



The LIO's growing democracy gap: an endogenous source of polity contestation

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Abstract

The Liberal International Order (LIO) is under pressure from various angles. To account for this phenomenon, a recent trend is to focus on endogenous sources of contestation—institutional properties of the order that create negative feedback effects. In this article, we seize on and extend an endogenous explanation centring on the LIO's political structure and institutional design. While existing research stipulates a connection between the rising authority of liberal international organisations (IOs) and their increasing politicisation, we still lack a clear understanding of the reasons behind the growing rejection of the order at the level of mass publics. We argue that the LIO's institutional setup contains a widening 'democracy gap' denoting a disconnect between the participatory legitimisation requirements for the exercise of political authority and the technocratic legitimisation rationale characterising IOs. By creating a *justification deficit*, the democracy gap incites growing political dissatisfaction and, by implying a *responsiveness deficit*, it turns policy contestation into outright polity contestation. We probe the plausibility of our theoretical argument in case studies of the EU and the international regimes on trade and human rights, and subsequently discuss the analytical and normative implications of our argument.

Keywords Authority · Contestation · Democracy · Legitimacy · Liberal International Order

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Introduction

There is a growing contestation of the core institutions underpinning the Liberal International Order (LIO) by elites and citizens around the world. A wealth of literature currently debates the crisis of the LIO, its potential decline or resilience, and the challenges it faces from the outside as well as the inside (e.g. Ikenberry 2018; Eilstrup-Sangiovanni and Hofmann 2020; Mearsheimer 2019; Nye 2017; Alcaro 2018; Grewal 2018; Lake et al. 2021; Copelovitch et al. 2020). In this context, explanations abound as to why the LIO and its tenets such as institutionalised multilateralism, the promotion of individual liberties, the rule of law, and open markets have come under increasing strain (see also Eilstrup-Sangiovanni and Hofmann 2020).

For a while, the debate has been dominated by approaches centring on factors arguably exogenous to the LIO, such as global power shifts (esp. the rise of China and US hegemonic decline) (e.g. Weiss and Wallace 2021; Boyle 2016), domestic economic shocks and distributional inequalities (Bearce and Jolliff Scott 2019; Bisbee et al. 2020), or a backlash against cultural globalisation and progressive norms (Inglehart and Norris 2017; Norris and Inglehart 2019). Some also treat the rise of nationalist populism as the main factor to account for the increased delegitimation of the LIO and its component institutions (Voeten 2020; Copelovitch and Pevehouse 2019; Pevehouse 2020).

More recently, a growing number of contributions has pointed to the importance of factors *endogenous* to the LIO, that is, they focus on properties of the order that are potentially self-undermining (see Lake et al. 2021). In this reading, the order is said to contain the seeds of its own demise. One strand of literature focuses on the self-undermining properties of the LIO's economic order. After its decidedly neo-liberal turn in the 1980s the LIO has opened the doors to 'hyper-globalisation' and unfettered trade liberalisation which created distributional effects and heightened economic inequalities. As a consequence, the 'losers' of globalisation increasingly mount opposition to the order (Colgan and Keohane 2017; Rodrik 2018; Broz et al. 2021). Another body of literature explores the political and institutional properties of the LIO and their self-undermining potential. It starts from the observation that the LIO is governed by international organisations (IOs) that enjoy increasing amounts of authority enabling them to assert intrusive policies which undermine national sovereignty. Because of the increasingly palpable distributional consequences of such policies, IO authority becomes increasingly politicised and contested, rendering global governance an ever more complicated task (Hooghe et al. 2019; Zürn 2018; Tallberg and Zürn 2019; Börzel and Zürn 2021).

In this article, we expand on the latter account and provide a theory to explain the increasing polity contestation of the LIO based on its self-undermining institutional properties. While existing research has addressed the link between IO authority and contestation of the LIO, we find that the causal mechanism remains theoretically underspecified. Most importantly, we lack an understanding of how exactly the rise of IO authority drives the LIO's increasing contestation at the level



of mass publics. In particular, it remains elusive why the general politicisation¹ of global governance—which has been shown to follow in the footsteps of IO empowerment—tends to degenerate into a broader rejection of liberal international institutions. After all, the LIO's legitimacy crisis finds expression in the contestation of the order's core validity claims and constituent institutions, not in the public exchange of opinions about the right policies. Therefore, this article fleshes out a causal mechanism showing how two institutional properties of the LIO—its rising authority and technocratic legitimisation rationale—engender a deepening *democracy gap* which, in turn, drives a specific type of contestation, namely public *polity contestation*. Extant contributions have stipulated connections between IOs' legitimacy requirements and their politicisation and observed the co-occurrence of policy and polity contestation. The novelty of our contribution is to theorise in detail the causal mechanism linking institutional properties of the LIO to its contestation at the polity level.

In the next section, “[The democracy gap: how the LIO incites polity contestation](#)”, we argue that the growing authority of IOs is trailed by a democracy gap designating the spread between democratic legitimacy requirements for the issuance of collectively binding decisions with distributional effects and the institutional reality of IOs. Most, if not all, IOs fall short in providing avenues for substantive debate and bottom-up collective will-formation that seem indispensable for a legitimate system of collective self-government. Generally, IOs' setup reflects the idea of either technocratic pareto-optimisation that deliberately eclipses democratic contestation from the process (Keohane et al. 2009) or intergovernmental bargaining that is thought to eschew participation requirements (Moravcsik 2004; critically Patberg 2016). We argue that this mismatch has two consequences: First, it implies a justification deficit for political decisions. As IOs (and their leading member states) cling to their technocratic or intergovernmental legitimisation rationales, decisions are presented as essentially without alternative. When decisions are not conceived as political choice but as the outcome of expert deliberation or diplomatic negotiation, reason-giving and normative argumentation are in short supply. Second, the democracy gap implies a responsiveness deficit. IOs lack democratic institutional infrastructures that would allow popular grievances to be accommodated in inter- and supranational decision-making processes. Policies are formulated and measures adopted without providing those affected the opportunity to influence the substance of the decisions. The consequences of these two deficits are profound. The justification deficit depletes the perceived legitimacy of liberal norms and rules adopted by IOs, because it suggests that ‘there is no alternative’, stimulating support for populist counter-narratives contesting the LIO (White 2019: 127–146). The responsiveness deficit, on the other hand, leads to contestations that increasingly target IOs' authority generally (polity contestation) rather than the substance of political decisions that they adopt (policy contestation). As public concerns over

¹ Politicization denotes the process by which a topic becomes a salient and contentious object of public debate. It is defined ‘as an increase in polarization of opinions, interests or values and the extent to which they are publicly advanced towards policy formulation’ (de Wilde 2011: 559).



political choices cannot be fed into the relevant political decision-making processes on the inter- or supra-national level and opposition cannot be directed against particular policies, it turns towards the polity per se (Mair 2007).

