Legalising norms of democracy in the Americas

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Abstract. Why have states legalised international norms promoting domestic democracy in some regions of the world? This issue poses a difficult puzzle because standard assumptions about state preferences for sovereignty make the creation of strong, binding international rules on democracy unlikely. We identify four possible answers: the interests of powerful states, common government interests in domestic policy lock-in, the absence of fears that powerful states will use the rules to intervene unilaterally in domestic affairs, and the robustness of pre-existing norms. We explore our argument by applying it to the Organization of American States (OAS), a fairly unlikely organisation for the strong legalisation of international rules. Our findings suggest that legalisation of democracy is quite difficult to achieve. State interests in locking in democratic benefits and state power – even hegemonic power – are necessary but insufficient. An important set of new democracies attempted legalisation in the 1950s, yet failed. The United States, as strong a regional hegemon as ever, attempted further legalisation in 2005, yet failed. Motives and power must be accompanied by low fears of unilateral intervention and high levels of norm robustness in order to produce results.

Introduction

In the past twenty years the world has witnessed an acceleration of international legalisation. States have increasingly adopted binding and specific international norms and rules to regulate their interactions and have delegated authority to international organisations to monitor or enforce agreements and to adjudicate disputes. While students of international politics have started to document this recent trend and begun to theorise about it, little research thus far exists identifying the reasons for legalisation.

In particular, we are interested in the legalisation of international norms promoting domestic democracy. This issue poses an especially difficult puzzle because standard assumptions about state preferences for sovereignty make the creation of strong, binding international rules on democracy unlikely. While most IOs govern relations between states, international treaties on democracy seek to regulate relations between a state and its citizens. States have been reluctant to create binding rules on most issues; they should be even more reticent when it comes to issues that

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full more exclusively within their domestic jurisdictions. What accounts for the deepening of democracy through international organisations and what sets it in motion? Who are the key actors propelling the process and under what conditions is it most likely to occur? What stops or reverses the process of deepening and how?

We identify four possible causes of legalisation of democratic governance: hegemony, common government interests in locking in democracy, fears of intervention from powerful states, and the robustness of pre-existing norms. We explore our argument by applying it to the Organization of American States (OAS). The Americas provides a useful region to examine explanations for legalisation because it is an unlikely place for legalisation of democracy to develop. Inter-American relations have been marked historically by a fair amount of mistrust between the United States and many Latin American states. Latin American countries have been wary of international rules that would facilitate US intervention and the United States has been concerned about rules that would bind its own hands unnecessarily. Despite these potential hurdles, legalisation of democratic governance increased substantially in the region in the 1990s before hitting a plateau and failing to move forward after 2001. No other region has made such progress except Europe. The Americas makes a better case study because the OAS is a traditional regional IO and hence the findings may be more generalisable than a study of the EU. In a similar vein, other European institutions such as the Council of Europe have legalised democracy, but it would be difficult to disentangle the spillover effects of the EU from other factors.

Our findings suggest that legalisation of democracy is quite difficult to achieve and occurred in the Americas due to a confluence of strong state interests and some important conditions. In particular, we find that state interests in locking in democratic benefits and state power, even in hegemonic form, are necessary but insufficient. These motives must be accompanied by low fears of unilateral intervention and high levels of norm robustness in order to produce results.

This study begins by introducing the concept of legalisation and developing the factors that we consider crucial for the legalisation process. We then explore the specific mechanisms that have been adopted in the OAS resulting in greater legalisation of democracy. The following section illustrates our theoretical arguments by examining the most significant events in the legalisation of democracy in the 1990s and by comparing them with earlier periods in inter-American history, with recent events in 2005 and with other regions of the world where states have not engaged in legalisation. We conclude by discussing our findings and their implications for the study of international organisations.

Why do states legalise?

Conceptualising legalisation

Legalisation constitutes one form of institutional change and can be defined as a process in which institutional rules become more obligatory and precise and in which institutional actors receive more delegated authority to interpret, monitor, and
implement those rules.¹ This is of course only one way in which the term legalisation can be defined. Finnemore and Toope have argued that this definition of legalisation would be more accurately termed ‘legal bureaucratization’ because obligation, precision and delegation focuses on ‘the structural manifestations of law in public bureaucracies’.² International law, as Finnemore and Toope point out, involves much more than just international treaties and positivist legal language; it includes customary law, issues of legitimacy, and legal processes and relationships (rather than just legal forms).³ Analysis of any one of these aspects of international law relative to democracy would certainly be helpful, but no article can do everything. Obligation, precision and delegation offer reasonable choices as phenomena to be explained because they have in fact tended to move together over the past several decades in the Americas, as we argue below. Moreover, states and other actors have expended considerable effort in altering these dimensions or trying to prevent their alteration. We attempt to minimise the neglect of other features of international law by examining a fairly broad array of causal factors, including those related to legitimacy, such as norms, and by adopting a methodology that focuses on tracing the processes by which these political-legal features evolved.

We define obligation, precision and delegation in substantially the same way as in the *International Organization* special issue on legalisation.⁴ ‘Obligation’ means that states or other actors are bound by a rule or commitment or by a set of rules or commitments. Specifically, it means that they are legally bound by a rule or commitment in the sense that their behaviour thereunder is subject to scrutiny under the general rules, procedures, and discourse of international law, and often of domestic law as well.’ The notion of an obligatory international institution runs directly counter to the common assumption that states jealously guard their sovereignty and that the international arena is characterised by anarchy. The desirability of such obligatory rules is a theoretical debate at least as old as Grotius and Westphalia. The apparent increase in the number of obligatory institutions in recent years (the EU broadly, the European Central Bank, the WTO, the International Criminal Court) has renewed scholarly interest in the concept. As usual, however, theories have lagged behind real-world developments.

