

Autonomy or Domination? Two Faces of Differentiated Integration

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Abstract: *When is differentiated integration (DI) of the European Union a source of autonomy and when is it a source of domination? Much depends on what collective goods member state democracies seek through integration. Club goods often require member state democracies to form DIs of their choice. Public goods and common resource goods may, in contrast, require limits on DI if member state democracies are to meet their own obligations to their own publics to secure rights, justice, non-domination and democracy itself. Those differences are important to understanding how European democracies should be 'internationally ordered' if they are to sustain internal forms of political autonomy. They also demonstrate the importance of DI to the autonomy of member state democracies in associating together beyond the state; in defining obligations within the state; and in securing the greatest autonomy of each European democracy compatible with the greatest possible autonomy of all European democracies.*

Zusammenfassung: *Wann ist die differenzierte Integration (DI) der Europäischen Union eine Quelle der Autonomie und wann eine Quelle der Herrschaft? Viel hängt davon ab, welche kollektiven Güter die Demokratien der Mitgliedsstaaten durch Integration anstreben. Clubgüter erfordern oft, dass die Demokratien der Mitgliedsstaaten DIs ihrer Wahl bilden. Öffentliche Güter und Gemeingüter können dagegen Beschränkungen für DI erfordern, wenn die Demokratien der Mitgliedstaaten ihren Verpflichtungen gegenüber ihrer eigenen Öffentlichkeit nachkommen sollen, um Rechte, Gerechtigkeit, Nichtherrschaft und Demokratie zu sichern. Diese Unterschiede sind wichtig, um zu verstehen, wie europäische Demokratien „international geordnet“ sein sollten, wenn sie interne Formen politischer Autonomie aufrechterhalten sollen. Sie zeigen auch die Bedeutung von DI für die Autonomie der Demokratien der Mitgliedstaaten bei der Zusammenarbeit über den Staat hinaus; bei der Definition von Verpflichtungen innerhalb des Staates; und bei der Sicherung der größtmöglichen Autonomie jeder europäischen Demokratie, die mit der größtmöglichen Autonomie aller europäischen Demokratien vereinbar ist.*

Résumé: *Quand l'intégration différenciée (ID) de l'Union européenne est-elle une source d'autonomie et quand est-elle une source de domination ? La réponse à cette question dépend beaucoup des biens collectifs que les démocraties des États membres recherchent à travers l'intégration. Les biens de club exigent souvent que les démocraties des États membres forment les IDs de leur choix. Les biens publics et les ressources communes peuvent, en revanche, nécessiter des limites à l'ID si les démocraties des États membres doivent remplir leurs propres obligations envers leurs publics pour garantir les droits, la justice, la non-domination et la démocratie. Ces différences sont importantes pour comprendre comment les démocraties européennes devraient être « ordonnées au niveau international » si elles veulent maintenir des formes internes d'autonomie politique. Elles démontrent également l'importance de l'ID pour l'autonomie des démocraties des États membres lorsque ces derniers s'associent ; pour la définition des obligations au sein de l'État ; et pour le maintien de la plus grande autonomie de*

chaque démocratie européenne, compatible avec la plus grande autonomie possible de toutes les démocraties européennes.

KEYWORDS: Autonomy, Differentiated integration, Domination

Introduction

Differentiated integration (DI) is often justified as a form of non-domination (Bellamy 2019; Bellamy and Kröger 2020); and, in particular, as a way of overcoming core predicaments in European integration in ways that are most compatible with the autonomy of each of the European Union's national democracies and fairness between them (Nicolaidis 2013). Those who want to integrate further can do so without being dominated by the permanent and perhaps unreasonable vetoes of other European democracies. Those who do not want to integrate further can abstain without being shut out of other forms of co-operation. Even member state democracies that do want to develop shared policies or laws together, do not need to do so at the same time and in the same ways.

So, on a benign interpretation, DI can mean less 'one-size-fits-all'; improved trade-offs between decisions taken together and apart; and less need for national democracies to sacrifice preferences, values and even identities to achieve any given level of common solutions to collective action problems. DI can also better align co-operations between member state democracies with obligations within them (Lord 2015). Simply put, DI may mean more autonomy and less domination for national democracies: a greater ability to make choices without being dominated by the choices of others. It might be downright wrong for the Union not to practice DI. A European Union that insisted on uniform integration (UI) and did not use DI would forego an important way of aiming at the greatest possible autonomy of each of its member democracies compatible with the greatest possible autonomy of all of them.

Yet, it is by no means self-evident that DI will work in such a benign way. DI has a dark side. It could itself be a source of externalities and predatory behaviours. Outs might use DI to free ride on the provision of positive externalities such as an internal market, security, a stable banking system or a co-ordinated European contribution to fighting climate change. Ins might, conversely, use DI to exclude others; to cartelise gains from co-operation and to impose negative externalities. Hence DI can be a source of democracy-on-democracy domination (Eriksen 2019) and not just a kind of emancipation from a need to make unwelcome choices between 'one-size-fits-all' integration and an under-governed condition where common goods are under-provided and inter-democracy externalities are inadequately managed.

