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# Contestations of the Liberal International Order: From Liberal Multilateralism to Postnational Liberalism

Tanja A. Börzel  and Michael Zürn 

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**Abstract** The 1990s saw a systemic shift from the liberal post–World War II international order of *liberal multilateralism* (LIO I) to a post–Cold War international order of *postnational liberalism* (LIO II). LIO II has not been only rule-based but has openly pursued a liberal social purpose with a significant amount of authority beyond the nation-state. While postnational liberal institutions helped increase overall well-being globally, they were criticized for using double standards and institutionalizing state inequality. We argue that these institutional features of the postnational LIO II led to legitimization problems, which explain both the current wave of contestations and the strategies chosen by different contestants. We develop our argument first by mapping the growing liberal intrusiveness of international institutions. Second, we demonstrate the increased level and variety of contestations in international security and international refugee law. We show that increased liberal intrusiveness has led to a variety of contestation strategies, the choice of which is affected by the preference of a contestant regarding postnational liberalism and its power within the contested institution.

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The Liberal International Order (LIO) is under pressure. We argue that the tide of current contestation of the LIO is driven by a rise in liberal authority that set in after 1989. The move from liberal multilateralism, which had emerged after World War II, to postnational liberalism, which has characterized the LIO since the end of the Cold War, saw an increased level and variety of the LIO contestation. Postnational liberalism is substantially more intrusive than liberal multilateralism, and therefore it creates unresolved legitimization problems. Nowadays, state as well as nonstate actors in both the global North and the global South contest the LIO. However, they use different strategies. To account for the observed variety of contestations, we focus on the contestant’s preference or support for postnational liberalism and its power within the contested institution.

The initial setup after World War II, with the United Nations (UN) system and the Bretton Woods Institutions, was rule-based multilateralism. Its social purpose was to promote free trade, while protecting the freedom of states to regulate their economies to reduce unemployment. This “embedded liberalism”<sup>1</sup> in the economic realm was regionally limited to the Western world and complemented by global but

1. Ruggie 1983.

comparatively weak institutions; the UN human rights regime and the UN Security Council (UNSC), charged with the maintenance of international peace and security, are the most noteworthy of those. Overall, the post–World War II order was a thin liberal order—only weakly liberal but quite effective.

With the end of the Cold War, we saw a new thrust toward the LIO. It included a significant rise in the authority of international institutions, and a strengthening of decisively liberal features (such as human rights, the rule of law, democracy, and the free movement of people), as well as an extension of states joining these institutions. These liberal principles have been instantiated and protected by specific institutional arrangements that emerged mainly in the 1990s and early 2000s.

The arrangements comprised conditionally sovereign states, which gained legitimacy by enforcing and guaranteeing liberal rights, rules, and decisions.<sup>2</sup> Externally, the cooperation of states was promoted by international institutions exercising authority regulated by international law. Moreover, open markets and supranational bodies maintaining the rules for an economic order pushed economic policies toward further liberalization. The initially weakly liberal international institutions set up by the United States and its Western allies after World War II appeared to prevail around the globe, gain in strength, and get more liberal over time. In our view, the 1990s saw a systemic shift from a thin liberal post–World War II international order of *liberal multilateralism* (LIO I) to a post–Cold War international order of *postnational liberalism* (LIO II). LIO II is not only rule-based but it also openly pursues a liberal social purpose, with a significant amount of authority beyond the nation-state.<sup>3</sup>

This transformation toward postnational liberalism has led to contestations of the LIO, which have been more and more visible from the late 1990s on.<sup>4</sup> Rather than exploring changes exogenous to the LIO, such as shifting power configurations, our contribution focuses on endogenous dynamics of the LIO. Many postnational liberal institutions were criticized for working in favor of Western societies and elites, having a neoliberal flavor with significant distributional effects, applying double standards, and institutionalizing state inequality. LIO II was less accommodating of states with diverse cultural backgrounds than the liberal multilateralism of LIO I. The surge of Islamic fundamentalism, revisionism in Russia, the rise of China, and antiglobalization movements, as well as the proliferation of right-wing populism and nationalism in Europe and the US, emerged as new (or renewed) challenges for liberal societies. These contestations also target the way in which liberal societies have chosen to organize their relations at the international level. They express and mobilize civilizational, religious, and ethno-nationalist claims and have converged in the critique of a universal understanding of individual rights backed by strong institutions.

2. Keck and Sikkink 1998; Risse, Ropp, and Sikkink 1999.

3. Compare Zürn 2018, chap. 5.

4. Lake, Martin, and Risse 2021.

Borders are emphasized again, and the free movement of capital, goods, services, and people is increasingly challenged. In addition, diverse lifestyles (gender relations, multiculturalism, LGBT+) are dismissed as “unhealthy.” All this is accompanied by a growing rejection of political authority beyond the nation-state. The legitimacy of multilateral institutions protecting and promoting economic freedom, security, human rights, democracy, and the rule of law is called into question, and not only by autocratic regimes. In liberal democracies, nationalist and populist forces on the right and antiglobalist movements on the left target international institutions as well. Some of the contestations are directed against the move toward postnational liberalism in the 1990s and early 2000s; others address the LIO in general. While these challenges have accumulated into a wave or even a tide, different types of actors contest different components of the LIO and use different strategies. We therefore speak of a differentiated wave of contestations. This article aims to provide an understanding of the wave with its variety of contestations and their implications for the future of the LIO.

We argue that the institutional features of the new, postnational LIO explain both the current wave of contestations and the strategies chosen by different contestants. To develop our argument, we proceed in three steps. We start by discussing theoretical explanations for challenges to the LIO that dominate the debates in international relations (IR) by focusing on exogenous factors, such as power transition. We then present our own account as an endogenous explanation of the timing, levels, and types of LIO contestations. The empirical part of the paper first maps the growing political authority of international institutions and their increasing liberal intrusiveness. It goes on to illustrate that this has led to a rise of different contestations that are determined by the contestant’s preference or support for postnational liberalism and its power within the contested institution. In two case studies, we illustrate our arguments on the increased level and variety of contestations in two separate issue areas: the challenge to the UN-based international security regime complex, and the conflicts over international refugee law in the European migration crisis. In both instances, we show that increased liberal intrusiveness has led to a variety of contestation strategies, the choice of which is affected by the preferences and the power of the contestant. We conclude by discussing the challenges our findings pose for the study of IR.

## **Predominant Explanations**

The emergence of postnational liberalism (LIO II) coincided with fewer interstate wars, continued economic growth and poverty reduction in many countries of the global South, modest unemployment rates in most of the consolidated economies of the global North, and a significant improvement of the Human Development Index. Why is it, then, that the LIO, which is associated with these accomplishments, is increasingly challenged? And how can we account for the differences in contestants’ strategies?