We further specify our theoretical argument in the section “[Endogenous catalysts](#)” by elaborating on two *catalysts*—also endogenous to the LIO—that should make the activation of the theorised mechanism particularly likely: crises of interdependence and the legalisation/judicialisation of politics. Since these catalysts are unevenly distributed across sub-orders of the LIO and over time, they also help understand when and where the mechanism will operate empirically. Following the presentation of our “[Empirical strategy](#)”, we illustrate the plausibility and determine the scope of our theory in four short case studies on LIO sub-orders that we deem most likely to give rise to the theorised mechanism: Two instances of contestation are presented in the section “[Legalization and contestation in the international trade and human rights regimes](#)” and two case studies covering the EU’s economic and monetary regime during the euro crisis and the COVID-19 pandemic are discussed in the section “[The legitimacy crisis of the EU?](#)”. The “[Discussion and conclusions](#)” section charts avenues for future research and highlights normative and practical implications of our argument.

The democracy gap: how the LIO incites polity contestation

The LIO is facing a legitimacy crisis. Public discontent and opposition to international cooperation and IOs that embody the LIO has been on the rise (e.g. Bearce and Jolliff Scott 2019; Walter 2021). Importantly, the growing contestation of the LIO does not merely target concrete political choices and decisions, that is, the *policies* enacted by liberal international institutions. Instead, it is also concerned with the fundamental principles, institutional setup, and authority of the LIO per se. That is, criticism is targeted at the order’s *polity*.² While there certainly is public and controversial debate about salient IO policies such as the European Green Deal, emergency recommendations by the World Health Organization (WHO) during the COVID-19 pandemic, or the UN Security Council’s stance on the conflict in the Middle East, such issues are increasingly overshadowed and often side-lined by more fundamental contestations of the organisations’ authority to deal with such questions in the first place. The EU is confronted with the rise of Eurosceptic parties and movements (de Vries 2018), the WHO—denigrated by the Trump Administration—is publicly put into doubt as a neutral epistemic authority (Fazal 2020), and the United Nations Security Council is delegitimised as undemocratic (Binder and Heupel 2015). Voter-based exits from international institutions, a phenomenon of growing importance in recent years, are among the strongest indications for polity contestation by disaffected publics (Walter 2020). We argue in this section that one key driver of this polity contestation is a widening *democracy gap*, which is endogenous to properties of the LIO itself. The democracy gap results from an increasing

² For the distinction of policy and polity contestation, see, e.g., de Wilde and Trenz (2012).



mismatch between the rising political authority of IOs and the technocratic rationale that underpins their legitimacy as de-politicised institutions.³ IOs lack the justificatory reservoir for distributional decisions (be they about the allocation of wealth or values) and they are insufficiently responsive to the grievances of the affected populace. As a consequence, dissatisfaction is bound to increase and likely to spill over into a more fundamental contestation of the political institutions constitutive of the LIO. We will unpack this argument step-by-step in the following.

The rise of international political authority

It is a truism that delegation to IOs has become a key organising principle of the LIO. For many decades since the end of World War II, the management of transnational interdependence has resulted in an unprecedented variety, scope and density of international institutionalised cooperation (Raustiala 2013; Koremenos 2016; Hathaway and Shapiro 2017). The pursuit of universal goals as free trade, human rights, and domestic democracy promotion has become gradually inscribed in the LIO: Since they cannot be reached unilaterally at a global scale, the use of multilateral institutions is the method of choice for liberal internationalists (Keohane 2012). As a consequence, the relocation of decision-making capacity from national to international institutions has prompted an incremental rise of political authority exercised by IOs (Hooghe et al. 2017; Zürn et al. 2021). Political authority refers to the right of individuals acting on behalf of an institution to issue prescriptions, rules, orders, or judgments that are recognised as binding by the addressees even if they go against the short-term interests of some community members (Zürn 2018). While international cooperation was long marked by intergovernmental international institutions following the consensus principle, since the end of the Cold War in particular, there has been an increase in international cooperation with more supranational elements (see, for example, Genschel and Zangl 2014). Indeed, the proliferation of problems that require collective action, ranging from financial market instability, environmental degradation to pandemics, has led to an expansion of international authority. Recent empirical research in the projects Measuring International Authority (MIA) and The International Authority Database (IAD) confirms that there has in fact been a broader rise in IO authority, most notably since the heydays of liberal internationalism after 1990 (Hooghe et al. 2017; Zürn et al. 2021). States have stepped up the delegation of governance tasks to supranational IO organs and pooled their sovereignty in intergovernmental bodies—rendering their decision-making power and resources subject to collective agreement (Hooghe and Marks 2015). Moreover, IOs with pooled or delegated authority have also seen a broadening of the scope of their activities and an increased bindingness of their judgments and decisions (Zürn 2018).

³ We use the term ‘democracy gap’ rather than ‘democratic deficit’ to separate our analytical argument from the normative criticism implied by the concept of a ‘deficit’. The democracy gap highlights a disconnect between two different logics to legitimize authority, the technocratic logic based on expertise and the democratic logic based on popular consent.



Indeed, it is one thing to hold the formal competence to take binding decisions and another one to actually exercise that power. Most measures of international authority are in fact about authority potentials rather than the *de facto* exercise of authority. It is the latter, however, which can be expected to evoke a social reaction. Nonetheless, it is plausible to argue that the increase in formal authority not only carries a shadow of power, but also translates into a growing factual exercise of authority. This is reflected in the increasingly intrusive policies enacted by IOs in response to their rising formal authority. In trade policy, for example, international cooperation no longer stops with ‘at-the-border’ issues, such as tariff reductions. The World Trade Organization (WTO) also addresses ‘behind-the-border’ issues, such as environmental standards and workers’ rights, which can be heavily politicised and socially contentious (Hale et al. 2013: 227). In the field of international financial cooperation, the International Monetary Fund (IMF) takes over *de facto* control of public budgets and fiscal policy in member states at the risk of sovereign default. In the field of international security, the United Nations Security Council not only multiplied the number of binding resolutions adopted under Chapter VII of the Charter, but also started to take measures directly against groups and individuals (Malone 2004; Drezner 2011). Importantly, the degree to which states and societies are affected by the exercise of IO authority—through negative externalities, distributional losses, or adaptation costs—is stratified across states according to power differentials. As a consequence, some states are more regularly in the position of rule-makers and others more regularly in the position of rule-takers (Viola et al. 2015). Hardly any state is able to shield itself from international authority entirely, however, and whenever states are subject to IO’s exercised authority, distributional struggles emerge and societal value conflicts are unleashed (see Hooghe and Marks 2009; Hooghe et al. 2019).

