

Differentiation, dominance and democratic congruence: A relational view

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Differentiation, dominance and democratic congruence: A relational view

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Abstract

This EU3D Research Paper tentatively explores ways of applying the differentiation lens from the EU to the global level of inter-state cooperation. Given the wide scope of this research agenda, its only ambition is to offer a few building blocks for further research on the basis of a *relational* view of differentiated cooperation, which starts with characterising the relations between actors rather than the actors themselves. The research paper is divided in four sections. (1) *Whether* differentiation is desirable and for whom if we seek to maximise democratic congruence, including vertical and horizontal non domination. (2) *What* types of differentiated relations constitute the landscape of forms of differentiation, presenting a relational typology consisting of selection, recognition, distinction and discretion. (3) *Why* delves into the many categories of causes or factors explaining why states engage in differentiation at the EU and the global level – reading functional and political drivers as indicators of patterns of relations, distinguishing in particular between states that are un-able, unwilling or unamenable when considering joining integration schemes. And finally the last section (4) *How* offers a few preliminary thoughts on how or under what conditions, DI/DC can pass the democratic congruence test.

Keywords

Autonomy | Democracy | Differentiation | Differentiated Cooperation | Differentiated Integration | Domination

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Introduction

Be it on the part of politicians, scholars, or the general public, to speak of differentiation or “differentiated integration” (DI) oscillates between two kinds of connotations, namely (good) diversity and (bad) fragmentation, with much in between and much contestation around what counts as good and bad. In the EU context, differentiation is supported by an unholy alliance between those who support it in principle as the best way to accommodate the heterogenous attributes of its constituent parts in the long run, and those who tolerate it pragmatically, as a stop-gap measure and a way to further integration not only through small *functional* steps but through small *membership* steps. Seen from a global perspective however, differentiation is a fact of the matter, not a state of the world to be encouraged, tolerated or transcended.

This paper seeks to present some of the building blocks for a generalised view of differentiated integration or cooperation under different degrees of lack of overarching structuring authority. As we will argue, if differentiation in the global realm is here to stay empirically and may only increase in the future, we need to ask under what conditions it may be sustainable, in other words, what may constitute a stable equilibrium for a differentiated arrangement of cooperation. The DI literature pertaining to the EU offers numerous valuable insights for addressing this question in the EU’s internal and external context, including on the relationship between “differentiation” (as a general feature of modern societies), “differentiated integration” and “differentiated cooperation” as deviations from uniform patterns of integration or cooperation. One of the aims of our EU3D’s research programme has been to clarify this distinction as part of an evolving theory of democratic differentiation.¹ To simplify, such a conceptual agenda calls for exploring the space between two simplistic poles which assume away the possibility of democratic differentiation, namely, transforming the transnational level to mimic a full-fledged democracy or merely consolidating democracy within states while minimizing the impact of interdependence between them.

As has been widely noted, interdependence in general and differentiated integration in particular is bound to lead to some degree of democratic incongruence, namely a disjunction between those who take decisions and those affected by them, or between the boundaries of rule-accountability and the boundaries of rule-applicability (Fossum 2015, Heermann and Leuffen 2020, Nguyen, 2020). Under certain conditions, such incongruence becomes domination. Here I argue with others that we should not throw out the differentiation baby with the ‘specter of dominance’ (Eriksen, 2019) bathwater involved with DI. Strategies are available for ensuring greater democratic congruence, which can obtain at the global level and which the EU can pursue globally, lest it be seen as either impotent or hypocritical. After Brexit, whether differentiation and even

¹ As spelled out in Fossum 2019 and Lord 2021, and with further relevant studies available here: [Research - EU3D \(uio.no\)](https://www.uio.no/research/eu3d)

disintegration is democratic must remain an open question (Nicolaidis, 2019, Patberg, 2020).

Between the EU and the global - Inside out and outside-in

That differentiation is here to stay in the EU can be debated, but there is little doubt about it at the global level. For one, we start from different baselines. While in the case of the EU, universal membership is the presumption and actual starting point, this has not been the case globally. To be sure, the post-Second World War period reshaped cooperation on a global scale on the presumption of universal membership — manifested in the institutional establishment of intergovernmental organisations in the political realm (UN system), the economic realm (Bretton Woods, UNCTAD etc), or in the security realm (UNSC).

But de facto differentiation (of status and power) prevailed at the global level for at least three reasons: i) the residual of the tiered international system between the ‘civilised’ world and the rest inherited from the colonial era, progressively mitigated by decolonisation but not entirely (Hansen and Jonsson, 2014); ii) the multiplication of plurilateral agreements/organisations around various categories of convergent interests; iii) and the multiplication of regional organisations (NATO, OEEC, EU, regional development banks; as well as the regional branches of IOs) which embody differentiation in themselves and in their external behaviour, by engaging in differentiated cooperation with partner states. Today we must add to these factors the increasing geopolitical bifurcation of world governance, at least in some fields, a trend which is admittedly in flux.

In other words, the EU is both part of a ‘differentiation set’ at the global level while at the same time exploring modes and patterns of differentiation within itself. With the self-declared aim to secure lasting peace in Europe, its member-states progressively (and for some reluctantly) endorsed a double dynamic of geographical and policy expansion, supported by a logic of ‘functional constitutionalism’ beyond the state (Isiksel, 2016) By the 1990s, the idea and practice of differentiated integration had been enshrined to cope with the ensuing demands for more dynamic cooperation and flexible decision-making under conditions of increased economic and political heterogeneity between EU member states. Henceforth, ‘differentiated integration’ served as the poster child for the paradigmatic shift at the time from ‘ever closer union’ to ‘united in diversity.’ (Moravcsik and Nicolaidis, 1999).

