The Institutions of International Treaty Organizations as Evidence for Social Contract Theory

Roger D. Congleton
West Virginia University
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Abstract. Treaty organizations are formed via voluntary contracts among national governments that address policy issues of mutual concern. As such, treaty organizations provide evidence about the kinds of institutions that might be adopted via social contract. This paper develops a theory of the design of treaty organizations and examines the domains of authority and decision-making procedures of 22 treaty organizations to determine if any general traits are in evidence. It turns out that most treaty organizations rely upon unanimity or supermajorities for their major decisions and usually have quite narrow (bounded) policy domains.

Key Words: Social Contracts, Treaty Organizations, Treaties, Trust, Unanimity, Bounded Policy Domains.

JEL Codes: H1, H7, F5.

I. Introduction: Treaties as Social Contracts among Nations

One does not often observe new governments that are formed by social contracts among individuals. We do, however, observe a wide range of private organizations formed voluntarily, from informal football games to formal private clubs, cooperatives and corporations. Many of these include formal decision-making procedures and nontrivial rule-enforcing systems, but all benefit from other laws that constrain what members may do to one another and also what the organization can do to members. Although private organizations provide examples of voluntary agreements that address coordination problems and other social dilemmas, they do not address the fundamental problems of life in society

that social contract theorists have in mind. They exist within rule-bound societies rather than as a means for addressing problems associated with law-less settings.[1]

The best historical examples of governments formed via contracts with which I am familiar are towns founded during the colonial period in the territories that became the United States of America.[2] However, these seventeenth-century towns were formed in somewhat special circumstances and, in most cases, among relatively small groups of individuals in settings where the individuals were bound by English law. Therefore, they too fail to characterize social contracts that initiate governance in the sense posited by social contract theorists. Their initial circumstances were in a sense "too good" to count—although arguably they were not in practice really all that far from the anarchies imagined by Hobbes (1651), Locke (1690), or Buchanan (1975). British law enforcement was often weak at best in the colonial territories during the first decades of settlement.

A better example of the creation of rulemaking and rule-enforcing organizations in settings where few if any rules constrain those creating new agencies occurs in international affairs. International affairs are conducted in an environment in which there are no higher-level rule-enforcing agencies and in which any new agencies created reflect the shared interests of two or more national governments. There are international customs—norms and customary law for the behavior of governments with respect to each other and to individuals—but no truly binding international laws, judicial procedures, or enforcement agencies that assure that nation-states will abide by agreements reached. The creation of new international agencies is thus undertaken in an environment very similar to that imagined by

[1] The same could be said of the many organization studied by Elinor Ostrom (1990) in both her own work and in her summaries of others—although many dealt with larger issues than those addressed by private clubs, condo associations, and local governments.

[2] A good example is the town of Providence, Rhode Island, whose founding document takes the form of a social contract: "We, whose names are hereunder written, being desirous to inhabit in the town of Providence, do promise to submit ourselves, in active or passive obedience, to all such orders or agreements as shall be made for public good by the body in an orderly way, by the major consent of the inhabitants, masters of families, incorporated together into a township, and such others as they shall admit into the same, only in civil things." (Roger Williams' town charter Oath for Providence, Rhode Island, 1636).

Locke (1690) in his discussion of contract-based governance. There are customary laws but no overarching enforcement of those laws.[3]

Agreements among governments have existed as long as there have been governments, but these are often difficult to track down, translate, and analyze. Not all were written, and not all written agreements were known to persons outside government. More recent formal agreements—treaties, protocols, and formal conventions—are easier to analyze because most are written, most are held in a repository run by the United Nations, and most have recently become available online. The Vienna Convention on the Law of Treaties (1969) provided standardized procedures for adopting, ratifying, recording, leaving, ending, and modifying treaties.

In cases in which treaties create new international organizations, agencies, or facilities, such treaties can be regarded as social contracts among national governments. The decision-making procedures adopted and powers delegated to newly created international agencies thus provide evidence of the type of decision-making processes and extent of authority likely to be held by governments created via social contract. No claim need be made about the intent of the contracting parties—whether it is solving international externality and coordination problems that might increase the welfare of most persons living within the signatory states or negotiating cartel agreements among national governments that reduce the extent of tax and regulatory competition among member states. The point is that the signatories all expect to benefit in one way or another—as with any other contract.

It is clearly possible that a wide variety of treaty organizations could be constructed in the "no rules" environment in which new agencies are formed. However, perhaps surprisingly, the treaty organizations reviewed below are remarkably similar. In general, relatively little authority is delegated to new treaty organizations, they have relative narrow

[3] Classic works in social contract theory include Hobbes (1651), Locke (1690), and Montesquieu (1748), and more recently, Buchanan (1975, 1990). Locke posits an environment in which customary or natural laws loosely bind the behavior of individuals, but that are more than occasionally violated by at least a subset of the members of the communities of interest.

domains of responsibilities, and their decision rules tend to be based on consensus or supermajority rules. This suggests that social contract–based governments would at least initially tend to have a narrower range of authority and require greater levels of support for new policies than commonplace in contemporary democracies, as was arguably the case for the handful of federal states that emerged from such treaties as with Switzerland, the Republic of the Netherlands, and the United States of America.

The remainder of the paper is organized as follows. Section II develops a model of the formation of treaty organizations through voluntary agreements. It demonstrates that a variety of details of organizational designs simultaneously affect the likelihood that a consensus is reached concerning the institutions and policy domains of a new treaty organization. The model also demonstrates that numerous possibilities exist, although convergence in organizational designs is possible if particular expectations about the risks and benefits of treaty organizations are commonplace. Section III undertakes a series of brief case studies of treaty organizations. Most of these are environmental treaties from the post–World War II period. In addition, a few formal treaties of alliance and confederation are reviewed from a broader more diverse time period. The main focus of the case studies is on the scope of their authority and their top-level decision-making procedures.[4]

II. Designing International Treaty Organizations

The process through which treaties and treaty organizations emerge exhibits a natural sequence. First, an international social dilemma—a coordination or externality problem of some sort—is recognized. Political entrepreneurs induce negotiations to take place among the parties whose interest in solving the problem is most obvious. The first result is often

[4] As will be obvious to most readers, this paper is written from the perspective of constitutional political economy rather than international law or international relations. Its main interest is in the origin and effects of alternative institutional designs. It thus builds on ideas that have emerged in that field of research which began with Buchanan and Tullock (1962). A short overview of that perspective is given in Buchanan (1990) and in Congleton (2018), which also places it in relationship to the other major fields of rational choice politics and public choice research. This approach has previously been used to analyze treaty organizations in Hawkins et al (2006) and Lake and McCubbins (2006).

what Congleton (1995, 2001) termed a symbolic treaty, a treaty whose signatories have formally agreed that a problem exists and that it would be useful to address it. Following a symbolic treaty, negotiations take place on procedures that might be adopted to work out formal language through which the coordination problems of interest might be addressed. If successful, those negotiations produce a procedural treaty—a treaty that characterizes a new international organization or delegates a new task to a preexisting international organization.

