

Private authority in global environmental politics: Delegation to non-state actors in multilateral environmental treaties

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*Presented at the American Political Science Association
Boston, MA
28-31 August 2008*

I. Introduction

In a recent editorial in the *New York Times*, David Brooks lamented the growing inability of states to address the world's problems effectively: "The dispersion of power... means that more groups have effective veto power over collective action. In practice, this new pluralistic world has given rise to globosclerosis, an inability to solve problem after problem" (Brooks 2008). Pundits, policymakers and scholars have echoed Brooks: the role of actors beyond the state is expanding, with meaningful (and sometimes deleterious) effects for world politics. Nowhere has this shift been more pronounced than in the realm of international environmental policy. The 1972 UN Conference on the Human Environment marked the beginning of the modern environmental era, and with it, an influx of NGOs participating in these new global fora. Other non-state actors—private firms, foundations, transnational associations and multinationals—have also become active in global, national and local efforts to promote environmentally-sound policies. Many, like Brooks, have interpreted this evidence to mean that the growing influence of non-state actors has resulted in a shrinking role for the state.

This large-scale picture does little to explain the different ways in which these non-state actors are involved in world politics. Until recently, there has been little systematic investigation of whether non-state actors are taking on more *governance activities* as compared with the past, or if there are simply more deliberation and lobbying activities on a global scale than before. This paper seeks to address this gap by examining one path through which non-state actors participate in international environmental politics: delegation.

To understand whether non-state actors are acting as agents more than in the past, I examine 152 multilateral environmental treaties from 1902-2002 for instances of delegation to states, international organizations (IOs) and non-state actors. The dependent variables are thus policy function delegated, and agent designated for that function. In general, my analysis shows states are not reluctant to delegate: in this sample, they delegated 29.8% of all the policy functions performed, when delegation is measured expansively. However, this overall rate masks dramatic variation among different policy functions and actors. States are quite willing to delegate

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implementation and adjudication tasks, but very rarely delegate policy functions with potentially greater sovereignty costs—such as rulemaking and enforcement (on the relative sovereignty costs of different policy functions, see Bradley and Kelley 2008: 20). Moreover, although states appear to delegate liberally, it is much more rare that agents are the *sole actors* tasked with a given policy function. “Agent only” instances of delegation—where agents are the sole actors—occur in only 14.5% of all policy functions.

The data also show that states choose their agents carefully. IOs are overwhelmingly the preferred agent, and are delegated to in 24.6% of all policy functions. By contrast, states almost never delegate to private actors, who are chosen as agents in only 3.8% of all policy functions. Created, governed and funded by states, IOs are arguably easier to constrain than private agents. The frequency with which states choose IOs as responsible for implementation and monitoring supports existing research that maintains that delegation is most frequently used as a way to capitalize on existing expertise, and technical experience.

Finally, variation over a century of multilateral environmental agreements offers no indication of an increase in delegation; rates of non-delegation have remained between 56%-74% since the 1930s. Despite the relatively constant rate of delegation and non-delegation, the data do show a rise in delegation to private actors in the last fifteen years. While this is not definitive evidence, it suggests that further analysis is needed to ascertain the whether and how the participation of non-state actors is growing. In general, however, the analysis presented here provides little evidence to support the shrinking of the state.

This preview of the findings helps illustrate the three main goals of the paper. First, I challenge the assertions of the private authority literature that the state is in retreat, and the influence of non-state actors is unequivocally growing. The evidence in support of this argument is inconclusive, at best. Second, as one of the few large-N analyses on delegation to international organizations, I contribute longitudinal data to support claims made by literature on international delegation. Finally, by conceptualizing delegation to non-state actors as a type of private authority, I aim to bridge the gap between the delegation and private authority literatures. By and large, these two literatures have been treated separately. Yet delegation can and should be considered a type of authority: when states delegate to private actors, they grant agents authority to act on their behalf.

The paper proceeds as follows. First, I situate my investigation within the relevant literatures in political science. Second, I discuss data collection and methods. Third, I discuss the non-barking dog—patterns of delegation to private actors. Fourth, I turn to a more general discussion of the, focusing particularly on delegation to IOs. Finally, I offer a summary of findings, and steps for future research.

II. State of the Literature

There is a rich and growing literature in international relations on delegation. IR scholars have built on the work of economics, which seek to explain when firms choose to “make or buy” different goods and services (Alchian and Demsetz 1972). More recently, American political scientists have asked the conditions under which governments choose to delegate to legislative

committees and bureaucracies (see, e.g. Epstein and O'Halloran 1999, Moe 1989). This line of inquiry has since been exported to world politics, in an attempt to explain why states, acting collectively, choose to delegate certain tasks to international organizations. These studies have all made useful contributions, mostly in the rational-institutionalist tradition, that account for states' decisions to delegate at the international level. Dominant explanations focus on the need to enhance credibility of commitments (Majone 2001), reduce information asymmetries (Tallberg 2006), resolve disputes (Alter 2008, Koremenos 2008), lock-in policy bias (Milner 2006), and prevent the endless "cycling" of policies through careful shaping of the agenda (Pollack 2003).