Debates in IR focus on exogenous explanations for contestations of the LIO. Power transition theory emphasizes changes in the distribution of power in the international system through the rise of nonliberal states. Hegemonic stability theorists see liberal economic orders as the products of the dominance of a leading economic power, which is based on its competitive advantages.<sup>5</sup> To the extent that rising powers catch up economically, they challenge the comparative advantage of the hegemon and its liberal rules, especially those that are incompatible with the domestic order of a rising power.<sup>6</sup>

Rationalist institutionalism focuses on the effectiveness of international institutions in managing the relations between interdependent states so that they serve their interests. Rule-based cooperation in multilateral institutions has facilitated the opening of markets, the establishment of collective security systems, and the protection of human rights. However, rule-based multilateralism has failed to effectively address new challenges, including the stabilization of financial markets, the fight against climate change, the proliferation of weapons of mass destruction, the rise of Islamic terrorism, and the COVID-19 pandemic.<sup>7</sup> The lack of performance and problem-solving capacity fuels contestations of liberal international institutions. Changes in the distribution of power may affect the underlying constellation of interests, leading to demands for adapting international institutions to benefit both rising and established powers. Consequently, rising powers are seen as reformist, advocating a change of policies and institutional reforms rather than a demise of the LIO.<sup>8</sup>

Sociological institutionalist approaches warn against overestimating the contestation of the LIO. They emphasize the embedding and socialization of rising powers into the (liberal) norms and principles espoused by established powers and enshrined in international organizations (IOs).<sup>9</sup> However, socialization does not necessarily mean acquiescence to every existing rule. It includes habits of questioning the interpretation and application of existing principles and norms, especially those that have turned out to be counterproductive. In this way, sociological institutionalists account for reformist contestations of those (neo)liberal norms that have turned out to be normatively indefensible in liberal terms.

In sum, predominant explanations in the IR literature offer important insights on what may drive the current wave of contestations of the LIO. They focus on material and ideational changes, many of which are related to the rise of new powers that pursue different interests and express different cultural claims than those states that have supported the LIO.

Our account, in contrast, centers on the endogenous dynamics of LIO contestations. We argue that the postnational features of the LIO have produced its own contestations. This argument resonates with the contributions in the first part of this

5. Gilpin 1987.

6. Kupchan 2012; Modelski 1987; Wade 2003.

7. Acharya 2016; Mansfield and Rudra 2021.

8. Stephen and Zürn 2019.

9. Ikenberry 2011; Johnston 2007.

special issue. They find that the neoliberal turn of international institutions produced a change in the distribution of wealth, driving the backlash against the LIO within those liberal states that were crucial in creating and sustaining it. We concur that many challenges to the LIO come from inside industrial democracies, from those who perceive themselves as the losers of globalization. Yet, as the second part of the special issue shows, the LIO is also contested externally by authoritarian governments of societies in both the global North and the global South that benefited from the global redistribution of wealth from the 1990s on. Some of them reject international liberal authority as such, while others contest only specific aspects. To understand the threats these internal and external challenges pose to the LIO, we need to account for both their rise and their varieties.

### **An Alternative Account: Liberal Intrusiveness and the Variety of Contestations**

Our account of the rise and the varieties of LIO contestations focuses on the shift from liberal multilateralism to postnational liberalism. We consider thickly liberal international authorities with a high level of intrusiveness the main driver of the current wave of contestations.

The shift from liberal multilateralism (LIO I) to postnational liberalism (LIO II) is related to material and ideational changes highlighted by IR theories. The collapse of the Soviet Union as one of the two superpowers that emerged after World War II did not result in fundamental power shifts only. Communism also disappeared as the major alternative to liberalism. At the same time, the associated deepening and broadening of the authority of liberal international institutions is at least partly the result of self-reinforcing dynamics triggered by the post–World War II LIO.<sup>10</sup> Addressing the historical dynamics of the increasing liberal intrusiveness of international institutions would go beyond the scope of this essay. We concentrate on demonstrating how the tensions and contradictions within postnational liberalism have been challenging the foundations of LIO II.

After 1945, American leadership enabled the establishment of a multilateral international order with some liberal ingredients. The postwar LIO I was based on state consent, and it included a competition between two world systems. It was a weakly liberal but quite effective international order. Its self-reinforcing dynamics resulted in the postnational LIO II, which emerged after the end of the Cold War.<sup>11</sup> On the one hand, LIO I deepened, broadened, and strengthened the liberal elements of its institutions. The deepening of free trade from the 1960s on and the slow but progressive recognition of human rights as universal standards in the global system are indicative of these developments. On the other hand, the growing

10. Zürn 2018.

11. Compare Lake, Martin, and Risse 2021.

attractiveness of the Western model of society in terms of peace, freedom, and prosperity—which was at least partially owed to LIO I—put pressure on the Soviet Union. Perestroika in response to this pressure enabled the revolutions in Eastern Europe and the demise of the Soviet Empire. These dynamics triggered a transformation of the LIO that led to the rise of contestations. Contestants, however, have pursued different strategies, depending on their position and preferences. Our model captures this process in four steps.

First, the period after the end of the Cold War saw a growth in multilateral institutions at the global and regional level with more authority than ever before, further undermining the consent principle in interstate decision making.<sup>12</sup> The social purpose of these institutions beyond the nation-state has been strongly liberal, promoting and protecting individual economic as well as political and civil rights. We argue that the increasing authority of international institutions and the strengthening of their liberal content combine into a systemic shift from the liberal multilateralism of LIO I to the postnational liberalism of LIO II.

Second, to the extent that international institutions increased their liberal intrusiveness, we expect growing contestation. This argument draws on the link between authority and legitimation.<sup>13</sup> We identify two causal mechanisms at work that limit the legitimation of deepened liberal authority. The starting point for both is that international authority concentrates decision-making power in the hands of executives of powerful states, backed up by technocrats. On the one hand, these executives utilize international institutions to affect the policies of less powerful states. Like cases are often not treated alike. It is, for instance, very unlikely that any of the permanent member states (the P5: China, France, Russia, the United Kingdom, and the US) will be targeted by sanctions authorized by the UNSC. In this sense, international institutions formalize stratification between states through weighted voting and veto power, as well as through more informal stigmatization processes.<sup>14</sup> States tend to challenge those international institutions whose decisions they cannot influence.