The organizations created by procedural treaties attempt to find and recommend mutually agreeable substantive policies for the member states. In the last stage—a third treaty or protocol may be signed in which particular steps to address the problem noted in the first treaty are formally adopted. This step depends in part on the authority delegated to the treaty organization in the second step. If a treaty organization has only proposal authority, it may simply recommend steps that can be taken. This may take place through formal recommendations to member states or in the form of new protocols or treaty proposals that may be formally signed and adopted by member states. If the agency has been delegated authority to adopt and implement rules, it may simply adopt rules and enforce them, as a contemporary nation state would.

It is the second stage of the process, the one that creates new international organizations, that is the focus of the present paper. Procedural treaties create a new organization and determines its authority, policy domain, and decision-making procedures. The second stage is also of practical significance in that it is a prerequisite for working out subsequent substantive agreements. The third stage is of interest, but is less relevant for social contract theory. Substantive treaties are analogous to the adoption of legislation by an existing government, rather than instances in which a new governing organization is created.

The authority that a treaty organization is delegated is a product of negotiations and possibilities for consensus. A treaty organization's authority, policy focus, decision-making procedures, and membership all affect the likelihood that a procedural treaty will be adopted because they jointly determine the likely outcomes of the organization's deliberations. Each

member has to anticipate positive net benefits from agreeing to establish and join such an organization.

Expressed in mathematical terms, a treaty organization is characterized by its policy domain, D, its membership, M, its decision-making rule, V and its type of authority A_j. For the purposes of this paper, D, M, and V are assumed to be continuums, whereas types of authority are assumed to be discrete. Authority is assumed to take one of three forms: proposal authority (j=1), proposal and rule adoption authority (j=2), and proposal, rule adoption, and rule enforcement authority (j=3). Member states normally have duties to take the proposals seriously (as all or nothing offers) under j=1, adopt implementing legislation in accord with the rules adopted under j=2, and defer to the organization's rules and enforcement activities under j=3. It is only under j=3 that a treaty organization can literally force a member state to accept its recommendations or adopt its rules. In the other cases, it is a sense of duty or advantages associated with continued membership that account for an international agency's direct effect on member-state policies.[5]

Each forward-looking potential member state's pivotal decision maker has an "ideal" institutional arrangement in mind. [6] It maximizes his or her (or their party's or government's)

[5] In complex settings, D, M, and V can be represented as a single index number or as a vector of characteristics that determine domain, type of member, and decision-making process. Multidimensional characterizations are commonplace in real treaty organizations, as with the contribution- and/or population-weighted voting schemes used by many grant-making international organizations. Treaty organizations may also have multidimensional policy domains and/or several types of memberships—in effect different treaties for different classes of possible member states, and so forth. The model developed in this section can easily accommodate such generalizations. The single value characterization used in the mathematics and discussion was adopted to simplify both the model and prose.

[6] The terms member state and member state government are used interchangeably throughout the text. It is, of course, the member state governments that are signatories, rather than the state as a whole. "Single actor" models of decisions are used to simplify and focus the analysis on the issues of most interest. For democracies, this is a reasonable approximation for the classic Downsian (1957) equilibrium model of democracy and also for extended neo-Downsian models of political equilibria (Congleton 2019) that take account of information problems, delegation and rent seeking. Most elective governments have a president, prime minister, or chancellor who can make treaty decisions for their governments. For authoritarian regimes, it is assumed that either there is a single man or woman who possesses rule-making authority or a single decisive/pivotal member of a ruling

anticipated net benefits from the new treaty organization. The expected net benefits (N^e; expected benefits, B^e, less expected costs, C^e) for a potential member state's pivotal decision maker i can be written as follows:

$$N^e_i = B^e_i(A_j, D, M, V) - C^e_i(A_j, D, M, V) \quad \text{one each for } j= 1,2,3 \qquad (1)$$

The potential members' expected net-benefit function is assumed to be strictly concave and twice differentiable with respect to domain, number of members, and voting rules, and thus tends to have an ideal solution for each of the three possible delegations of authority (A_j). Extreme cases (corner solutions) are discussed after the three possible interior solutions are characterized.

The expected benefits of policy coordination tend to increase with the policy domain granted. The effect of voting rules and membership vary with the problems to be addressed and the extent of differences among the membership. Local public goods problems imply that marginal benefits rise with membership until all relevant "local" parties sign onto the treaty and fall after that. The marginal benefit from managing global public goods problems tends to rise monotonically with membership, other things being equal. The effects of voting rules on marginal benefits vary with the heterogeneity of the member interests. When member interests are homogeneous, the value added by supermajority rules tends to be minimal, and the properties of median estimators tend to favor majority rule because the decisions reached tend to be more accurate estimates of the policies that will actually advance their common interests. However, when there are significant disagreements and some members are deemed more likely to shirk than others, supermajority rules and various weighted voting schemes may improve an agency's policies and increase risk-adjusted expected net benefits from membership.

Expected costs include contributions to the international organization and the costs associated with fulfilling treaty obligations. These vary with the authority granted to the

committee or junta. In both cases, the equilibrium authority of the individuals of interest are products of complex interactions among hundreds, thousands, or millions of people depending on the forma constitution, size, and political culture of the state of interest.

organization created. The expected costs tend to rise with extensions of domain and authority, because the risks associated with agency problems tend to increase and because policies tend to be more costly to implement as the domain of policy increase. The latter costs tend to fall as the degree of consensus required to adopt policies is increased because fewer policies are likely to be adopted and the policies that disadvantage a particular state government are more likely to be blocked by the member states adversely affected. The effects of membership on expected costs vary with the type of problem(s) to be addressed. For global public goods, the costs tend to fall as membership increases. For local public goods, they tend to fall until all relevant "local" members join and then rise thereafter. The more heterogeneous the membership is or is likely to be, the more difficult negotiations tend to be, and the more likely it is that minority interests will be neglected by voting rules that require less than consensus.[7]

The purpose of the model is to illustrate the interdependency among various aspects of institutional design for each level of authority that might be conferred, rather than to characterize fully an international agency's decision-making processes. A subset of the details may, for example, be worked out by the treaty organization itself after it is established.