The technocratic legitimization rationale of IOs

It is one of the defining properties of the LIO that the social goals pursued through international agreements and IOs can usually be subsumed under one of the liberal categories of democracy, human rights/humanitarianism, and material progress via free markets. To attain these objectives, the design of IOs—as putatively objective, impartial bureaucracies—reflects the rationalising promise of cooperative multilateral institutions (Barnett and Finnemore 2005: 163–164). After all, bureaucracies’ main promise is to eliminate politicised influences by instituting continuous, rule-bound hierarchical systems that display a high degree of impersonality and take decisions based on sectoral expertise (Weber 1978: 220–223). IOs’ main source of legitimacy thus lies in the expectation that they produce pareto-optimising outcomes based on their capacity to arrive at rational and expertise-driven decisions (Keohane et al. 2009). Their recognition as rightful decision-makers is hence predominantly based on outputs, not (democratic) inputs (Scharpf 1999).

To liberal internationalists, IOs have become symbols of progress based on the belief ‘in the capacity of technological change and markets to transform the character of global politics in positive ways by creating ever-expanding material resources



that can ameliorate social conflicts' (Barnett and Finnemore 2005: 165). Indeed, from a democratic perspective, the epistemic or technocratic quality of IO authority may be a sufficient legitimacy base as long as IO decisions do not create losers or allow for losers to be compensated (Scharpf 1999; Keohane et al. 2009). The institutional design of IOs largely reflects this assumption. With few exceptions, IOs' channels of input legitimation are restricted to the delegation chains from domestic will-formation to national governments to government representatives in IO bodies. IOs' accountability to member states and member states' accountability to citizens thus arguably provide sufficient democratic credentials for IOs (Moravcsik 2004). Genuinely democratic input at the supranational level, such as international parliamentary assemblies, is weak and, with the exception of the European Parliament, mostly symbolic (Schimmelfennig et al. 2021). Accordingly, international institutions justify their authority predominantly on the basis of a technocratic legitimation rationale, not on the basis of the democratic quality of their decision-making procedures (see also Zürn 2017: 278).

The democracy gap

Against the backdrop of IOs' rise in authority, today's LIO is populated by IOs whose activities are increasingly intrusive for the respective rule-addressees. At the same time, IOs' avenues of legitimation remain predominantly technocratic and output-oriented. We consider this to represent a growing democracy gap because the *technocratic* legitimation logic which underpins IO rule-making authority does not match the consequences of the rise of IOs' *political* authority: When IOs adopt rules or help bring about policies with distributional implications—creating winners and losers—superior knowledge or expertise alone are an insufficient ground for IOs to command legitimacy. These kinds of decisions require democratic input (Scharpf 1999). At the domestic level, it is common sense that taxation and social welfare, for example, are not questions to be solved by way of expert deliberation, but through participatory forms of interest aggregation (Habermas 1996). Internationally, however, there has so far been no sufficient compensatory democratic input for the growth of politically salient IO decisions.

Empirically, the democracy gap manifests itself through two characteristics. The first is a *justification deficit*. The proliferation of international institutions with liberal content has locked in liberal policy choices by de-politicising the underlying normative questions and drastically reducing 'access to contestation' (Wiener 2014). The establishment and conferral of monitoring, implementation, and adjudication tasks to bureaucratic IOs and judicial organs stabilises initial normative choices by taking them out of the realm of the political and rendering them a matter of technical rule application (see also Hirschl 2004; Gill and Cutler 2014). Simply put, what used to be domestically debatable policy options is transformed into international legal rules that are immensely difficult to contest. Not only does this create a lack of contestability, it also induces a shortage of justification. Authority-holders in the LIO make few attempts to convince the rule-addressees that their foundations and decisions are normatively justified. The foundations are taken for granted and the decisions are



presented as inevitable and ‘right’. However, this technocratic legitimisation rationale built into the LIO offers an insufficient basis to justify *political* decisions with distributive consequences. The more the scope of IO authority expands to include fundamentally political decisions and tangible intrusions in ‘behind-the-border issues’, the more IOs’ epistemic legitimisation narrative is overburdened. The attempt to nurture a belief in the rightfulness of their rule is thus increasingly hampered.

Second, the democracy gap is marked by a *responsiveness deficit*. That is, the LIO lacks democratic institutional infrastructures that would allow popular grievances to be accommodated in inter- and supranational decision-making processes. Indeed, some IOs have established representative institutions such as parliamentary assemblies to add a veneer of democracy to their authority (Rittberger 2005; Rittberger and Schroeder 2016; Schimmelfennig et al. 2021). Moreover, IOs have generally become more open to the participation of a broader range of stakeholders, in particular non-governmental organisations (Tallberg et al. 2013). However, compared to the far-reaching consequences of IOs’ political authority, the existing representative institutions and access points for non-state actors are insufficiently consequential (Follesdal and Hix 2006). Moreover, the quasi-constitutional lock-in of core norms of liberal internationalism sharply reduces the range of contestable issues in the first place (Gill and Cutler 2014; Grimm 2017). As a consequence, substantive political demands deviating from the liberal script are structurally underrepresented and disadvantaged in IOs.