I argue that distinguishing where DI is a form of autonomy or a form of domination requires an understanding of collective goods theory. As we will see, economists identify different kinds of goods that can only be provided collectively or not at all. Because they are all around us, the most important of those collective goods correspond to familiar concepts: a club, a public, a common. We form or join swimming clubs since not all of us can afford swimming pools on our own. One thing that defines us as publics, but not as clubs, is that there are some goods that we do not just enjoy together. We cannot easily be excluded from them either. Finally, there are commons. Students do not (usually) exclude

one another from common areas of student flats. But the common area can be a common mess or a common tragedy (Hardin 1968), even if no-one really wants it that way. Common goods can be more precarious than club goods from which people can be excluded or public goods that can often be enjoyed by publics without that making the good less available to others.

Each of those kinds of collective good – club goods, public goods and common resource goods – has an important role in politics and in the justification of political authority, even, if as we will see, that role has not always been fully understood. DI is no exception. It too is a form of political authority. Club goods, public goods and common resource goods also have a key role in what DI means for standards of autonomy and non-domination; and, therefore, in determining where DI is justified as a form of political authority.

It is important to start by distinguishing any integration – uniform or differentiated – from mere co-operation between European democracies to provide collective goods. In one of the great classics in integration theory, Leon Lindberg (1963) defined integration as ‘a process’ by which states ‘forego the desire and the ability to conduct’ key policies independently of each other, seeking instead to make joint decisions or to delegate the decision-making process to new central organs.’ Unlike cooperation, integration implies some element of shared legal or political authority. As a sub-genus of integration, DI must also involve some creation, deepening or abstention from shared authority. I, therefore, side with Frank Schimmelfennig and Thomas Winzen (2020: 15) when they define DI as differential validity in the Union’s laws and in policies, rights, obligations and institutions created under those laws. DI mostly arises where some Union laws are not valid in all member state democracies or where they have some validity in some non-member democracies. DI is differentiation in how far European democracies put themselves under the legal and political authority of the Union.

Thus understood, DI is one way in which European democracies can work together to provide collective goods. But it is not the only way. Hence any justification for DI must answer several questions: why act together? Why not just cooperate without any shared legal or political authority? If shared authority is needed, why employ the authority of the Union? And why employ the latter differentially rather than uniformly? Deciding how they should provide collective goods is a large part of what member state democracies do when they decide to act together; and of their decisions to do that by integrating uniformly or differentially or by just cooperating. As we will see the possibilities and problems of providing collective goods are amongst the important *empirical* circumstances in which democracies make *normative* choices between cooperation, integration and varieties of the two. Above all, different kinds of collective good have quite different implications for where DI can be justified by standards of autonomy or of non-domination.

I make that argument as follows. Section 1 identifies standards of autonomy and non-domination. Section 2 argues that we need to understand differences between club goods, public goods and common resource goods if we are to discuss how European democracies should be ‘internationally ordered’ (Pettit 2010: 77) in ways that combine their international interconnectedness with their internal autonomy. Section 3 uses club goods theory to identify where restrictions on differentiation might be unjustified interferences in the autonomy of European democracies in choosing their own integrations or co-operations. Section 4 identifies where, conversely, European democracies may need to agree limits on how far they can differentiate their co-

operations and integrations over the provision of public goods and common resource goods if they are to deliver their own commitments to their own publics to secure rights, justice, non-domination and democracy itself; or, indeed, if their own publics are to be autonomous in how they use their own democracies to accord one another rights and obligations or control their own laws as equals. Section 5 considers implications for political order and political authority, including for where differentiated integration – and not merely differentiated co-operation – may be needed.

Autonomy and (Non-)Domination

Autonomy is often understood as an ability to make choices. Yet not all choices are of equal importance to all concepts of autonomy. Autonomy seems especially concerned with how far people can choose their own conceptions of what is right or good in ways that allow them to live their lives ‘according to reasons and motives that are their own’ (Christman 2020) and, therefore, to enjoy ‘normative self-determination’ (Forst 2017: 157). However, autonomous individuals will also need to be a part of a shared political process in which they can control their own laws, accord one another rights and define any shared obligations as free and equal persons. Personal autonomy and political autonomy presuppose one another (Habermas 1996: 118). We need, then, to be concerned with both the autonomy of individuals and the autonomy of whole democracies.

Up to a point domination is simply the opposite of autonomy: domination is a ‘power to dictate norms and rules’ to others and a ‘failure to respect’ their moral status...as sources of the norms that govern them’ (McCammon 2018). However, the literature on domination is not just concerned with autonomy as an ideal. It is also helpful in identifying where autonomy can be circumscribed in practice. Philip Pettit (2010: 74) develops the idea of domination as an interference in choice. In his view domination can occur where A can change some element in B’s choice set in an ‘alien way’ by removing, manipulating or even invigilating choices available to B. Frank Lovett (2012: 139-140) distinguishes substantive from procedural domination: forms of power that threaten the substance of B’s rights, values or opinions from forms of power that are not ‘reliably constrained’ by procedures and rules that are ‘common knowledge to all concerned’. Either way, domination presupposes an inability to exit, evade or countervail. Hence, it can only occur in a dependent or asymmetric relationship. That, though, arguably includes relationships where there is a potential to dominate, and not just actual domination (Pettit 2010).