Three sets of first-order conditions characterize member state *i*'s ideal institutional structure for the treaty organization under consideration, one set for each discrete level of authority. Each set of first order conditions jointly determine a member state's ideal organizational structure for coordinating international policies in the area of interest (D) for a particular level of authority (A_i) that might be delegated to the organization. Together they determine his, her, or its three maximal expected net benefits for the three types of authority that might be delegated to the new organization. The highest of which characterizes a member state's ideal institutional structure for addressing the problem of interest.[8]

[7] This reasoning parallels that of Buchanan and Tullock (1962).

[8] The probabilities of various outcomes associated with particular institutional designs considered by leader i (and his or her advisors) determine the average or expected result. To simplify notation and discussion, these density functions are subsumed into the expected benefit and cost functions

To simplify the model and discussion, it is initially assumed that leaders anticipate a symmetric organization in which each country has a single vote and member states have similar interests. The ideal organizational structure for the pivotal decisionmaker or leader of county i for a given level of authority (j) is that which maximizes his or her expected net benefits for his or her ideal level of authority. The other characteristics, D_{ij}^*, M_{ij}^*, and V_{ij}^* will satisfy:

$$B_D = C_D \qquad (2.1)$$

$$B_M = C_M \qquad (2.2)$$

$$B_V = C_V \qquad (2.3)$$

for authority level of interest, j=1, 2, or 3. Because all three first-order conditions have to hold simultaneously, equations 2.1, 2.2, and 2.3 imply that each ideal institutional characteristic is affected by the others and by the type of authority granted to the organization.

Let the ideal combination of domain, membership, and voting rule be characterized as D_{ij}^*, M_{ij}^*, and V_{ij}^* for potential member state *i's* pivotal decision maker with respect to a particular level of authority, *j*. State *i*'s pivotal decision maker's maximal net benefits for a particular level of authority, *j*, is thus:

$$N^e_{ij^*} = B^e_i(A_{ij}, D_{ij}^*, M_{ij}^*, V_{ij}^*) - C^e_i(A_{ij}, D_{ij}^*, M_{ij}^*, V_{ij}^*) \quad \text{for j=1,2,3} \qquad (3)$$

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associated with alternative institutional designs. See Ostrom (2005) for an overview of complex institutional designs.

The specific probabilities one analogous to those studied in the power-index literature with its probabilistic characterizations of possible coalitions and outcomes generated by various electorates under alternative voting rules. See, for example, Straffin (1977) or Matsui and Matsui (2000). Such power index calculations are normally (implicitly) conditioned on membership and/or decision rules. See Steunenberg and Schmidtchen (1999) for an analysis of voting power within the European Union. Detailed analyses of probabilities and outcomes is not necessary for the purposes of this paper. A variety of similar probability functions are consistent with that general approach and such a function is implicitly incorporated into a member state's expected net benefit calculations.

The ideal authority level to be conferred, j*, is the one that maximizes each nation's pivotal leader's net benefits, which is simply a matter of comparing and ranking three real numbers.

In a well-functioning liberal democracy, a national leader's net benefits are correlated with his, her, or its majority coalition's net benefits from coordinating policies in the area of interest—although in some cases, a symbolic treaty may be adopted simply to appear to be "doing" something (Gustafsson 2019, Congleton 1995). Except in the latter cases, agreements among democratic states with well-functioning electoral systems can thus be considered agreements among the median voters of the member states.

In the cases in which member interests are homogeneous, the expected net benefit functions are all the same and the ideal treaty organizations will be identical for each potential member state. The potentially agreeable subset of institutional designs is limited to those that are expected to generate positive net benefits for each potential signatory, which in most cases, will be a relatively small subset of the institutions that could be adopted. Agreements are possible when that subset is larger than a null set. It is likely that the particular institutions found agreeable vary with the type of authority to be delegated, and it is possible that only a single level of authority will have a mutually agreeable (non-null) set of institutions associated with it.

A homogeneous group of countries can fairly easily work out a procedural treaty and design for a treaty organization, because the same first order conditions characterize the maximal expected net benefits of each member state government. In symmetrical cases, these tend to be identical for each government, as do their participation constraints. The latter tend to rule out complete dominance by a single member state and support symmetry with respect to votes and funding duties.

In cases in which there are two homogeneous groups of countries—ones with expected net benefits above zero and ones whose net benefits are less than zero—there will be signatories and non-signatories, but again a true consensus is likely to exist among signatories regarding the authority, domain, membership, and voting rules for all signatory states.

In asymmetrical cases in which positive expected net benefits exist for a subset of potential member-state governments, but to different degrees, a variety of disagreements may exist about the nature of the ideal treaty organization being contemplated and an agreement tends to be more difficult to work out, as each potential member state "holds out" for their ideal institutional arrangements.

In cases in which extreme asymmetries exist, a particular potential member state may be critical for obtaining positive net benefits from the treaty organization being considered. In such cases, the indispensable member state can make all-or-nothing offers to the other potential members. It will choose its most preferred institutional parameters from the set of institutions that have positive net benefits for the states that characterize its optimal membership. This institutional agenda setter does not necessarily obtain its ideal design, because of participation constraints, but realizes the best that is feasible given the requirement of unanimous agreement.

Of course, real world institutional choices include a broader variety of institutional features than characterized in the above model. For example, voting rules can be more complex and different rules or weights may apply to different types of member states. In such cases, the voting-rule variable would be a vector or index rather than a single number. The membership variable may also be a vector or index rather than a single variable, because some members will have different duties than others as is the case for many environmental treaties. Similarly, the domain of policy making may be also be multidimensional, and so on.

However, the essential properties of more general characterizations of the problem of institutional design will resemble that of the simpler model focused developed above—which is, it bears noting, richer than those used in most other analyses of treaties which tend to focus on a single dimension of institutional design such as voting rules.

The model and its associated discussion demonstrates that there are interdependencies among institutional design elements, and that the best combination tends to vary with the degree of authority delegated to a new organization, the homogeneity of the membership, and the likely extent of member duties under the rules proposed or adopted by

the organization created. It also implies that the difficulty of reaching consensus tends to vary with the homogeneity of member interests. The more similar potential member state interests are, the easier it is to create a treaty organization.