‘Precision’ means that rules unambiguously define the conduct they require, authorize, or proscribe.⁵ In turn, ‘delegation’ means that third parties have been granted authority to implement, interpret, and apply the rules; to resolve disputes; and (possibly) to make further rules. In the international arena, individual states often delegate to a collective body of states. In the European Union, for example, states allow a number of policy issues to be decided by qualified majority votes in collective deliberations in the Council of Ministers. While the Council is not a ‘third party’, states have still yielded their sovereign authority to a collective of other states who can determine domestic policies. Such a step constitutes partial delegation. Stronger acts of delegation would include independent third parties like the

³ Ibid., pp. 746–51.
⁵ Ibid.
European Court of Justice or the International Criminal Court. Delegation is widely discussed in the principal-agent literature, a tradition that is just now finding an echo in international relations scholarship despite some earlier efforts. Certainly, scholars have long been interested in IO autonomy, but it remains the case that we have few explanations of that autonomy. Rather scholars have been focused on explaining the existence of institutions themselves, rather than particular characteristics such as obligation and delegation. More broadly, scholars have moved past the debate on whether institutions matter, with more interest in explaining variation in the nature of those institutions and the conditions in which they matter. This article forms part of that broader effort.

It is also important to define the nature of what is being legalised; in this case, domestic democracy. While the theoretical literature on the nature of democracy is vast, we generally adopt an empirical approach to this question by focusing on the ways in which the OAS itself has defined and redefined democracy, as states have negotiated those meanings. Our discussion below frequently cites OAS documents on democracy and shows how those understandings became more specific over time.

At the same time, the theoretical claims we examine suggest that democratic states and democratic norms are likely to result in legalisation; hence, we must utilise some pre-existing understandings of democracy to assess those claims. Because we are studying a couple of dozen countries across 60 years, it is important to utilise a concept of democracy by which different states can be measured at different points in time. This sharply restricts possible conceptualisations. A concept of democracy in which the people’s will is translated into political outcomes, for example, is not viable because we have no way of measuring popular opinion across 60 years for all Latin American countries. The Polity project provides one of the very few efforts to conceptualise and measure democracy across this much time and space. In this project, democracy is conceptualised as the competitiveness and openness of executive recruitment, the competitiveness and openness of political participation, and the extent of institutional checks on executive authority. Our use of the Polity data, however, is not simply a ‘drunkard’s search’ where we adopt data because it exists. This conceptualisation of democracy – which focuses on the nature of political institutions – is consistent with the notion of legalisation employed in this article and also with the shared understandings of democracy adopted by the OAS. Hence, it is appropriate both conceptually and empirically for our study.

Methodologically, this article adopts positions articulated by George and Bennett and Brady and Collier. The goal of social science, in their view, is to identify, assess and eliminate rival explanations for social phenomena, but at a mid-range level

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8 A. George and A. Bennett, Case Study and Theory Development in the Social Sciences (Cambridge, MA: MIT Press, 2005); and H. E. Brady and D. Collier (eds), Rethinking Social Inquiry: Diverse Tools, Shared Standards (Lanham, MD: Rowman and Littlefield, 2004).
(such as particular types of institutions or institutional features rather than institutions generally) that identify ‘conjunctions of mechanisms’ and ‘the pathways through which they produce results’.\(^\text{10}\) We aim to identify the conjunction of factors that has produced higher levels of legalisation of democracy in the Americas and to show the pathways by which this has occurred. In doing so, we utilise the methodologies of both pattern-matching – informal correlations between causal factors and outcomes – and process-tracing – the temporally sequenced chains of events that produce the outcomes in question.\(^\text{11}\) We thus examine instances of legalisation (or their absence) to see if they occur simultaneously with predicted values of their hypothesised causes and we trace the sequence of events that led to those instances of legalisation, evaluating the level of consistency between those sequences and hypothesised causes.

\(\text{US power}\)

For many realist scholars, international institutions are created by powerful states to serve their interests. Mearsheimer has ably summarised the logic:

Realists also recognize that states sometimes operate through institutions. However, they believe that those rules reflect state calculations of self-interest based primarily on the international distribution of power. The most powerful states in the system create and shape institutions so that they can maintain their share of world power, or even increase it. In this view, institutions are essentially ‘arenas for acting out power relationships’. For realists, the causes of war and peace are mainly a function of the balance of power, and institutions largely mirror the distribution of power in the system.\(^\text{12}\)

In the Western Hemisphere, the United States obviously has much more power than any other state and so its preferences should be reflected in the OAS, according to this logic. This should especially be true because the United States also pays 60 per cent of the OAS regular budget, a lopsided amount by any standard. Our first hypothesis follows.

**Hypothesis 1.** The more powerful the United States relative to other OAS states, and the stronger its interest in promoting democracy in Latin America, the greater the level of legalisation.

We employ a simple, straightforward measure of hegemony, namely, the percentage of regional GDP produced by the United States. Although more sophisticated measures are possible, GDP is the best single measure of power. US interests in democracy should be apparent by its promotion of or opposition to legalisation during OAS debates. The resulting expectation is simple: where the US promotes legalisation, it should succeed; when the US opposes legalisation, it should fail.

\(^\text{10}\) George and Bennett, *Case Study and Theory Development in the Social Sciences*, p. 8.

\(^\text{11}\) Ibid., pp. 181–232.

New democracies

In contrast to the realist argument that the hegemon drives the democratic legalisation process if it perceives legalisation to be in its national interest, an alternative explanation focuses on new democracies as the driving force. Moravcsik has argued in an influential piece that governments should have interests in legalisation when they wish to reduce future uncertainty and increase stability in domestic politics. Politically powerful actors in any government live with varying levels of possibility that they will lose power and that their replacements will change their policies. Thus, they have incentives to bind the hands of future leaders by ‘locking in’ particular policies. Leaders with the largest chances of losing office are those with the greatest interests in locking in their policies.

One way to lock in their preferred policies is to legalise them in international institutions, creating greater levels of obligation, precision, and delegation to protect those policies. This logic can easily be applied to the issue of domestic democratic institutions. In newly democratic countries, as Moravcsik has argued, new democratic elites fear authoritarian reversals from autocrats recently displaced from power. As a result, they have an interest in locking in commitments to democratic institutions, in part by using international institutions. Moravcsik explains the emergence of the European human rights regime within the Council of Europe in this way. Weak democracies commit to the binding European Human Rights Convention to strengthen their still fragile regimes against domestic non-democratic opposition. In this case, international agreements provided state leaders with a means to lock in future leaders to the respect for human rights. Given these arguments, we would predict the following:

Established democracies and authoritarian regimes, according to Moravcsik’s argument, do not share these interests in promoting democratic practices via legalised international institutions. For established democracies, the potential sovereignty costs of having domestic rules overturned by third parties are too high relative to the minimal benefits. For authoritarian regimes, they have no interest in establishing institutions that might help end their power.

