdrawal is unlikely to do relevant damage to the Maduro government's already exceedingly low reputation for human rights, giving that government little reason to stay in and face continued shaming. The Duterte government in the Philippines may be thinking through similar math with regard to the ICC, United Nations, and other institutions. At the very least, President Duterte's threat of leaving⁹¹ may change the calculus of his critics who do not want to lose the limited leverage they have.

Of course, for at least some states, increasingly effective institutions should provide some benefits. States can rely on the WTO to guarantee that the benefits they bargained for are protected. Members of UNCLOS benefit from increased security and stability for shipping, fishing, and mining. All of these benefits should raise the costs of withdrawal and/or noncompliance. The problem is that this calculus is true for many members of that institution. With so many states reliant on those institutions' continued success, free-riding becomes a real, viable strategy.

States know that they can withdraw from, violate, or cheat on the agreement without it falling apart. Others have too much invested in it. China, the United States, the European Union, etc. can play hard and fast with WTO rules, knowing that the overall agreement and the benefits they receive will not go away. In particular, those states have negotiated free trade agreements hard to square with WTO rules. Few have challenged them though,⁹² almost certainly for fear that a

⁸⁹ Effectiveness is a concept itself worthy of analysis. See, e.g., Yuval Shany, *Assessing the Effectiveness of International Courts: A Goal-Based Approach*, 106 AJIL 225 (2017); Timothy L. Meyer, *How Compliance Understates Effectiveness*, 108 AJIL UNBOUND 93 (2014). I use "effectiveness" here simply to describe an institution's relative ability to achieve the goals (or at least the perceived goals) of the regime in which it is embedded.

⁹⁰ Joanna Harrington, *Venezuela Denounces American Convention on Human Rights*, EJIL:TALK!, Sept. 12, 2012, <https://www.ejiltalk.org/category/international-tribunals/inter-american-commission-on-human-rights/>.

⁹¹ See TELEGRAPH, *supra* note 7.

⁹² See Lewis, *supra* note 84, at 651, 652-53; Joost Pauwelyn, *Legal Avenues to 'Multilateralizing Regionalism': Beyond Article XXIV*, in MULTILATERALIZING REGIONALISM CHALLENGES FOR THE GLOBAL TRADING SYSTEM (Richard Baldwin, ed. 2009).

successful challenge would undermine either their own such agreements or the WTO as a whole. Better for everyone to look the other way. Similarly, the United Kingdom has consistently fallen back on the continued presence of the WTO and its rules both to justify Brexit and as supposed leverage in its negotiations with the rest of the European Union.⁹³ The United States has long been able to rely on the stability created by UNCLOS even as it remains outside.⁹⁴ China has largely ignored the PCA's decision against it with regard to China's actions in the South China Sea,⁹⁵ knowing that it would still benefit from the regime elsewhere in the world.⁹⁶

Relative v. Overall Welfare

A third driver of instability associated with both multipolarity and institutional success may be a state preference for policies and rules that increase relative welfare at the expense of general welfare. The general assumption underlying many of our current global, multilateral institutions is that the goal is to increase overall welfare. Some side payments might be necessary to guarantee that all participants see some benefit, but so long as all do, the deal has been thought of as a successful one. (Of course, sometimes, whether everyone is truly benefitting or benefitting sufficiently/fairly has been a serious question – see, e.g., the bilateral investment regime.)

But this assumption may be naïve, a pro-social illusion conjured by uni- or, at least, limited polarity. In a period of unipolarity, with wide gaps in wealth between the powerful states sponsoring the regime and those seeking to join it, guaranteeing that everyone gets at least some benefit may be enough for everyone. Poor states are eager for whatever help they can get to develop. Rich states are happy to help poor states develop to create more opportunities for their producers and investors. Multipolarity may undermine this consensus.