However, very few of these works explicitly take up the issue of non-state actors as agents (but see Mattli and Büthe 2005). Indeed, the literature on international delegation tends to focus on the types of cooperation problems and the costs and benefits of delegation, rather than the agents involved. As a result, delegation theory in international relations takes agents to be relatively unitary. As Lake and McCubbins note, understanding the role of non-state actors is the "next frontier" in delegation theory, though interestingly, they focus the capacity of private actors to monitor IOs in their exercise of delegated authority, rather than considering private actors as agents themselves (2006: 341-368).

This study aims to begin the discussion about the role of private actors as agents in international delegation. Do states delegate to private agents for the same reasons that they chose IOs? As a first step toward answering this question, this paper aims to describe systematically and over time the variation in the dependent variable: delegation. Before formulating and testing hypotheses about the causes of delegation to private agents, we must first understand how frequently it occurs. How often do states delegate to non-state actors? For what tasks? These are the two main questions that this analysis seeks to answer.

In addition to the focus on private agents, this study fills a gap in the literature on international delegation more generally. Most studies to date focus on the microfoundations and causal mechanisms of delegation through case studies. By virtue of this focus, there is very little large-N work on patterns of delegation. To my knowledge, only one other author has gathered similar data on patterns of delegation. In a recent paper, Koremenos asks, as I do here, when do states choose to delegate, and to whom? (She also tests hypotheses to explain these actors of delegation, which this paper does not.) In that paper, she examines four issue areas with considerably smaller samples (the largest N is 47), and includes both bilateral and multilateral treaties (whereas I focus only on multilateral treaties). Her study is certainly broader in scope, but is less focused on the distinction between types of agents (public or private) and more on whether they are internal or external to the agreement (2008). The other relevant large-N study by Koremenos (2007) examines the prevalence of dispute resolution mechanisms in a random sample of bilateral and multilateral treaties from 1926-85. However, her study focuses on the degree of legalization of these dispute resolution mechanisms, rather than on the type of agent that is entrusted with this task. In sum, even the few large-N studies in the delegation literature have very little to say about the role of non-state actors as agents in world politics.

I call attention to the literature on private authority because by and large, delegation and private authority have been treated separately. Yet surely delegation can be considered a type of

authority: when states delegate to private actors, they grant agents authority to act on their behalf. In other words, through delegation, states vest non-state actors with authority, or more specifically, with private authority. Though the delegation literature is in the early phases of investigating the role of non-state actors, scholars of private authority have long theorized that the “retreat of the state” can be attributed to the growing role of private actors in world politics (Strange 1996). Private authority, which Cutler et. al. define as: “power to make decisions in a given issue-area that is recognized as legitimate, and that is not associated with governments,” is the subject of a large and varied literature (1999: 5). It would be remiss not to consider some of these works in examining the role of private actors.

Strange describes private authority on a continuum ranging from those instances that states merely tolerate, such as organized crime, to those that they actively court, such as the services provided by insurance firms (1999: 93-94). Other scholars classify private authority based on its source, in the Weberian tradition. Haas’s classic study of epistemic communities argues that scientists were able to influence policy-making because of their expertise and their “authoritative claims to knowledge” (1990: xxiii). Studies of human rights show that non-state actors draw on their moral standing to legitimize claims to authority. Finnemore’s study of the Red Cross demonstrates how a small number of morally committed doctors were able to convince states of the importance of humanitarian norms that resulted in the codification of those norms through the Geneva Conventions (1996). Similarly, one of the sources of the legitimacy of the “boomerang effect” described by Keck and Sikkink is that transnational advocacy networks are bound together by shared principled ideas or values (1998: 30). For Keck and Sikkink, the authority of these non-state actors is grounded in their moral claims.

In addition to examining sources that legitimate claims to authority, a number of studies of private authority focus more simply on the governance functions that non-state actors perform. A variety of certification schemes illustrate the power that NGOs and firms have exerted in the market. Cashore and his colleagues argue that NGOs have successfully persuaded large timber producers and vendors to submit to rigorous monitoring because they have selected key points in the supply chain where pressure will produce leverage (2004). Similarly, Garcia-Johnson argues that the chemical industry submits to certification because certification institutions can perform functions that individual firms are unable to do on their own: they provide “a set of collective goods: rules and conformance reports that help firms protect their reputations” (2001: 1). Similar studies show how non-state actors have exercised influence through certification in areas such as production processes (Prakash and Potosi 2006) and labor standards (Abbott and Snidal 2006).

These are just a few of the numerous studies that demonstrate how non-state actors are exercising authority in world politics. In general, they seem to support Strange’s theory of the retreat of the state. However, many of these works suffer from selection bias; authors often study those cases where private authority is present rather than hypothesizing about the instances in which we should or should not see its emergence. As Drezner recently put it: “most of the empirical work on global civil society [which for Drezner, includes all non-state actors] consists of efforts to demonstrate existence rather than pervasiveness” (2007: 20). Strange herself concedes that her cases “may have been chosen somewhat at random, out of personal interest. But they are supposed to illustrate the theoretical propositions laid out in earlier chapters” (1996:

xvi). While this approach may be a useful first step in theory building, it also underscores the great need for large-N analyses to help contextualize such arguments.