In this most immediate sense, the generic term of differentiation can be defined as any modality of cooperation between states, or substate entities, that allows them to work together in non-homogenous ways. “Differentiated integration” refers to the outcome these modalities may lead to eg, the possibility for EU Member States to hold different rights and obligations regarding specific policy areas as opposed to the idea of “unity” in the sense of a uniform rights-obligation nexus for all EU Member States (Kölliker, 2006, p. 2). While similar ideas were already present in the 1970s (Stubb, 1996, p. 284;

Wallace 1998), DI became political reality and gained discursive traction in the 1990s (Holzinger & Schimmelfennig, 2012, Adler-Nissen, 2011), more specifically with the Maastricht and Amsterdam Treaties. This story is the common narrative of the emergence of DI in the EU (Brunazzo, 2019; Dyson, K. and Sepos, 2010) In a nutshell, “DI mostly arises where some Union laws are not valid in all member state democracies or where they have some validity in some non-member democracies,” leading to differential validity in the Union’s laws and in policies, rights, obligations and institutions created under those laws (Schimmelfennig and Winzen, 2020).

Unsurprisingly, the radical expansion of DI in the EU in the last three decades has been extensively documented and analyzed in an expanding literature with its own terminology and concepts, that serves as the basis for the EU3D programme and findings. However, EU3D was launched on the premise that some dimensions largely overlooked in the common narrative are worth exploring, and in particular the normative drive and implications of differentiation in terms of democracy and domination (see Fossum, 2015, 2019, 2021, Eriksen, 2018). As has been pointed out, the tension between integration and democratic autonomy especially acute when dealing with core state power (Genschel and Jachtenfuchs, 2016). In short, we ask under what conditions is differentiation conducive to democracy and under what conditions is it associated with dominance (Fossum, 2019; Fossum, Quesada, and Zgaga, 2020).

It would be futile to attempt to summarize or account for the vast literature relevant to this topic. We are therefore compelled to draw from it selectively. This paper seeks to contribute to the EU3D agenda first, as suggested above, by taking an outside-in perspective, thus embedding this question in a more general perspective. Indeed, for the most part, the literature refers to either the *internal* dimension of DI or to formal *external* differentiation with regard to relationship between the EU and its associated neighbours, eg in the European Economic Area (EEA) context. But the *global* dimension has received only limited attention, and, perhaps by extension, the *cultural* dimension is largely absent from DI debates. This is surprising as diversity and heterogeneity are all the more relevant in the global ‘anarchic society’ of states, as *per* the English school of international relations.

We are therefore curious to ask what insights (including about the *EU* itself) we might gain in applying the differentiation lens to the global level of inter-state cooperation. This is a vast programme which we do not propose to take on in any systematic way. Instead, our more modest aim is to suggest some of the questions that might be relevant to this agenda. In doing so we will use either the generic term of differentiation as default, or the concept of ‘differentiated cooperation’ (DC) to refer to the global level, although we are well aware that in the EU context the term “differentiated cooperation” tends to be used to refer specifically to the realm of foreign policy. While unlike ‘integration,’ ‘cooperation’ does not necessarily imply the same degree of shared legal or political authority or governance infrastructure, such differences are arguably a matter of degree. In short while differentiation, differentiated integration and

differentiated cooperation can be used to connote different semantic scopes which are important to clarify in other contexts, we will not be wedded to rigid semantic definitions in this research paper.

To be sure, different terminologies often apply to similar phenomena thus obscuring similarities and shared patterns. This is certainly the case for (regional) DI and (global) DC, especially if we are interested in comparing the EU not with other ('less advanced') specific functional international organisations but with the international system as a whole. For instance, Kröger, Lotimer and Bellamy (2021) note that the EU tends to be more favourable to DI than most international organisations and less than individual (federal) states, unsurprisingly given its in-between status. This contrast is of course appropriate when making comparisons between ideal types (IOs, federations, confederations, states). Compared to an IO the EU covers many more functional fields and will thus experience centrifugal forces. On the other hand, a state may cover even more functional field but as an entity, is grounded on the presumption that all are subject to its rules within its jurisdiction where countless bargains are traded-off against one another.

But we note that it is probably analytically more accurate to compare the EU to the international system as a whole, given its integrative function between specific functional policy regimes (Abbott, Genschel, Snidal and Zangl, 2015). We find that DI as a lens has rarely been applied to the global level in this way, but rather to individual sectors (eg Basedow 2018 for the trade regime). Yet, there are clearly echoes between DI scholarship and the vast literature on regime complexity, club goods or multilevel governance within the context of a wider global governance literature (Orsini et al 2013, 2019, Enderlein et al 2011, Marx & Wouters 2018, Jenny, 2016, Schäfer, Wolf, 1995). This literature has covered the many different international 'regimes complexes' that exist for the different policy fields that are transnationalised to some degree from global financial safety nets and development finance, to climate change mitigation and adaptation, global migration, taxation, banking regulation, competition policy or electrotechnical and data standards (Orsini, Morin, and Young, 2013; Alter & Raustiala 2018; Pratt, 2018; Henning and Pratt, T, 2020; Bradford, Chilton, Megaw and Sokol, 2019; Rixen, 2008). And like the DI literature, it probes the depth, functioning, integration dynamics, and modes of interaction between states under conditions of interdependence (Pratt 2018). This research paper is not the place to present even the beginning of a bridging exercise between the two sets of literatures but simply to insist on their mutual relevance and potential for mutual enrichment.

A note of caution is in order. Notwithstanding this impulse to compare the EU and the global realms in terms of differentiated integration/cooperation, we are sensitive to the pitfalls this demarche may entail in its potential implicit assumption that the EU may stand as a model for the global. This is an idea or a bias that has been defended and rebuked in equal measure, as today's EU standards of cooperation may seem to echo the European standards of civilization that define the era of high imperialism (Lenz & Nicolaidis, 2019, Nicolaidis, Fisher-Onar, Viehoff, Vergerio, 2014). But this is of course

not our own assumption. Instead, we suggest that these parallels can be used from two complementary perspectives:

- 1) from an inside-out perspective, to ask which kind of European DI practices might be relevant or even influence global governance, short of active promotion of such practices, and what lessons we can draw *from* the EU.²
- 2) from an outside-in perspective, to ask how the global dimension, and the self-ascribed role of the EU in promoting a certain kind of multilateralism might influence the way in which DI develops in the EU context, and what lessons we can draw *for* the EU.