On the other hand, the exercise of international authority can overrule decisions of elected governments, for instance, via a decision of the Dispute Settlement Body of the World Trade Organization (WTO). Postnational liberalism pushes states to respect human rights, the rule of law, and democratic principles, placing universal liberal ideas over popular sovereignty. The promotion and protection of liberal norms by international institutions increase the propensity, particularly for authoritarian populists inside and outside liberal societies, to contest the intrusiveness of the postnational LIO II. The redistributive consequences of international institutions also become more visible. In general, the LIO benefits people with a high mobility of their resources and capacities that act in line with a liberal cosmopolitan vision of the world. This has domestic repercussions. Rather than being indifferent, citizens have increasingly taken

12. Börzel 2013; Lake 2009.

13. Tallberg and Zürn 2019; Zürn 2018.

14. Adler-Nissen and Zarakol 2020; Búzás 2021; Tourinho 2021.

a stance on neoliberal international agreements. The worldwide antiglobalization protests by civil society groups against the Transatlantic Trade and Investment Partnership are a prominent example. International liberal institutions also constrain states in their redistributive capacity to compensate the losers of globalization.

Third, both of these mechanisms are accentuated by moments of crisis that make the liberal intrusiveness of international institutions felt. In these moments, the depoliticized mode and distributive consequences of liberal intrusiveness receive public attention, and the insulation of decision-making mechanisms becomes visible.<sup>15</sup> Crises therefore function as an accelerator and transparency mechanism for liberal international authority. Two such moments were of special importance in translating legitimation problems into actual contestation. Regarding security issues, the attack on Saddam Hussein's government in Iraq by a US-led coalition of the willing in 2001 increased suspicions that the LIO mainly served the national interest of the hegemon. The final justification referring to the nonproliferation of nuclear weapons made it especially obvious that like cases were not treated alike. The intervention in Libya in 2011 also fueled misgivings against powerful Western states using international institutions to their advantage. Regarding economic issues, the financial crisis of 2008 and the ensuing European debt crisis were decisive. They demonstrated that major decisions were carried out via international institutions with little accountability, such as the International Monetary Fund and the European Central Bank, or through negotiations behind closed doors. National parties and parliaments played a marginal role at best. As we will show below, the so-called European refugee crisis of 2015 equally disclosed controversial features of postnational liberalism.<sup>16</sup> We argue that these visibility moments were especially important for the growing contestations of the LIO driven by its increasing liberal intrusiveness.

Fourth, the growing visibility of the steep rise of liberal intrusiveness has led to a wave of differentiated contestations, with significant variation in what is contested and where. In general, we define contestations as discursive and behavioral practices that challenge the authority of international institutions, their liberal intrusiveness, or the LIO as a whole. Contestants are the actors that stand behind and select a particular strategy of contestation. Based on this general definition, we develop a typology to contrast different strategies of contestation of rule-based multilateralism and/or the liberal social purpose of international institutions.

In our account, it is the position of contestants toward liberal authority (preference) and their relative position in the contested institution (power) that determine the strategy of contestation. The first dimension refers to the degree to which an actor has the power to shape the decisions of an institution (institutional influence). In our broad understanding, institutional influence consists of a formal layer that refers to its material capabilities and the institutional rules an actor can draw on to affect

15. Goldstein and Gulotty 2021.

16. Börzel and Risse 2018.



decisions. The first dimension also contains an informal layer: It describes the extent to which the actor is part of background talks prior to decisions, or is stigmatized as a troublemaker that needs to be regulated, as opposed to an order-maker that regulates others. These two elements are combined into a dimension, the extreme values of which we label as weak and strong institutional influence.

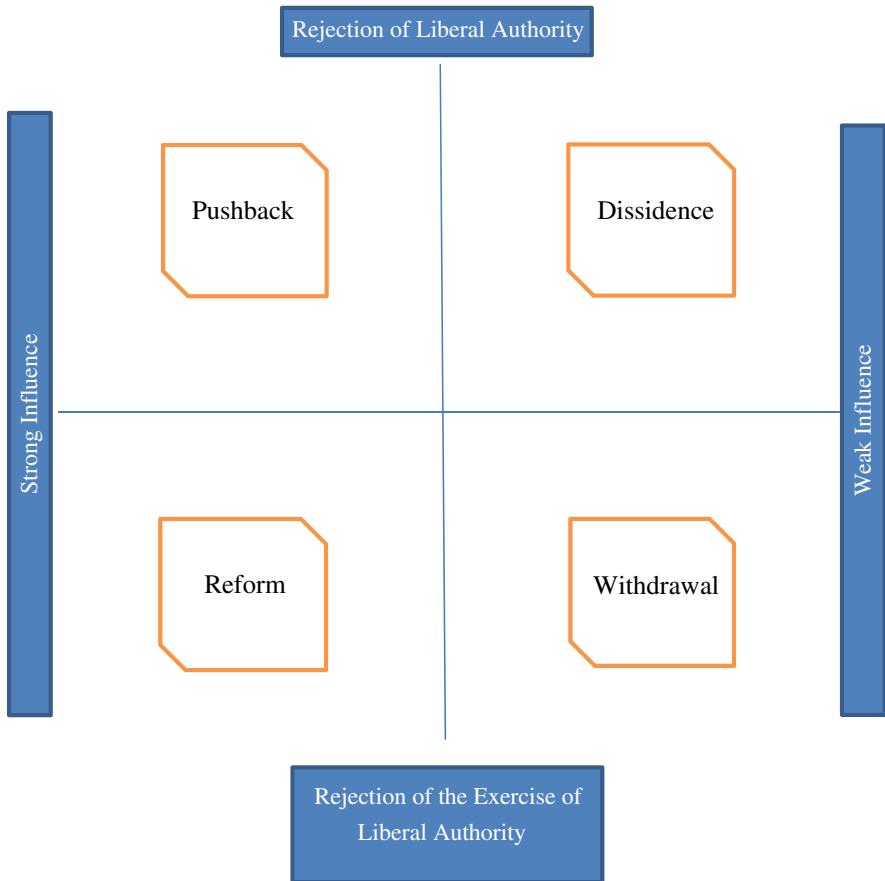


FIGURE 1. *Varieties of contestations*

The second dimension is about actor preferences regarding postnational liberalism. While some contestations are directed against the specific exercise of liberal authority, others defy the mere existence of liberal international authority. This distinction refers to the question of whether an international authority in place is rejected as such or whether its practices (decisions and decision making) are challenged.

The combination of power and preferences leads to a two-dimensional space of LIO II contestations (Figure 1), and we describe four strategies in this two-by-two grid.

*Pushback* describes a strategy to reduce liberal international authority from the inside. The goal of this strategy is to return to the prior condition of less liberal intrusiveness. In many cases, this involves challenging core components of the dominant liberal order. Pushback contestations are voiced by governments that wield enough power to change international authorities or by influential social movements and political parties within liberal states that yield the power to bring about institutional change.