III. Data collection and Analysis

Since this study examines acts of delegation (and non-delegation), it is appropriate to begin with some definitions. In this study, delegation is “a conditional grant of authority from a *principal* to an *agent* that empowers the latter to act on behalf of the former.” (Hawkins et. al. 2006: 7, emphasis original). The authors also point out that the authority conferred through delegation is “limited in time or scope and must be revocable by the principal” (2006: 7). Since I am interested in acts of delegation at the international level, the principal is always a collective one, comprised of a group of states that jointly assign tasks to a given agent. For example, if all the parties to a treaty agree to designate an international organization as the monitoring body, then this is considered an act of delegation. By contrast, if each party designates a *national* agency to monitor the treaty’s implementation at the domestic level, this is *not* considered an act of delegation in this analysis.

For the purposes of this study, private authority is the authority conferred to non-state actors through the act of delegation by a collective principal. In general, non-state actors include non-governmental organizations, private firms, transnational organizations, foundations, associations, networks of various types of non-state actor groups. I use the terms “private actor” and “non-state” actor interchangeably; these terms do *not* include international organizations. Any uncertainties about the type of agent were resolved by consulting the Union of International Associations, which classifies all international non-profit, non-governmental and intergovernmental organizations. For a full discussion of coding rules for these actors, see Appendix I. The important point here is that in this study, private authority occurs when states delegate to non-state actors.

The analysis is based on data compiled and coded by Ronald Mitchell through the International Environmental Agreements (IEA) Database Project. His project disaggregates international environmental agreements (IEAs) into distinct features. This is achieved by coding 29 different features at the level of treaty article. His IEA Database Project has coded a random sample of 152 IEAs signed between 1902 and 2002.¹

My analysis uses Mitchell’s random sample of 152 treaties. Using new software called the Coding Analysis Toolkit, I coded each of the treaties by paragraph.² The Coding Analysis Toolkit (CAT) was launched in its beta version in fall 2007, and designed to facilitate fast, automated coding of qualitative data (either raw data, or data previously coded in Atlas.ti). Another key feature is its ability to validate and adjudicate data coded by multiple researchers (Lu and Shulman 2008). This study represents one of the first published to use CAT as a methodological tool.

¹ For a full discussion of the project, the coding instrument and the treaties, see <http://iea.uoregon.edu/>.

² More information on CAT can be found at: <http://www.qdap.pitt.edu/cat.htm>.

I coded any paragraph that might contain an act of delegation, yielding an N of 2535.³ Each paragraph in my dataset is coded for both the policy function and the actor responsible for carrying out that function. Therefore, there are two dependent variables: the actor(s) responsible for carrying out the policy function, and the policy functions delegated (or not delegated). Technically speaking, the unit of analysis in this study is the treaty paragraph. However, since each paragraph is coded by function, the sample represents all policy functions named over all the treaties. Since this is a theoretically more useful category, I will refer to the units in the sample as policy functions, though I offer statistics on the paragraphs as a point of comparison. There are five policy functions: rulemaking, implementation, monitoring, adjudication and enforcement. There are four possible actors responsible for implementing these functions: states themselves (i.e. no delegation), a subset of states, an international organization or a non-state actor. If states are responsible for the policy function, then it is coded as no delegation. If agents are solely responsible, then the paragraph is coded as “agent only” delegation. I include a category called “state agent”, which occurs when states collectively delegate to one state or a subset of states. For example, Great Britain could be responsible for collecting and disseminating all monitoring data for a given treaty. Ambiguous agent denotes delegation to a body whose composition either has yet to be determined or is unclear.

To reflect the complexity of governance arrangements, I allowed for multiple codes in each paragraph. If the treaty names more than one function or one agent in a given paragraph, then multiple codes are selected. Moreover, if the treaty language indicates that functions could be carried out either by states themselves, or by an agent, then both “no delegation” and delegation to the appropriate agent are indicated. I call this category “mixed delegation.” Again, Appendix I contains description of each of these codes.

Before delving further into the analysis, a few words on the sample are in order. First, a skeptic would rightly point out that of all of the areas of international relations, non-state actors are arguably the most active and numerous in environmental politics. Choosing to examine patterns of delegation in environmental treaties could therefore overestimate the amount of delegation to private actors in other issue areas. I do not argue with this objection. However, as stated earlier, delegation to private actors is a relatively under-explored phenomenon. Therefore, I thought it prudent to begin with a “most-likely” case. If indeed there is an increasing amount of delegation to non-state actors over time, it should be evident in the area of environment. Conversely, were I to find *no evidence* of private authority, this study would become a crucial case (Eckstein 1975). A negative finding in an easy case such as environment would quickly silence those who argue that the authority of the state is being supplanted by private authority.

³ Since I am only interested in certain “features” coded in Mitchell’s dataset, I selected a subset of paragraphs. I excluded certain codes that I was confident would not contain information about policy functions, such as paragraphs with definitions or goals, or those that elaborate the circumstances of entry into force. However, I took two steps to prevent the accidental omission of data. First, I erred on the side of caution. I only excluded those codes which were extremely unlikely to contain usable data, such as those mentioned above. Any “borderline” codes, which might include information about policy functions, were included in the selection process. Second, any article or sub-paragraph can have more than one code in the dataset. This means that excluded codes would be included if there is a second code for the text that is also on my inclusion list. Again, this selection process errs on the side of inclusion. A list of codes used to select the sample, as well as those excluded is available upon request.