External DI in the EU holds a special status in this framework, as it lies in between the two perspectives (Lavenex, 2015, Gstöhl, 2015). The ways in which the EU approaches its external agreements with third countries might be interpreted as a probe for what kind of global cooperation it might want to promote. And these lessons may even lead the EU to revise its own internal approach to the extent that this is relevant to the global governance tool-box. More broadly, we seek to argue that the two perspectives are reconcilable and, indeed, might inform each other. In particular, we seek to ask what kinds of questions or analytical grid arise from studying DI in the EU for deploying a DC frame on a global level.

A relational view

The second focus adopted in this paper has to do with our theoretical frame within the field of international relations (IR). To focus the mind and our account, we suggest that a *relational* view of differentiation might open new vista on the topic of differentiation, a view which encourages us to orient (or at least start with) our analysis towards how we perceive, interpret, and engage with ‘relations’ rather than ‘things,’ in the international realm, and therefore with similarities and differences, that which to a great extent IR is about. While discussed here from an IR viewpoint, needless to point out that relationism is the main (implicit or explicit) theoretical *parti pris* of a political theory of domination, and thus appropriately bridges the two conceptual worlds.

There are many extant strategies on hand, with different takes on the kind of methodological nationalism which prevails in mainstream DI literature (Inayatullah and Blaney 2004 , 23; see also Tickner and Wæver 2009 ; Tickner and Blaney 2012 ; Behr 2014; Jackson and Nexon, 2019, Jenson and Mérand, 2010, Mérand, 2008, Nordin et al, 2019)). Some argue that what is at stake is the way different states approach difference both ontologically and epistemologically (Trowsell et al, 2021). Others that we must do so through IR engagement with contemporary cosmology’s focus on the relational nature of the universe, and a much broader with relational social theory and critical theory (Kurki, 2020, Blanco, 2021). In Kurki’s words IR needs to “join the relational revolution afoot in the natural and social sciences starting with an

² For an overview of the EU’s principles and practices, see Fossum (2021).

ontological interrogation about where our assumptions about states, individuals, or the international come from.” (Kurki, 2020; see also Allan, 2018, Wendt, 2015).³

Relationalism can take many forms. But what these contemporary forms all have in common is that they start by taking seriously the presumption that the IR world is composed of ongoing relations, where all international actors are actors-in-relations (Qin, 2016) who base their actions on their assessment of the value of alternative processes and interconnections. Under the logic of relationality (or Chinese *zhongyong* dialectics), social facts that were typically seen through a separation-based lens are now understood as components of relations where we ask which differences are considered more important than others. Relations are not just interactions between ‘things’ like states or corporations, but are constitutive of the system in which they interact.

This is of course not the place directly to critique extant disciplinary worldviews, ontologies, theories, and methods. Our ambition is more modest. In part, the relational lens allows us to shift our concerns progressively from the survival of states to the survival of the planet (Burke et al, 2016), and in the process ask what kind of differentiation is more conducive to the agenda of planetary politics. In doing so, we need to take seriously the idea that practices of ‘international relationality’ constitute an opportunity to “redefine the ‘international’ as a co-dependent space where two or more actors (despite their divergences) can interface into a dialogical community’ (Kavalski, 2018). In this view, relations need to be understood as ‘shooting through’ levels of analysis, local and domestic politics, the inter-national and the global (Kurki, 2020).

In short, what I propose to do instead is to introduce a relational flavour in our conversations about differentiation that may open up new avenues for research. I suggest (rather than demonstrate) that such a *relational* lens will help us probe dominant findings (or sometimes assumptions), on DI. For instance, if analytically, a process of differentiation constitutes a departure from undifferentiated integration (as a fact or as a goal), triggered by increased heterogeneity between actors, is it not the case that this process is determined first and foremost by the kind of prior and on-going relationship these actors were involved in? How resilient was the relationship towards ‘differences’ in underlying interests or in positions regarding differences themselves — with various actors more or less amenable to granting each other discretion on how to apply alternative rules? If differentiated cooperation is actually the default, as it has long been at the global level, ‘de-differentiation’ is simply a way to amend pre-existing

³ The related critique of methodological nationalism is arguably not new in IR theory: writing on changes in the global political economy since 1959, Susan Strange consigned the notion of “actors” and states as the privileged units to the “scrap heap” in 1984 (Strange 1984, 268-269). Critics of the assumption of “anarchy” in IR highlight relationality and its quality: asymmetric (hegemonic), complex interdependences and hierarchies (Onuf & Klink 1989, Milner 1991). Wendt was already working out this problem and anticipating its critique (of excessive, reifying structuralism) in 1987, thinking in terms of a “structuration theory” dialectically synthetic of individualism and structuralism (Wendt 1987, 355-356). Deleuze & Guattari argued that relations of difference or repetition (to a “self” or others) are logically prior to and generative of identity in 1968.

relationships, If differentiation is a means to tailor cooperative boundaries to democratic preferences, we are still left with parallel democratic processes whose relationship needs to be analysed. And transnational democratic participatory processes themselves are constituted by a range of relationships among a range of actors at various levels of aggregation.

*

The research paper is structured as follows. Section 1 (Whether?) discusses the normative benchmark proposed in this research paper – and the normative goods that are at stake when analysing differentiated arrangements – by surveying some of the arguments used to justify or criticize DI in the European context around non-dominance and democratic autonomy as relational concepts. This brief overview leads us to propose a tentative ‘democracy test’ or compass to assess whether differentiated integration and cooperation can help citizens around the world better control the decisions and policies they are subject to. Section 2 (What?) presents a brief historical excursus aimed at unearthing some useful questions by contrasting regional and global integration/cooperation and laying out ‘relational categories’. Section 3 (Why?) asks why do states engage in DI at the EU and the global level – reading functional and political drivers as indicators of patterns of relations. Finally, Section 4 (How?) probes the specific dynamics of differentiated integration/cooperation and the mechanisms used to address democratic congruence. A final section concludes.