Hypothesis 2. The larger the number of new democracies in Latin America, the higher the levels of legalisation.

Measuring new democracies is a tricky business. The most widely used, comprehensive measure of democracy can be found in the Polity IV dataset. The polity2 variable measures a country’s political institutions ranging from −10 (completely autocratic) to +10 (completely democratic). These numbers provide a useful baseline for the degree of democracy in American countries from 1940–2002, but they miss a crucial element of Moravcsik’s argument: the extent of the threat to democracy. We assume that most new democracies feel at least somewhat threatened by their former autocratic rulers for ten years. After ten years, most new democracies have already transferred power through elections at least twice and have fallen into more stable patterns of rule. We classify a state as a new democracy during the year

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14 Ibid.
in which that state attains a positive score in the polity2 measure, after at least one year of non-positive scores, and for the next nine consecutive years or until the state falls back into a non-positive range. We also expect states with weak democracies who want to strengthen them significantly will want to lock in those beneficial effects. Hence, we also classify a state as a new democracy during the year in which its polity2 score increases by 3 points from the prior year, given that it begins in a positive range, and for the next nine consecutive years or until the state falls back to its previous score.

This measure is almost surely conservative because many new democracies continue to face threats for more than ten years. Brazil, for example, is classified as a new democracy in 1946 and is no longer ‘new’ in 1956. Yet in the late 1950s and early 60s, Brazil faced a variety of threats to its democracy, culminating in the 1964 coup. In all cases, we supplement these numbers with knowledge about events in the country from secondary sources that help us interpret the amount of threat that exists to that new democracy.

**Sovereignty costs**

Theories of state power and lock-in both focus on the benefits for states. Yet legalisation also imposes costs on states. In particular, legalisation creates the possibility that states will utilise international rules to interfere in the domestic affairs of a state in unwanted ways. Relatively weak states in particular must worry about such interference. In international as in domestic politics, rules are not power-blind. The most powerful states can often use international rules to their advantage and may in fact support legalisation for that reason. It is of course often true that powerful states can do what they want, regardless of international rules. However, we expect that weak states will work hard to avoid handing powerful states international rules that can provide normative cover for their interventionist actions. In practice, Latin American states have frequently created non-interventionist international rules and blocked international rules that might play into US hands over the past two centuries.

**Hypothesis 3.** The lower the threat from powerful states to use legalised rules in unwanted ways, the greater the likelihood of increasing legalisation.

Unlike other measures in this article, there are no standard quantitative indicators that can serve as proxies for threats from powerful states. Threats depend on power, but not all power differentials produce threats. Rather, threats are the result of preferences and actions. Hence, measures of threat should rely on state actions that signal preferences. As Thompson argues, the choice of a state to utilise military action unilaterally or with multilateral approval is a good indicator of the level of threat it poses to third states. Acting multilaterally is costly for states wishing to intervene

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elsewhere. Gaining multilateral approval requires lots of time and diplomatic effort and may require large changes in a state’s goals and strategies. We therefore measure the level of interventionist threat posed by the United States by examining the extent to which it gained multilateral approval for its military actions in any given time period.

**Norms/shared understandings**

Finally, established norms can help drive the legalisation process forward, and shape the content of legalisation efforts in several ways. First, most international norms are a reflection of the values of at least some of the world’s governments and nonstate actors. Those actors are more willing to promote increased legalisation of their favoured principles, especially since the existence of a norm suggests that other governments have endorsed the value rhetorically. Second, it is simply easier to build a multilateral consensus for greater legalisation around principles that are already widely accepted. As Finnemore and Sikkink point out, some norms become taken for granted and are therefore difficult for any state to oppose. In fact, states would not routinely consider whether they really should oppose strengthening such norms. When motivated actors propose increasing legalisation of a taken-for-granted norm, few will oppose the proposal. Arguments from strategic actors that are congruent with pre-existing norms are more likely to be persuasive.

A third way that established norms foster legalisation is linked to a path-dependence argument. Historical institutionalists have pointed out a variety of reasons why institutions and the norms embedded within them tend to persist and grow stronger over time. In the economic path-dependence literature, initial decisions constrain future behaviour by structuring incentives in ways that reinforce the decision, even if it was sub-optimal. Large initial investments provide incentives to continue investing in the same way in order to avoid fixed and startup costs necessary for new kinds of investments. Likewise, initial policy decisions encourage large investments of resources designed around that set of rules, creating vested interests opposed to large changes in the rules. Other self-reinforcing mechanisms of path dependence include learning effects, coordination effects, and adaptive expectations.

Which norms matter most? Legro suggests two key measures for norm robustness (those most likely to influence state behaviour): durability and concordance. Durability refers to ‘how long the rules have been in effect and how they weather challenges to their prohibitions’. Concordance means the extent to which states have accepted those rules; whether they receive lip service only or whether they have

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become taken for granted and are never challenged. Norm robustness is of course difficult to measure, but that does not mean scholars should not try. We examine the robustness of the democracy norm in the inter-American system by tracing references to democracy in inter-American conferences and meetings to determine when they first appeared and whether they remained constant over time or varied. Because democracy was legalised in the 1990s, we expect to find evidence that it has a longer durability than in other regions of the world where democracy has not been legalised. We examine concordance by taking the average regional polity2 score in each year, thereby capturing the general regional commitment to democracy. While this is obviously an indirect measure of concordance and a problematic proxy measure, there are no systematic public opinion surveys in Latin America that could take a more direct measure of norm robustness through public opinion. These measures of norm robustness avoid endogeneity problems because they are separate from our measure of the dependent variable, which involves an examination of international documents to determine the existence of obligation, precision and delegation. Moreover, the theoretical reasoning is not tautological because states can legalise their commitment to particular values even when they have not previously articulated those values as shared norms, and just because states articulate norms does not mean they will legalise them.