Second, I have chosen to conduct my analysis at the level of the treaty. One might reasonably object that we are less likely to see delegation at the treaty level and more likely to see it at the level of implementation—where decisions to delegate are more easily reversed, and where authority can be granted in response to specific problems not anticipated at the outset. Again, this is a legitimate concern. Findings drawn from data gathered at the treaty level will not be conclusive, but they will indicate if research at the sub-treaty level is needed. Evidence of private authority at the treaty level thus serves as a plausibility probe. Positive findings suggest that further inquiry at the implementation level will be needed for a more complete understanding about the profusion of private authority. Thus, I begin with the analysis presented here—at the treaty level. As an acknowledgement of this untapped source of evidence, I hope to include an analysis of decisions taken after the treaty entered into force in future version of the paper, to see whether rates delegation rise at the level of implementation.

IV. The role of private actors

The story of private actors in this sample is one of relative unimportance. They are mentioned in only 53 of the 1491 paragraphs, or in 3.6% of the total paragraphs. In the majority of these (66%), they co-occur with other actors—either states or other agents. Interestingly, in 32% of the paragraphs in which private actors are named, they appear as the sole actor tasked with a policy function. Table 1 illustrates.

Table 1: How often does delegation to private actors co-occur with...		
	No. of paras.	% of total private actor paras.
No delegation? (i.e. with states)	25	47.2%
State Agent?	6	11.3%
IO Agent?	5	9.4%
With no other actor? (i.e. sole agents)	17	32.1%
Total	53	100.0%

Looking more closely at Table 1, in almost half of the paragraphs in which they are named, private actors appear in “mixed” delegation situations. That is, in 25 of the 53 paragraphs where private actors are named as agents, states may decide to carry out the function themselves, leaving private actors with no role at all. Private actors are the sole agents in 17 paragraphs, or 32.1% of the paragraphs in which they appear.

What policy functions are private actors delegated? The two most frequently delegated tasks are implementation and adjudication. The prevalence with which states delegated to private actors to adjudicate may seem puzzling at first, since this ceding control over this policy function could potentially impose considerable sovereignty costs. However, a comparison of Tables 2 and 3 shows that private agents are rarely left to adjudicate on their own. More frequently, delegation to private agents co-occurs with “no delegation.” This suggests that states often prefer to be the first line of action to resolve disputes; if possible, they wish to find solutions through negotiation. At the same time, these treaties contain provisions for third party arbitration if an agreement cannot be reached by the disputants. Most often, there is a reference to states’ rights to bring a dispute before the International Court of Justice; in other cases, there is a provision for the

creation of an independent arbitration panel. The comparatively large number adjudication functions delegated to private actors can be explained by this two-tiered approach.

	Functions delegated (# of times)	% of total private actor functions (N=70)
Rulemaking	6	8.6%
Adjudication	23	32.9%
Implementation	25	35.7%
Monitoring	10	14.3%
Enforcement	6	8.6%
Total # of functions	70	100.0%

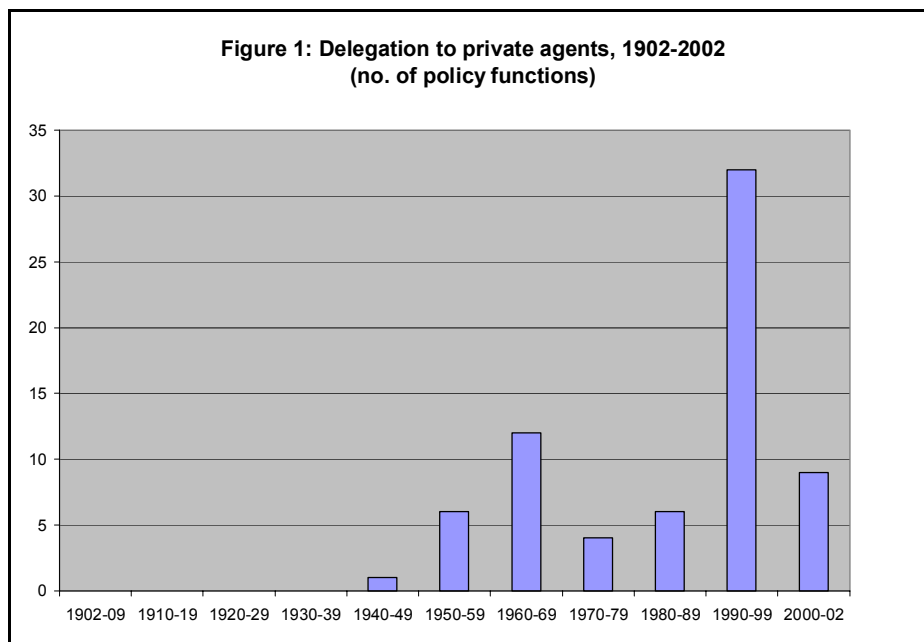
If the number of functions delegated to private actors seems small, the number delegated *only* to them is much smaller, as Table 3 indicates. Over the 1847 policy functions in the sample, only 19, or one-tenth of one percent, are delegated solely to private actors. In other words, in 72.9% of the functions delegated to them, private agents operate in concert with other actors. They are indeed a very small part of the story. The majority of these “private agent only” functions are adjudication and implementation. In the former, states are likely looking for an impartial arbiter with relevant expertise. In the latter function, again, states are looking for actors who possess the necessary specialized knowledge. For example, the Scientific Committee on Antarctic Research is one of the few non-state actors called by name in the sample of treaties. It is charged with implementation, largely because it is one of the few bodies with the necessary scientific knowledge to evaluate the information that states provide about their behavior.