Contestation and delegitimation of the LIO

What are the political consequences of the democracy gap? As a result of the justification deficit, growing political dissatisfaction, which can be materially or culturally motivated, is directed at IOs. As a result of the responsiveness deficit, demands for reform and policy change cannot be easily fed into the relevant political decision-making processes on the inter- or supra-national level. In fact, the institutional characteristics of the LIO are designed precisely to be immune to such forms of *policy* contestation. Its liberal core is locked in and institutionally well-protected from democratic politics. The ‘logic of no alternative’, which is often brought to the LIO’s defence, further reduces the order’s susceptibility to alternative arguments (Hay 2007: 124). Hence, domestic contestation of IO policies has little prospect of substantively affecting the political direction of international institutions. Such limitations on the access to substantive contestation are bound to lead to the mobilisation of principled opposition (Mair 2007), that is, opposition directed not against particular policies, characteristic of the democratic process, but towards the polity *per se*. In line with this reasoning, we expect that the LIO’s democracy gap is responsible for eventually turning policy contestation into *polity* contestation. The object of contestation is the IO and its overall authority is put into question: Dominant tropes that reflect our argument are that the people lack voice in IO decision-making (‘we have no say’), that the preferences or grievances of one’s group are structurally neglected, and that the liberal elites running IOs are unaccountable and unresponsive to the interests and grievances of the respective constituents.



Endogenous catalysts

So far, we have argued that the mismatch between the rise of international political authority and IOs' predominantly technocratic legitimisation patterns produces a democracy gap, which fuels polity contestation. *Ceteris paribus*, we argue that the greater the democracy gap, the likelier the LIO's polity contestation. Of course, there is variance in the size of the democracy gap across different sub-orders of the LIO and over time. To delineate the most likely context for our mechanism to unfold, we outline two factors—also endogenous to the LIO—that function as catalysts of the democracy gap by reinforcing the justification and responsiveness deficits of LIO sub-orders: *Crises of interdependence* and the *legalisation/judicialisation* of politics. In the presence of (one of) these factors, we hold, the democracy gap is most pronounced and polity contestation the most likely to ensue.

First, we hold that the growing diffusion of authority beyond the state makes the order increasingly vulnerable to *crises of interdependence*. On the one hand, international integration creates interdependence that is 'self-reinforcing' (Hale et al. 2013) in a sense that the politically fostered growth of transnational interactions in one field often begets the involuntary growth of transnational co-dependencies in other fields. Arguably, for instance, the growth of transnational trade as fostered by the WTO also increased climate-damaging carbon emissions and cross-border travel which carried the risk of globally spreading pathogens. And while the first may be manageable with the delegated authority of IOs in that area, the latter often lack the governance infrastructure to address negative externalities in a timely manner. On the other hand, the increasingly intrusive exercise of authority by IOs feeds distributional conflict among the rule-addressees and thus increasingly politicises decision-making in IOs. Governments are confronted with a domestic 'constraining dissensus' (Hooge and Marks 2009) that incentivises them to refrain from publicly visible authority transfers that could fill such governance gaps. As a result, collective problems are no longer effectively addressed and incite transboundary crises (see Jones et al. 2016). As the global financial crisis vividly demonstrates, the liberalisation of international capital flows exposed numerous countries to enormous financial risk, facilitated by grossly inadequate international banking regulations, which governments had been loath to tighten.

Such crises of interdependence are a catalyst for widening the democracy gap and thus for increasing the likelihood of more intense polity contestation. The effective management of transboundary crises often requires an uptick in international authority through assertive and particularly intrusive measures emanating from IOs (Kreuder-Sonnen 2019; Heupel et al. 2021). On the one hand, such measures simply increase the visibility and palpability of IO authority as they effectuate abrupt and consequential change. On the other hand, because crises regularly defy the application of conventional norms and rules, IOs and their member states may be incited to circumvent constitutional constraints to create authority where it is needed (Kreuder-Sonnen and White 2021). Such expansions of authority by stealth almost by definition reinforce the justification and responsiveness deficits (Schmidt 2021). The democracy gap is further widened if the salient political decisions adopted



during crises are delegated to or assumed by decidedly technocratic, supranational IOs or IO bodies, thus circumventing processes of democratic participation and will-formation. Here, the democracy gap becomes most visible.

Second, we argue that the deepening *legalisation and judicialisation* of the LIO represents another catalyst for the democracy gap. To advance (universal) liberal policy objectives, IOs are modelled on the template of non-majoritarian institutions (NMIs): Decision-making processes shielded from majoritarian politics, hierarchically rule-bound, and based on technocratic and legal expertise to best advance liberal policy objectives (Barnett and Finnemore 2005; Keohane et al. 2009). The proliferation of judicial and quasi-judicial bodies independently determining the meaning of international agreements is one hallmark of the LIO (Alter 2014) and an embodiment of the principle of non-majoritarianism. Particularly in the field of international trade and investment, dispute settlement bodies have come to assume the role of an international judiciary assuring abidance by the terms of liberal trade and investment regimes. This international ‘judicialization of politics’ (Hirschl 2004) implies that fundamental political questions, e.g. about societal priorities regarding environmental protection or social welfare, become subject to legally enshrined (neo-)liberal premises (Gill and Cutler 2014). Judicialisation thus helps locking in liberal value choices by circumscribing the legally acceptable realm of domestic policy-making in a way conforming to liberal goals. In sum, what used to be debatable policy options is transformed into international legal rules that are immensely difficult to contest. Because international courts and court-like institutions can claim to act independently and based on legal reasoning alone, they project the idea of an international rule of law in the common interest. To the degree that international authority is underpinned by processes of legalisation, the discursive space for policy debate and contestation is further delimited, which is likely to increase the potential for polity contestation.

These two catalysts—crises of interdependence and the legalisation/judicialisation of international authority—both feed on and reinforce the broader trend underpinning the democracy gap—the concomitant rise of international authority and IOs’ technocratic legitimization rationale. The presence of these catalysts renders the democratic unresponsiveness of IOs salient, widening the democracy gap and turning policy into polity contestation.

Empirical strategy

In the following two sections, we demonstrate the plausibility of our theoretical argument by offering three empirical illustrations and one contrasting example. Since our main objective is to contribute to theory development by delineating the different components of a complex theoretical mechanism, we cannot offer a comprehensive empirical test of our argument. We hold that an ‘intermediary stage before moving directly from hypothesis construction to time-consuming empirical tests’ (Levy 2008: 7) is to carry out a *plausibility probe* of our theoretical proposition with the purpose to demonstrate its empirical relevance (Eckstein 1975: 109–110). To illustrate the plausibility of a novel theoretical argument, it is apposite



to choose one or several cases that are *most likely* for the theory to hold. If the specified mechanism cannot be shown to work under the most conducive conditions, the theory will seem implausible. To gain a more thorough understanding of the conditions unleashing the mechanism, we also include a case that *prima facie* seems most likely but does not produce the theorised outcome.