All these considerations suggest that international organizations would exhibit a wide variety of authority, decision rules, memberships, and also vary in their subsequent production of substantive agreements. However, the model also allows the possibility that if expectations about the merits and risks associated with alternative institutional designs are largely independent of the nature of the policy problems addressed, there will be considerable convergence in the institutional designs adopted.

If, for example, it is commonly believed that member states will dutifully implement the recommendations of the treaty organizations created, there is little reason to delegate such agencies rulemaking or rule-enforcing authority. Such authority would pose additional risks without providing additional benefits. And, if the benefits of membership are similar, if not identical, there would be little to be gained by shifting away from decision rules based on consensus or supermajorities. Moreover, that all members have agreed to a course of policy makes it more likely that all will feel duty bound to implement the agreed policies. In such cases, rule proposing authority will be delegated to treaty organizations in relatively narrow policy domains, and the rules proposed to members states would be adopted by consensus or supermajorities of member-state representatives to the international organization created.[9]

These features are commonplace among the environmental and alliance treaties examined below.

[9] It is only when a subset of member states is expected to behave other than dutifully—for example, to free ride on the coordination or public good production agreed to—that strong organizations can be justified. However, not all potential free riders would agree to join an agency with significant rulemaking and rule-enforcing authority. Moreover, efforts to delegate both rule-making and rule-enforcement authority implies that a typical member does not trust most of the others to abide by their treaty duties, but somehow can trust the agency-created enforcement authorities—even though it will largely be staffed by member states. Obviously, this combination of beliefs is unlikely.

III. Case Studies: Environmental Treaty Organizations and Defense Alliances

The United Nations Depository includes more than 500 multilateral treaties. However, relatively few of these treaties create new international agencies. Many of the treaties are symbolic; others are consequences of negotiations by preexisting treaty organizations. For the purposes of this study, it is only the subset of treaties that create new standing treaty organizations or international agencies that are of interest, and of that subset, it is chiefly those that aim to benefit the signatories by addressing issues of major importance for the citizens of the member states.

Most of the cases reviewed are environmental treaties. These treaties are focused on for several reasons but chiefly because concerns about transnational environmental problems have come to dominate democratic politics in recent decades and thus may be assumed to be "important" for the signatories. They are also obvious examples of international social dilemmas that may be solved via social contracts. In addition to the environmental treaties, several treaties of alliance are reviewed. The problems addressed by the alliance treaties are arguably closest to the variety that grounded Hobbes' analysis of social contracts. Three are durable treaties that arguably formed the basis for a subsequent national government. One is a major multilateral treaty that has arguably been the most successful of such treaties that did not lead to the formation of a nation state. Nonetheless, perhaps surprisingly, the initial delegations of authority and decision-making procedures adopted by the treaties of alliance reviewed are remarkably similar to those of the environmental treaties.

a. Bilateral Environmental Treaties

Table 1 lists 15 bilateral environmental treaties. Ten of the treaties create or empower preexisting international organizations to monitor and coordinate information about pollution in a particular area (often a specific body of water) and to make policy recommendations to the respective national legislatures for improving the environmental quality in that area of mutual concern. Only two of the treaties explicitly list effluent targets

or empower an agency to oversee the implementation of the rules adopted.[10] The treaties between the United States and (a) Germany and (b) the former USSR are examples of low-cost symbolic treaties.

Table 1. Early Bilateral Procedural International Environmental Treaties				
Signatories	**Year**	**Focus**	**Action**	**Responsibility**
UK and West Germany	1969	Oil slicks	Coordination	Inform each other of existing or potential oil spills
France and Switzerland	1971	Lake Geneva	Commission formed	Recommend policies and monitor water pollution
USA and USSR	1972	General	Commission formed	Exchange of scientific information, joint conferences
Italy and Switzerland	1972	Border Lakes	Commission formed	Recommend policies and investigate pollution sources
USA and Canada	1972	St. Johns River	Commission	Monitor water quality and coordinate policies
USA and Canada	1974	Oil spills	Contingency planning	Development of a marine contingency plan
USA and West Germany	1974	General	Cooperation	May harmonize policies and share information
Poland and Czechoslovakia	1975	Air Pollution	Commission (Plenipotentiaries)	Coordinate monitoring and exchange information
Denmark and Sweden	1975	Oresund Sound	Commission	Recommend policies and coordinate research
USA and Canada	1978	Great Lakes	Commission	Recommend policies and report on treaty programs
USA and Mexico	1980	Maritime Boundaries	Contingency plan	To coordinate a joint response to hazardous substance spills
USA and Canada	1980	Air pollution	Commission	Recommend policies and coordinate and share research
USA and Mexico	1983	Border area pollution	Commission (2 coordinators)	Coordinate policies and meet at least once a year
USA and Canada	1984	St. Johns River	Continuation of 1972 agreement	Monitor water quality and recommend targets
USA and Mexico	1985	Hazardous Substances	Contingency plan	Coordinate responses to accidents along the border

None of the agencies created had the ability to punish member states that violated provisions of the policies suggested or substantive agreements reached. Consistent with Congleton (1992), all but two of these treaties were agreements between democracies. Twenty-seven of the 30 signatories are liberal democracies.

[10] Both the *Oresund Sound Treaty* and the *1978 Great Lakes Water Quality Treaty* specify which effluents are to be controlled. Only the Great Lakes Treaty mentions specific target levels for targeted effluents and hazardous materials.

As noted above, the lack of enforcement power does not necessarily imply that no steps are undertaken to address the issues that led to the treaties negotiated. However, it does suggest that the steps undertaken reflect domestic politics. And, to the extent that the treaties indirectly affected domestic politics, they are likely to have done so through effects on domestic political equilibria (in most cases, by reinforcing preexisting support for new environmental legislation). These anticipated results may be sufficient to justify the agreement for those who sign the treaty of interest. In agreements among countries in which the executive branch could unilaterally adopt the laws and regulations necessary to satisfy the treaty agreements, preexisting trust among the treaty signatories is likely to have played a role in the expectations of reciprocity among signatories.

b. Multilateral Environmental Treaties

The first environmental treaties were mainly between two countries, the treaties that followed were often multilateral. During the period between 1979 and 2015, 18 more or less separate environmental policy areas were addressed by treaties and associated protocols.[11] In most cases, the founding treaties created an organization to collect information and develop policy recommendations. The names of the organizations and decision-making bodies were often rather mundane, as with "the conference of the parties," but the agencies and working groups created made a series of recommendations concerning environmental policies within the area of policy in which they were delegate authority. Negotiations within the organizations created often produced a series of amendments and protocols to the original treaties on policy issues within their domain. The history and typical sequence of multilateral treaties, thus, parallels that of bilateral treaties. A sequence of treaties—normally symbolic, procedural, and substantive—were negotiated.