Studies in behavioral psychology suggest that individuals are more concerned with positional welfare than real welfare.⁹⁷ In many studies, individuals will reject deals that make them better off, but in ways they feel disproportionately advantage others.⁹⁸ Studies of wealth and happiness also strongly suggest that individuals are less affected by absolute gains in salary or spending power than by relative ones.⁹⁹ What matters most is what they are earning compared to a peer

⁹³ *EU, Britain Agree to Seek Same WTO Quotas After Brexit: Sources*, REUTERS, Oct. 3, 2017.

⁹⁴ See JOHN F. MURPHY, *THE UNITED STATES AND THE RULE OF LAW IN INTERNATIONAL AFFAIRS* 242-43 (2004); See also José E. Alvarez, *The New Dispute Settlers: (Half) Truths and Consequences*, 38 *TEX. INT'L L.J.* 405, 444 (2003) (observing that the United States would only join the ICC if it could be convinced that it “will not simply be able to free ride on international institutions that apply only to others”).

⁹⁵ *China Refuses South China Sea Arbitration Award*, XINHUA NEWS, July 12, 2016; Jane Perlez, *Tribunal Rejects Beijing's Claims in South China Sea*, N.Y. TIMES at A1, July 12, 2016.

⁹⁶ See, e.g., *Your Rules or Mine?*, *ECON.*, Nov. 13, 2014 (suggesting China may be free-riding on law of the sea rules rather than supporting them).

⁹⁷ See, e.g., Anne van Aaken, *Behavioral International Law & Economics*, 55 *HARV. INT'L L. J.* 421, 428 (2014); Ori Heffetz & Robert Frank, *Preferences for Status: Evidence and Economic Implications*, Johnson School Research Paper Series #05-09 (July 2008); E. Fehr & K.M. Schmidt, *A Theory of Fairness, Competition, and Cooperation*, *QUARTERLY J. ECON.*, 114, 817-868 (1999); DAVID MYERS, *THE PURSUIT OF HAPPINESS* 43-44 (1992).

⁹⁸ Fehr and Schmidt, *supra* note 97, at 826.

⁹⁹ Fehr and Schmidt, *supra* note 97, at 821; Christina Starmans, et al., *The Science of Inequality: Why People Prefer Unequal Societies*, *GUARDIAN*, May 4, 2017.

group.¹⁰⁰ Moreover, losses in status compared to that peer group are felt more strongly than gains.¹⁰¹ These effects are further compounded with increases in wealth. Above a certain level of absolute wealth, status and positional wealth seems to be of increased importance.¹⁰²

Applied at the level of the state, one might then expect states to become more sensitive to status and positional wealth as the wealth differences between them shrink and they begin to look like peers (or rivals). Moreover, one might expect the traditionally wealthy or powerful to react more strongly and negatively to the changes.¹⁰³

Of course, there are serious questions whether biases visible in individuals carry over to states or across the principal-agent relationship. State decisions are often made by groups rather than individuals and on behalf of the public interest rather than their own. Both can change the decision-making logic. Some state policy may be enough in the hands of individuals that their biases may carry through to decisions on the state's behalf. But one doesn't have to assume states act on individual leaders' biases to see how these biases may play a role in decisions on these global goods. Even if states are not swayed by relative as opposed to real welfare, voters and public opinion likely are, as the vote in favor of Brexit in the United Kingdom and the popularity in the United States of Donald Trump's rhetoric about China, Mexico and South Korea likely demonstrates.

The rise and demise (?) of the Trans-Pacific Partnership illustrates how the success of multilateral institutions and resulting multipolarity combined with concerns regarding positional welfare can reshape global negotiations. The GATT and WTO have been remarkably successful at growing overall global welfare and helping distribute global wealth more equitably.¹⁰⁴ But that success hasn't led to more and deeper multilateral integration at the WTO. On the contrary, negotiations there have ground to a halt, at least in part due to disagreements about the distribution of benefits from prior and future deals.¹⁰⁵ The action has instead moved to regional and bilateral free trade areas, often dominated by one or a couple dominant economic actors. One complaint about TPP was that it seemed to create little to no new trade.¹⁰⁶ Instead, its main impact seemed to be to divert trade from one supply chain located in particular states (in particular China) to a different one based in others.¹⁰⁷ In lieu of cooperation through the WTO, states are competing for the spoils of trade through regional trade agreements.¹⁰⁸

¹⁰⁰ Heffetz and Frank, *supra* note 97, at 13-14.