1. Whether? Non-dominance and democratic congruence as normative benchmark

A core tenet of the EU3D agenda is to articulate a general concern for the normative horizon of democracy in terms of domination. One powerful set of influences to that effect is republican political philosophy (Pettit, 1997, 2012, 2014, Eriksen, 2019, Fossum 2019, Bellamy 2019). Here what matters domestically is that the free individual be “protected against the domination of others by the un-dominating and un-dominated state” (Pettit 2012). Correspondingly at the international level, we need to ask what corresponds to the un-dominating and un-dominated state, non domination between interconnected peoples or a fair scheme of cooperation (Bellamy and Kröger, 2019; Rensmann, 2020). The emphasis on the nexus between democracy and dominance at the heart of this research programme thus stands as a bridge between political philosophy and international relations. B To be sure, among the many relational views in political philosophy, non-domination is a relatively demanding one since it mandates an equality of status between the parties (Gadecke 2021). What does it mean to make non-domination our core normative benchmark for assessing the worth of differentiation in general and alternative differentiation schemes in particular? Here we start by reviewing criteria for dominance and ‘democratic congruence,’ establish the distinction between vertical and horizontal domination, and argue for the

fundamental indeterminacy of the democratic benchmark given the broad array of lenses that can be employed to assess the quality of democracy beyond the state.

Non-Arbitrariness, Agency and Authorship

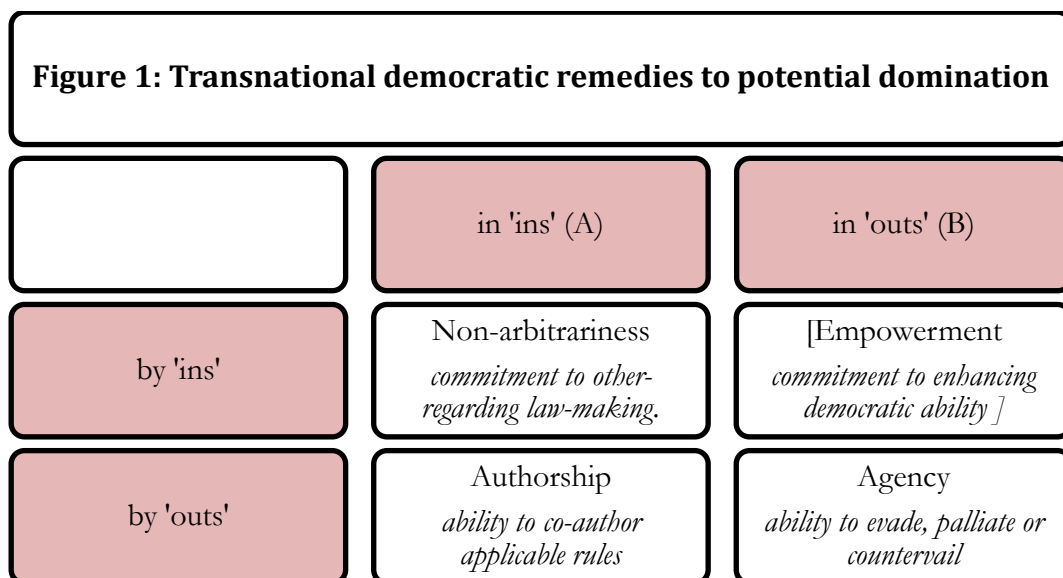
Much has been said about democracy as non-domination following Pettit, and many definitions have been floating around for the purpose of this exercise. Suffice to say for our purposes that different definitions and approaches to dominance at the domestic or local level will in turn create a more or less demanding standard for non-domination in the transnational realm. If dominance refers to *being subjected to somebody else's wielding of arbitrary power*, our concern here is the requirement of *democratic autonomy* for a country or a group of countries, that is the ability of democracies to “meet their own obligations to their own publics and the ability of those publics to use their own democracies to co-author their own laws in matters of great importance to their lives or to accord one another rights and obligations” (Lord 2021).

Put simply, analysts concerned with exploring the relationship between inter-state differentiation and democracy tend to play with variants around the ‘all-affected-principle’, which in its most demanding form would suggest that for non-domination to obtain transnationally everyone affected by a policy should have an (equal say) in shaping it (Pettit 2010, Cheneval 2011, Lord 2021). Less bluntly, they ask to what degree and in which ways, the ‘all-affected-principle’ can be addressed without simply merging the boundaries of decision-making and the boundaries of the impact of these decisions.

Not all forms of power asymmetries and influence of one state or ‘people’ over another (eg not all versions of the ‘all affected principle’) qualify as dominance.

To start with, we need to ask *what is at stake* with each potential instance of domination, whether the subjugation to alien rule is about areas of our individual or collective lives that truly matter, core values, basic needs, and interests, rather than trivial issues. Power inequalities, undue influence, humiliating moves, unchecked externalities from domestic actions abound in the international as well as domestic realm without qualifying as dominance and denial of democratic self-determination *per se*. But this does not mean, however, that analysts can agree on where the lines lie.

Within this scope condition (eg significant stakes), we will not review the vast scholarship devoted to exploring the measures and sites of domination. Here, and to simplify radically we zoom in on different categories of transnational democratic remedies, according to the site where the remedial action is taken and the actor taking in (consider ‘ins’ a group of democracy A and ‘outs’ a group of democracy B).



Nota: The schema presented assumes that the risk of domination stems from (A) externalising to others (B) the costs of providing certain common policies, public good provisions and the likes. But as Lord (2021) points out, merely free riding on such provision when they produce positive externalities also limits the internal autonomy of democracies.

Non-Arbitrariness. Domination can be seen to obtain when one party (A) takes a decision ‘arbitrarily with regards to third parties’ (B), that is a decision that affects the choice set of others without taking into account their opinions, interests and preferences. This is of course par for the course when it comes to democratic decisions taken by one group of states that affects the choices faced by others. Such asymmetry needs not be problematic if some version of “taking into account” the other side obtains. But what if that simply produces harms that are externalised onto others? Here, “arbitrary” refers to lack of internal rules or institutional constraints within the democratic system of A to check the nature of the interference. In this most basic sense, various degrees and methods of ‘other-regardingness’ or ‘internalising externalities’ and other kinds of *checks* internal to the processes followed in the country or group of countries taking the relevant decision (A) can help redress risks of domination. In the same way as we think of a state’s obligations and constraints to reflect citizens’ interests in the domestic realm, we can think of various institutions that may do so across countries –such as for instance fiscal councils whose mandate is to consider other countries’ requirements in their domestic decision making (Merlo and Fasone, 2021).