Three of the 18 treaty areas addressed broad environmental issues where policy coordination might improve results for most citizens in most member states. It is this small subset of environmental treaties that is focused on in this subsection. It is in such areas that

[11] A complete list of the environmental treaties in the United Nation's depository (conventions, protocols, and amendments) can be found under chapter 27 of its *Multilateral Treaties Deposited with the Secretary-General* (as of May 31, 2019). See: https://treaties.un.org/doc/source/titles/english.pdf.

significant policymaking and enforcement authority might have been delegated over a relatively broad area of environmental policy—although it turns out that was not the case.

The 1979 *Convention on Long-Range Transboundary Air Pollution* provides for annual meetings of the contracting parties, whose representatives make up its executive board (Article 10); this board reviews efforts undertaken by the parties and working groups established by the member-state governments to address the concerns that motivated the treaty. These concerns were initially the measurement and analysis of various air pollutants (Articles 2, 3, and 4). The agency was also delegated authority to make recommendations about how to better advance its mission. Agenda control resides in the Executive Secretary of the Economic Commission for Europe (Article 11). The recommendations worked out often go beyond the initial mission of the agency in that particular effluent targets are mentioned in the protocols, as for example in Annex II of the 1994 Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions (June 1994). Major decisions such as amendments to the initial treaty and settlement of disputes were made by consensus (Articles 12.3 and 13).

The 1985 *Vienna Convention for the Protection of the Ozone Layer* similarly created a conference of the parties as its main decision-making body (Article 6) but with a secretariat to be chosen by member states at its meetings (Article 7). The language of the proposals and reports worked out by the member states were to aim for consensus, but when a consensus could not be found, a three-quarters majority would be sufficient for a proposal's adoption (Article 9). The aim of the agency was monitoring and analyzing factors relevant for understanding the ozone layer and also to suggest policies for ensuring its long-term existence (and implicitly recovery) (Article 2). Substantive proposals were again treated as essentially new treaties—protocols—which all member-state representatives could sign (approve) or not according their government's preferences. Several substantive protocols were negotiated, which led to the near cessation of the production of many classes of CFCs by signatories during the next 20 years. (This process began with Annex I of the original treaty.) Again, no enforcement power was delegated to the agency, and adoptions of its substantive policy recommendations remained voluntary at the level of national

governments. Domestic politics, reciprocity, and trust were sufficient to achieve substantive results without the authority to impose and enforce rules.

The 1992 *United Nations Framework Convention on Climate Change* adopted procedures that were similar to those of the *Vienna Convention for the Protection of the Ozone Layer*. The aims were also planet wide, but concerned a wider variety of effluents and various land-management policies. The conference of the parties agreed to reduce or eliminate the effect of human activities on the planet's climate (Articles 1 and 2), although they did not agree to particular substantive polices to do so. Revisions to the 1992 convention required consensus of the Conference of the Parties, its primary decision-making body (Article 7). However, if a consensus could not be reached, language for proposed amendments can be approved by a three-quarters vote of the member states. The amendments were to be signed and approved by the member states individually and were not binding on members that failed to do so (Article 15). The convention also creates subsidiary scientific and financial bodies that report to the conference of the parties. As in the previous cases, several protocols were subsequently negotiated and signed.[12]

[12] The convention and its amendments direct each signatory to measure and monitor emissions of greenhouse gases and carbon (without listing the specific gases or sinks of interest). They also require signatories to adopt policies to curtail emissions and preserve carbon sinks, again without specifying specific sinks, targets, or policies, which are left up to the signatories. The protocols negotiated tend to be similarly nonspecific. For example, the Paris Agreement of 2015 is intended to hold the increase in global average temperatures to 2°C above pre-industrial levels (Article 2) but includes no specific steps for doing so. Instead, all signatories "shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve" (Article 4). Thus, instead of working out a cooperative plan among member states, the protocol asks countries to independently provide plans that they expect or at least aspire to adopt.

In this respect, the Paris Agreement might be said to be an effort to provide support for domestic groups that favor stringent actions to address global warming, who can buttress their arguments with the obligations accepted under the Paris agreement and Kyoto Protocol as amended in Doha. Of course, when domestic politics move in a direction that is not supportive of the aims of the convention, democracies cannot fully commit to such a plan, because any plan adopted by the government of a current democratic signatory can be reversed by a subsequent government. For example, in 2017, the United States withdrew from the Paris agreement because the government (under President Trump) that replaced the signatory government (under President Obama) regarded the commitments made by the Obama administration to be too stringent.

For the purposes of this paper, whether the international agencies achieved substantive results is of less interest than the institutional characteristics of the agencies created: the scope of their policy domains, the procedures used to adopt recommendations, and any enforcement powers that they might have. Substantive results are of interest only insofar as they provide evidence that a social contract has achieved part its stated purpose. Table 2 summarizes the above discussion.

Table 2. The Domain of Authority and Decision-Making Rules for Three Major International Environmental Treaties

Treaty	Domain of Authority	Decision Making Rule
1979 *Convention on Long-Range Transboundary Air Pollution*	Monitoring Effluents and Recommend Policies	Consensus
1985 *Vienna Convention for the Protection of the Ozone Layer*	Monitoring Effluents and Recommend Policies	75% Super Majority
1992 *United Nations Framework Convention on Climate Change*	Monitoring Effluents and Recommend Policies	75% Super Majority

The international agencies created by the three major multilateral environmental treaties reviewed are surprisingly similar to those created by the earlier bilateral treaties. The delegation of authority has been limited to proposal authority, rather than rule-adopting and/or -enforcing authority. Their decision rules require consensus or supermajority decision making by representatives of the parties to the treaty organization of interest, rather than majority rule. Trust and reciprocity among the members are implicitly assumed to be sufficient to have an agency's recommendations accepted and implemented by the signatories.

c. Defensive Alliances

It might be argued that more authority is likely to be delegated to a treaty organization in "life and death" settings that resemble those that Hobbes used to motivate his irrevocable and general social contracts. The circumstances in which such treaties are negotiated are more urgent and the matters address are existential in nature. Environmental problems may be significant and existential in the long run, but they tend to be less immediate than problems associated with war and peace. Thus, defense alliances may be

more likely to include rulemaking and rule-enforcing agencies of the sort anticipated by Hobbes (1651) and Buchanan (1975) than environmental treaties. There is some evidence to support that contention, but again it turns out that the organizations created to address such problems tend to have very limited policy making and enforcement authority.