It is not hard, then, to understand why notions of autonomy and domination have featured so strongly in discussions of DI. Does DI create asymmetric and even dependent relationships? Does it involve following rules made by others, most obviously where non-member democracies follow EU rules; but also, perhaps, in internal DI where latecomers to a cooperation end up following rules decided by early movers? Does DI, therefore, imply that citizens of some European democracies are not fully authors of their own laws; and that they, therefore, have reduced agency and autonomy in matters important to their life chances, rights and values (Eriksen 2019)? Or, to the contrary, would an insistence on UI to the exclusion of DI be an unjustified interference in the choices available to citizens of European democracies?

International Ordering for Non-Domination

The foregoing concerns touch on a more general problem. Personal and political autonomy presuppose one another within a democratic state. But being a part of a democratic and undominating political order will not be enough if that order is itself dominated (Bellamy 2013). All members of a political order might be perfectly free and perfectly equal in relation to one another. Yet their choices may be dominated from outside their own political order. As Philip Pettit (2010: 77) puts it, ‘individuals will not be free if their own state is dominated by other states’ or even by external non-state actors. Hence, Pettit continues, a foremost challenge to many democracies is one of how they ‘should be internationally ordered’ so that they can best secure standards of internal autonomy.

That is where DI comes in. Choices between DI and its alternatives – and choices between different forms of DI – are choices of how European democracies should be internationally ordered if they are to combine their international interconnectedness with their internal autonomy. Consider choices of DI at greater length. Those are a not just choices of i) differentiation over uniformity. As seen, they are also choices of ii) some element of integration over just cooperating, or iii) neither. They are likewise choices of a European or regional solution over more iv) international or v) bilateral ones. Further choices then need to be made vi) between varieties of DI, including, as specified more closely in this special issue, internal and external DI; constitutional or instrumental DI; opt-outs, vanguard groups, cores, variable cores, multiple speeds and so on. Those varieties of DI can also vii) be delivered through different institutional practices that correspond to differences in what it is for a democracy to integrate itself into some shared form of legal or political authority.

Nor are those single choices. Choices of i)-vii) can be combined in multiple different ways. European democracies also face repeat choices over i)-vii). That in turn means that choices between DI and its alternatives are often endogenous to cooperation and integration themselves. Their practical and normative significance often depends on choices already made or on how they foreclose or facilitate future choices. To paraphrase Marx, European democracies make choices of i)-vii) but not from positions of their own choosing. Where they are in search of collective solutions to collective action problems in providing collective goods, European democracies necessarily constrain one another’s choices. As the tiresome cliché goes, it is hard to play cricket when everyone else wants to play football. Yet, of course, it is possible to try to pressure or persuade the others into playing cricket or to play nothing at all or to suggest an entirely different game. For any one European democracy, then, choices of and within DI are neither wholly individual nor wholly collective.

However, choices between DI and its alternatives – and between varieties of DI - also need to cohere with one another both in terms of feasibility and normative commitment. If we are to evaluate where DI can contribute or detract from standards of autonomy or non-domination we also need to identify the real-world problems and empirical circumstances that require democracies to seek international arrangements that can sustain their internal autonomy. It seems broadly plausible that the more democracies are interconnected (Bellamy 2013: 500) the more pressing and difficult they may find it to define how they should be internationally ordered to ensure the internal autonomy of their own publics as co-authors of their own rights, obligations and laws. But some forms of interconnectedness seem benign or trivial. Their effects are easily evaded or easily

managed; or, failing that, they create reciprocal and balanced interdependencies, rather than the asymmetric and dependent relationships which we have seen, are defining of domination. In contrast collective goods theory can help us isolate just those forms of interconnectedness that do raise concerns of autonomy and domination that will need to be considered in choices of DI. First, club theory can identify where restrictions on DI might be arbitrary interferences in the autonomy of European democracies in deciding how they should integrate or cooperate to deal with their interconnectedness. Second, collective goods theory more broadly can, in contrast, identify where interconnected European democracies may need to limit DI if they are to operate as democratic political communities in which their citizens can autonomously accord one another rights and obligations. The first of those effects has been more explored in the literature than the second (for an exception see Kölliker 2001). Yet, I argue, understanding the two in combination is essential to distinguishing where DI might be a source of autonomy or domination.

DI and Autonomy of Association

I started with a deliberately informal discussion of three kinds of collective good: club goods, public goods and resources held in common. Even now a largely non-technical discussion will be enough to demonstrate why differences between club goods, public goods and common resource goods are crucial to identifying where DI is a solution or a problem in combining the interconnectedness of European democracies with their internal autonomy.