¹⁰¹ Heffetz and Frank, *supra* note 97, at 26-27; Van Aaken, *supra* note 97, at 427, 429.

¹⁰² Heffetz and Frank, *supra* note 97, at 26-27; Richard A. Easterlin, et al., *China's Life Satisfaction, 1990-2010*, 109 PNAS 25, 9, June 19, 2012.

¹⁰³ Cf. Jeffrey Berejikian, *The Gains Debate: Framing State Choice*, 91 Am. Pol. Sci. Rev. 789 (1997).

¹⁰⁴ See DANI RODRIK, *THE GLOBALIZATION PARADOX: DEMOCRACY AND THE FUTURE OF THE WORLD ECONOMY* 110 (2011) (observing that "the world economy has achieved unprecedented levels of growth since World War II. Nothing in history comes close").

¹⁰⁵ *Id.* at 258-59; Editorial Board, *Global Trade After the Failure of the Doha Round*, N.Y. TIMES, Jan.1, 2016.

¹⁰⁶ Alex Rogers, *Meet the Critics of President Obama's Trade Deal*, TIME, April 27, 2015,

¹⁰⁷ Daniel C.K. Chow, *How the United States Uses the Trans-Pacific Partnership to Contain China in International Trade*, 17 CHI. J. INT'L L. 370, 386-87 (2015).

¹⁰⁸ See Alter and Raustiala, *supra* note 24, at 10.

But the same forces driving regional trade agreements also risk tearing them apart. Voters in the United States worry that Mexico and Canada have benefited more than the United States from NAFTA, China more from the WTO, South Korea more from the Korea-U.S. Trade Agreement.¹⁰⁹ The concern that TPP might mean more of the same was a key factor in its anemic public support and its eventual abandonment by the presidential candidates. Brexit seemed to reflect similar voter concerns about the relative benefits of EU membership.¹¹⁰

One symbol associated with rise of economic populism in various developed states over the past year is the “elephant graph” created by Branko Milanovic.¹¹¹ The graph shows the global change in real income from 1998-2008 by income percentile. Starkly, much of the world – the 10th-65th income percentiles along with the very top earners – have experienced massive growth in real income over that period. One group, though, has not – the 75th-85th income percentiles. While the first group is disproportionately located in the new economic powerhouses of Asia, the second is disproportionately represented by the middle class of the older developed states.¹¹² The sense by some Brexit and Trump voters that they have been relative “losers” in the current multilateral institutions isn’t pure fantasy and seems to be driving their policy preferences.

This heightened concern for relative gains, growing out of greater multipolarity and combined with the shifting costs and benefits of cooperation through multilateral institutions, may be casting a shadow over security cooperation as well. In a bipolar world, NATO served the interests of both the United States and its allies well. The United States could see NATO as essentially an extension of U.S. security policy. Even if had to sometimes bow to its allies’ demands,¹¹³ cooperation with European allies (and Canada) expanded U.S. power and served the U.S. agenda. European states, while at times bristling under U.S. dominance, nonetheless needed U.S. support. In a multipolar world, where Russia may or may not be the top security concern of the United States and where other NATO states are themselves more powerful, particularly economically, NATO might look more like constraint than a tool to some in the United States—both with regard to U.S. priorities and U.S. actions. Trump’s complaints about the relative benefits and costs borne by the U.S. and European allies¹¹⁴ may not be so surprising.