Four treaties of alliance are examined, including three that gradually evolved into governments of the variety that Hobbes and Buchanan had in mind. As in the case of environmental treaties, international social dilemmas were address that potentially could improve the welfare of most persons residing in the territories covered by the treaty. The initial treaties, however, were very similar to the environmental treaties examined above in terms of their scope, their use of consensus decision-making procedures, and their delegation of proposal authority as opposed to rulemaking "and rule-enforcing authority.

The first alliance treaty examined is arguably the oldest and most durable of the European alliances. The initial treaty of alliance is sometimes referred to as the Swiss Federal Charter (*Bundesbrief* 1291), although the document is a relatively simple letter of agreement among just three cantons.[13] The alliance gradually expanded through a series of subsequent treaties to 13 cantons, the last of which was consummated in 1513. The resulting alliance is normally referred to in English as the Old Swiss Confederacy.

The main purpose of the original letter of agreement was to establish a defensive alliance. Its first substantive paragraph states that, "each community has solemnly sworn to universally succor the others at its own expense in order to withstand and avenge malicious attacks and wrongdoings." It also provides for coordinated responses to major crimes such as murder and arson and calls for judicial proceedings to be undertaken only within existing local judicial systems, as opposed to judicial systems organized by the Hapsburgs or the Roman church. The letter of agreement does not create a new organization or international

[13] The English translation of the Bundesbrief that is used as the basis of this paragraph is from the Bundesbrief Museum in Schwyz, one of the three founding cantons, and the source of the English word for that country, Switzerland. The confederation's Latin name was and is *Confoederatio Helvetica,* which accounts for Switzerland's two-letter country designation as CH.

agency but implicitly calls for meetings of representatives of the three canton overlords to work out disagreements among themselves and to plan for military assistance. With such a small group of member states, unanimity was the natural decision rule for such meetings.

Each step in the process of enlargement of the Swiss Confederation is of historical interest, but for the purposes of this paper, what is most important is that the delegation of responsibilities continued to be narrow—chiefly concerning matters of war, alliances, and additions to the confederacy—and that voluntary commitments were made by the member state governments to undertake military steps to aid others in an *eidgenossenschaft* (oath fellowship). The specific military support, however, would largely be conceived by each canton independently of the others, rather than imposed by a central federal command structure—although there must have been efforts to coordinate military activities during their most aggressive period (through the confederation's defeat in 1515 at the Battle of Marignano). Consensus was nonetheless their decision-making rule for major decisions such as declarations of war and allowing other cantons to join the confederation.

The Old Swiss Confederacy was highly decentralized, used consensus decision-making procedures and the scope of its confederal government was very limited. It was more of a treaty organization than a confederation. It remained the main form of inter-cantonial governance until it was disrupted by Napoleon in 1789. The confederacy was more or less restored after the Kingdom of France was restored in 1814 but was replaced by the contemporary Swiss constitution in 1848, which although highly decentralized by world standards, was far more centralized than the previous confederacy.

The next alliance treaty to be examined is the 1579 *Union of Utrecht*, which is often said to be the founding document of the Dutch Republic. As in the Swiss case, it initially included signatures from only a subset of the provinces that would subsequently form that federation.[14] The main purpose of the agreement was again mutual defense: "That the

[14] The English translation used as the basis of the short overview provided in this paragraph is from the website "constitution.org," which in turn was taken from Rowen's *The Low Countries in Early Modern Times: A Documentary History* (New York: Harper & Row, 1972).

aforesaid provinces shall also be bound to assist each other in the same way and to help each other against all foreign and domestic lords, princes, lands, provinces, cities or members thereof, who seek to do them, as a group or individually, any harm or injustice, or wage war upon them."

Although the agreement does not presume to overrule governance within the provinces, the union did provide for joint funding of defensive efforts and new fortresses along the periphery of the territories of the member states. Narrow tax-farming rights were to be sold to the highest bidder to fund their joint defensive efforts. The tax sources agreed to at the conference could only be changed by unanimous consent. Provisions to address other issues when unanimous agreements were not forthcoming are also included, although through shifts in the relevant decision makers (to provincial *stadhouders*) rather than through supermajority rules. The Union also called for significant religious freedom and free trade among the signatories. Thus, its scope and the extent to which policies were to be coordinated via the treaty were significantly broader than under the Swiss treaties, although it did not formally include rulemaking or rule-enforcing authority.

As in the Swiss case, no enforcement or formal rulemaking powers were delegated to the conferences of member representatives. Responsibility for implementing the agreements worked out was left to the provincial governments. Oaths were again initially the ultimate guarantor of the treaty commitments. In the Dutch case, oaths were to be sworn by the most powerful government officials in each member state.[15]

The union was subsequently joined by most of the rest of the polities of today's Netherlands (the provincial and city states north of the Rhine) and the meetings of provincial representatives—the States General—came to serve as the Dutch republic's main

[15] The agreement ends with the statement: "To assure its more exact performance, the Stadholders of the aforesaid provinces who are now in office and their successors, as well as the magistrates and chief officials of each Province, City and member thereof, shall be required to swear an oath to follow and maintain this Union and Confederation and each article therein, and to have others do the same. The same oath shall be taken by all civic guards, confraternities, and corporate bodies in any cities and places in this Union."

decision-making body after its war of secession with the Hapsburg Empire was won. Initially the government was highly decentralized, held limited authority, and used consensus-based decision-making. However, during the next two centuries, the confederal government gradually became a "normal" government with significant rulemaking and rule-enforcing authority with an increasingly strong chief executive (generally *stadhouders* from the Orange family). This federal government was also ended by the interventions of Napoleon. After the period of what might be termed its French period, the republic was replaced by the kingdom of the Netherlands (*Koninkrijk der Nederlanden*) with a king rather than a *stadhouder* as its most powerful leader.

The third defense alliance examined is that of the English colonies of North America that seceded from the British empire and formed the United States of America. The 1776 *Articles of Confederation* for the United States of America parallels in many respects the *Union of Utrecht*. Negotiations took place as defensive military operations were being undertaken (in New England), and it took several meetings to produce a consensus for both a formal declaration of independence from England and a formal treaty of alliance among representatives of the former colonies to be worked out and agreed to. The *Declaration of Independence* was agreed to about two years before negotiations produced a consensus among state delegates regarding the institutions of the agency to be created—its domain of policy, its authorities within that domain, and its decision-making procedures. (The expectations, interests, and size of the thirteen founding colonies were significantly different from one another.) Both the *Swiss Federal Charter* and the *Union of Utrecht* were discussed at the meetings that produced the *Articles of Confederation*.