Club theory has a special place in identifying where spontaneous choices of integrations and co-operations by European democracies might be compatible with the autonomy of all of them. Like all collective goods, club goods provide a benefit that would otherwise not be available at all; but, unlike public goods, club goods can exclude free riders (Buchanan 1965): and, unlike resources held in common, they can exclude behaviours that deplete a good that is vital to all. The EU is often taken to be an example. To the extent their benefits are largely non-rival for members (any benefit enjoyed by one does not diminish benefits available to others) and largely excludible for non-members, the Single Market, the Single Currency and internal and external security have been identified as club goods (Brandi and Wohlgemuth 2006; 9), as have various forms of internal and security cooperation. On that account, the EU is a ‘club of clubs’ (Majone 2014).

Unless, however, preferences are identical, any one way of providing a club good will suit some more than others (Cornes and Sandler 1986). Hence, for democracies seeking to co-operate, it would be vanishingly unlikely that the marginal benefits and marginal costs would be identical over all possible clubs. As Brandi and Wohlgemuth put it (2006: 10-11), ‘Different policy clubs would demand different optimal membership sizes...optimality would *require* [my emphasis] different memberships’.

Since, though, club goods can exclude free-riders, states can be expected to form clubs fairly easily from those likely to benefit from membership. That is comforting in a world of closely interdependent democracies. Each democracy can be expected to choose for itself each of the clubs that would satisfy its needs for cooperation. Each can be expected to form, enter and leave just those clubs it judges to be to its net marginal benefit. Unlike states with their defined territories and monopolies of power, clubs of co-operating democracies can be of many variable memberships depending on the club good and the different ways democratic states value those goods.

Hence, a DI based on club theory would probably be more than one of concentric circles. Memberships would be likely to vary the whole way down to each policy club. In the case of the EU, even the Single Market contains different ‘sub-clubs’ to the extent that its unifying principles are accompanied by increasing use of legislative DI (Duttile et al. 2017) where member states have derogations from particular legislation. The Single Market club is also wider than the Union itself. The European Economic Area (EEA) lifts exclusions from the Single Market for those non-members that are prepared to accept equivalent obligations to membership. The Common Foreign and Security Policy is also a club of all member states that forms sub-clubs and ad hoc clubs with non-members. Individual security missions include quite different combinations of members and sometimes non-members.

We can now understand why some of the strongest arguments for DI and some of the fiercest critiques of UI have their origins in club theory. For critics from Mitrany (1965) to Majone (2014: 13) any aspiration to develop a European Union with a uniform body of policies, laws, institutions, rights or obligations was deeply misguided and would deservedly fail. It would almost certainly not be the best way of ordering European democracies for the purposes of reconciling their internal autonomy with their interconnectedness. When the costs and benefits of different clubs and different ways of configuring clubs are quite different for different member state democracies, attempts at ‘one size fits all’ would only lead to continuous ‘demands for exceptions and special treatment’ (ibid). Uniform integration would collapse into differentiated integration. In contrast to doomed and undesirable attempts to insist on one-size-fits-all, support for multiple and differentiated clubs could, as seen, be expected to develop spontaneously between just those European democracies which judge the marginal gain of participation in each club exceeds the marginal cost. Why take a hard route to developing forms of integration or cooperation when an easy one is available? Former European Commissioner Ralf Dahrendorf (1979: 19–20) noted the ‘strange masochism’ of rejecting of *à la carte* Europe.

Worse, though, than being increasingly at odds with the empirical reality of the Union, and worse than being unwise, any favouring of UI over DI clubs would be a form arbitrary domination. Why aim for a monopoly provider of club goods that could dominate its members when competition between possible providers would help keep club goods aligned with the preferences of members? Why accumulate powers in one dominant centre when multiple differentiated co-operations would help disperse powers in ways helpful to avoiding domination (esp. Mitrany 1965: 141)?

Any norm against DI would also limit choices available to member state democracies. In Pettit’s terms, it would remove choices from their choice sets. It would restrict their ability to form clubs of their own choosing or to match their preferences as well as they can to the variety of clubs formed. It would require them to form sub-optimal clubs from their own point of view. Nor would a norm against DI just constrain the autonomy of member state democracies. It would also constrain autonomy within member state democracies. EU clubs may need to be authorised and controlled by member state democracies. But they need not be limited to co-operations between member states. To the contrary differentiation in EU policy, law and institutions can be used for transnational co-operations of regions, localities and stakeholder groups that allow subnational actors greater autonomy from ‘one-size-fits-all’ solutions at both the European and national levels (Casella and Frey 1992; Majone 2014: 319).