¹⁰⁹ Felicity Lawrence, *Trump is Right: NAFTA is a Disaster. But US Workers Aren't the Big Losers*, THE GUARDIAN, Nov. 18, 2016; Robert B. Zoellick, *The Case for Trade, and Why American Leaders Need to Make It*, HARV. BUS. REV., Sept. 19, 2016; *The Impact of China Joining the WTO*, WALL ST. J., May, 22, 2017; Damian Paletta, *Trump preparing withdrawal from South Korea trade deal, a move opposed by top aides*, WASH. POST, Sept. 2, 2017.

¹¹⁰ Bruce Stokes, *Brexit vote highlighted UK's discontent with EU, but other European countries are grumbling too*, PEW RES. CTR, June 24, 2016, at <http://www.pewresearch.org/fact-tank/2016/06/24/brexit-vote-highlighted-uks-discontent-with-eu-but-other-european-countries-are-grumbling-too/>; Bagehot, *Brexitland versus Londonia*, THE ECONOMIST, Jul. 2, 2016.

¹¹¹ Branko Milanovic, *The Greatest Reshuffle of Individual Incomes Since the Industrial Revolution*, VOX, July 1 2016, <http://voxeu.org/article/greatest-reshuffle-individual-incomes-industrial-revolution>.

¹¹² For a terrific discussion of this graph, see Anthea Roberts, *Being Charged by an Elephant: A story of globalization and inequality*, EJIL:TALK!, April 19, 2017, <https://www.ejiltalk.org/being-charged-by-an-elephant-a-story-of-globalization-and-inequality/>.

¹¹³ See, e.g., generally MARC TRACTENBERG, *A CONSTRUCTED PEACE: THE MAKING OF THE EUROPEAN SETTLEMENT, 1945-1963* (1999) (describing U.S. maintained its authority within NATO by making sometime concessions to its NATO allies).

¹¹⁴ Philip Rucker, Karen DeYoung, and Michael Birnbaum, *Trump Chastises Fellow NATO Members, Demands They Meet Payment Obligations*, WASH. POST, May 25, 2017.

A similar story might be told about the role of the United Nations, which for a brief time following the end of the Cold War looked like it might become the central forum for global security. For the United States, enjoying its unipolar moment, working through the United Nations may have allowed it to get greater buy-in for its policies. And multilateral support may have lowered the costs of pursuing U.S. policies—enough to outweigh the perceived costs of multilateral engagement (much of the time). For other states, bringing U.S. policy into the United Nations, while clearly strengthening the United States, may have carried the promise of some increased voice and the possibility of placing some constraints on the hegemon's actions. In an increasingly multipolar world, those perceptions of the relative value of cooperation through the United Nations may be shifting. For the United States, action through the United Nations may look more like a constraint than a force multiplier. At the same time, for other actors like Russia, China, and Saudi Arabia¹¹⁵ (not to mention Iran), eager to flex their newfound muscles, the UN may seem an embodiment of old power dynamics and structures, out of which they had been left.¹¹⁶ Action moves from the halls of UN headquarters to the ground in Ukraine, Syria, the South China Sea, and Yemen, where the situation looks much more like a free-for-all, in which cooperation is more likely to be bilateral and opportunistic than long-term and multilateral. Of course, on issues on which the United States, or others, may feel like it cannot act alone or with a small group of allies, where only mass multilateral action is perceived to be useful, like the North Korean nuclear threat, the United Nations may continue to be seen as the best working forum. Overall though, states' individual security priorities seem to be taking precedence over more systemic concerns about global peace and security.

The Costs of Multilateralism

Seeking global or near global agreements and institutions is a choice. Regime designers need to carefully balance the costs and benefits of a broader agreement. Such agreements bring clear benefits. A broader agreement including more players can solve distributional problems by increasing the range of possible trades to give more players a “win.” This is perhaps most obvious in trade agreements, where states might only be willing to open a market for particular reciprocal concessions that only some states can provide. The U.S. might not have anything valuable enough to trade Canada for the opening of its dairy market; a three-way trade though that promises access to Japan's beef and pork market might get the job done.¹¹⁷ But the principle applies in other contexts as well. The United Nations Convention on the Law of the Sea¹¹⁸ overcame the limitations of prior agreements by broadening scope and broadening membership.¹¹⁹ States that might have had irreconcilable preferences in bilateral negotiations were able to find beneficial policy trades in a multilateral one. A broader agreement also spreads the political and material costs of chosen policies, limiting regulatory leakage to those outside

¹¹⁵ See, e.g., J. Dana Stuster, *Saudi Power Play Sends Shockwaves Abroad*, LAWFARE, November 14, 2017, 10:30 AM, available at <https://www.lawfareblog.com/saudi-power-play-sends-shockwaves-abroad>.