But such a view of remedies to domination is relatively conservative – it takes unilateral albeit important moves on the part of potential dominant parties to overcome it.

Authorship. Whereas *arbitrariness* refers to the source of potential domination *authorship* refers to what the parties need to do together in order to push-back against *potential* democratic dominance, whereby (B) actively contributes to authoring the rules that will affect it. Reflecting a republican idea of checks and balances applied to

interstate relations, the ultimate fount of democracy and non-domination has to do with authorisation and authorship, including rights of information, participation, and co-decision, as well as radical contestation that are part and parcel of any democratic system. Here we ask what minimal version of such rights need to obtain across jurisdictions for an act to count as non-dominating in this second more demanding variant. Authorship amounts to giving the third party (B), the democratic peoples of another polity, the opportunity to co-write the rules that will ultimately affect them, as we can see with the numerous channels of participation offered to third parties in the EU context.

Agency. A third and next step in corralling democratic mechanisms to address risks of potential domination is to move beyond the actions by and in the potentially dominating party (A) and turn to the *agency* of the other side (B), eg the one presumed to be dominated. What is it that a party can do to overcome risks of domination, or at least do to manage the ways they are affected by the actions of others? *Agency* refers to B's capacity to push back – evade, palliate, or countervail. We ask whether the group or country in question is able to significantly mitigate, minimise or altogether evade the impact of decisions taken outside its control. This can happen either by refusing to enter into a given arrangement or through the right and capacity to exit. Here, only if the costs of failing to enter or exit are prohibitive can we speak of domination. Short of these extreme instruments, the question remains whether measures are available under one's own control effectively to manage one's vulnerability and alignment with rules developed elsewhere. This third variant is about mitigation and choice, whether a party retains the choice to be different or the same, or anything in between, and about its capacity to mitigate the impact of other parties' choices.

Empowerment. Finally, and perhaps most theoretically, a last category of transnational pushbacks against potential cross-border domination can be related to Party A actively supporting Party B in dealing with the risks of its own actual or potential domination. Thus, for instance, when the EU puts its agricultural policy under its own shared authority (differentiated integration from a global viewpoint) it produces negative externalities (linked to subsidies) on less developed countries, which it tries in turn to compensate for through aid and other kinds of support, which matter in terms of democratic autonomy to the extent that they are handled democratically in (B). At its most effective, this category can be a form of empowerment (This category is added here for the sake of completeness but will not be referred to further in this research paper).

There are many ways to think about the democratic imperative under the dominance frame. In an important recent contribution, Bellamy (2019) discusses his idea of a republican association of sovereign states, which states accede to on a voluntary basis and which ensures freedom as non-domination insofar as two conditions are met: “first, domestic democratic institutions must ensure political authority within a state is under their equal influence and control (a radical interpretation of *agency*); and second, the state must be part of an association of democratic states in which the rules governing

their mutual relations are under the equal influence and control of the elected representatives of those states (a narrow version of the *authorship* criterion insofar as authorship should also include other actors than state representatives.”

Here we use *democratic congruence* as the referent for assessing the “democratic quality” of a given interaction, or more specifically the democratic anchoring of interaction between states. Taken together, non-arbitrariness, agency, authorship and compensation define the contours of democratic processes across borders to the extent that with each, we ultimately ask about the ways in which citizens can hold rule-makers to account within and across countries (accountability of whom, exercised by whom, over what issues, and at what level) and thus serve democratic values (eg equality, fairness, impartiality). Democratic congruence very simply measures the gap between the impact that rules may have on a person, a group or a country and his/her influence over such rules through institutionalised systems related to non-arbitrariness, agency and authorship as outlined above. In theory, democratic institutions and procedures have developed countless ways for maximising such democratic congruence. But of course “actual existing democracies”, especially as they interact with each other always fall short of this ideal.

It is inevitable that democratic congruence be affected by a country’s dealing with the outside world. Each country is subject to a vast array of rules and an equally varied degree of influence depending on the issues or regimes at stake. Indeed, the idea of complex interdependence introduced four decades ago by Keohane and Nye starts from noting that two states become more interdependent when events that take place within one state have an impact upon events taking place in another state, where vulnerability focuses on the costs of breaking relations and sensitivity on the costs of maintaining them (Keohane and Nye, 1989:12). Here, we ask not about such impacts in general but about impacts on democracy and dominance specifically where the source of events is not an individual state but a group of states cooperating around one or several issue areas.

Under a democratic frame, we are concerned here with democratic interdependence which can be defined as *the mutual dependence between the democratic quality of political systems* (Cheneval and Schimmelfennig 2013; Nicolaidis, 2013, Ronzoni 2017, Mueller, 2011). The concept relates to but is not synonymous with Kantian peace, or the pacific benefits of democracy. Nor does it simply amount to adding democracy to patterns of economic interdependence. Instead, it signals two shifts in emphasis from the notion of ‘complex interdependence’:

- 1) From economic to political symbiosis, not as the political consequences of economic interdependence but as the product of the direct power relations between political systems, which in this case are managed through (imperfect) democratic processes - as ‘peoples checking peoples.’
- 2) From asking to what extent interdependence is democratically managed in terms of equal sovereignty *between* states (vetos, seats at the table), to asking how the democratic character *of* individual states and the democratic

autonomy of peoples is affected by their interactions with other states and peoples (or groups of states in the context of differentiation). We can think of either mutual democratic empowerment or mutual democratic suppression.

Ideally, when assessing patterns of democratic interdependence, we need to take into account *the combination of impact* between all the external rules a country is subject to, and *the combination of influence across rule systems* in order to assess a country's relative position (and vulnerability to democratic domination) in the system. It may be that impact in one area is *compensated for* in another area. Moreover, there may be *continuous scales* of impact vs influence and there may be *threshold effects* such as the binary impact of membership vs non-membership in a given club which in turn produces negative or positive externalities. This is why assessing democratic congruence on an issue-by-issue basis without taking into account the totality of a state's relational map will always constitute a gross over-simplification.