Actors that are dissatisfied with the way authority is exercised but accept international liberal authority in general should opt for *reform*, if they can make their demands for change heard within the international institution. Examples are reforms that aim at strengthening liberal authority or changing policy.

In contrast, outsiders that see little chance to change how liberal authority is exercised are likely to opt for *withdrawal*. This can take the form of “counter-institutionalization,” that is, the creation of new liberal authorities, without necessarily leaving the existing ones.<sup>17</sup> Another form of withdrawal is to simply disregard the authority, as long as actors find its exercise disagreeable but lack the means to change it or to create alternative international institutions.

Finally, we use *dissidence* to refer to the strategy that aims at the destruction rather than the reduction of liberal international institutions because actors reject any liberal international authority but lack the power to defy it.<sup>18</sup> A nonviolent form comprises attempts at the full repatriation of international authority by transferring sovereignty rights back to states. Terrorism can be considered a violent form of dissidence.

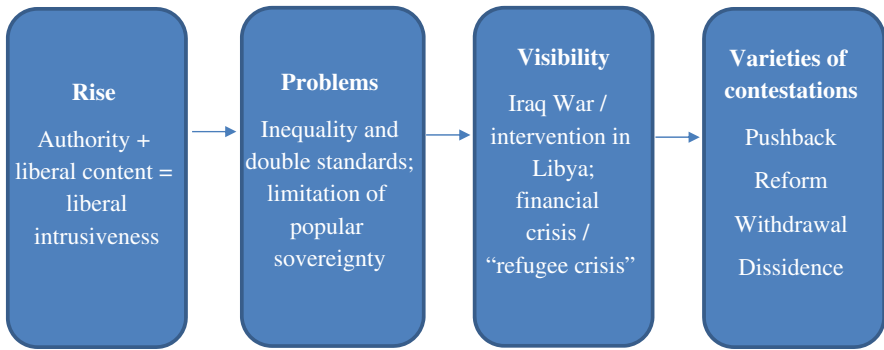
In sum, we posit that postnational liberalism is increasingly challenged by four different types of contestations. The expectation is, first, that we see a general rise of LIO contestations, and, second, that the choice of strategy is affected by the contestant’s preference regarding postnational liberalism and its power to change international authorities. [Figure 2](#) summarizes our model, which provides a joint explanation of the rise in and varieties of contestations of the LIO.

## Empirical Probe

The empirical probe of our model of LIO contestations proceeds in two steps. First, we demonstrate the transformation of the LIO from liberal multilateralism to postnational liberalism. For this purpose, we develop a measure of liberal intrusiveness by combining the overall degree of international authority with the relative strength of the liberal content. In a second step, we delve deeper with two case studies illustrating our theoretical argument on how the shift toward postnational liberalism has given rise to varieties of contestations in two issue areas that are key to the LIO: international security and international refugee law.

17. See Alter and Raustiala [2018](#) for an overview on regime shifting and contested multilateralism.

18. We borrow the term from Daase and Deitelhoff [2019](#), who use “dissidence” to describe a full rejection of existing systems of rule, challenging both their social purpose and their decision-making structures and processes.



**FIGURE 2.** *Postnational liberalism and its varieties of contestations*

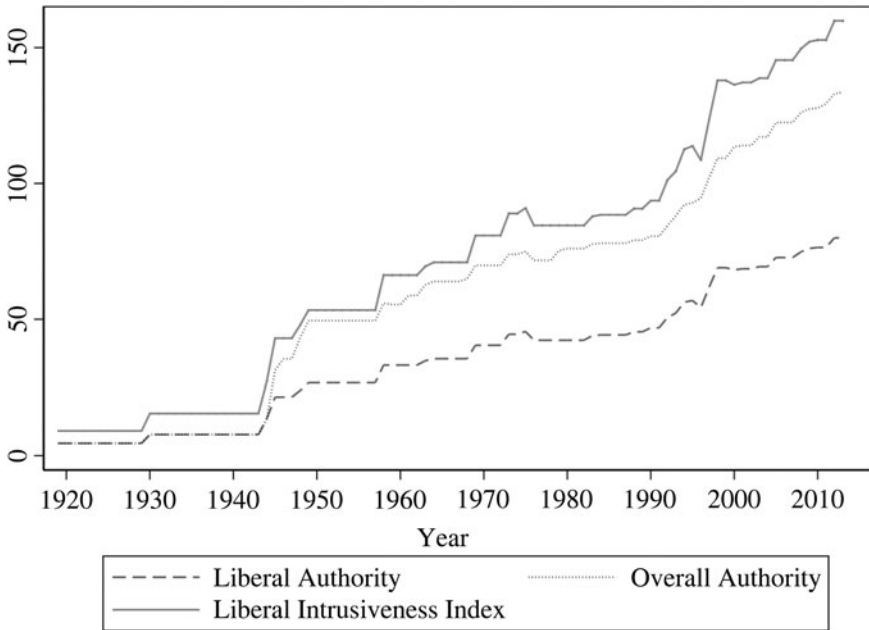
### *Liberal Intrusiveness*

We measure the extent to which postnational liberalism has evolved since the 1990s with a liberal intrusiveness index, using the data about international authority, as developed in the International Authority Database, in two ways.<sup>19</sup> First, we assess the overall level of authority in the international system as a whole. The database measures the authority of thirty-four IOs in terms of their *autonomy* from states in making decisions and the extent to which their decisions, procedures, and rules are *binding* for states, limiting their discretion regarding a number of *policy functions*. To empirically capture the autonomy and bindingness dimensions for each policy function, a comprehensive coding scheme with more than 150 items was used. The authority score is the weighted product of autonomy, bindingness, and policy scope, with a maximum of 10.25 for each IO. In Figure 3, the y-axis refers to the sum of authority of all thirty-four IOs, with 358.75 as the overall maximum. The x-axis describes the development of the values over time. The dotted line adds the authority scores of all coded IOs.

We clearly see two periods of steep rise of international authority: after 1945 and after 1990. The first period of growth was driven by the founding of new IOs, including the UN, the Bretton Woods Institutions, and the European Communities as the most important international authorities established in the aftermath of World War II. The growth levels out in the 1970s. The second wave started with the end of the Cold War and is as steep as the first one. This time, the number of IOs remains

19. The International Authority Database at <<https://www.wzb.eu/en/research/international-politics-and-law/global-governance/projects/international-authority-database>> (accessed 13 August 2020) assesses the authority of thirty-four IOs and 230 IO bodies based on geographic and issue-specific selection criteria from the pool of all active 359 IOs in the Correlates of War data set on intergovernmental organizations (Pevhouse, Nordstrom, and Warnke 2007). Approximately 1,000 legal documents were coded, including founding treaties, potential amendment treaties, and rules of procedures. See the URL above for the method and major descriptive findings.

relatively stable, so that the growth mainly points to a deepening of existing authorities rather than the creation of new ones.