Finally, a presumption against DI can be criticised as assuming *a priori* that some reasons for associating together at the European level are less valid than others. Recalling

Lovett's distinction between substantive and procedural domination, a norm against DI might be both substantively and procedurally wrong: substantively wrong in constraining national democracies or other actors within them from forming the clubs best aligned with their preferences; procedurally wrong in not being neutral between UI and DI. On that view, no one constellation of uniform or differentiated integration should be taken to be the most justified form of integration, independently of a democratic process in which citizens of European democracies can settle that question as equals. Rather, the Union should operate as a neutral framework of institutions and law for its members to form UI clubs and DI clubs as they see fit. Nor, arguably, should the Union even favour any one form of DI. It cannot, for example, be assumed that problems of domination involved in 'one-size-fits-all' will erode over time. It may always be unlikely that the marginal benefits from co-operating will exceed the marginal costs of co-operating for all member state democracies across all possible co-operations. Hence, a form of European Union that respects the needs of its member democracies to make different choices over club goods will not just need to avoid assuming that UI is more justified than DI. It may also need to avoid favouring multi-speed over other forms of DI. It may, as the UK's former Permanent Representative, Sir Ivan Rogers (2017) put it, require a 'recognition of viable, different, permanent destinations within the EU'.

At this point it is helpful to anticipate two objections to how I have so far used club theory to justify DI. First, it might be objected that a Europe of differentiated clubs would be a 'patchwork' (Demertzis et al. 2018: 6). It would foreclose the development of a 'diffuse reciprocity' in which European democracies benefit in the round even if they do not always do so in relation to single policies and laws. It might likewise constrain the emergence of a shared identity and, therefore, of shared democracy at the EU level. On that understanding DI also constrains choices: of packages and of constitutional development. But would DI have such an effect? The development of clubs between just those member democracies that judge participation to be to their net benefit could conceivably be as dynamic and coherent as aiming at one-size-fits-all. The dynamic of club development would simply follow the availability of pareto-improving gains from co-operation; and, whilst member states would not be obliged to aim at one-size-fits-all, their clubs might not in practice deviate too much from it. Recall the earlier discussion of how far choices of DI are unlikely to be single choices. Rather they may be repeat choices that can also be variously combined with one another and with UI. European democracies might plausibly face increasing returns – economies of scale and of scope – from bundling their integrations and co-operations. The more democracies can co-ordinate different commitments, trade their votes and vetoes across them, exchange information and build trust the more instances there may be where the marginal benefits exceed the marginal costs of acting together. In sum, then, European democracies might be best able to make choices they would otherwise be unable to make by forming clubs with differentiated memberships, outcomes and institutional methods and by bundling those clubs into clubs of clubs. Allowing that to happen spontaneously might produce more integration – and more coherent integration – than aiming at UI. The latter might involve long waits for co-operations to be of net benefit to all member democracies or fractious and dysfunctional clubs where some would be better off outside.

A second objection is to any assumption that there would necessarily be anything wrong in a European Union that is non-neutral between the clubs its member state democracies might want to form. Assuming the Union should be neutral between all possible forms of integration or none may itself sit uneasily with an important form of autonomy: namely,

freedom to form associations for specific purposes. Any member state democracy should, arguably, be free if it wishes to aim at UI and to associate with other democracies with that aspiration or commitment. Nor need that mean foregoing all the advantages and freedoms of forming variable membership clubs or stopping others from enjoying that autonomy.

Differentiation and Obligation

The last section showed how collective goods theory helps us understand how DI might plausibly operate as a voluntary and spontaneous order based on a club of clubs. In complete contrast, I now show how collective goods theory can also help us understand the limits to DI as a source of non-domination. One problem is that the optimal scale for providing a club good may only allow for a very few clubs. Contrary, then, to the idea that clubs of democracies may need to compete for members in much the same way as clubs of individuals, many clubs of democracies may tend to be monopolies or oligopolies with an element of arbitrariness. They may even be natural monopolies where – even without anyone intending to form a monopoly – it is hard to form more than one club with the required scale. However, even unintended monopolies can entail domination. If latecomers enter the club, they may have to follow rules made by early movers. If they stay out, they may have limited means of forming alternative clubs of their own.

That problem has been important to the history of the EU and DI. The EU has, arguably, been the dominant club for market integration in Europe since its inception. Yet, if there is a point at which the marginal cost exceeds the marginal return of expanding the single market club, it would seem to be at a high level of membership. If, though, any single market club is likely to be a kind of natural monopoly in the European region, that makes things hard for any European democracy unable to accept institutional and constitutional principles on which that single market is based. That, arguably, was the core problem of UK membership of the Union. A single market is nothing if not a huge undertaking in shared law-making. While, then, the UK largely joined the European Communities to avoid market exclusion – and while it was itself a leading supporter of market integration – the single market club eventually required a level of shared and binding rule-making which clashed with some conceptions in British politics and society of what it is for the UK to control its own laws. That difficulty was compounded by the UK's late entry to the European Communities, since the common market, and later the single market, were developed within supranational institutions and strong assumptions about the supremacy of Union law. Norway and Switzerland also show how a single market that approximates a natural monopoly may make it hard for some European democracies either to accept the institutional principles of the single market club or to identify alternative clubs. Albeit, in those cases, it has been possible to develop forms of external DI that – for all the harshness of their constraints – represent some compromise between the autonomy of insiders and outsiders in neither fully replicating the constitutional principles of the Union nor undermining the EU's freedom to form and sustain its own single market club by allowing non-members access without some equivalence in institutional obligations. In the case of internal DI, rules for enhanced co-operation likewise anticipate difficulties of balancing the rights of early movers and late entrants in a reciprocal relationship of non-domination. However, those rules, arguably, palliate, rather than remove, the difficulty. It may be intrinsically hard for differentiation to be a form of 'live and let live' where there are limits on the number of viable clubs and