We thus predict the following impact of norms on the legalisation process:

*Hypothesis 4*. The more robust the existing norms of democracy, the higher the level of legalisation.

**Legalisation in the OAS**

Analysis of OAS documents suggests that legalisation of the democracy norm has increased across each of the three analytical components of the concept in the past 60 years, although it has proceeded in fits and starts and has sometimes stalled. Democracy has been a principle of the inter-American System for many years, but legalisation did not begin until 1990. During the 1990s, legalisation of democracy moved from low to moderate levels through amendment of the OAS Charter and by the creation of new mechanisms to promote and protect democracy. Since the late 1990s, however, further legalisation has slowed considerably despite the efforts of some states.

The original OAS Charter (1948) broke new ground internationally by declaring that American solidarity was based on ‘the effective exercise of representative democracy’ (Article 5). This principle, however, lacked precision and delegation, with no authority given to any OAS organ for oversight. While the Charter was legally binding, the democratic norm was simply ‘reaffirmed’ as a ‘principle’, and thus was not strongly obligatory – an observation confirmed by long experience with brutal authoritarian rule in multiple countries in subsequent years.

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23 To operationalise obligation, precision, and delegation we adopted the rules and guidelines laid out in detail by Abbott et al., ‘The Concept of Legalization’, pp. 408–18.
One of the first steps in increasing the legalisation of democratic principles in the hemisphere was to create the Office for the Promotion of Democracy (OPD; formerly known as the Unit for the Promotion of Democracy). In 1990, the OAS General Assembly established the OPD to provide advisory services and technical assistance to member states in order to modernise and strengthen their political institutions and democratic processes. In recent years the OPD has become a key source of support for the efforts made by member states to defend, consolidate, and advance democracy. It has monitored over 70 elections since its establishment, and regularly provides support to the OAS bodies in their deliberations on strengthening and preserving democracy. Although the creation of the OPD did not affect levels of obligation by states, the OPD’s generation, dissemination, and exchange of information on democratic political systems has made the concept of democracy in the region more precise. The creation of the OPD also signalled a slight increase in delegation even though the Unit does not engage in electoral observations except by invitation from a member state. Because OAS organs often rely on the technical expertise of the OPD when they consider measures to strengthen and preserve democracy, the OPD has essentially been given the authority to investigate and report on democratic conditions in the hemisphere.

A second step in further legalising democracy came shortly after the creation of the OPD. In June 1991 in Santiago Chile, the General Assembly passed Resolution 1080 creating automatic procedures for convening the Permanent Council in the event of a democratic crisis. The Council would examine the situation and then convene either a meeting of the Ministers of Foreign Affairs, or a special session of the General Assembly. The resolution authorised states ‘to adopt any decisions deemed appropriate, in accordance with the Charter and international law’ in response to the threat to democracy. Resolution 1080 slightly increased levels of obligation, precision, and delegation within the OAS by instructing the Secretary General to call for immediate convocation of the Permanent Council to address a democratic crisis and by vaguely identifying the scope of such a crisis. The resolution specified that the Permanent Council should be convened in the event of a ‘sudden or irregular interruption of the democratic political institutional process or the legitimate exercise of power by the democratically elected government’. These were conditions that resulted in the resolution being invoked four times in the 1990s in response to events in Haiti, Peru, Guatemala, and Paraguay.24

At the same meeting in Santiago in 1991, the General Assembly also approved the ‘Santiago Commitment to Democracy and the Renewal of the Inter-American System’ which reiterated states’ commitment to democracy. The Commitment noted that the ‘effective exercise, consolidation, and improvement’ of democratic government is a ‘shared priority’ of member states. States declared their determination to strengthen ‘representative democracy’ recognising it as ‘an expression of the legitimate and free manifestation of the will of the people’. Members were determined

to ‘adopt efficacious, timely, and expeditious procedures to ensure the promotion and defense of representative democracy, in keeping with the Charter’.

In December 1992, member states took their most dramatic step to legalise democracy by amending the OAS Charter through the Washington Protocol, which went into effect in September 1997. The protocol added a provision authorising suspension from the OAS of any government that had seized power by force. Such a suspension would require a two-thirds vote of member states in the General Assembly. The amendment was widely supported, with only Mexico voting against it. As an amendment to the Charter, the measure imposes the highest possible level of obligation on ratifying states. The protocol also increased the level of precision, especially by laying out clear and specific procedures to be followed when democratic governments are overthrown by force. States did not delegate to an autonomous third party but rather to a subset of states by empowering two-thirds of them with the ability to suspend member states from participation in the OAS. Many states clearly saw this as increasing the powers of the OAS to intervene in domestic politics; in fact, this was the basis of Mexico’s opposition to amendment. In a formal declaration, Mexico insisted that ‘it is unacceptable to give to regional organizations supranational powers and instruments for intervening in the internal affairs of our states’.

Since the enactment of the Washington Protocol states have made less progress on legalising the democracy norm. In September 2001, the General Assembly approved the Inter-American Democratic Charter, which mostly reinforced existing OAS instruments for the active defence of representative democracy. The Charter substantially advanced the specificity of the democracy norm, but increased the level of delegation and obligation only minimally. Article 1 of the Charter states clearly that ‘the peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it’. Articles 2, 3 and 4 go on to explicitly list the essential elements of representative democracy including: respect for human rights and fundamental freedoms, access to and the exercise of power in accordance to the rule of law, the holding of periodic, free and fair elections based on secret balloting and universal suffrage, the pluralistic system of political parties and organisations, and many others.

The Charter broadens the conditions under which a member state can be suspended from the OAS by a two-thirds vote to include an ‘unconstitutional interruption of the democratic order’ (Article 21), whereas the Washington Protocol authorises suspension only if a democratic government is overthrown by force. Despite its name, the Democratic Charter is not a treaty and thus has a lesser level of obligation than the OAS Charter and Protocols. At the same time, its repeated invocation in OAS resolutions and documents since it was adopted implies that it has a fairly high level of obligation despite its status as a resolution. Provisions of the Democratic Charter were applied formally for the first time in April 2002 regarding Venezuela. The OAS condemned the alteration of the constitutional order that temporarily forced President Hugo Chavez from office. The OAS proceeded to negotiate with the Venezuelan parties to find a constitutional solution to the situation and eventually gained support for a referendum which was held 15 August 2004.