Against this backdrop, we opted for the study of three sub-orders of the LIO that all expose the core drivers of our mechanism (international authority and technocratic legitimisation) plus at least one catalyst (a crisis of interdependence or high degrees of legalisation/judicialisation). First, we present two vignettes of growing polity contestation in the international trade and human rights regimes. We hold that these sub-orders of the LIO are most likely to feature the theorised mechanism, because they are marked by growing political authority in the absence of meaningful democratic avenues of legitimisation *and* are strongly affected by the second catalyst—legalisation/judicialisation—which led to a situation in which political authority is increasingly wielded by non-majoritarian judicial institutions that are shielded from democratic politics. In the second set of vignettes, we explore two instances of EU crisis politics, the euro crisis as well as the COVID-19 crisis. The EU can be considered the most highly developed sub-order of the LIO (see Ikenberry 2018: 14): It is characterised by an extraordinarily high degree of political authority exercised by supranational institutions whose legitimisation rationale remains primarily technocratic despite the growing relevance of the European Parliament (Rittberger 2005; Follesdal and Hix 2006). Particularly against the background of recent transboundary crises—the euro crisis and the COVID-19 crisis—functioning as catalysts, the gap between authority and legitimacy requirements in the EU became more pronounced and more palpable. As a result, we would expect the conditions for a widening democracy gap and polity contestation to be particularly pronounced. While the euro crisis illustrates how these conditions give rise to the theorised mechanism, the COVID-19 crisis produces a divergent outcome and we hence use this final case to discuss boundaries to our argument.

Taken together, then, our empirical strategy allows us to illustrate the theorised mechanism in concrete cases and ascertain that it typically operates under those conditions that are most conducive to its activation. To the extent that we can confirm the mechanism at work in a diverse set of LIO sub-orders, we can also be confident that it is no regional or issue-specific idiosyncrasy and may travel to further sub-orders with similar constellations. What our empirical strategy does not allow is to test the scope conditions of our argument. Further theoretical and empirical work is needed to establish these (see “[Discussion and conclusions](#)” section).

Legalisation and contestation in the international trade and human rights regimes

In this section, we apply our theory to two prominent sub-orders of the LIO, the international trade and human rights regimes. Both are marked by rising levels of political authority and a concomitant judicialisation. According to our theoretical



argument, the empowerment of NMIs such as courts and quasi-judicial institutions should widen the democracy gap and incite polity contestation. We submit that our argument is matched by developments in these two most different issue areas for which we provide two simple vignettes highlighting that the mechanism is applicable to different pillars of the LIO.

Contestation of the judicialised international trade regime

The international trade regime, centred on the WTO and its core free trade principles of national treatment and most favoured nation, has seen a steep rise in authority with the passage from the GATT to the WTO in 1994. First, by including ‘behind-the-border issues’ in the global trade liberalisation agenda, the intrusiveness of international trade rules increased, and so did their distributional effects. In many ways, these led to social stratification across industrialised and developing countries. At the same time, however, they also increased inequality across different groups of society within these groups of countries (Lakner and Milanovic 2016). Second, the political dispute settlement procedure under GATT has been replaced with the permanent Dispute Settlement Mechanism (DSM) of the WTO where the quasi-judicial independent Appellate Body takes final decisions and makes conclusive determinations on the interpretation and application of WTO law (see Zangl 2008). This judicialisation has firmly locked in the main tenets of the liberal trade regime and created a supranational body whose expansive jurisprudence arguably created new obligations on its own (Howse 2016; Condon 2018).⁴ A similar development is discernible beyond the WTO in the wider free trade regime that was reinforced by the global spread of bilateral, regional, and mega-regional free trade, preferential trade, and investment agreements (Looney 2018). Almost all of these agreements delegated dispute resolution to standing or ad hoc arbitration panels with the authority to take decisions that are binding for the contracting parties. In many cases, panel awards engaged in far-reaching interpretations of their jurisdiction and superimposed trade rules over conflicting societal demands regarding, for instance, environmental, human rights, or indigenous concerns (e.g. Simma 2011). Therefore, the international ‘constitutionalisation’ of (neo-)liberal policy goals is often criticised for undercutting the possibility of democratically authorised deviation from this paradigm (Finbow 2016; Schneiderman 2008).

Given their immunity to political contestation and inaccessibility for interest representation, the authority of DSMs in the free trade regime comes with a serious democracy gap. As a consequence, we see an increasing level of dissatisfaction with this sector of the LIO as well as growing traces of polity contestation. These come in diverse shapes and with different political motivations, but they are all designed to delegitimise the institutions underpinning the international free trade regime. Two examples highlight the global spread of this phenomenon. First, large parts of the

⁴ For example, the Appellate Body imposed on member states a duty to negotiate before being able to justify a measure under the GATT Article XX chapeau, and it prohibited the United States’ long-held practice of zeroing through an expansive interpretation of the Antidumping Agreement.



US-American electorate have come to embrace the notion that the free trade rules promoted by the WTO represents a potential danger for domestic jobs and local industries. As evinced by the support for presidential candidate Donald Trump in the 2016 elections, who promised an economically nationalist agenda in opposition of central tenets of the international trade regime (Helleiner 2019: 6), the distributional effects of the regime have given American voters a source of dissatisfaction with this part of the LIO (Manza and Crowley 2017). Importantly, since the order is legally carved in stone and heavily constitutionalised, Trump's populist response was to attack the trade system as a whole, undermining both its constitutive principles (e.g., through punitive tariffs) and its authoritative institutions (e.g., by blocking the nomination of judges for the WTO DSM). Second, the negotiations of free trade agreements, such as the Transatlantic Trade and Investment Partnership (TTIP) and the Comprehensive Economic and Trade Agreement (CETA), have been attacked from civil society organisations in EU countries, targeting the democratic costs of the prospective free trade agreements and arbitration. Protest erupted less because of matters relating to the substance of free trade principles, but rather because of feared constraints on states' democratic right to regulate domestically salient issues (see Scott Cato 2016). The strongest criticism was levelled at the plans for investor-state arbitration, which would have led to the establishment of further quasi-judicial bodies with the delegated competence to adjudicate on claims brought forward by corporate actors against member state regulatory policies (de Ville and Siles-Brügge 2016).