conflicting preferences over the form of those clubs. Whatever happens the clubs formed by some will limit the options available to others.

Another problem with the idea of a Union differentiated into a club of clubs is that not all collective goods are club goods. Public goods and collective resource goods are quite different to club goods in their implications for DI. As seen, a European Union of clubs with differentiated memberships can be expected to develop relatively easily. That is because clubs can exclude outsiders from benefiting without contributing. But that is difficult in the case of public goods and harder still where co-operation is needed to avoid the depletion of a common resource. That entails a further difference. Whilst a case can be made that discouraging the provision of club goods through groups of variable memberships would be an arbitrary interference in the choices of member state democracies, those democracies may themselves have to put some limits on some forms of DI if i) they are to avoid democracy-on-democracy domination and if ii) they are to make choices of public goods and common resource goods that are important to their own obligations to their own publics. Indeed, they may need to limit DI if their own publics are to be autonomous in using their own democracies to accord one another rights and obligations and to make their own laws as equals.

The core problem is that club goods, public goods and common resource goods are quite different in their ability to deal with externalities. Externalities are familiar but rarely completely understood (Mansbridge 2014: 10). They are harms or benefits that are not reflected in costs rewards to those who produce them (Laffont 2008). Simply summarised, externalities are negative where actors do not pay the full cost of harms they impose on others. They are positive where actors do not receive the full benefits of their own actions. Negative externalities will be over-produced. Positive 'externalities' (Cornes and Sandler 1986: 6) will be under-produced. So, at an international level, too little may be done to clean up climate change (a positive externality) and too much to create climate change (a negative externality). Too little may be done to provide stable systems of human security and economic exchange (positive externalities) and too much to create financial risks that put entire economic systems at risk (negative externalities). Safeguards against the creation or neglect of such externalities clearly could hardly be more fundamental to how European democracies may need to be internationally ordered if they are to combine their interconnectedness with their internal autonomy.

International co-operations aimed at providing club goods can solve the problem by simply internalising externalities. As seen, they can reserve positive externalities to those who pay for their provision. In contrast, co-operations aimed at international or regional public goods may struggle to exclude free riders. Likewise, co-operations aimed at avoiding the depletion of common resources that cross political frontiers - climate, fishing stocks or the credibility of rules aimed at stabilising financial systems or preventing arms racing (Mansbridge 2014: 8) - may struggle to exclude all those able to over-exploit those resources.

These can be sources of democracy-on-democracy domination and not just state-on-state domination. They can also involve active domination to different degrees. Active domination occurs where groups of states or democracies solve problems in providing public or common resource goods between themselves by externalising harms to others. A more passive form of domination occurs where states or democracies free-ride on the provision of public or common resource goods by others. In both cases, democracy may even make things worse. If, any one national democracy has an interest in imposing harms on its neighbours or in free-riding on the efforts of others to maintain economic,

ecological or security systems, then its own electorate and parliament will also have an interest in behaving in those ways (Lord 2015, 2017). If voters are purely self-regarding, electoral competition within any one democratic state may only be in 'equilibrium' (where those competing for power have done everything possible to win votes) at precisely the point that maximises negative externalities and free riding between democracies (Grant and Keohane 2005).

Merely free-riding on the efforts of others might seem less dominating than actively externalising to others the costs of providing key public goods or over-exploiting an international resource pool. Yet all three can limit what is, perhaps, most fundamental to the internal autonomy of democracies: namely, the ability of democracies to meet their own obligations to their own publics and the ability of those publics to use their own democracies to co-author their own laws in matters of great importance to their lives or to accord one another rights and obligations.

David Hume (1978 [1739]: 538-539) was amongst the first to note the relationship between the provision of collective goods and the justification of political authority. As he put it, 'bridges are built, ramparts raised, canals formed, fleets equipped and armies disciplined everywhere under the care of government.' 'Political society', Hume continues, can 'remedy' the 'difficulty' that individuals will seek to 'free' themselves of the 'trouble and expense' of providing some goods by laying 'the whole burden on others'. Thus, political authority is one way of solving the free-rider problem. Still, useful though bridges and lighthouses might be, it might be objected that only the most fundamental obligations to secure justice and enforce rights so that the freedom of each is compatible with the freedom of all (Kant 1970 [1797]: 133-134) can justify anything as morally problematic (Beetham 2013: 3) as the exercise of political power by some people over others.