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Since then, states have not advanced legalisation farther. In early June 2005 the OAS considered a proposal that would create a new committee to receive civil society input on the quality of democracy and make recommendations for action. Such a committee would have substantially increased state obligations and the level of delegation; however, the Declaration of Florida, adopted at the end of the 35th session of the OAS General Assembly, did nothing of the sort. Instead, it instructed the Secretary General to present some proposals to the Permanent Council, after consultation with that same Council, which would promote initiatives for gradual and balanced cooperation on democracy promotion. This toothless measure was further gutted by a phrase requiring those proposals to respect the principle of nonintervention and the right of self-determination. The Council, in turn, was instructed to consider initiatives in the area of representative democracy. The entire document is a series of vague phrases about initiatives and cooperation, obligates no one to do anything, and contains little if any delegation of authority. Instead, it mostly suggests that democracy should remain on the OAS’s agenda.

Assessing the evidence

US power

What accounts for these variations in the level of legalisation? While the extent of US hegemony in Latin America is often a matter of heated debate, our measure suggests that the variation is less noticeable than the consistency. The US share of GDP in the Western Hemisphere from 1960–2004 has varied from a high of 85.46 per cent in 1960 to a low of 80.24 per cent in 1980. During those years, the US experienced a steady if very gradual decline in its share of GDP. After 1980, it experienced a fairly steady ascent until 2003, when it stood at 83.93 per cent. We conclude that US hegemony has not changed much in the past 50 years.

US preferences, in contrast, appear to have changed dramatically. In the 1950s, the United States flatly opposed any efforts to legalise democracy, declaring that ‘because of the structure of its Federal Government, [it] does not find it possible to enter into multilateral conventions with respect to the effective exercise of representative democracy’. The logical connection between federalism and multilateral conventions is unclear; what is self-evident is that the United States wanted nothing to do with an international agreement on democracy that might affect it somehow. That attitude changed to the polar opposite in the early 1990s when the United States pushed hard for the Washington Protocol, even lending its name to the accord. The United States was also a primary supporter of the Democratic Charter.

While this pattern suggests that US power is a useful explanation of legalisation, recent events have cast substantial doubt on the explanation. In May and June 2005, the United States mounted a full-court press to further legalise democracy in the

Declaration of Florida.\textsuperscript{29} It failed spectacularly, garnering the opposition of nearly every other country in the Western Hemisphere in the process. The draft US proposal called on the Permanent Council to routinely assess any situation that might affect a state’s democratic process, a significant broadening of the Democratic Charter.\textsuperscript{30} It also called for establishing a new committee that would ensure ‘that civil society organizations can present their views and advice to the OAS on a systematic and regular basis’, again a significant step forward from the vague rhetoric welcoming civil society views. The final draft watered down these proposals by authorising the Secretary General to consult with the Permanent Council and then devise proposals for ‘gradual initiatives for cooperation, as appropriate. . . .’ and by barely mentioning civil society’s input. Even these halting measures were further weakened by a phrase calling for respect for the principle of nonintervention and the right of self-determination, two concepts that did not exist in the operative part of the draft resolution.

The failure is all the more notable given the level of effort exerted by the United States. President Bush attended the General Assembly to exhort states to cooperate to preserve the gains from democracy.\textsuperscript{31} Secretary of State Condoleezza Rice went farther, arguing that it was time for the OAS to act on the pledge of the Democratic Charter and that governments failing to meet democratic standards ‘must be accountable to the OAS’.\textsuperscript{32} Rice insisted to reporters on the way to the meeting that the democracy norm must be enforced by the Permanent Council and she ‘repeatedly called on the organization to allow citizens groups with concerns about their country to testify.’\textsuperscript{33}

Latin American states were scarcely swayed by the fact that the US was the sponsor of the Florida Declaration. If anything, US power worked against it in this case. As one senior OAS official put it, US officials ‘don’t realize that they are like an elephant entering a bazaar – the minute they come in, everybody runs for cover’.\textsuperscript{34} According to news reports, US power failed to sway anyone except Panama and Colombia on this issue. Nearly every other country in the region opposed the proposal, including Chile – generally a good US ally and home state of the Secretary General of the OAS, who supported the measure.

\textit{Lock-in: newly established democracies}

The wave of democratisation that swept Latin America in the 1980s and into the early 1990s offers an intuitively promising case study for legalising democracy in

\textsuperscript{29} The United States also made an attempt at legalisation in 1999 – though it had much lower visibility and apparently lower levels of effort – but likewise failed. See Associated Press, ‘US shelves proposal aimed at helping democracies in the hemisphere’, 8 June 1999.
the OAS. At first glance, the domestic lock-in explanation helps make sense of Resolution 1080, the Washington Protocol, and subsequent OAS actions resulting from these mechanisms. A wide variety of Latin American countries made transitions to democracy in the 1980s and early 1990s, including some of the largest and most influential, such as Brazil, Argentina, Chile, and Peru. Almost all faced serious threats from domestic actors with more authoritarian preferences.

A more detailed analysis suggests generally positive but nevertheless mixed evidence for the lock-in argument. News reports suggest that a group of Andean countries – Bolivia, Colombia, Ecuador, Peru, Venezuela – led the effort to approve Resolution 1080 in 1991. Three of these were relatively recent democracies while Venezuela and Colombia were established democracies. The following year, Argentina, a new democracy, took the lead in proposing the Washington Protocol. Interviews with diplomats confirm the impression that new democracies were especially interested in international protection. ‘Look, I am part of an entire generation that came into adulthood under a military regime’, said Heraldo Muñoz, Chile’s delegate to the OAS. ‘We have established democracies out of our own traumatic experiences. We are tired of internal war. So you’ve got to try to set up some kind of mechanism to protect these democracies.’ By the same token, Mexico was the only country to vote against the Washington Protocol when the OAS adopted it, and Mexico was one of the most notably non-democratic countries in Latin America in 1992.