Contestation of the judicialised human rights regime

In the international human rights regime, one type of institution has consistently gained authority in the post-Cold War era: international courts (ICs) (Alter 2014). In tune with a general increase of judicial authority across policy fields, it is particularly the ICs of regional human rights conventions such as the Inter-American Court of Human Rights (IACtHR) and the European Court of Human Rights (ECtHR) that have become increasingly influential. While international judicial remedies for human rights violations had long been politically constrained through the principle of jurisdiction by consent of the defending state, these human rights courts are today equipped with compulsory jurisdiction and provide direct access for non-state actors including individual claimants (Alter 2014: 5). As a consequence, human rights ICs can, *inter alia*, nullify executive acts of domestic governments and even legislative acts of democratically elected parliaments if they are found to violate human rights obligations.

The most common legitimisation rationale of ICs is based on counter-majoritarian legalism (von Bogdandy and Venzke 2012: 14). In order to uphold the liberal tenets of constitutionalism, most importantly the protection of minority rights against a potential 'tyranny of the majority', ICs are conferred authority to override political measures that impinge on a previously agreed upon set of individual rights. ICs are thought to arrive at such conclusions in a putatively depoliticised, technical process of law interpretation and application. Democratic



input legitimacy is thus presumed irrelevant, if not counterproductive, to the legitimization of ICs (see also Keohane et al. 2009). However, in at least two regards, IC authority has also become political by creating distributive consequences. First, the judicialisation of the human rights regime may have led to its partial ‘overlegalisation’ through which states are hampered in their ability to strike a balance between individual liberties and other important societal objectives (Helfer 2002: 1853–1858). Arguably, active human rights ICs give expression to their liberal foundations in case law that creates obligations for states and rights for individuals extending into the future. This progressively narrows the political discretion—also of democratically elected parliaments—to decide on value allocations involving goal conflicts with individual liberties. This ties in with the second aspect: namely that regional ‘human rights courts have issued judgments about citizenship, religion, immigration, and other issues that directly concern the identity of polities’ (Voeten 2020: 414). Here, ICs clearly interfere with conflicts over values and ideologies rendering them political actors irrespective of the legalistic procedure for arriving at their judgments. As Voeten argues, ‘in this sense the ‘judicialization of politics’ almost inevitably spurs a politicization of the judiciary’ (Voeten 2020: 414).

Hence, the empowerment of ICs in the human rights regime has led to a democracy gap created by the expansion of political authority while retaining a purely non-majoritarian legitimization rationale. Dissatisfaction with ICs and the political consequences of their rulings can of course be publicly voiced, but such criticism is bound to go unheard, precisely because of the ICs’ mandate to be aloof of politics. Consequently, dissatisfaction is likely to turn into polity-contestation and even resistance. Indeed, over the past decade or so, observers have noted a veritable backlash against international human rights courts (Madsen et al. 2018; Voeten 2020). For example, after rendering judgments touching on the Tanzanian constitution and contentious issues such as Rwanda’s dealing with perpetrators and their accomplices of the 1994 genocide, the very young African Court on Human and Peoples’ Rights (ACtHPR) already faced serious and vocal resistance from both states, starting with Tanzania’s outright rejection of rulings against it and culminating in Rwanda’s withdrawal of its acceptance of direct individual applications to the Court. According to Daly and Wiebusch (2018: 294–295), these patterns of resistance might ‘escalate into a more systemic and even transnational critique of the court, resulting in either changes to the system, rendering it defunct by starving it of resources, or even shutting it down entirely’. Similarly, Venezuela and Trinidad and Tobago left the IACtHR after contentious rulings, and even several domestic courts in member states started resisting the Inter-American Court (Madsen et al. 2018: 197). Not least, the ECtHR has been facing growing resistance since its vast expansion of authority after 1990. Not only did member states try to rebalance the system to the benefit of national politics with the 2012 Brighton Declaration, but both governments and civil societies in several member states rejected the Court’s authority altogether. In the United Kingdom, for instance, this is neatly traceable to ECtHR rulings that stopped the deportation of convicted Islamist terrorists due to their right to family life and gave prisoners the right to vote (Madsen 2016: 169–170).



Dissatisfaction and resistance thus stemmed from the Court's involvement into highly polarised political matters, whose domestic democratic settlement was called into question by an international authority.

The legitimacy crisis of the EU?

For the second set of illustrations, we focus on the EU against the backdrop of two transboundary crises, the Eurozone crisis as well as the COVID-19 crisis. Both crises spurred observable changes in the two key factors of our theory. With the crises serving as a catalyst, we witnessed a considerable rise in regulatory and fiscal authority on the one hand and a mounting tension between governance measures perceived to be intrusive and a technocratic legitimisation rationale highlighting the political necessity of such measures on the other hand. As a consequence, our theory would expect the democracy gap to widen and polity contestation to ensue.

The Eurozone crisis and mounting polity contestation

Against the backdrop of the Eurozone crisis, the EU witnessed a veritable boost in its political authority. Centralised lending capacities were created through the European Financial Stability Facility (EFSF) and the European Stability Mechanism (ESM), and supranational surveillance mechanisms were instituted to oversee the implementation of concomitant economic and fiscal consolidation measures designed for indebted countries (i.e. the troika). Moreover, member states also introduced a stricter regulatory framework for Eurozone member states (Laffan and Schlosser 2016). The Eurozone crisis and the flurry of institutional and policy reforms offer a vivid illustration of the overburdening of the technocratic problem-solving approach. Many elements of Eurozone crisis governance were designed, by and large, in accordance with the technocratic playbook: Eurozone governments further empowered non-majoritarian actors, such as the Commission and the European Central Bank (ECB), seeking to isolate political decisions from parliamentary interference and popular opposition, and put emphasis on the technicity and inevitability of these decisions (Kreuder-Sonnen 2018; White 2019).

However, the substantive measures adopted in this context had tangible distributional effects. Most obviously, fiscal assistance through the EFSF and the ESM from creditor to debtor states was conditioned on the latter's implementation of macro-economic adjustment programs. Recipients of emergency credits such as Greece and Portugal were thus compelled to subscribe to far-reaching austerity reforms, which intruded deeply into their welfare systems by, *inter alia*, drastically reducing the amount of health care provision, pensions and unemployment benefits (Petmesidou and Glatzer 2015). Moreover, the governance efforts to save the common currency implied costly interventions not only on the side of the 'recipient' countries, but also for the 'donor' countries (Hix 2015: 189). While the political solutions to the Eurozone crisis were thus modelled on the technocratic template, their political



and social implications defy a technocratic legitimization rationale. Instead, they are even seen as contributing to rather than soothing the social and economic woes in the countries on the EU's periphery (Matthijs 2017; Scharpf 2013). The politics of the Eurozone crisis thus illustrates how a substantial increase in the EU's political authority resulted in an unprecedented scope of intrusiveness, unsettling political and social fabrics in the crisis-ridden states; at the same time, these interventions are legitimised primarily with reference to technocratic, not democratic principles.