¹¹⁶ Cf. Alter and Raustiala, *supra* note 24, at 10 (describing strategies of regime shifting).

¹¹⁷ See, e.g., Bill Curry, *The ABCs of TPP*, GLOBE AND MAIL, Oct. 5, 2015.

¹¹⁸ See generally United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

¹¹⁹ See Miles Kahler, *Multilateralism with Small and Large Numbers*, 46 INT'L ORG. 681, 694 (1992).

the agreement, and guaranteeing the cooperation of all those needed to supply a global public good.

But broader agreements also come with well-recognized costs. Bringing in more parties, particularly those with limited interests in the regime, may require thinner agreements. The International Covenant on Civil and Political Rights may have to be more accepting of reservations and accept weaker enforcement mechanisms than regional human rights agreements in order to garner near universal membership. A global climate change agreement may need to be less ambitious and less enforceable than a bilateral or regional deal between states with shared interests and/or resources. The result of this choice is two-fold. First, and most obviously, it risks watering down the agreements to the point where they may only marginally provide the desired global public good, if at all. Many advocates in each area might suggest they give up too much. But second, this choice also decreases the value of the agreement for each member. And if the value of the agreement is too small, the agreement may become highly unstable. When material or political circumstances change and the costs of the agreement rise, the perceived benefits of staying in the agreement may be too low to keep a state in. Losing the benefits of the agreement may no longer be a meaningful incentive to deter withdrawal or non-compliance.

What Comes Next?

This doesn't necessarily mean that global, multilateral deals are a bad idea in a multipolar age. Thin agreement on certain basic principles may be valuable even if thicker agreements are impossible. Such thin agreement can shift future unilateral, bilateral, and regional negotiations in particular directions. Global agreements may also empower other actors to bring their power to bear on states, whether transnational NGOs, epistemic communities of scientists, economists, or soldiers, corporations, or domestic political actors and lawyers. Human rights advocates can use agreements ratified by the state in that state's own courts.¹²⁰ U.S. military lawyers will push back against suggestions that the Geneva Conventions are "quaint."¹²¹ A range of groups will lobby to keep the United States in Paris Accord. And while the South African government may see little benefit in remaining a party to the Rome Statute, their Constitutional Court may make it more difficult to withdraw and rescind their commitment.¹²²

¹²⁰ See, e.g., BETH A. SIMMONS, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* (2007).

¹²¹ See, e.g., Simon Chesterman, *The Spy Who Came in from the Cold War: Intelligence and International Law*, 27 MICH. J. INT'L L. 1071, 1098 (2006) ("It is noteworthy, however, that these U.S. policies have been protested most strongly by the uniformed military..."); Tim Golden, *Tough Justice: After Terror, a Secret Rewriting of Military Law*, N.Y. TIMES, Oct. 24, 2004 ("Military lawyers were largely excluded from that process in the days after Sept. 11. They have since waged a long struggle to ensure that terrorist prosecutions meet what they say are basic standards of fairness.")

¹²² James Macharia, *South African Court Blocks Government's ICC Withdrawal Bid*, REUTERS, Feb. 22, 2017. Multilateralism might be supported by constructivist strategies of internationalization and socialization even as rationalist calculi in its favor begin to run out. But these strategies may be on a clock. If the idea is to bring a large number of states into a regime in hopes of acculturating their leaders and populations to that institution's norms, that process cannot take forever. Those norms need to become anchored before the rationalist calculus shifts against continued membership.