The one outlier of worth noting is the single rulemaking function delegated to private actors. It occurs in the 1992 Agreement Establishing the Inter-American Institute for Global Change Research. In addition to creating this intergovernmental organization, the agreement also creates a Scientific Advisory Committee, to be staffed by scientists serving in their personal capacity. Among other tasks, they are charged with creating the rules to govern the peer review system, as well as their own rules of procedure. These are certainly rule-making privileges, but are relatively minor in terms of sovereignty costs to states.

	Function delegated (# of times)	% of total private actor functions (N=70)
Rulemaking	1	1.4%
Adjudication	7	10.0%
Implementation	8	11.4%
Monitoring	3	4.3%
Enforcement	0	0.0%
Total	19	27.1%

The data presented above show that the overall role for private actors in multilateral environmental treaties is minor. States rarely delegate to private agents, and when they do, it is overwhelmingly in tandem with other actors. Those that support the view of the shrinking state

might argue that general trends cannot tell the whole story. Thus, I now turn to the variation in delegation to private actors over time. Figure 1 shows the variation in delegation to private actors across the one hundred years of the sample. The data here tell a different story. \



There is no consistent pattern across the entire sample; the number of policy functions delegated appears to fluctuate somewhat randomly between the 1940s and the 1980s. However, delegation to private actors spikes in the 1990s and continues at a high rate in the first three years of the 2000s. Those that espouse the view of the “retreat of the state” would most certainly point to these last twelve years of the sample, which contain 62% of all instances of delegation to private actors across the century. Moreover, it is noteworthy that almost half of the functions delegated in these dozen years, or 49% of all the policy functions, are “agent only” instances of delegation. Indeed, the years 2000-2002 alone contain almost 13% of all instances of private actor delegation in the sample. Should the rate of delegation continue at the same pace, this decade is set to keep pace with the previous one. Of course, additional data is needed to confirm this conjecture. Nonetheless, the variation over time shows that although it remains small, the amount of private authority has been growing in the recent past.

Overall, however, the data do not tell a compelling story in support of theories of the retreat of the state. Private actors are infrequently used as agents, and when they are, it is often in tandem with other actors. They serve as a source of redundancy in treaties, acting most often as a third party arbiter of last resort. Moreover, and unsurprisingly, states are unlikely to delegate policy functions to private actors that might entail considerable sovereignty costs. Hence, they tend to delegate implementation tasks, and to a lesser extent, adjudication tasks. The relatively large increase in the last twelve years suggests that changes may be afoot, and that more research is needed.

V. General trends of delegation

Although my research interests focus on the role of private actors, the data presented here are also relevant to larger discussions about delegation. Given the paucity of large-N studies of delegation at the international level, the data here provide a useful starting point for understanding patterns delegation across functions and over time.

Table 4 shows that overall, rates of delegation are fairly high, with states choosing to delegate in 27.2% of all paragraphs. As a proportion of the total policy functions, the rate of delegation is slightly lower; 21.3% of all policy functions contain some act of delegation. This measure includes all cases of “mixed delegation”, where states may carry out a function themselves *or* delegate it to an agent. The “ambiguous” category includes those paragraphs with two or more actors and two or more functions. When measuring “agent only”, instances where agents are the sole actors, the rate of delegation drops as low as 12.4% (depending on the measure). We will examine which policy functions drive this shift below, as we look into the distribution of delegated tasks.

	No delegation	Mixed delegation	Ambiguous	Total	Agent only delegation
% of <i>total paragraphs</i> (N=1491)	67.5%	27.2%	5.3%	100.0%	16.1%
% of <i>total policy functions</i> (N=1847)	70.3%	21.3%	8.4%	100.0%	12.4%

Table 5 shows the frequencies for each policy function. The vast majority of the paragraphs (allowing for multiple codes per paragraph and eliminating irrelevant paragraphs) contain language about implementation—that is, indicating what actions should be taken to fulfill the objectives of the treaty. The second largest category is rulemaking; of the total number of functions in the dataset, 21.7% referred to rulemaking activities.

	No. of paras. mentioning each function	% of total functions
Rulemaking	400	21.7%
Adjudication	119	6.4%
Implementation	1010	54.7%
Monitoring	218	11.8%
Enforcement	100	5.4%
Total	1847	100.0%