As an initial consequence of the crisis, a broad range of actors formulated positions on and demands towards the policies of European institutions. Originally, these were driven by variable substantive dissatisfactions. Debates revolved around policy questions, including, for instance, whether state budgets should be consolidated through austerity measures or whether economic growth should be stimulated by way of public investments. On a wide array of mostly economic and partly also cultural (cross-national solidarity) issues, the direction of the EU was contested (Kriesi 2016). This plurality of views, however, was not accommodated in the political process dominating the governance of the crisis. Given the responsiveness deficit, which is characteristic of the democracy gap, policy opposition did not translate into changing policies. To the contrary, to smoothly implement the neo-liberal policy solutions, both political and technocratic leaders of European institutions followed a strategy of de-politicisation, seeking to shun democratic debate and to circumvent political and institutional constraints (see also Schimmelfennig 2014; Kreuder-Sonnen 2016).

As a consequence, policy contestation increasingly morphed into polity contestation: The public discourse transitioned from the politicisation of substantive questions to the delegitimation of the political order. Dissatisfied voters developed both anti-EU sentiment and alienation from the domestic political mainstream that seemed complicit in the crisis politics—driving them into the arms of Eurosceptic challenger parties (Matthijs 2017; White 2019). Whether motivated by left-wing economic or right-wing cultural demands, and whether embedded in political discourses of Europe's North-West, South, or East, these parties' delegitimation attempts have at least one common denominator: the allegedly undemocratic nature of the EU that empowers an allegedly unaccountable, self-serving technocratic elite at the expense of the (national) people.

Political arguments couched in anti-system rhetoric resonated increasingly well with voter demands across Europe. Popular opposition to the EU's crisis governance was reflected in a decline in the legitimacy beliefs underpinning support for the EU. Armingeon et al. (2016) found that in the Eurozone countries that were hit hardest by the crisis, levels of trust in political institutions and satisfaction with democracy (both at the domestic and EU level) had eroded dramatically: Between 2007 and 2013, the proportion of the population that has become detached from the political system (at the national and EU level) has increased from 27% to 74% in Greece, 14% to 64% in Spain, and 39% to 58% in Italy (Armingeon et al. 2016). These findings are echoed by Torreblanca and Leonard (2013), who find that levels of trust in the EU among its citizenry have eroded markedly between 2007 and 2012. In sync with the decline in trust, voters increasingly put their hopes in populist fringe parties. As Hobolt and de Vries demonstrate empirically for both left and right, 'citizens



who were personally negatively affected by the crisis and who disapproved of EU actions during the crisis were more likely to cast a ballot for a Eurosceptic party' (Hobolt and de Vries 2016: 510). After a first surge in the 2014 EP elections, the numbers increased further especially for right-wing populist parties in the 2019 EP elections—consolidating and expanding a strong nationalistic faction in the EP. In core member states such as France, Italy, and the UK, they have become the strongest parties. Across Europe, they increased by about 5% and now occupy about one third of the seats in the EP.

The COVID-19 pandemic: transboundary solidarity instead of polity contestation?

Another crisis that hit the EU similarly created conditions favourable for polity contestation to emerge in the course of a widening democracy gap: the COVID-19 crisis. The transnational economic repercussions of the pandemic gave rise to an unprecedented surge of fiscal integration in the EU: Redistributive measures to support the social and economic recovery of EU member states were to be financed through shared debt. A massive recovery package was put together and justified with reference to its political necessity to avoid economic collapse and a re-play of the euro crisis in the economically most vulnerable member states. Thus, the theoretical ingredients for a widening democracy gap are amply present, as are the conditions for polity contestation.

The decision of European Council to adopt a European recovery plan—Next Generation EU (NGEU)—broke with the long-standing position, defended staunchly by the economically and fiscally better-off member states, that fiscal burden-sharing in the form of joint EU debt was anathema. Yet, to cushion the socio-economic impact of the COVID-19 crisis, EU member states agreed to do just that: They decided to fund a recovery programme amounting to some €800 billion through a common debt instrument. This unprecedented rise in international authority and the redistributive measures it implied coincided with a technocratic legitimization discourse. Fiscal assistance and burden sharing measures were presented as being without alternative in light of the crisis (Krotz and Schramm 2022; Dose and Rittberger 2022).

According to our theoretical argument, the confluence of an increase in international authority, reflected in the creation of the NGEU, coupled with a technocratic legitimization discourse should have given rise to a democracy gap and trigger polity contestation. Yet, what we witness contradicts our expectations. Despite the enormous redistributive implications of the EU's NGEU decision, it came to enjoy widespread support among the EU's publics, and even in fiscally more conservative member states, support for the recovery measures exceeded opposition (Flash Eurobarometer 2021). Moreover, citizens across the EU expressed a high level of trust that the EU was doing the 'right thing' in the light of the pandemic (Standard Eurobarometer 2020). Thus, not only are signs of contestation scant. Likewise, indications about justification or responsiveness deficits appear to be much more contained than, for instance, in the context of the euro crisis.

Why, then, does the rise in the EU's fiscal authority not trigger polity contestation, even though all the conditions specified in our model seem perfectly lined-up:



a rise in authority, technocratic legitimation, as well as looming economic crisis induced by negative interdependence? What is striking is that the COVID-19 pandemic triggered not only a technocratic legitimation narrative, emphasising the political and economic necessity of the wide-reaching fiscal measures; the pandemic also gave rise to a widely-shared solidarity-based legitimation discourse, which—in the course of the pandemic—came to be a dominant crisis frame. According to this discourse, the crisis was perceived as a natural disaster that was no-one's fault (Crespy and Schramm 2021; Dose and Rittberger 2022). As a consequence, fiscal burden-sharing measures and their redistributive consequences were widely considered acceptable. What is more, solidarity-based fiscal assistance implied that the NGEU contained none of the conditionality-based requirements that were so politically intrusive and caused resistance in the context of the euro crisis. Instead, the bulk of the Corona recovery fund contained grants funded by joint debt. Addressing the adverse crisis impact was thus seen not as a national responsibility but as a European one, which required transnational solidarity.