As in the Dutch case, its main purpose was arguably to create a formal defense alliance of the member states, although the policy domain delegated to the new treaty organization was broader and it included a few areas in which it had rulemaking as well as rule proposing authority. Article 3 states that "The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other,

against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever."

The *Articles* followed the Utrecht treaty in that it also provided procedures for jointly funding their collective war efforts (Articles 8 and 9), provides for resolution of disagreements among member states (Article 9), and as in both the Utrecht and Swiss Federal Charters, assures the retention of member-state sovereignty (Article 2). In addition, the *Articles* address the issue of confederal debt (Article 12), provide detailed decision-making rules for the meetings of the assembly of member-state representatives (termed a congress of the united states, Articles 5, 9, 10, and 13), and included provisions for a free trade zone (Article 6). The confederal congress was also delegated rulemaking authority in the area of international affairs. Amendments to the articles required unanimous assent by member-state governments, and most other decisions required a 9/13 majority of the state delegations (one voter per state delegation), although a few procedural issues could be decided by majority rule.

The 1777 *Articles of Confederation* created an organization that had authority that went somewhat beyond those of the other treaty organizations reviewed in this paper, although it too had a bounded policy domain, and relied on consensus and supermajority rules for major decisions. The articles were subsequently ratified by all member states (the 13 former English colonies) during the next four years.[16]

The last treaty of alliance reviewed is that created by the 1949 *North Atlantic Treaty*. It formed an alliance that was principally for the defense of its member states, which initially included 12 countries. The treaty includes broader objectives as well—to safeguard the freedom, common heritage and civilization of their peoples, founded on the principles of

[16] As true in Switzerland and the Netherlands, the member states had long had local governments with significant autonomy. In the American case, their pre-independence colonial governments included broadly elected bicameral assemblies, and in two cases, had directly or indirectly elected their colonial governors for roughly a century before independence was declared. After independence was declared, the other states adopted new election-based procedures to select governors. Some chose direct elections and others (the majority) chose to have their governors appointed by the state legislatures.

democracy, individual liberty and the rule of law—but most of its subsequent activities focused on efforts to "unite their efforts for collective defense and for the preservation of peace and security." In contrast to the other three alliance treaties, the North Atlantic Treaty Organization (NATO) was negotiated after a major war was won rather than at the brink of war. As in the other cases, its main initial goal was the coordination of military operations, albeit with the defense of liberal democracy as one of the aims of its military activities.[17]

Article 9 established a council of member states that is the supreme decision-making body of the treaty organization created, which subsequently took the name the North Atlantic Council. The North Atlantic Council makes all its decisions via unanimous agreement.[18]

Various working groups were established by the treaty organization, including ones that directly address the coordination of military matters. Generally, strategic aims are published as "strategy documents" rather than as protocols or amendments. Protocols are used to invite new member states. The alliance presently includes 29 member states, each formally committed to aid in the defense of all others were they to be attacked.

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[17] As founding members of the United Nations, broader goals are largely left to that organization rather than what came to be called the North Atlantic Treaty Organization. Article 1 makes it clear that its main purpose is securing peace in the territories of the signatory states. "The Parties undertake, as set forth in the Charter of the United Nations, to settle any international dispute in which they may be involved by peaceful means in such a manner that international peace and security and justice are not endangered, and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations."

Article 2 nonetheless includes a liberal or democratic political agenda as well. "The Parties will contribute toward the further development of peaceful and friendly international relations by strengthening their free institutions, by bringing about a better understanding of the principles upon which these institutions are founded, and by promoting conditions of stability and well-being."

[18] This use of unanimity is not expressly stated in the treaty documents, but is stated on the Council's website (https://www.nato.int/cps/ic/natohq/topics_49763.htm): "Decisions are agreed upon on the basis of unanimity and common accord. There is no voting or decision by majority. This means that policies decided upon by the NAC [North Atlantic Council] are supported by and are the expression of the collective will of all the sovereign states that are members of the Alliance and are accepted by all of them. All members have an equal right to express their views and share in the consensus on which decisions are based."

NATO has no tax authority, although it has a significant budget, recently spending 1.4 billion euros on military matters and 250 million euros on civil matters (NATO press release December 19, 2018). NATO's expenses are funded through membership dues, rather than taxes.[19] Its budget, however, is only a small fraction of the total military expenditures of the member states. Members fund most of their own military expenditures through their domestic budgets. As in the other treaty-based alliances, the member-state governments retain control of their military organizations, deployments and budgets, although they have duties to come to the aid of others and to adhere to NATO's strategies and command structure during times of crisis.[20]

As true of the other treaty organizations examined in this paper, NATO has proposal power rather than rulemaking or rule-enforcing power. It can propose levels and patterns of expenditures, but these are ultimately determined by domestic politics with a coordinating nudge from NATO decision makers.[21]

Table 3 summarizes the four very durable defense alliances reviewed in this subsection of the paper. Overall, the treaty organizations created for the purposes of military defense resemble those used to advance environmental policy coordination. They tend to use decision-making procedures that are based on consensus rather than majority rule. They tend to have relatively narrow policy domains. They tend to have proposal rather than rulemaking or rule-enforcing authority. Member-state governments have duties to take the advice of the treaty organization into consideration, but they retain sovereign control over essentially all policy areas.

[19] The manner in which in treaty organizations fund themselves is rarely specified in their founding documents but rather is worked out at subsequent meetings of the organization. Funding is often complex and variated. For thorough overviews, see McArthur and Rasmussen (2017, 2019).
[20] A useful overview of the history, problems, and future of NATO can be found in Sandler and Hartley (1999). The focus of the short overview undertaken in this paper is its formal authority and highest level of decision-making procedures for its policy domain.
[21] See Sandler and Harley (1999) for a book-length treatment of bargaining within NATO over policy proposals and defensive strategies.

In the three cases in which the alliances gradually became true national governments with rule-adopting and rule-enforcing authority, the initial special purpose treaties were normally replaced by more detailed and expansive political constitutions—not simply amendments but major changes in the institutions and authorities delegated to (or taken by) the new central governments.