Both conventional wisdom and the polity2 measure for democracy substantiate the argument by revealing that there were a large number of new democracies in Latin America in the late 1980s and early 1990s. Using our standard for the polity2 data, there were four new or newly strengthened democracies in 1980, nine in 1985, eleven in 1990, and nine in 1995. This measure is somewhat conservative because some democracies undoubtedly remained under threat from authoritarian sectors for longer than ten years but we only count the first ten years. Even more impressive is the correlation between the low number of new democracies in 2005 and the failure to legalise democracy further, thus helping explain Latin America’s lack of interest in the US proposal in Florida. By our measure, there were only four new democracies left in the Americas in 2002, the last year for which data are available, and probably none in 2005. These results suggest that states lacked any interest in legalising democracy further.

Evidence drawn from earlier time periods in the Americas suggests important limitations on the lock-in argument, however. An important group of new or newly strengthened democracies emerged in Latin America in the late 1950s, including (using polity2 data) Uruguay, Panama, Chile, Colombia, and Venezuela. The undercounting of new democracies here is undoubtedly more severe than in the early

1990s because the threats to democracy were so much greater. For example, Ecuador and Brazil, both new democracies in the late 1940s, lost their democracies in the early 1960s and were under threat in the late 1950s – yet are not counted by our standards. Argentina did not quite make it out of the negative, authoritarian, range in the late 1950s according to polity2, yet most observers of the period classify it as relatively democratic. Certainly the subjective perspective of the time – when the bar was lower for being considered a democracy – was that Argentina was a struggling democracy in the late 1950s.

As lock-in theory would predict, some of these new democracies attempted to legalise democracy. Contrary to expectations, they failed to make much progress and some new or threatened democracies strongly opposed the efforts. At a meeting of foreign ministers in August 1959, the OAS adopted the ‘Declaration of Santiago’, which declared that the existence of anti-democratic regimes constitutes a violation of OAS principles and a danger to peace. Yet this non-binding resolution was not obligatory and did not delegate anything to anyone. At the urging of Venezuela, a new democracy, the OAS also appointed a committee at that same meeting to draft a procedure that would determine whether states were complying with their democratic obligations. The resulting draft convention, from 15 December 1959, laid out the characteristics of democracy and required individual governments and the OAS to take a variety of actions against non-democratic governments, principally, the non-recognition of governments seizing power from democracies. Argentina, Brazil, Chile, the Dominican Republic, Mexico and the United States all issued strong written objections, claiming that the draft convention violated the OAS Charter and the UN Charter. Of these, Argentina, Brazil and Chile were all new, newly improved or struggling democracies at the time, yet they saw little value in an international agreement. We explore their opposition in greater detail in the next section.

Proponents did not give up, repeatedly placing the issue on the OAS’s agenda over the next few years. It is important to note, however, that those proponents were not always new democracies. For example, the Dominican Republic, Honduras (both authoritarian regimes) Venezuela (new democracy), and Costa Rica (established democracy), requested a meeting in August 1962 to discuss how states should react to coups. It is difficult to understand the motivation for this failed effort unless it is seen as an effort to head off US intervention in the region. In November 1965 Second Special Inter-American Conference in Rio finally adopted a rather toothless resolution, whose general irrelevance is partially revealed by its title, ‘Informal Procedure on Recognition of De Facto Governments’. The resolution recommended that governments consult with one another after the overthrow of democracy in one state and that individual governments decide for themselves whether to recognise a new government that has taken power by force.

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41 Ibid.
42 Ibid.
43 Ibid.
Our third hypothesis suggests that the stronger the interventionist threats from the United States, the less the opportunity for legalisation because states will see too many sovereignty costs. During the Cold War, the United States repeatedly intervened unilaterally in Latin America, thus producing substantial fear and resentment from countries in the region. The 1954 US-sponsored coup against a relatively democratic government in Guatemala made the point exceptionally clear that no one was exempt from US efforts; subsequent interventions made the point time and time again. Historically, fear of multilateral mechanisms and institutions that would give the United States a pretext to intervene runs extremely deep in Latin America. Since their independence in the 1820s Latin American states have attempted to fashion international rules that would constrain US interventionism and have ardently opposed international rules that might facilitate it. To some governments, proposals to allow multilateral enforcement for democracy looked like blank checks for the US to intervene and to anoint its action with the OAS’s blessing.

A close reading of the documentary evidence from the effort to legalise democracy in the late 1950s and early 1960s confirms that Latin American states frequently cited sovereignty concerns when expressing their opposition. No state of course simply invoked the fear of US intervention but it wasn’t far below the surface in state comments. The Dominican Republic made an unusually blunt objection to legalisation, arguing that the proposal would permit ‘direct intervention in both the internal and external affairs’ of states, in direct contradiction to the OAS Charter. Even more significantly, the three new democracies to oppose legalisation also cited sovereignty concerns. Brazil, less than four years away from a coup that would dismantle its struggling democracy, grumped that ‘recognition is an act of sovereignty that permits of no limitations’. As a result, the draft convention, ‘breaches principles of international law that are fundamental to the American system’. Chile refused even to seriously review a draft text proposing legalisation, arguing that such an analysis would be ‘superfluous’ since the draft so clearly contravened the OAS Charter. Argentina simply cited a decision by the Inter-American Juridical Council, which concluded that collective action in the defense of democracy violated non-intervention principles in the Charter.

The United States, however, began to signal dramatically different intentions soon after the end of the Cold War by cooperating with multilateral institutions before using military force. The most dramatic example was of course US cooperation with the UN Security Council prior to the first Gulf War. No less striking, especially for a Latin American audience, were the patient US efforts to work with first the OAS and then the Security Council to resolve the crisis in Haiti from 1991–1994. The amount of time that passed before the United States finally utilised force was itself a strong indication of its preferences and intentions. Over the course of nearly four

47 Smith, Talons of the Eagle: Dynamics of US-Latin American Relations.
49 Ibid., p. 21.
50 Ibid., p. 24.
51 Ibid., p. 25.
years, the United States patiently sought and received the OAS’s blessing for diplomatic and economic sanctions on Haiti. When it looked like force would be necessary, the OAS passed a resolution deferring to the UN Security Council, who then authorised the use of force. Although Latin American states could not quite bring themselves to authorise military intervention, the fact that they failed to oppose it and in fact immediately welcomed the change when it occurred constitutes strong evidence that they no longer felt threatened by US actions.