Horizontal vs vertical domination

To simplify further, the problem of domination applied to the international realm lies in the clash between two imperatives. On the one hand, "the subjection to supranational rules and institutions is necessary to secure the joint and reciprocal non-domination of states" (Laborde and Ronzoni 2016: 281), since otherwise, weaker states will always be subjected to stronger states and all states would be subject to the whims of other states. This is the risk of *horizontal* domination.

At the same time, the drive to address such a concern for horizontal domination between states can lead to the emergence and hardening of *vertical* domination above the state, as the concentration of power at higher levels presents its own democratic problems, when it is not matched by the appropriate channels of participation and contestation (Zürn 2004). And in both dimensions, the ultimate benchmark has to do with how such domination patterns *between* states affects domination *within* states, in other words the capacity of citizens to influence their own affairs.

To be sure, from this perspective, domination of both kinds is rife in the EU, prior to any consideration of the differentiation agenda. The EU may be at its core an anti-hegemonic institution shaped in part to counter-balance the power of hegemony in its midst to subjugate smaller states (this in contrast to external hegemony which arguably was not addressed by design in the foundational years). But it has been drifting away from this agenda for a long time (Magnette and Nicolaidis, 2003). Big states have reasserted their power in the EU through the preponderance of intergovernmental institutions and decisions over supranational ones, which serves to magnify *power asymmetries* and thus horizontal domination between states, as was the case especially after the sovereign debt crisis, eg the growing role of the EuCo, Council politicization, intergovernmental agreements on fiscal supervision, etc (see among others, Crum, 2016; Fabbrini, 2019; Crum and Merlo, 2020; Curtin, 2014, and the executive dominance literature more generally). Conversely, it can be seen when supranational

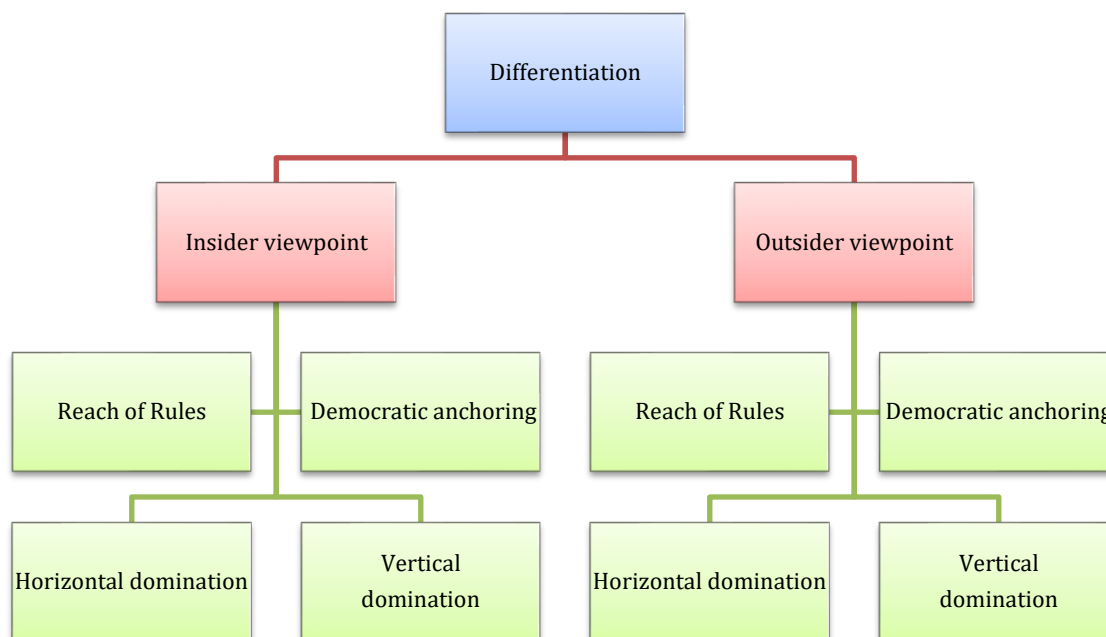
institutions overstep their own authority to impose solutions on individual member states, although in this case horizontal domination can become both embedded in and constrained by vertical domination.

As the depth and complexity of rule-making grows, so does the imperative of its democratic anchoring to compensate for risks of domination both horizontally between jurisdictions and vertically between the supranational and state level, and their citizens. This is made more difficult by the reach of rule-making in global governance and the multiplicity of its guises, as covered by the vast scholarship on instruments in international law, “soft” vs ‘hard” regulations, as well as the apolitical nature of technical standards.

In the end, as mentioned above, we must also consider the meaning of domination, not only in terms of an inter- or supra-state structure but *all the way down*, as addressing the extent to which the democratic status of citizens as equal sovereigns within their polity is worsened or enhanced by the (non)participation of their states in a cooperative endeavour. While efforts have been made to strengthen counter-balancing processes (national parliaments “yellow cards”, ECI), these are still wanting in the EU, and all the more beyond. Territorial and ideological cleavages superimposed on formal governance constellations, seem to render the idea of achieving a normatively ideal form of democratic justice illusory. And the more patterns of domination expand transnationally, the harder it becomes to extend and deepen democratic countervailing practices.

As summarised in figure 2, a relational approach can be based on the two paradigmatic roles in the relationships which orient the universe of differentiation, namely insiders and outsiders, and analyse the different ways in which balancing between horizontal and vertical domination obtains for insiders vs outsiders in schemes of differentiation. The more insiders are able to define the rules of the game or the boundaries of differentiated groupings, the more likely they are to exercise horizontal domination. But to the extent that outsiders are excluded or opt out from cooperation schemes, they are less likely to be the object of vertical domination. This rough diagnosis is mitigated both by the asymmetries of power between peoples and by the ways in which the three criteria of (non)arbitrariness, agency and authorship play out in alternative scenarios. Democratic incongruence results from the balance between horizontal or vertical domination which in turns expresses itself through both the reach of the rules in question and the quality of democratic processes. We will not systematically discuss these different configurations. Suffice to say that democratic incongruence is more likely to stem from vertical domination for insiders and horizontal domination for outsiders.