Table 3. The Domain of Authority and Decision-Making Rules for Four Durable Defense Alliances

Treaty	Domain of Authority	Decision Making Rule
Swiss Federal Charter (*Bundesbrief* 1291)	Mutual Defense and Crime Enforcement	Consensus
1579 *Union of Utrecht*	Mutual Defense (includes provisions for tax finance)	Consensus
1777 *Articles of Confederation*	Mutual Defense (includes provisions for taxation and a free trade zone)	9/13 Super Majority
1949 *North Atlantic Treaty*	Mutual Defense and Coordination of Strategy and Funding of Defense	Consensus

IV. Conclusions: Social Contracts and the Domain of Authority

Although this sampling of treaty organizations is relatively small, the similarities are sufficiently large to venture a few conclusions about the delegation of authority and typical institutions of a treaty organization. First, treaty organizations are normally granted proposal authority rather than rule-imposing or -enforcing authority. Second, that authority is conferred within a bounded policy domain in which advantages from policy coordination are anticipated. Third, decisions within the agencies created are normally made via consensus or supermajority decision rules by delegates of the member states. When the proposals seem sound (consistent with the interest of the member state governments), member states will support them. When they are not, they are vetoed within the treaty organization of interest.

Fourth, compliance with treaty duties is—at least initially—voluntary for member states. As with the Old Swiss Confederacy, they are oath fellowships, rather than strong coercive agencies of the variety that Hobbes anticipated. This does not imply that signatories

to treaties never accept the proposals of the agencies created, but it does imply that the proposals must be expected to produce significant benefits for the governments responsible for implementing the proposals made. Such benefits include increases in political support by domestic groups favoring the policy recommendations of a treaty organization and other desirable "real world" consequences associated with the policies themselves.

Fifth, the domains in which treaty organizations are empowered to make proposals tend to be bounded and to focus on specific policy areas. These bounds can be extended by formal amendments of the founding documents. In some cases, the scope of authority is ambiguous or broader than it subsequently turns out to be in practice. For example, treaties often include symbolic statements that are evidently not regarded to be central to a treaty organization's mission or likely areas of agreement. Both the North Atlantic Treaty and the United Nations Framework Convention on Climate Change have very broad domains if their initial paragraphs are taken literally; however, in practice, the areas in which cooperative agreements have been forthcoming have involved mutual defense strategies in the case of North Atlantic Treaty and monitoring and regulating emissions of various green-house gases in the case of the Convention on Climate Change. The use of consensus decision-making rules tends to induce narrow interpretations of the "true" bounds implied by a treaty organization's founding documents.

Sixth, treaty memberships are often initially smaller than ideal. A few countries often initiate negotiations in a particular policy area, work out a procedural treaty, and subsequently other countries decide to join the treaty organization created. The multilateral environmental treaties and three of the four treaties of alliance reviewed exhibited membership growth through time. Such expansions would normally occur when the benefits from coordination are reasonably diffuse and the organization is sufficiently effective that benefits are obtained at a reasonable cost for member states.[22]

[22] In some cases, the focus and policies of a treaty organization become more obvious as its policy proposals and financing are worked out. As this occurs, non-members may attempt to join a preexisting treaty organization. For example, some of the multilateral treaty organizations created

Given a relatively narrow domain of policy and proposal power rather than rule-choosing and -enforcing authority, one might expect that voting rules would not matter much. Instead, all of the treaties reviewed stress consensus or unanimity as the aim of deliberations. When consensus language cannot be found, treaty organizations often use supermajority rules of various sorts. There are practical reasons to have such rules when authority consists for the most part of proposal power, especially when the fruits of cooperation require individual member states to independently adopt domestic legislation to implement the proposals (or suggested language) developed by treaty organizations. Consensus-based rules imply that a treaty organization's recommendations are acceptable to all, and therefore likely to be implemented by all the member states.

Overall, the surprising similarity of institutional designs among the treaty organizations reviewed provides evidence that expectations about the functioning of such organizations have not changed very much through time. Similar organizational structures have been adopted for many centuries.

Taken as evidence of the nature of social contracts that form governments, the model and cases reviewed lead to some interesting conclusions: (1) Governments based on social contracts tend to have bounded policy domains. (2) They use consensus and/or supermajority rules to make policy decisions. (3) Citizens are likely to remain actively involved in the decision-making process, rather than to delegate full rulemaking and rule-enforcing authority to their governments. For example, they may retain authority to veto recommendations of the governing organization created by requiring major policies to be directly voted on, as for example, possible at a tribal meeting, town meeting, or national referendum. (4) The scope of authority delegated to governments is likely to be very limited at first but may be expand through time. Expansions of authority are likely to be through

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subagencies for distributing grants of various kinds, which induced many countries to become members in order to qualify for the grants. In other cases, a potential member state may have re-evaluated the benefits of membership because of changes in political circumstances, as was the case for many of the most recent members of NATO.

formal amendments adopted via consensus or super majority, as citizens are persuaded of the usefulness of additional scope for coordinated action or jointly produced services.

These conclusions exhibit several important differences from the predictions of classical social contract theory—especially that of Hobbes. Little power is initially delegated to the organization(s) formed and the policy domain is generally narrowly defined—which is to say, bounded rather than unbounded. Moreover, citizens retain an active role in policy formation rather than fully delegate it to leviathan as posited by Hobbes.

It is easy to imagine what such limited authority and high demands for consensus would look like, because we can directly observe them in treaty organizations, both old and new. Of course, this evidence is not perfect, since treaty organizations are products of other organizations (governments) rather than individual citizens, but even imperfect data can be suggestive.

It is noteworthy that few contemporary governments resemble such contract-based organizations. The closest to this model among contemporary Western governments is that of Switzerland, where referenda and canton governments continue to serve as check on their central government's authority. This resemblance is of course not entirely accidental. It clearly reflects that government's origin—both in myth and to a significant degree in reality—as a treaty organization, an oath fellowship created some 800 years ago.[23]

[23] In the other two cases in which governments emerged from defense alliances, the treaty organization was supplanted by new more centralized constitutions. The United States adopted a major constitutional reform in 1789, which substantially increased central government authority, however, although taxing authority and rule-making authority was obtained, governance remained highly decentralized for more than a century. Centralized authority was further increased with a series of amendments adopted during the 1909–19 period and increased during the rest of the twentieth century. The Dutch Republic continued to be highly decentralized during the next two centuries—albeit with a gradual increase in central authority until its demise during the period of the French Revolution. Following that war, a new royal government was formed with significantly more centralized authority. The Swiss constitution of 1848 increased the centralization of Swiss governance but, being grounded on the norms and procedures of the old confederacy, continued to be highly decentralized, although it too exhibited a trend toward greater centralization in the twentieth century.

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