Source: Our compilation, with data from the International Authority Database at <<https://www.wzb.eu/en/research/international-politics-and-law/global-governance/projects/international-authority-database>>, accessed 13 August, 2020).

FIGURE 3. *The liberal intrusiveness index*

Second, we zoom in on liberal IOs, which have a clear focus on either trade (economic liberalism) or human rights (political liberalism). IOs are coded 0 when neither trade nor human rights is their primary purpose, 1 when either of them is the primary purpose, and 2 when both human rights and trade are major issues. In this way, we capture the degree to which international authority is of liberal content. Again, we see a steep rise of liberal authority after 1945 and 1990 (dashed line).

Our intrusiveness index (continuous line) combines the level of authority with its liberal content. Adding the authority and content scores illustrates the shift of the multilateral LIO I to the postnational LIO II. First, after an initial rise of liberal international authority immediately after World War II and a period of stagnation especially from the 1970s on, we see a renewed phase of extension starting in the 1990s. Second, after the end of the Cold War, liberal authorities become not only stronger but also substantially more liberal. The growth of liberal international authority is steeper than it was after World War II. The postwar LIO I was above

all “rule-based.” Attempts to make it more intrusive, such as creating the International Trade Organization or the European Defence Community, had failed. The postnational LIO II is both more liberal in content and more authoritative in form. Third, the growth of liberal international authority seems to level off after 2010. According to our model, this is related to legitimization problems that arose when crisis events, such as the military interventions in Iraq and Libya and the global financial crises, made the intrusiveness of liberal international institutions more visible.

We argue that the steep increase in liberal intrusiveness of LIO II after the end of the Cold War triggered a major wave of contestations starting at the turn of the century.<sup>20</sup> First, transnational movements, which are mainly based in Western countries, battle neoliberal policies and demand the reregulation of global markets. They pursue a reformist strategy that aims at strengthening liberal authority to address the redistributive consequences of international trade. This form of contestation increased (with a time lag) after postnational liberalism emerged from the late 1990s on, as shown by the research on protests against and the politicization of international institutions by transnational social movements. Second, international liberal institutions have also become increasingly politicized in liberal societies. Authoritarian populist parties (APPs) echo the demands of illiberal regimes to protect national sovereignty against external interference authorized and legitimized by liberal international institutions, including the WTO, the UN, the European Union (EU), and the Organization for Security and Co-operation in Europe. The success of these parties is indicated by the rising share of APPs in electoral democracies, as well as of elected autocrats openly challenging liberal institutions. Third, rising powers have contested postnational liberalism, especially since 2001. Like other contestants in the global South, China, Brazil, and India target the Western bias of these institutions, for example, through their voting behavior in the UN General Assembly. Fourth, the LIO in general became the major target of fundamentalist Islamism from the late 1990s, attacked for its liberal authority and the cosmopolitan world view associated with it.

We probe the hypothesized relationship between liberal intrusiveness and the rise of varieties of contestations by looking in depth at two cases that are central for the LIO. Both cases show that increased liberal intrusiveness has led to increased but differential contestation and that the position of contestants toward and within liberal authorities determines their choice of strategy.

### *Varieties of Contestations of the New Security Regime Complex*

In the field of security it looked, for some time, as if the global governance system would move from a regime based on the principle of international security to one based on human security. The goal of preventing wars between states, as inscribed into liberal multilateralism, was broadened toward preventing massive violations of human rights. On the international level, two institutions especially turned in practice

20. Compare Lake, Martin, and Risse 2021.

more liberal and more authoritative at the same time: the UNSC and the International Criminal Court (ICC). After claims that the UNSC and the ICC exercised their authority unevenly and illegitimately, contestations increased significantly and ultimately resulted in a reweakening of these institutions.

### *From LIO I to LIO II: The Case of Humanitarian Interventions*

In the early 1990s, the second generation of peacekeeping operations brought intra-state wars onto the agenda of the UNSC, which up to then dealt almost exclusively with interstate wars. It was the activation of peace enforcement on a broad scale that moved the UNSC fully into the age of postnational liberalism. After Saddam Hussein invaded Kuwait in August 1990 and refused to withdraw, the UNSC authorized the liberation of Kuwait by military means. The social purpose of the intervention was still international security, but this changed quickly in line with the second generation of peacekeeping toward the liberal notion of human security. The UNSC for the first time acknowledged “that a humanitarian crisis—including threats to democracy—can constitute a threat to international peace, justifying actions being taken according to Chapter VII of the UN Charter.”<sup>21</sup> In this vein, at the UN’s 2005 World Summit, the international community adopted a toned-down version of the Responsibility to Protect (R2P), providing justification for interventions against genocide, war crimes, ethnic cleansing, and crimes against humanity. Thus the UN intervention regime reached an unprecedented level of liberal intrusiveness. Although the UNSC changed practice after 1990, the ICC was a newly founded flagship organization of postnational liberalism. The Rome Statute was adopted in July 1988, and entered into force four years later. The lengthy negotiations and the early phase of the ICC were characterized by strong resistance from the US administration. It was overcome only after France and the United Kingdom changed sides.<sup>22</sup> African states overwhelmingly endorsed the ICC, with Senegal being the first country in the world to ratify. The adoption of the ICC stood for a new era of postnational liberalism. The era was marked by democratization, the expansion of global governance and global institutions, and widespread recognition and implementation of human rights standards.

### *A Differentiated Wave of Contestations*

Despite initial support, the exercise of liberal authority in the new security regime complex ran into legitimacy problems. Non-Western states claimed that the UNSC and the ICC did not treat like cases alike but reinforced double standards and Western dominance. For the UNSC, the interventions in Iraq (2003) and later in

21. UNSC Resolutions 841/1993 and 1529/2005 (Haiti).

22. Deitelhoff 2009.

Libya (2011) were decisive events. Despite the lack of authorization from the UNSC for an intervention in Iraq, US president George W. Bush gathered a coalition of the willing to remove Saddam Hussein from power and bring about a regime change. UNSC Resolution 1973 had authorized the military intervention in Libya by a multi-state-led coalition. However, China and Russia, which had abstained, did not see the resolution as an authorization of regime change. Regarding the ICC, mainly African states that had initially supported the ICC criticized the court for selective prosecution and the UNSC for selective reference of cases to the ICC. Until the ICC launched an investigation in Georgia in 2016, it had investigated only African cases, leading to accusations of neocolonialism and “race hunting” by official representatives of the African Union.<sup>23</sup>

Declining legitimacy led to stronger contestation. The second Iraq intervention, in 2003, was a game changer. On 15 February 2003 there were coordinated transnational protests around the world. People in more than 600 cities expressed opposition to the imminent war. Social movement researchers have described these protests as the largest in human history.<sup>24</sup> These developments also strengthened the mounting critique by Russia and China of so-called humanitarian interventions. At the same time, regional powers and major contributors of the UN asked for a reform of UNSC’s membership and rules of decision making. Attacks of the ICC from African states can be observed from 2009 on.<sup>25</sup> Contestations not only grew but also differed. In line with our argument, the different contestations in the security regime complex can be accounted for by states’ diverging preferences regarding humanitarian interventions and different institutional influence in the UNSC and the ICC.