Figure 2: Differentiation, Domination and Democratic Congruence



Externalities and democratic congruence

The international realm is replete with coordination problems characterised by negative or positive externalities, whereby the former leads to the over-production of undesirable actions (from a global utility viewpoint), and the latter to the under-production of desirable actions. In such a world, issues of self interest in the face of negative and positive externalities blend into our moral commitment to other human beings and other communities around us. The normative challenge for the study of differentiation is in part to explore this empirical/normative interface.

We draw from the extant literature on differentiation the need to combine insights from various disciplines to address these issues. The public goods literature in particular has served as the basis for classifying types and degrees of functional incentives to participate or not in various cooperation schemes according to different types of externalities and modes of internalising them. But it has been criticised for underplaying the democratic concern, underpinned as it is by a discourse of top-down “power-over” dominance that replicates statocentric thinking ablated of the legitimation function of democracy almost entirely (Brando et 2019). Nevertheless, it can be argued that, critically employed, the tools of public goods theory combined with a differentiation lens can help us ask the right questions about the optimal contours of democratic congruence given the existence of different kinds of spillovers and externalities.

To be sure, the mere existence of externalities does not in itself generate democratic incongruence. As Claassen (2016) rightly argues, externalities simply point to a

boundary crossing, not to how boundaries are drawn in the first place or ought to be managed. This in turn depends on the relationship in which this generation of externalities is embedded. Will one side be affected merely by the fact of the actions producing the externalities, or will this impact be mediated by the kind of formal agreement struck between the jurisdictions involved? For instance, the fact that regulatory differences between jurisdictions create externalities by requiring adaptation by one side is the product of an array of choices based on cost-benefit calculations by regulatory authorities, trading companies and consumers. Obviously, it matters if the externality produced by a regulation or a policy is itself the product of prior agreements or simply a product of interdependence (Nicolaidis and Shaffer, 2005). Moreover, democratic incongruence does not merely stem from being at the originating end or the receiving end of externalities. Members can have highly unequal stakes in collective decisions, whereby the provision of that good or the management of a common resource will fit their preferences differently.

To simplify then, the connection between “externalities management” and democracy oscillates between two ends of a spectrum, substantive on one hand, institutional and procedural on the other hand. Substantively, one can embrace a specific normative theory to interpret the impact of externalities on different constituencies and stakeholders and ask how their interests or preferences are reflected in alternative cooperative schemes, and how or to what extent different actors should be allowed or mandated to ‘internalise externalities’, either to take into account their production of ‘bads’ or to provide incentives for the production of ‘goods’. So, for instance, one could embrace a utilitarian approach and decide that the verdict on internalisation will be decided by understanding which option leads to the highest utility. Here, the norms of (*non*)*arbitrariness* and *agency* discussed above are critical.

The other option is to adopt an institutional or procedural approach, which determines how concerns over justice, fairness, distribution, and the likes ought to be handled democratically. This can relate to the normative categories of (*non*) *arbitrariness* and *agency* but will relate above all to various forms of democratic *authorship*, in the form for instance of a common authority which decides how to assign duties and rights. Not only should such an authority be ideally controlled equally by the parties involved but such control itself requires democratic anchoring. In this case political integration need not be highly institutionalised - a simple conflict-of-rule regime can be used to decide about schemes of internalisation.

Nevertheless, both of these options overlook a critical consideration, namely what is the room for solidarity in such a configuration. And they lead to questions about the kinds of solidarity that need to obtain between the parties involved for differentiation to be democratically anchored and thus sustainable. Indeed, differentiation at the global level seems to lead to less rather than more solidarity between countries or jurisdictions. By definition, differentiated cooperation entails making solidarity optional. Political theorists like Rawls have long worried that optionality would come at a high moral cost and further erode bonds of the bonds of national communities that

make it easier to sustain redistributive policies. At the supranational level, optionality not only comes with the risk of free riding as we will discuss further below, but also with the risk of undermining the minimal sense of cross-border solidarity required for the functioning of democratic interdependence. And yet, the very meaning of sovereignty and self-determination in the international arena preclude any recourse to mandatory redistributive policies.

Arguably this assessment rests on the nature of the choice at hand. Differentiation can be associated with risks of undemocratic or illegitimate *inclusion* or *exclusion*. After all, since membership in our (nation)state communities is forced, the only way to redeem our participation in such non-voluntary schemes is to organise the distribution of advantages from social cooperation in an egalitarian way (Nicolaidis and Viehoff, 2015). But if we freely choose to join a cooperative arrangement, such a logic does not apply. In this schema, the EU is seen as a product of state consent – and thus in the realm of voluntary solidarity between states and therefore between people – rather than obligatory justice (ibid). Yet, if we understand such choice as constrained by various structural factors (can countries on the European continent easily choose to stay out of the EU?), especially the choice of participating in some policies but not others, then it may be argued that states should either benefit from the obligation to restore meaningful choice or from meaningful policies of solidarity on the part of other states with which they are structurally bound. Risks of illegitimate *exclusion* through ‘unchosen versions’ of differentiated integration constitute the flip side of this argument. Whether at the European or international level, new alliances of solidarity among participating states can lead to socio-cultural reaffirmation of hegemonic structures.

Three alternative standards of judgement

Against this backdrop, the normative value of differentiation can be assessed in terms of its transformative quality: how or to what extent differentiation changes the democratic quality of relationships between states (or other entities) in the international system? Does it mitigate or magnify pre-existing patterns and risks of transnational domination (which in turn affect the democratic congruence to which citizens are subject)?

We end this normative overview with the thought that such an assessment depends to a great extent on one’s theoretical premise about the character of cooperation itself, in other words the overall set of material and ideational assumptions within which differentiation is embedded. As Fossum states: “all modern political systems are differentiated; hence the issue is not whether differentiation is conducive to democracy but rather what forms of differentiation are” (2021). Fossum in turn argues that the answer to this question depends on one’s theoretical benchmark as to the nature of the EU. Building on his approach, I ask what three alternative frameworks for relationships between states (largely based on the EU) tell us about the normative benchmark for differentiation.