Yet, there is no real quarrel here. It is mistaken to dismiss the provision or regulation of public and collective resource goods as merely instrumental or utilitarian justifications for political authority. To the contrary, providing those goods – and managing the externalities involved in providing them – is something political authority needs to do in securing rights, justice or standards of democratic choice and control (Lord 2015, 2017). Closely interconnected democracies, such as those of the European Union, may struggle to provide their own publics with rights against polluters, monopolists, tax-evaders, terrorists, traffickers, discriminators or slanderers if the sources of those forms of arbitrary domination (Pettit 1997) are located in other states.

Those externalities may then make it hard to provide justice in the Rawlsian (2003: 8-10) sense of how well 'political and social' institutions, laws and practices all 'hang together as one' more or less 'fair system of co-operation'. As Laura Valentini (2011: 208) puts it: 'We can no longer assume that each state is uniquely responsible for securing domestic social justice'. The ability of states to do that 'depends on what happens beyond their borders'. If externalities mean that some 'goods' and 'bads' are systematically under or over-produced between democracies, it will be hard for actors within any one democracy to co-ordinate on any concept of justice that involves those 'goods' and 'bads'.

If, finally, it is an ideal of democracy that citizens should be able 'define the terms of their living together as equals' (Bohman 2007: 2), democracies may need means of managing inter-state externalities if their citizens are to have much chance of influencing choices in matters as vital to the 'terms of their living together' as protecting against pandemics; as providing security without arms racing; as providing financial systems without systemic risks; as avoiding tax avoidance or fighting climate change.

For sure, those all require solutions that go well beyond the European Union. But European democracies may best enter into wider commitments to manage international public goods and common resource goods by using institutions, norms and laws at the European level to co-ordinate, monitor and enforce their contributions to international agreements (Cook and Sachs 1999). Moreover, regardless of how far international or European solutions are needed, European democracies may need to limit DI between themselves. They will need to avoid forms of DI in which ‘ins’ dominate ‘outs’ or ‘outs’ dominate ‘ins’: in which cores or vanguards externalise costs of providing public goods or managing common resources: in which ‘opt outs’ have little justification beyond a wish to free-ride on the provision of public goods or management of common resources by others. Denying themselves those behaviours will, however, be a requirement for autonomy. First it will be a requirement for making optimal – or even adequate – choices at all over international public goods and common resource goods. Second, as repeatedly seen, the ability to make those choices is also essential to the ability of publics to use their own democracies to accord one another rights and obligations, set standards of justice or co-author their own laws in many matters essential to their life chances.

Differentiation and Authority

It could, however, be objected that European democracies may need to limit DI. But nothing said so far demonstrates a need to limit DI by norms, laws, institutions or authority of any kind, uniform or differentiated. Maybe cooperation without integration can be enough if European democracies are to contribute to international public goods and resource goods in ways needed to sustain their own internal autonomy. By finishing with some brief words on where that is unlikely to be enough we can also clarify where restrictions on DI can work as a form of self-limitation by European democracies.

Perhaps the following is the best case that can be made for co-operating with a minimum of shared law, institutions or even norms. Since providing certain kinds of collective good and removing externalities is pareto-improving, democracies may often be able to bargain and co-ordinate on solutions each can justify in their own way. The conditions where that is possible – low transaction costs in monitoring and enforcing agreements (Coase 1960) – are also more likely to hold where externalities are between states rather than individuals. Whilst managing diffuse externalities between millions of individuals may be difficult, groups of states such as the EU 27 may be sufficiently few to monitor one another without that requiring much by way of a shared institutional authority. Contrary to the view that bargaining is purely strategic and without normative value, bargaining together without agreeing shared institutions, laws or norms over the management of inter-democracy externalities can itself have the special normative quality of allowing each democracy to co-operate for its own reasons of value (Buchanan and Tullock 1962). Acting together, whilst deciding norms and values apart, may be especially appealing in the case of co-operation between democracies. After all, as the EU itself illustrates, conditions for democracy – such as political competition, high levels of voter participation, a well-formed public sphere and political community – seem easier to achieve within states than beyond them.

However, conditions that would allow democracies to provide collective goods and manage externalities by just bargaining between themselves will break down where they cannot easily form or enforce agreements on their own. Democracies will then have to choose: do they leave collective goods under-provided and externalities untreated? Or do

they agree and bind themselves together to shared norms and even shared institutions that might help construct, monitor and enforce the means of providing collective goods and manage externalities?

Yet, even if democracies could do everything necessary to provide collective goods and manage externalities by bargaining alone, there would still be a fundamental difficulty. Even where bargaining allows each democracy to reach optimal agreements as determined by its own norms, values and democratic procedures, it will only do that given some distribution of power. Bargaining will be likely to follow distributions of power between democracies in the absence of any agreed values, rights, norms, rules or institutions. The obvious question is whether a bargain based on some distribution of power between democratic states can have much resemblance – either as process or outcome – to what is required for democracies to meet their obligations to their own publics. How far the costs of avoiding an inter-democracy externality fall on its producer or its victim will depend on how easily the democracy representing the one or the other can live with the default of non-agreement. In short, bargaining over the provision of public goods and collective resource goods may simply fail to solve problems of democracy-on-democracy domination.