**Pushback.** As members of the P5 with veto rights, Russia and China can effect institutional change and do not contest the political authority of the UNSC as such. They target the *liberal* content of the human security approach.<sup>26</sup> They tried to push back any far-reaching interpretation of human security and the R2P by emphasizing the principle of Westphalian sovereignty and the need to act only via the UNSC. Russia and China had already justified their abstention from voting on Resolution 1973 with doubts about the threshold of “just cause” based on human security and R2P. After their experience with the use of Resolution 1973, they hardened their strategy by working more often and more offensively with their veto right, again based on the justification that humanitarian intervention was a Trojan horse for the advancement of the parochial interests of Western states.<sup>27</sup>

Pushback is different from full rejection or even dissidence. Russia and China consistently emphasize the value of the UNSC as an authoritative institution. China and, to a lesser extent, Russia also reluctantly began to adopt the language of human rights

23. Gissel 2018.

24. Walgrave and Rucht 2010.

25. Gissel 2018.

26. Jetschke and Abb 2019, 180.

27. Bellamy 2005, 42.

and R2P but disentangled it from its liberal content.<sup>28</sup> As a result, the authority of the UNSC was reinforced, while international monitoring of Russia and China's own domestic human rights record was prevented. While part of this contestation strategy is certainly due to changes in domestic politics in China and Russia, the general trend toward increased contestation follows a failure to legitimize the new liberal intrusiveness and perceived abuse of its possibilities by Western states.

**Reform.** India, Brazil, Japan, and Germany are important actors in the UNSC who can change the working of the institution. They do not object to the liberal intrusiveness of the UNSC *per se* but criticize its lack of representativeness. As expected, they chose a reform strategy that aims at institutional rules to increase the representativeness of the UNSC. The so-called G4 nations (Brazil, Germany, India, and Japan) have seen an increase in their power since the establishment of the UNSC, including a rise in their GDP, contributions to UN activities, and recognition as regional powers. They have felt that this should be reflected in their own permanent seat in the Council. The G4 have advanced their demands by relating them to three normative justifications: representation, effectiveness, and a reflection of the changed distribution of power.

The P5 have so far shown no sign of supporting such a reform. In the meantime, the demands by Brazil, India, and South Africa for institutional change have become more strident.<sup>29</sup> Yet, while the need for reform has been more or less globally accepted, a reform of the UNSC remains unlikely.

**Withdrawal.** African states support the assessment of the liberal intrusiveness of the security regime complex. They criticize what they perceive as selective prosecution. The UNSC has referred some cases (such as Libya and Darfur) but not others (such as Israel and Syria) to the ICC, supporting accusations of double standards and anti-African bias. Since they see themselves as having little influence on international institutions, African states chose a strategy of withdrawal. Since 2009, they have turned away from the ICC, prohibiting cooperation with the ICC in the prosecution of Sudanese president Omar al-Bashir and Libyan president Muammar Gaddafi, hosting wanted individuals, threatening to leave the ICC, and voting indicted individuals into the highest office. Over the years, the Assembly of the African Union has also adopted various resolutions critical of the ICC and its practice.<sup>30</sup>

One case is especially illustrative of the withdrawal strategy. In 2016, three African states—Burundi, South Africa, and the Gambia—announced their withdrawal from the Rome Statute. The Gambia revoked its withdrawal notification following the election of a new president; South Africa, after a ruling by its High Court. Burundi withdrew in October 2017. Although the ICC still has thirty-three African state parties, the legitimacy of the Court has been challenged by the African states and the African

28. Morozov 2015.

29. Jetschke and Abb 2019.

30. Gissel 2018.



Union. The contemporary crisis in Africa's relationship with the ICC "reflects a dissonance between the ICC's practices and the court that African states sought to create or thought they were creating."<sup>31</sup> The threat of withdrawal is accompanied by demands that the ICC be replaced by a regional African institution—consistent with our typology, in which counter-institutionalization is a special form of withdrawal.

**Dissidence.** In 2014, the Islamic State drew international attention when it brutally conquered vast swaths of Iraq and declared itself the Caliphate. By mid-2014, it had become "the strongest, best-resourced and most ideologically potent terrorist quasi-state of the post-9/11 era."<sup>32</sup> The central goal of the Islamic State is the destruction of the existing order and its replacement by a universal Islamic one. The Islamic State's interpretation of Islam rejects the state-based international order as an organizing principle. As a Salafi-jihadi movement, it also defies international law because man-made law subverts the principle of legislation as the prerogative of God alone. Most importantly, international law is seen as emanating from the most powerful states and reflects the norms of the "Crusader West."<sup>33</sup> Consequently, the Islamic State chose a strategy of dissidence.

The differentiated wave of contestations—the rise of pushback, reform, withdrawal, and dissidence—was consequential. Debates about the security regime complex and the R2P changed direction. The early debate focused on human security and aimed for a fundamental "re-conception of security, solidarity, and even sovereignty"<sup>34</sup> to allow for a norm change aligned with the growing intrusiveness of the UNSC. From about 2011 on, R2P became defined much more narrowly. Later on, it was made clear that the final authorization of interventions in domestic affairs required a decision by the UNSC. China and Russia have insisted that measures cannot be considered legitimate without the consent of the affected sovereign state. Contestation, therefore, was successful in the sense that the current situation is closer to the liberal multilateral security regime of LIO I than to the ambitions of a postnational liberal security regime envisioned by the supporters of human security and R2P in LIO II. The European refugee regime suffered a similar fate.

### *Varieties of Contestations of the European Refugee Regime*

The International Refugee Regime, built on the 1951 Geneva Refugee Convention, forms a constitutive part of the LIO. The Geneva Convention was inspired by and designed on the experience of massive refugee flows during and immediately after World War II. Several states had denied admission to Jews fleeing the Holocaust.