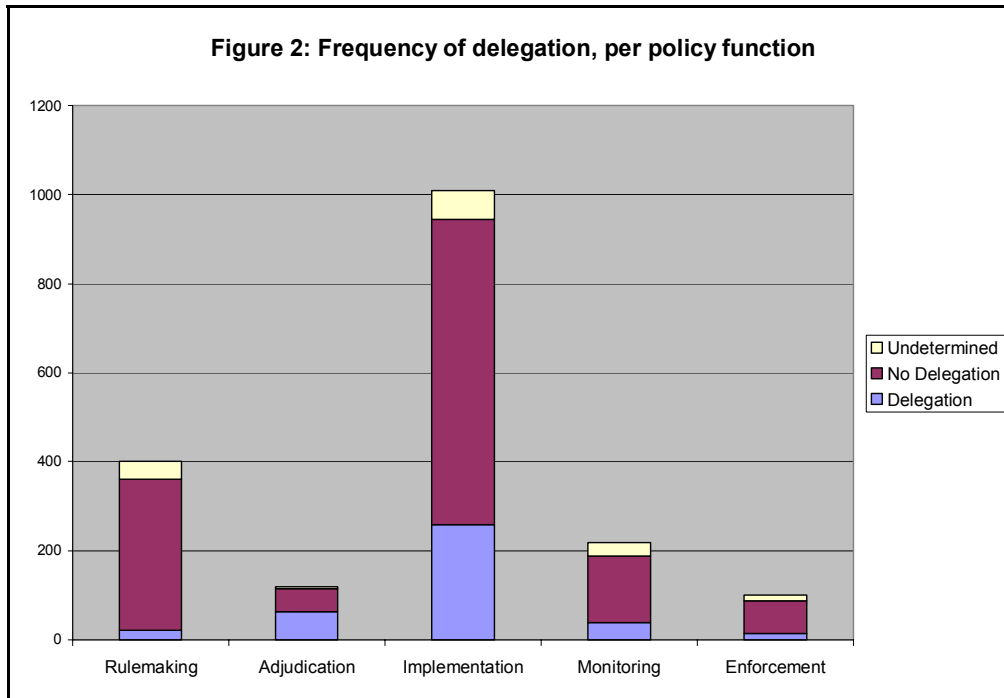
Table 6 illustrates the frequencies for each type of agent. This is a simple tally of how often each type of agent is named (i.e. delegated to) across all of the data. Note that this includes instances of “delegation only” as well as “mixed delegation,” which can contain values of both delegation to an agent as well as no delegation. Note also that more than one agent can be named in a given paragraph. Overall, agents comprise 34.4% of all actors named to carry out policy functions. Of those, IOs are by far the most prevalent agent, and constitute 24.9% of all agents. Private agents are rarely mentioned, comprising only 3.5% of all actors.

	No. of paras delegating to each actor	% of total actors
To a State Agent?	77	5.0%
To an IO?	367	24.9%
To a Private Agent?	53	3.5%
To Ambiguous agent?	31	2.0%
Subtotal	528	34.4%
<i>No delegation</i>	1006	65.6%
TOTAL	1534	100.0%

When states delegate, what functions do they delegate? Figure 2 shows frequencies of delegation of each policy function, aggregating mixed and agent-only values; Table 7 shows the rates of delegation per function. States are most likely to delegate implementation. This appears logical; implementation often requires specialized knowledge or experience which other actors (most frequently IOs) may possess. Also, implementation tasks have relatively low sovereignty costs in comparison with the other functions (Bradley and Kelley 2008). This finding is consistent with the delegation literature which cites expertise as a key explanator of delegation. Adjudication is also very frequently delegated—in 52.1% of adjudication functions. However, this figure falls to 12.6% when restricted to only agents—that is, when instances of “mixed delegation” are excluded.

The lowest rate of delegation occurs in rulemaking, which is equally unsurprising. Granting rulemaking powers to others may constrain the capacity of the principal to oversee or control the actions of the agent (Alter 1998); thus, states are more likely to reserve this function for themselves. Moreover, of those very few paragraphs that do allow agents to make rules, the majority (85%) include state agents. States are almost equally averse to delegating enforcement powers; delegation occurs in only 14.0% of the enforcement functions; the rate drops to 10% when examining instances of “agent only” delegation. When states do delegate enforcement, they tend to choose IOs, who serve as agents in 64% of all delegated enforcement functions, and in almost 80% of those enforcement functions delegated solely to agents. Again, from the point of view of sovereignty costs, this makes sense: when states relinquish power over enforcement, they select an agent that is relatively easy to control.

	% of policy function with no delegation	% of policy function with delegation	% of policy function ambiguous	Total	% of policy function with agent only
Rulemaking	84.8%	5.3%	10.0%	100.0%	3.5%
Adjudication	43.7%	52.1%	4.2%	100.0%	12.6%
Implementation	67.8%	25.6%	6.5%	100.0%	16.3%
Monitoring	68.3%	17.9%	13.8%	100.0%	11.5%
Enforcement	73.0%	14.0%	13.0%	100.0%	10.0%