Publics may feel that some collective goods and externalities are of such fundamental importance that they should be provided or avoided as a matter of right and not as a matter of what can be bargained with other democratic states. They will not expect to have to bargain for compensation, to split differences, to divide remedies between victim and perpetrator, or even to negotiate over who should be understood as the victim and the perpetrator. Rather, democracies might expect a clearly defined right – and a right to be able to live with the certainty of having clearly defined rights – not to have certain negative externalities imposed upon them and not to have others frustrate their own efforts to provide positive externalities they believe are essential to their rights or well-being. Rather than leaving things to bargaining on the assumption that is the best way of avoiding any element of shared authority, national democracies might get far closer to meeting their obligations to their own publics by developing shared obligations with other democracies over the provision and regulation of international public goods and common resource goods. At that point, however, any one European democracy would no longer just be concerned with its own autonomy; but, rather, with defining common obligations, rights and expectations over the use of UI or DI. That would require some consideration of where the greatest autonomy of each national democracy is compatible with the greatest autonomy of all.

But even if they can agree shared obligations over international public goods and common resource goods, can autonomous European democracies bind themselves to those obligations? If the shared norms and trust that sometimes solve that problem at the level of small communities of individuals (Ostrom 1998) cannot be scaled up to relations between whole European democracies, might the latter need to coerce themselves into solutions (Hardin 1968: 1247)? That sounds unpromising. The EU is not a state. It has limited coercive means of its own, especially in relation to its member state democracies. One way forward may be to link the different forms of collective good provision considered here: to make access to club goods conditional on contributing to public goods and not depleting common resource goods (Olson 1965). So, for example, access to the single market or the structural funds (club goods) might be made conditional on co-operation on climate change (a common resource). Once again that underlines the importance of regarding DIs and UIs as choices that can be combined. Note, though, that

it is for member states to 'coerce themselves into' solutions. As Duncan Snidal (1979: 564) has remarked, 'the political analysis of public goods is most appropriately viewed not as an analysis of the exchange of goods but as an analysis of the exchange of authority between actors.' Any 'exchange of authority' needed for member state democracies to agree limits on opt-outs from core provisions of public goods or core rules regulating the depletions of common resource would, if my argument is correct, itself be based in the needs of those democracies to meet their own obligations to their own publics. That might offer some hope of developing shared obligations over the management of public goods and common resource goods out of individual obligations each owes to its own democracy (Bellamy and Weale 2015)

Conclusion

DI is sometimes seen as a source of autonomy and sometimes as a source of domination. Determining where DI is the one or the other, I have argued, requires more than an understanding of ideals or standards of autonomy or non-domination. It also requires an understanding of how European democracies can be internationally ordered in ways that combine their autonomy with their interconnectedness. Prominent amongst the empirical circumstances that shape where their interconnectedness is compatible with autonomy and non-domination within and between themselves are different kinds of collective good and different kinds of externalities associated with those goods. In the case of club goods, DI can improve choices available to European democracies. Restricting DI can be understood as an arbitrary interference in the autonomy of European democracies in forming those clubs that best meet their needs and preferences in internalising externalities. Things are quite different with public goods and common resource goods. In those cases, European democracies may need to limit DI if it is not to be a source of democracy-on-democracy domination. Likewise, they may need to restrict DI if they are to manage externalities between themselves in ways needed to meet their own obligations to their own publics to provide rights, justice, non-domination and democracy itself; or, indeed, if their citizens are to be effective and autonomous in using their own democracies to accord one another rights and obligations or control their own laws.

Leuffen et al. (2013) argue that the Union needs to be understood as a 'system of differentiated integration'. In other words, the EU is organised for the differentiated, and not just the uniform, integration of European democracies. I have tried to take that idea further by arguing that our assumptions about DI need to cohere with one another in terms of both feasibility and normative justification. Both normatively and empirically choices of DI then need to be understood as single DIs, multiple DIs, and combinations of DI with UI where some uniform rules and authority delimit DI. However, as a system of DI, the Union is and ought to be something more than Majone's idea of a club of clubs. That metaphor is much too permissive. To be fully autonomous in making choices of DI, European democracies will need to do more than form clubs of their choice. They will also need to limit their choices of clubs if they are themselves to make choices over public goods and common resource goods. Only once we understand how the Union can be configured for the provision of all three – club goods, public goods and collective resource goods – can we even begin to understand the combinations of DI and UI that might get us closer to an ideal in which each European democracy enjoys the greatest possible autonomy compatible with the greatest autonomy of all European democracies.

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Data Availability Statement

Data sharing is not applicable to this article as no datasets were generated or analysed during the current study.

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