Put more abstractly: if a transboundary crisis can be successfully framed as accidental and exogenous, such as the COVID-19 pandemic, solidarity-based legitimation narratives may enjoy sufficient support to justify the concomitant international crisis response, even if this entails far-reaching redistribution (see Boin et al. 2009: 88; Genschel and Hemerijck 2018: 4). It is the availability and societal resonance of alternatives to the technocratic legitimation narrative that can potentially short-circuit the mechanism we stipulate. Under such circumstances, crises of interdependence do not necessarily catalyse the democracy gap. While the contentious politicisation of redistributive policies during the euro crisis incited policy-makers to resort to decidedly undemocratic decision-making procedures and circumvent public dissent (in turn triggering polity contestation), the public convergence on the solidarity frame during the coronavirus crisis allowed for intergovernmental consensus decisions with much fewer democratic ramifications.

The deviant outcome of the transboundary economic crisis induced by the COVID-19 pandemic does not invalidate our argument. It rather highlights that we need to very carefully identify those (potentially rare) conditions, which give rise and sustenance to alternative legitimation narratives to justify expansions in international authority (see Zürn 2018: 77–84).

Discussion and conclusion

The LIO no longer enjoys the kind of 'permissive consensus' among political elites and broad sections of the publics in Western democracies it did in the past. While the causes of dissatisfaction with the LIO are manifold, we argued in this paper that the fundamental delegitimation of the LIO, which we referred to as polity contestation, has *endogenous* sources: The legitimacy crisis of the LIO is, at least in parts, homemade. Building on theoretical propositions of a political explanation for endogenous delegitimation dynamics in the LIO, our main goal was to theoretically specify the causal mechanism that links institutional properties of the order to its



increasingly defiant contestation. By spelling out how the LIO's widening democracy gap creates conditions bound to increase popular dissatisfaction with policies of liberal IOs (justification deficit) and to turn this dissatisfaction with policies into polity contestation (responsiveness deficit), we contribute novel insights to the literature on the nexus between international authority and its contestation.

In the remainder of this concluding section, we address some theoretical and normative implications that follow from our argument. First, from a theoretical perspective, we suggest further research be conducted on the conditions for cross-sectional variation in the reaction to the LIO's democracy gap. The argument presented in this paper was about the secular trend of a growing democracy gap inherent in the LIO that increasingly incites polity contestation. Within this trend there is obvious variation: In some countries, the politicisation of the democracy gap leads to fierce polity contestation and even calls to abandon international institutions. In others, protest remains minoritarian. Beyond domestic political opportunity structures allowing for or stifling the mobilisation of resistance to the LIO (de Vries et al. 2021), we suspect that variation in specific and diffuse support for LIO suborders affect societies' propensity for contestation. In terms of specific support, states' power position in the LIO should play an important role, because it affects the experienced distributional consequences of IO authority. Quite simply, weaker states are likely to be distributional losers whose citizens are then more likely to contest IOs than citizens of more powerful states that are likely distributional winners. In terms of diffuse support, the size of the 'legitimacy reservoir' that IOs enjoy in a given society should play an important role. In this vein, whether and to what extent polity contestation is triggered could depend on the general standing and reputation of an IO as constituted and reproduced in domestic political discourse. We would expect that an IO's democracy gap will be politically exploited to a much greater extent in societies with low diffuse support for the IO than with high diffuse support—see for instance the generally high reputation of the UN and the EU in Germany vs. the generally low(er) reputation of those IOs in the UK.

Second, from a normative perspective, our argument begs the question of whether and how the LIO could be reformed to escape its self-undermining trajectory. In principle, two avenues seem plausible to arrive at an order that would close the democracy gap: either democratising IOs to meet the legitimisation requirements for the exercise of political authority, or reducing IOs' political authority to match their technocratic legitimisation rationale. The former option is more prominently debated in the literature than the latter. Democratising IOs has been a cosmopolitan ambition for a long time and some already see trends in this direction. Since IOs are opening up to non-state actors, establish more and more parliamentary assemblies, and speak the language of democracy, global governance supposedly seems on a path towards democratic consolidation (Zürn 2018). So far, however, change has remained superficial and symbolic, and thus insufficient to alter domestic perceptions of heteronomy. Instead of institutionalising avenues for permanent contestation and dissent, IOs have primarily sought to engage in strategic self-legitimation (Dingwerth et al. 2019, 2020; Ecker-Ehrhardt 2018).

In order to fundamentally change the public perception of the democratic quality of global governance, reforms would need to make significant inroads towards



challenging the technocratic or intergovernmental decision-making structures in IOs so as to actually provide a transmission belt for popular demands into IO policies. On the other hand, the procedural democratisation of IOs may also go too far. For instance, allowing for IO legislation by directly elected supranational parliaments in majority decisions might represent the apex of democratic federalism in the global order, but in the absence of a transnational demos whose common identity and public sphere would render adverse consequences acceptable to the losers, it might quickly deteriorate into a ‘tyranny of the majority’ (see also Grimm 1995; Dahl 1999; Scharpf 2017). For instance, if the European Parliament had democratically decided to impose austerity in Greece (and there likely would have been a majority for this course at the beginning of the euro crisis), this would probably not have assuaged Greeks’ widespread impression of foreign rule. As long as nation-states remain the dominant focal points for identity formation and political allegiance, cosmopolitan democracy cannot live up to its theoretical potential.

Hence, to arrive at a stable equilibrium of authority and legitimacy in the LIO, it might be necessary to more seriously consider the second avenue, namely to reduce IOs’ intrusiveness to an extent that their remaining authority can be sufficiently legitimised through technocratic or partially democratic procedures. For one, IOs that are deliberately designed on the template of NMIs (e.g. the ECB, international courts) would need to be tied back to dealing with those questions of technical expertise that their depoliticised setup is justified for. Moreover, states might have to think about re-contracting IOs to re-nationalise some of the authority they previously delegated. When done in concert and with a view not to undermine the most important cooperative achievements, such forms of disintegration may potentially be democracy-enhancing (see Patberg 2020). To the extent that it reduces the democracy gap, it may help create a more stable international order.

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