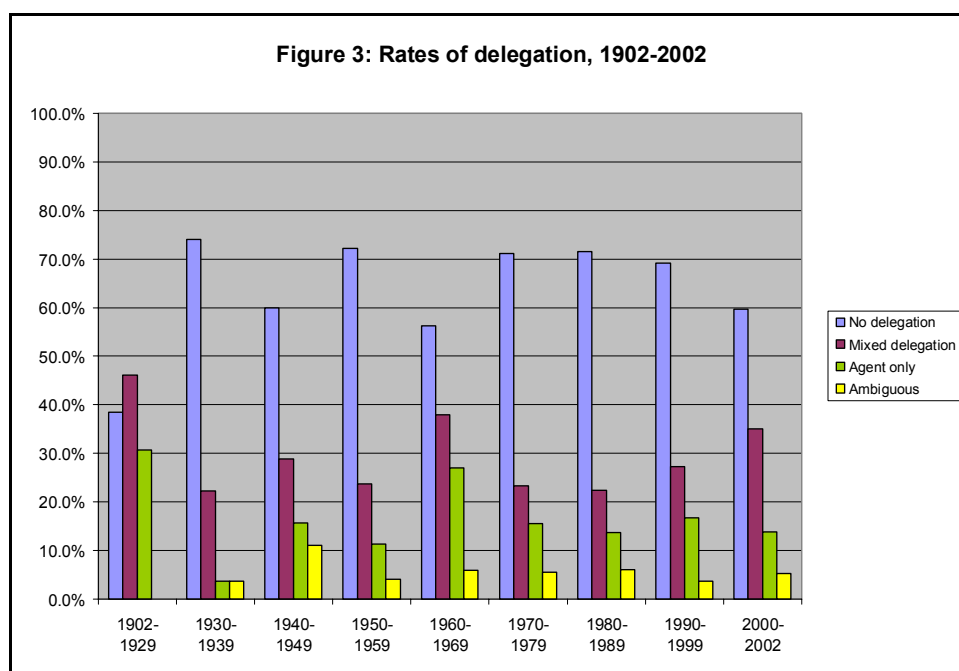


The tables above suggest that states delegate quite frequently, and that they prefer IOs as agents. Table 8 looks more closely at IOs and the distribution of tasks delegated to them. Column 2 of Table 8 shows that IOs are most frequently delegated tasks of adjudication and implementation. Monitoring is also a popular task for delegation. As with private actors, the adjudication function is particularly high; again, this is due to the “two-tiered” system that many treaties invoke. Often, treaties state that any disputes that cannot be resolved through negotiation may be referred to the International Court of Justice. Column 3 of the table provides additional evidence for this assertion: when the “no delegation” code is excluded, the percentage of adjudication tasks exclusively delegated drops to 7.7%. States rarely choose delegation to the ICJ as the only dispute resolution mechanism.

Implementation and monitoring are also frequently delegated to IOs. In fact, when one compares the number of paragraphs to the proportion of “agent only” functions delegated, these two tasks are much more commonly the sole purview of agents. This supports rational-institutionalist arguments in the literature that states delegate to agents in order to lower transaction costs by exploiting existing expertise, and creating credible commitments. Many of the monitoring functions delegated solely to IOs call for the collection and evaluation of information regarding states’ practices. Thus, IOs act as third-party monitors, ostensibly increasing the likelihood that non-compliance will be detected, and therefore the seriousness of the commitment. Even though the level of “agent-only” enforcement seems high, there are two mitigating factors. First, overall, enforcement is infrequently delegated to IOs; only 16% of all enforcement functions include IOs as an agent. Second, in only four of those cases are IOs simultaneously delegated monitoring ability. Thus, if the treaty has weak monitoring provisions, opportunities for meaningful sanctions will be small.

	# of paragraphs	as a % of total occurrences of policy function	% of which are "agent only" functions
Rulemaking	42	10.5%	7.1%
Adjudication	39	32.8%	7.7%
Implementation	260	25.7%	48.8%
Monitoring	51	23.4%	35.3%
Enforcement	16	16.0%	43.8%

Finally, I turn to the variation in delegation rates over time. As Figure 3 shows, there is no strong pattern in the data. The rate of “no delegation” has remained relatively constant since the 1970s—around 70%—with a decrease to 59.6% in the first two years of this decade. There is no trend of constant increase in the last half century, or across the whole sample. Indeed, the highest levels of delegation happen in the first time period 1902-1929 (53.8%), and in the 1960s (38.0%). The recent rise in mixed delegation could mean that states are looking for redundancy in treaty design more frequently now than in the past three decades, but further data on the period 2002-2008 would be needed to evaluate this assertion.



In summary, in the realm of international environmental politics, states delegate quite liberally, overall, in about 30% of the sample. But they are careful about what policy functions are delegated, and to whom. Functions involving high sovereignty costs, particularly rulemaking, infrequently delegated. Monitoring and enforcement are sometimes delegated, but rarely without the watchful eye of states. For each of these tasks, only about 10% of the function is delegated to agents only. Turning to the choice of agents, as Section IV showed, private agents are rarely used. In general, states prefer agents that are more easily controlled—international

organizations. IOs are by far the most common agents, and are most likely to be delegated implementation tasks. Adjudication is the second most frequently delegated function, but IOs are generally used as a “fallback”, in cases where states cannot negotiate a settlement. This evidence, coupled with the inconclusive variation of delegation rates over time, offers little support for theories of a shrinking state. Rather, it suggests that states are rationally calculating when to delegate in order to maximize benefits and minimize transaction costs.

VI. Conclusions

Two important conclusions about private authority can be drawn from the data presented here. First, the story of private actors in international environmental politics in the last century is one of the non-barking dog. Overall, private actors have a very small role in global environmental treaties. Certainly, this does not support the idea that the state is carrying out fewer governance functions, even in an issue area supposedly overrun with multiple types of private actors. Although environmental politics should be considered a relatively “easy” case for private authority, we find limited evidence of delegation to private actors. When they are selected as agents, however, states most frequently rely on private actors to adjudicate disputes—primarily as a “fallback” after states attempt to resolve conflicts themselves, but also as the sole arbitrator. This is consistent with Koremenos’s finding that dispute resolution is the policy function that most frequently makes use of “external” bodies to adjudicate (2008: 10).

Second, despite the small role overall, it is clear that rates of delegation to private actors have been growing. The last dozen years of the sample shows a marked increase in the use of private agents. This finding illustrates that while we cannot prove theories of “the retreat of the state” with this data, further research may reveal a definitive growth in private authority. In this future research, it will be important to see whether states prefer “mixed delegation” or “agent only” delegation when selecting private actors. Only the latter would potentially bolster arguments about the shrinking state.