31. Gissel 2018, 729.

32. Brands and Feaver 2017, 11.

33. Mendelsohn 2015.

34. Slaughter 2005, 619.

After the war, millions of refugees from the Soviet Union were forcibly returned despite concerns that they would face retaliation from the Soviet government. The “refugee” status as defined in the Convention therefore pertains to people persecuted in their home country; it does not cover people fleeing from poverty or natural disasters.

The core principle of the Geneva Convention is *non-refoulement*. The principle forbids a country receiving a refugee from expelling or returning them “to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion” (Art. 33 (1)). The New York Protocol of 1967 removed the geographic and temporal limitations of the Geneva Convention. The universal coverage is fortified by regional protection regimes, such as the Organization of African Unity (now the African Union) Convention Governing the Specific Aspects of Refugee Problems in Africa of 1969 or the Cartagena Declaration on Refugees of 1984. Asia is the only region that has refrained from developing regional refugee regimes, despite having the largest refugee population in the world.

### *The EU's Extension of Liberal Intrusiveness*

Under LIO I, the EU did not develop a regional refugee regime. All member states have been party to the 1951 Geneva Convention and its 1967 Protocol. Moreover, the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), which entered into force in 1953, has also protected the human rights of refugees. In case of violation, a state can be taken to the European Court of Human Rights. The court's judgments are binding and have to be executed. It took the EU almost fifty years to obtain the authority to develop its own regional refugee regime. The Common European Asylum System has been a decisive step toward postnational liberalism in LIO II. The system determines which member states would be responsible for registering asylum seekers and handling their applications. EU legislation also specified procedures for granting and withdrawing refugee status and made provisions for temporary protection in the event of a massive influx.

The Treaty of Lisbon of 2009 further strengthened the EU's liberal authority. It created a single European system built around a uniform status of asylum and subsidiary protection, a common system of temporary protection for displaced persons, uniform procedures for the granting and withdrawing of uniform asylum or subsidiary protection status, and common standards concerning reception conditions (Article 78, Treaty on the Functioning of the EU). Article 80 of the Treaty on the Functioning of the EU also explicitly provides for the principle of solidarity and fair sharing of responsibility, including financial implications, between member states. Finally, the Lisbon Treaty increased intrusiveness by making co-decision the ordinary legislative procedure for the adoption of EU asylum laws. The Commission has the sole right of tabling legislation, the Council decides by majority rule, and the European Parliament has an equal say in the adoption of new laws. The

Court of Justice of the EU obtained extended judicial oversight, allowing it to develop more case law on asylum.

The EU has used its extended liberal authority to develop a refugee regime that moves beyond the Geneva Convention in at least four important ways. First, it sets common standards for the reception of refugees. The principle of first entry places the responsibility for registering refugees and processing their applications on the member states at the EU's external border. Other member states are allowed to transfer refugees back to the country through which they first entered the EU. Second, in 2015, the Council invoked the principle of solidarity to adopt a temporary but mandatory mechanism by qualified majority to relocate 120,000 Syrian refugees in clear need of international protection from Greece and Italy to the other member states. Third, the EU transformed its European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU (FRONTEX) into the European Border and Coast Guard Agency (EBCG). Along with assisting member states in securing their borders, the EBCG has coordinated the EU's operations to rescue refugees and to fight human trafficking and smuggling in the Mediterranean. Fourth, the European Court of Human Rights has interpreted Article 3 (prohibition of torture) of the European Convention on Human Rights so as to extend the scope of the non-refoulement principle to criminal offenders. Moreover, individuals must not be sent back to countries in which they will face inhumane conditions. The prohibitions even hold within the EU. Returning refugees to Greece as a country of first entry has not been possible since 2010, when both the European Court of Human Rights and the Court of Justice of the EU raised concerns about the human rights situation in the so-called reception centers for refugees.

### *Contesting the EU's Growing Liberal Intrusiveness*

The extension of the EU's liberal authority after the turn of the millennium went largely unnoticed by the European publics. But this changed in 2015 with the massive influx of over a million refugees, which made the EU's liberal intrusiveness visible and its consequences felt. APPs in most member states boosted their electoral support by contesting the EU's liberal refugee regime. Where they did not take over the government, their mobilization of popular sovereignty against, in their words, the "imposed reception of foreigners by cosmopolitan elites" induced center-left and center-right governments to challenge the EU's liberal authority. Contestations have centered on three issues: the returning of the refugees, the relocation of the refugees, and external border security. As our analysis will show, contestants have pursued different strategies depending on their position toward the EU's liberal authority and their position within the EU's decision-making institutions. The various contestations have left the EU's postnational refugee regime largely ineffective.

Not all member states have been equally affected by the refugee influx. Finland, Luxembourg, Ireland, and Portugal—which are not major first-entry, transit, or destination countries—have little cause to contest the EU's liberal authority. But the

preferences of the other member states have been shaped by the electoral support for APPs. Principled rejection has formed where APPs have seized (partial) control over the government (Austria, Denmark, Hungary, Italy, Poland, the United Kingdom). When APPs have remained in opposition but substantially gained in electoral support since the heights of the crisis, governments have taken issue with the way the EU exercises its liberal authority (France, Germany, Greece, the Netherlands).

The most powerful member states to shape the EU's liberal authority within the EU's Common Migration and Asylum System are France and Germany. Even before Brexit, the United Kingdom was not part of the Schengen Area. Italy's position has been weakened by its role as a troublemaker, starting with Silvio Berlusconi, who has governed Italy on and off since 1994. Likewise, Poland, the largest of the Eastern European member states, has marginalized itself by following the lead of Viktor Orbán's Hungary as the main democratic backslider in the EU. Other countries of first entry, including Greece, Croatia, Cyprus, Malta, and Latvia, are too small and poor to shape EU policy and institutions. The Nordic countries, the Netherlands, and Austria, in contrast, have more influence in EU decision making due to their economic and political performance. We now compare the strategies the various member states have pursued in contesting the three core issues of the EU refugee regime.<sup>35</sup>

**Reform.** The EU's exercise of its extended liberal authority resulted in a system that placed the responsibility of dealing with refugees largely on Greece and Italy as front-line states. As the liberal powerhouses of the EU, France and Germany, supported by the Netherlands, chose a strategy of *reforming* the EU's liberal authority. But they have been unable to forge an agreement on a mandatory relocation scheme to end the ad hoc distribution of migrants stranded at sea. Their most recent reform proposal would have a "coalition of the willing" automatically accept a certain quota of refugees rescued in the central Mediterranean. The "Franco-German couple" also put its weight behind a reform of migration and border control proposed by the European Commission. The proposal envisions the creation of an authoritative EBCG standing corps to interfere with national border control, for example, by doing identity checks or admitting and refusing people.