But to the extent to which there has been a blanket preference for global-scale multilateral deals to provide global public goods,¹²³ that preference may need to be rethought. Providing global public goods in a multipolar world may require smaller deals that can guarantee states specific, desirable club goods. International justice, for example, might have to move to the local level, take local interests more directly into account, and promise specific realizable benefits to the country or countries in question.¹²⁴ And this may be the case even if the resulting deals are less efficient or effective in providing the broader good. Enhancing protections for endangered species or labor rights through TPP-like free trade areas, with all of that model's flaws, may be more durable and effective than attempts to work through the global multilateral Convention on the International Trade in Endangered Species. Local, bilateral, and regional environmental governance may more effectively get actors to change their policies than global multilateral ones. Tim Meyer, for example, has noted how local clean energy plans that favor local providers can overcome political obstacles better than national or multilateral efforts.¹²⁵ The cost is borne as an externality by others; such costs though may be the inevitable byproduct of multipolar, post-multilateral policymaking.

Notably, while these other-shape solutions may be less efficient from a global policy perspective, they may be fairer or more just along other metrics.¹²⁶ These structural realities thus dovetail well with other critiques of multilateralism-for-multilateralism's-sake, including concerns that multilateral solutions are not neutral, that they may favor certain interests over others, and that a more pluralist perspective that encourages bespoke policy choices may be more normatively desirable.¹²⁷ One can hear echoes of older concerns about the "democracy deficit" of multilateral institutions¹²⁸ beneath current voter complaints in the United Kingdom, United States, and elsewhere that multilateral institutions ignore them in favor of others. Deeper, broader integration may not always be better. Seeing multilateralism's structural limits may help reveal some of its normative ones as well.

Policymakers will also have to think hard about whether providing any particular global good really does require universal or near universal participation. An agreement between the states with the most emissions may be more important for progress on climate change than a broader agreement that can win everyone's support. And while some aspects of a problem may require

¹²³ See José E. Alvarez, *Multilateralism and Its Discontents*, 11 EUR. J. INT'L L. 393, 394 (2000) ("Multilateralism is [international lawyers'] shared secular religion.").

¹²⁴ See Jaya Ramji-Nogales, *Designing Bespoke Transitional Justice: A Pluralist Process Approach*, 32 MICH. J. INT'L L. 1 (2010).

¹²⁵ Timothy L. Meyer, *How Local Discrimination Can Promote Global Public Goods*, 95 BOS. U. L. REV. 1939 (2015).

¹²⁶ See, e.g., Alvarez, *supra* note 123, at 399 ("The tendency to stress the virtues of multilateral solutions, narrowly understood to mean liberal institutions on the model of the UN, artificially restricts the range of available prescriptions for modern human rights dilemmas.").

¹²⁷ See, e.g., Rodrik, *supra* note 104, at 233-80 (making the case for an international economic order that grants states more room to plot their own policy directions); Ramji-Nogales, *supra* note 124 (arguing that the legitimacy of international criminal justice is judged by how well it speaks to local conditions and needs); Margaret M. deGuzman, *The Global-Local Dilemma and ICC Legitimacy*, in LEGITIMACY AND INTERNATIONAL COURTS (Nienke Grossman, et al, eds. forthcoming 2018) (same).

¹²⁸ See, e.g., Alvarez, *supra* note 123; Eric Stein, *International Integration and Democracy: No Love at First Sight*, 95 AJIL 489 (2001).

near universal cooperation, other discrete aspects may take the form of aggregate effort or even single-best effort public goods.¹²⁹ Norm-setting and implementation may require different strategies and different shape agreements. For the former, global multilateral deals may continue to be the best strategy; for the latter they may not. Policymakers may have to break complex problems into their component parts and devise an effective strategy for solving each. Recognizing multilateralism's limits may make policymaking more complicated, but it may also make it more thoughtful.

¹²⁹ SCOTT BARRETT, *WHY COOPERATE* (2007).