As a result, states rarely cited sovereignty concerns in the 1990s when dealing with the same issue and even with the same types of penalties: diplomatic isolation and suspension from the OAS. The United States even directly admitted it wished to ‘find ways of increasing the leverage’ of the OAS and advance law as the basis of action, and Latin American states still responded positively.52 Argentina proposed the Washington Protocol and its delegate, completely forgetting or oblivious to past logic, stated ‘categorically’ that international decisions on democracy are ‘perfectly consistent’ with the principle of non-intervention.53 Brazil, the most sceptical of the old foes of legalisation, declared its willingness to entertain proposals that maintained the balance between non-intervention and the promotion of democracy.54 Despite consistently promoting a single-state veto throughout the negotiations, Brazil ultimately accepted the protocol.

Either states valued sovereignty less in the 1990s or they felt their sovereignty was less threatened in the 1990s. The first is possible, but the second is more likely. In fact, several states explicitly invoked the end of the Cold War as a reason to endorse legalisation since they had been freed from traditional security concerns. Chile’s ambassador, who was one of the most important proponents, opened his lengthy 17-page defence of the Washington Protocol by citing the opportunities provided by the historical moment. ‘The end of the cold war has furthered the promotion and defense of democracy in the region by removing the ideological and strategic connotations attached to it for many years. In other words, the perception today is that representative democracy can be defended here in the hemisphere without running the risk of being trapped in the logic of the East-West confrontation.’

The Argentine delegate argued the point more succinctly: ‘For years the impact of the east-west conflict significantly undermined the regional Organization’s commitment to democracy by subjecting democratic institutions to the fight against communism . . .’.56

After 2001, the United States once again changed course and signalled new intentions by intervening unilaterally in Iraq, in contrast with US behaviour a decade earlier.57 Of course, Latin American states are more likely to observe examples closer to home, and the United States soon obliged. In 2002, the United States was widely perceived as tacitly backing a coup that toppled the president of Venezuela before

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57 The analysis in this paragraph draws on news reports and conversations with senior OAS officials.
other countries acted to help return him to power again. Then in early 2004, the OAS brokered a political compromise in Haiti that would have retained its president in office amid mounting political and social crises, but a few days later the United States acted unilaterally, in the view of many Latin American countries, to help push him out of office and install the opposition in power. By acting in these ways, the United States clearly signalled preferences for unilateral intervention in Latin America.

It is little wonder, then, that during discussion of the 2005 Florida proposal from the United States to legalise democracy further, Venezuela and Haiti were so often mentioned by diplomats and analysts. Most Latin American states care little for the governments of these countries, which are officially democratic but in practice quite authoritarian. Yet they fear US meddling. Venezuela did its best to try to keep itself on the table as the prime example of US meddling, arguing that the US was aiming at Venezuela and wanted to turn the OAS into its policeman. US diplomats rather clumsily confirmed that they were basically aiming at Venezuela through ill-advised comments to reporters. As a result, diplomats put the language of non-intervention and self-determination front and centre in their comments. The ambassador from Argentina was rather blunt in this regard, arguing that ‘no one can be sure that in the future they would not be seated and judged by this committee in one year, two years, three years. Every country has its problems. But I can tell you one thing: the most powerful countries will never be there.’58 Mexico echoed these concerns by declaring that, ‘in principle, we are not in agreement with any tutelage from anybody.’59 Likewise, foreign ministers from the 14 Caribbean island members expressed their opposition by noting that a combination of the US government and civil society groups helped oust the Haitian president in 2004, an action they have repeatedly condemned.

Norms

When the OAS legalised democracy in the 1990s, it did not create an entirely new norm, but rather built on a strong tradition of multilateral democratic discourse and norms stretching back to the early 1900s.60 The first multilateral agreement to promote democracy in the Americas dates to the 1907 Conference on Washington, whose participants consisted of the United States and Central American states.61 Their commitment to not recognise any Central American governments that did not arise from free elections was obviously a hypocritical and self-serving US smoke screen, but it marked the advent of a multilateral discourse endorsing democracy. This discourse gained more widespread support in 1936 at the Inter-American Conference for the Maintenance of Peace. In the light of trouble brewing in Europe, Latin American states made reference to ‘the existence of a common democracy

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60 Muñoz, ‘The Right to Democracy in the Americas’.
throughout America’ as the basis for the ‘political defense’ of the hemisphere.62 For the first time Latin American states endorsed democracy as a ‘common cause’.63

After World War II, American states expanded and systematised their commitments to representative democracy thereby creating a clear, specific regional norm.64 A variety of states picked up the rhetoric of freedom and liberty that resonated during the war and enshrined those values in postwar international documents. A Mexico City conference on war and peace in 1945 declared that American states could not conceive of ‘life without freedom’.65 Significantly, states then endorsed a democratic norm in the central security treaty for the Americas, the 1947 Inter-American Reciprocal Assistance Treaty, which states that peace is ‘founded on justice and moral order and, consequently, on the international recognition and protection of human rights and freedoms (. . .) and on the effectiveness of democracy (. . .).’ This democracy norm obviously suffered from repeated violations throughout the Cold War, but norm violations do not necessarily mean that the norm ceases to exist. In fact, American states reiterated their commitment to the democracy norm in a number of OAS declarations in 1959, 1962, 1965, and 1980. Concordance with the democracy norm was quite spotty until 1959, when the average polity2 score climbed into the positive range for the first time, remaining there until 1967. It then climbed to positive levels again in 1982, gained strength in 1989 when it hit an average of 5, and strengthened still more in 1994 when it levelled off at 7, where it has remained.