**Pushback.** Smaller member states with little institutional influence within the EU have been less receptive of the EU's liberal authority, particularly when they face a strong populist opposition party. Denmark and Austria seek to return to the EU's more restrictive pre-2015 regime, which places the responsibility of rejecting or accepting refugees on the countries of first entry. They chose pushback as a strategy to maintain their right to forcefully return "illegal refugees," including criminal offenders, even to Hungary and Greece as countries of first entry, despite the risk of inhumane treatment. Both states also reject any relocation scheme under EU law; nor are

35. See Börzel [2020](#) for a more detailed case study of the contestations of the EU refugee system.

they willing to accept a strengthening of the EBCG beyond the coordinating role it had before the migration crisis.

**Withdrawal.** Smaller member states in the periphery of the EU have been overwhelmed both geographically and politically by their responsibility to deal with the massive influx of refugees. While Greece, Cyprus, and Malta demand solidarity by the other member states, they lack the power to push for a relocation mechanism. Accordingly, they have opted for a strategy of withdrawal. They do not apply the rules and procedures of the EU's refugee regime for receiving refugees. Greece, which has to cope with the lion's share of refugees, stopped registering refugees and processing their applications in 2015. And despite substantial technical and financial support from the EU, it has not provided for the basic needs of refugees in its overcrowded reception centers.

**Dissidence.** Italy, Hungary, and Poland openly defy the EU's authority on asylum and migration but lack the power to constrain it. As expected, they have chosen a strategy of dissidence. They seek to destroy the Common European Asylum System altogether by demanding the return of full control over the admission of refugees to the member states. Hungary has built razor-wire fences, turning back refugees who seek to enter the EU. Likewise, the Italian minister of the interior and the leader of the authoritarian populist Lega Nord, Matteo Salvini, closed Italy's ports and criminalized rescue missions by nongovernmental organizations. When Italian courts ordered the government to allow immediate assistance to people in need in Italian territorial waters, Salvini threatened to curb their independence. He also rejected any legal relocation scheme, even though Italy would be a major beneficiary. Only after his resignation in summer 2019 did the new center-left Italian government start to support the reform proposal of France and Germany for a redistribution mechanism. Hungary, in contrast, filed a court case against the temporary reallocation quota, contesting the EU's authority—and lost. Poland supported the lawsuit; it refuses to be part of any relocation scheme and was convicted by the Court of Justice of the EU, together with Hungary and the Czech Republic, of not receiving refugees relocated to them under the temporary scheme of 2015. The three governments also reject any EU interference in their national border control.

Thus the contestations of the EU's refugee regime support our arguments about the increasing but differentiated contestations of LIO II. Contestations were triggered by the massive influx of refugees in 2015, which made the extension of the EU's liberal authority visible and felt in the member states. As expected by our model, member states pursued different strategies of contestation depending on the political strength of APPs defining their preferences regarding the EU's liberal authority and their influence on EU decision making. The variety of contestations has left the EU's liberal authority paralyzed. Instead of admitting refugees and processing their claims for asylum according to international and EU law, member states have effectively closed their borders. It remains to be seen whether the EU will eventually return to a multilateral regime that at least complies with the Geneva Convention of 1951.

## Conclusion

We have argued that the challenges to the LIO are partly of its own making. The shift from the weakly liberal multilateralism of LIO I to the postnational liberalism of LIO II substantially contributed to its current crisis. At the same time, the greater liberal intrusiveness of LIO II gave rise to not one but many contestations, which we describe as four different types or strategies. Which strategy actors choose depends on their preferences regarding liberal authority and their power to change it.

It is too early to tell how the differentiated wave of contestations will affect the future of the LIO. We argue that its resilience does not hinge on only effectiveness, vested interests, institutional path dependency, and legitimacy.<sup>36</sup> Whether liberal international institutions will persist also depends on their capacity to accommodate the new conjunction of power and articulation of diversity through greater inclusiveness.<sup>37</sup>

We envision three possible scenarios. First, contestations dwindle and leave LIO II more robust. In this scenario, liberal international institutions would meet reformist demands to address grievances against exclusion and inequality by changing the way liberal authority is exercised. This could also bring back the withdrawers. The aggregate welfare gains of LIO II might induce those who chose the pushback strategy to abandon their resistance. Dissidents would become marginalized again. Second, the current tide of contestations sees the reconstitution of national and international politics as a conflict between those who seek greater international openness and cooperation versus those who advocate the return to the nation-state. The new cleavage might unite the reformers and withdrawers behind a (reformed) LIO II that has lost its global aspirations, while the pushbackers and dissidents might form regional counter-orders. Third, the pushbackers succeed in cutting back the liberal intrusiveness of LIO II. A weak(er) variety of LIO I would risk losing political support among the reformers and the withdrawers. The ensuing reconstitution of politics would result in a fundamentally different international order, be it in the form of a reversion to the power politics of the Westphalian order in the nineteenth century or a new Chinese hegemony based on a one-world ideology.

The liberal institutionalist mainstream in IR studies is not well equipped to identify the conditions under which these scenarios are likely to emerge. It suffers from a functionalist and a liberal bias. Liberal multilateralism was an effective response to global governance problems and a solution to collective action problems. The belief in the functional and moral superiority of the LIO has skewed many theoretical analyses of the challenges to the LIO toward continuity and resilience. In particular, the current backlash within liberal democracies that helped build and sustain the LIO was unexpected. To investigate both the causes and the consequences of LIO contestations, we need to grasp nonliberal and non-Western normative principles and

36. Lake, Martin, and Risse 2021.

37. Phillips and Reus-Smit 2019.

belief systems. It is not enough to account for nonliberal deviations in terms of structural causes, such as absence of power and autocratic political systems. We also need to study the normativity underlying the contestations by exploring the narratives and claims of the contestants.<sup>38</sup> For this, it takes a truly global IR approach that transcends the divide between the “liberal” West and the “nonliberal” rest.<sup>39</sup>

Finally, we have treated the different types of contestation as if they were independent of each other. Yet, the diffusion of international norms coincides with a tide of contestations. We require a better understanding of how different contestations are linked and how they interact. This involves thinking more carefully about the linkage between domestic and international politics. To the extent that the current contestations are structured around and will lead to a permanent new cleavage, we need to conceive it as a transnational cleavage that contains a struggle about borders that transcends (national) borders.<sup>40</sup> The contestation of LIO II is part of the transnationally entangled contestation of broader liberal scripts for organizing societies.<sup>41</sup>

## Data Availability Statement

Replication files for this article may be found at <<https://doi.org/10.7910/DVN/WEYEUM>>.

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38. Johnston 2007; Phillips and Reus-Smit 2019.

39. Acharya 2016.

40. De Wilde, Koopmans, and Merkel 2019.

41. Börzel and Zürn 2020.

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