These findings raise a question: If private authority is indeed growing at the rate that some scholars suggest, *where* is this growth occurring? Delegated authority appears to hold limited promise for evidence of the retreat of the state. This suggests two likely candidates for future inquiry. First, since implementation seems to be the preferred task to delegate, it seems plausible that delegation might increase as agreements mature. In most environmental agreements, governing bodies convene regularly, taking decisions on how to implement the provisions set forth in the treaty. Thus, one might look to these decisions to see if states begin to delegate to private actors as they face specific challenges of implementation. Second, it is also plausible that private actors are projecting authority outside of the multilateral system. Moral entrepreneurs, epistemic communities, public-private partnerships, corporate social responsibility and certification schemes are just a few of the many stripes of private authority that have been explored by scholars. The challenge remains, however, to situate these in a systematic inquiry that can allow us to understand the prevalence and influence of these alternative forms of private authority.

Appendix I: Coding Instrument

Policy Function Codes

Rule-making

Delegation of rule-making includes the “authority to create administrative rules, to implement, fill gaps in, or interpret preexisting international obligations” (Bradley and Kelley 2007: 12). Non-delegation means that this authority rests exclusively with states. Treaty language may specify rule-making ability with respect to information collection, or programs in which case the paragraph may be coded with more than one policy function (i.e. as both rulemaking, and the specified policy function). All discussions of voting and procedure are coded as rulemaking. Discussion of who can accede and under what conditions is *not* considered rulemaking; these provisions are generally about the scope and applicability of the treaty, and thus do not comprise rulemaking. These passages are coded as “no relevant text.” All articles referring to entry into force, ratification, reservations, signature and withdrawal are coded as “no relevant text.”

Implementation

States also delegate authority to agents to “carry out agreed-upon programs and projects, including internal administrative tasks” (Bradley and Kelley 2007: 14). Any measures that do not fall under other policy functions that help further the goals of the treaty are coded as implementation. Conducting specific projects, training, capacity building and technology transfer are all considered aspects of treaty implementation, as is general scientific research. All discussion of budget, finances and financial mechanisms is coded as implementation. The ability or authority to convene and/or run meetings is also coded as implementation. If there is specific language about which parties will pay for certain aspects, this is coded as implementation. If a state is simply named as a depository, or must be notified of signing, this is *not* coded as an act of delegation. Only repeated tasks are coded as acts of delegation. However, if it is responsible for disbursing funds or organizing meetings, then the state is coded as an implementing agent.

Monitoring

“Monitoring authority can range from voluntary reporting obligations to mandatory on-site inspections and can be carried out either by a standing body or on an ad hoc basis” (Bradley and Kelley 2007: 13). Self-reporting is coded as monitoring, as are inspections and other types of verification of compliance. Any collection or dissemination of information can be considered monitoring. Carrying out scientific assessments about specific topics related to rules (catch limits, deforestation levels, etc) or updating information to reflect scientific knowledge are also coded as monitoring activities. Note that general scientific inquiry is not coded as monitoring, but rather as implementation.

Adjudication

“Adjudicative delegation grants authority to make a decision about a controversy or dispute.” (Bradley and Kelley 2007: 10). As Koremenos (2007) notes, adjudication can often have several phases. For example, in the case of a conflict, states may first seek to settle the dispute themselves. If they are unable to do so, they may then choose to delegate to a subset of states—an ad-hoc body assembled for the purpose of resolving the dispute. In these instances, the provision is coded as having multiple types of delegation. If adjudication includes corrective measures or sanctions, then it is also coded as enforcement.

Enforcement

Enforcement activities include initiating or conducting investigations about compliance with the rules, intervention in other states’ behavior, imposing sanctions or retaliatory actions, or mandating corrective actions be taken in response to non-compliance. If adjudication makes no explicit mention of sanctions, then there is no enforcement code.

Agent Codes

No delegation. Any text that says that “states shall”, or “states are responsible” for taking certain actions are coded as no delegation. Any references to domestic implementation (ex. a certain ministry or body is responsible for implementation) are coded as no delegation, since this project is only interested of instances of delegation at the *international* level. If the text states that a certain function may be carried out “either directly or through an international organization” than the article is coded as having both no delegation as well as an IO agent.

State or states. Includes any subset of states that are party to the agreement. If the highest organizational body of the treaty is comprised of all Parties to the agreement, this is coded as no delegation.

IO agent. Includes all UN, intergovernmental agencies and secretariats, as well as “regional organizations”, unless regional organizations are specified as private. When an organization is created, such as a Fisheries Commission, this is coded as an IO agent.

Non-state agent. Includes all NGOs and private firms. “Expert panels” are coded as non-state agents, unless specified to be members of each Party’s government. Any uncertainties are checked against the Union of International Associations, which classifies all organizations that are international in scope.

Ambiguous agent. Includes cases in which I am unable to determine whether the agent is a state, an IO or a non-state actor.

No relevant text. Categories of text that are included are definitions, applicability of rules, geographic or temporal scope of an agreement and “goal statements”. Text emphasizing the importance of sovereignty, invoking certain legal principles, or “taking into account” a set of circumstances are also coded as no relevant text. Finally, conditions of membership or obligations of the members are coded as no relevant text, unless one of the specific policy functions is named.

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