The durability and concordance of the democracy norm in the Americas is thrown into sharp relief when contrasted with the absence of democracy norms in other regions of the world. The Charter for the Organization of African Unity, adopted in 1963, does not mention the concept of democracy, emphasising instead principles of sovereignty, non-intervention, self-determination, and non-alignment. The 1980 African Charter on Human and Peoples’ Rights guarantees a right to participate in the government, but this is a far cry from an endorsement of a systematic set of institutions that constitute democracy. The Constitutive Act of the African Union, adopted in 2000, finally endorsed ‘democratic principles and institutions’, which put African states in the same normative position that American states occupied in 1948. Democracy norms are even less developed in Asia. The Association of Southeast Asian Nations, for example, came into existence in 1967 but did not mention the word democracy in key regional agreements until the Bali Concord II, 2003, when it called on countries to get along with each other in a democratic international environment but still said nothing of domestic democratic institutions. The states comprising Asia-Pacific Economic Cooperation have yet to mention democracy in their annual leaders’ statements despite the leadership of several prominent democracies among those states. By way of concordance, no region outside of Europe comes close to Latin America. Africa, for example, did not achieve an average positive polity2 score until 2002, when it finally became a 1. South Asia does the best, hovering in the low positive range for much of the 1990s before falling back to zero in 2002.

63 Muñoz, ‘The Right to Democracy in the Americas’, p. 3.
In short, Latin America did not legalise democracy norms until several decades after states first endorsed those norms. Other regions of the world lack strong democracy norms and have certainly not made any effort to legalise democracy. Process tracing supports this correlation by demonstrating that American states consciously invoked long-standing values and norms as reasons to support legalisation during their debates over the Washington Protocol. The Argentine delegate began his speech by arguing that the democracy norm among American states stretched back to the time that Simon Bolivar convened an international congress. The Chilean delegate was so inspired by the history of the norm that he traced its evolution in ten pages of single-spaced, carefully researched text and submitted it to his fellow delegates as a key argument for action. Even though Mexico opposed the Washington Protocol, it nevertheless felt compelled to argue that the promotion of democracy was unquestionably a priority task for the OAS and one that was widely valued. Where opponents feel constrained to endorse the same norms that proponents use to advance their cause we have evidence of the importance of norms in shaping the debate and affecting its outcome.

Summary and analysis

The most important and surprising finding to emerge from our analysis is that neither strong state interests in locking-in democracy nor hegemonic US power have been sufficient to legalise democracy in the Americas. An important set of new democracies attempted legalisation in the 1950s yet failed. The United States, as strong a regional hegemon as ever, attempted further legalisation in 2005 yet failed.

In both cases of failure, process-tracing evidence suggests that the factor most closely correlated with opposition is fear of intervention. In the 1950s, the United States opposed legalisation, but it hardly had to work against it because so many Latin American countries expressed concerns about undermining sovereignty. In 2005, Latin American states may have seen diminished benefits from legalisation of democracy, but their opposition was driven more clearly by their concerns about undermining sovereignty. The United States adopted unilateralist stances toward intervention during the Cold War and after 9/11, and Latin American states responded by strongly citing sovereignty concerns during those two periods.

What then produces legalisation? The evidence suggests it is a relatively rare event that requires a confluence of factors. Diminished fear of intervention is not itself sufficient to drive legalisation forward. States must also be motivated by some positive gain from legalisation. Both hegemonic pressure and the desire to lock in democratic gains were present in the 1990s and so it is impossible to decide which was more important.

Cross-regional comparison suggests that democracy norms also seem to play a role. As with many kinds of norms, that role is not noticed until analysts examine a part of the world where the norm does not exist. Other regions in the world enjoyed

68 Ibid., pp. 279–81.
a surge of new democracies after the Cold War, but none legalised democracy in international institutions. Why not? None of them faced a strong regional hegemon with unilateralist interventionist tendencies. Instead, the absence of a well-established norm of democracy seems the most likely stumbling block preventing legalisation in other regions and appears to have facilitated legalisation in the Americas.

Conclusions

Why do states legalise issues like democracy in international institutions, thereby yielding some of their sovereignty? Many analysts have viewed the OAS and its associated rules through the lens of US power. As Peter H. Smith argues, in view of US regional hegemony, ‘the study of US–Latin American relations becomes a meditation on the character and conduct of the United States’. While we do not dispute the pervasive reality of US power, such power clearly has sharp limits, as illustrated by US efforts in Florida in 2005. Alternatively, the most obvious answer is that new democratic states wanted to protect their gains by legalising democracy internationally. Yet this explanation too is incomplete, as illustrated by the difficulties faced when new democracies pushed legalisation in the 1950s.

In both cases, the benefits to be derived from legalisation foundered on the costs of handing the United States new legal tools with which it might justify unilateral interventionism. While international rules do not determine US behaviour, Latin American states clearly felt compelled to work as hard as possible to shore up the concept of sovereignty during the Cold War but also more recently during the War on Terror.

These results suggest that stronger international protection for democracy is a relatively rare result and quite difficult to achieve. States still guard their sovereignty quite jealously in this issue area. Both power and strong motive are insufficient to produce legalisation. Either or both of these factors must coexist with low fears of unilateral intervention and robust norms of democracy. These conditions suggest that further legalisation of democracy is quite unlikely anywhere in the world. While the United States clearly desires to establish stronger international norms of domestic democracy, it may paradoxically be undermining this effort by its willingness to intervene in unilateral ways to accomplish this goal. The Latin American case also suggests that stronger, legalised norms only occur after less legalised norms develop slowly over time.

To what extent are our results generalisable to other issue areas? Our theoretical arguments are certainly set up in generalisable fashion. Lock-in arguments could apply to any issue on which governments prefer their preferences be adopted for the indefinite future but fear they will be overturned by future governments. Such issues include free trade, environmental protection, arms control agreements, and so forth. Concerns about interventions from powerful states could also be applied widely to different states and issue areas. Likewise, norms in these various issue areas vary in robustness across time and space, and our theory suggests that such variations should be tied to varying degrees of legalisation regardless of the norm being considered.

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By examining periods of inter-American history lacking democratic legalisation and by casting glances at other regions of the world, we have already attempted to demonstrate some generalisability across time and space. It would be an interesting and important task to examine other issues in similar comparative perspectives. Is the confluence of interests, costs, and norms required to create collective legalisation? With more cases and countries, more rigorous testing could also be performed to test which of these variables explains the most variation.