A first view connects European federalists with cosmopolitan federalists who worry about global democracy (Archbulgi, Held) who tend to believe that our normative horizon at the international level should resemble to the greatest extent possible the democratic fixtures of the nation-state (what I have termed the ‘mimetic approach’ to integration, although concepts like Vivien Schmidt’s a regional state stop short of supranational statism). They believe that the EU is and/or ought to be a state in the making to create and maintain a unitary legal order within continental boundaries, with rules applying as uniformly as possible across issue areas and territorial reach. In this view, risks of vertical domination are underplayed as *par for the course* in a state like structure, with horizontal domination assumed away through the balancing features of the federal construct (would we say that Hessen dominates Baden-Württemberg?!).

Differentiated integration in this mimetic view can be problematic, given that it does not pay attention to the mimetic input factors from the EU’s member states to the EU-level and hence is insensitive to built-in biases in the EU construct (Fossum 2019). It detracts from the creation of a pan-continental democratic EU, and, combined with functional integration, makes the European polity more institutionally and legally complex, with its citizens subject to different bundles of rights and obligations depending on their nationality or place of residence (Schimmelfennig, 2019, Schimmelfennig and Winzen, 2014, 2020). A higher degree of differentiation both dampens feelings of solidarity and makes democratic accountability harder (Warleigh 2002a: 70). By offering an option of partial exit and thus dampening the incentive for voice, differentiation inhibits the emergence of a pan-European public space, and down the road the sense of belonging to a single European people. As a result, political cleavages which in a democracy are represented and bargained over under a single roof, end up being dealt with through fragmenting the polity (Bartolini 2005, Schimmelfennig and Winzen, 2020). And externalities between states which are inherent to interdependence (whether they are included or excluded in differentiation schemes) instead of being compensated by inclusive participatory schemes become ever more the conduits of domination, especially in the case of external differentiation (Eriksen, 2018, Fossum 2015, 2019, 2020).

At the other end of the spectrum, those who see the EU as retaining the basic structure of an international society of sovereign states and understand it as an advanced regional organisation (albeit advanced) - in the sense of a territorially bounded version of global cooperation - are less worried about risks of vertical domination: if regional cooperation remains subject to state control anyway, the gap between structural externalities generated by state policies and those generated by inter-state cooperative policies is less pronounced. At the same time, risks of horizontal domination loom large to the extent that powerful states are less constrained by common rules and structures than in a federation. In this context, differentiation risks further lessening constraints on regional hegemon(s) or dominant states in the EU. In this case, we are likely to see risks of asymmetric democratic processes and anchoring detrimental to the overall democratic quality of integration under differentiation.

Third and this is our view, a demoicratic view tends to embrace differentiation as a desirable building block on grounds of non-domination (both vertical and horizontal), but subject to certain requirements. Accordingly, it matters most to ask how international interconnectedness between democratic polities affects their internal democratic autonomy and the extent to which horizontal links between peoples may compensate for potential inter-state domination. This means in particular that whether at the EU or global level, differentiation follows from the prerequisite that fundamental issues of entry, exit and constitutional matters must be subject to national vetoes and thus respect the popular sovereignty or the right of peoples to choose the level of integration that matches their aggregate preferences according to democratic procedures (Leruth and Kord [2015](#), [Lord 2021](#); Schimmelfennig and Winzen, 2020).

Different national cultures or ideological preferences may lead to different takes on self-determination allowing for greater democratic congruence between national preferences and degrees or modes of integration. In this sense, vertical domination is mitigated by the ability of states to choose degrees of shared and pooled sovereignty over time. Bellamy and Kröger (2017, 2021) suggest that certain forms of social, economic and cultural heterogeneity between countries are normatively valuable and should be preserved by affording different rights and duties to member states (internal DI). The argument starts from the idea that a “fair, impartial and equitable democratic system proves compatible with some forms of heterogeneity but not with others” (630), which means that if countries with very different preferences form associations and pool elements of political authority together, these systems of governance will not be seen as fulfilling important democratic values. Presumably then, countries may be justified in demoicratic terms from removing themselves from integrated policy area if this protects them from being part of an association that does not display the democratic values of fairness, impartiality, and equity. Turning the argument around, internal DI is normatively justified if it is motivated by the pursuit of better fulfilling of democratic values. Structurally, differentiated integration allow for a polycentric union with different groups of countries cooperating around different issues (Cheneval 2019) as well as new forms of networked governance (Warleigh, 2002b). Such flexibility is arguably part and parcel of the EU’s constitutional order (Curtin, 1993; De Búrca and Scott, 2000; De Witte, 2019; Gibbs, 2017; Weiler 2011; MacCormick, 1999). In short, differentiated integration is the most straightforward applications of the precept that ‘one size does not fit all’ (Demertzis, Pisani-Ferry, Sapir, Wieser, and Wolff, 2018), including in foreign policy (Macaj and Nicolaidis, 2014; Maurer and Wright, 2021).

On the other hand, and again from a demoicratic perspective, the risk of horizontal domination associated with the exclusionary character of differentiation remains. Indeed, a fair and functioning demoicracy which is predicated on a certain kind of (other-regarding and non-arbitrary) behaviour between states when they take part jointly in a cooperation schemes cannot abstract from it when DI is concerned. As with the first model, DI is more sustainable to the extent that a common organizational core for all member states manages the contours of differentiated integration as it related to overall mutual obligations.

*

To conclude this first normative part, exploring the echoes between European and global differentiation requires a normative compass for transnational governance to supplement the insights from extant theories such as the theory of public goods with the concerns related to democracy, domination, and solidarity. Bringing together the various points made here, we tentatively suggest that differentiation is normatively and democratically desirable to the extent that externalities it creates:

- 1) do not threaten the equal opportunity of citizens, both outside and inside of the integrated policy area, democratically to influence the operation of their respective states (*democratic anchoring*)
- 2) do not entrench positions of advantage or disadvantage that permanently threaten the status of countries in the global stage (*horizontal domination*)
- 3) do not lead to the erosion of the kind of shared principles and solidarity needed to administer the management of externalities in a fair way (*vertical domination*)

2. What? Differentiation and democracy in a comparative perspective

While Schimmelfennig has famously and incisively characterised the EU as a system of differentiated integration, in what sense can we speak of a global system of differentiated cooperation? We are not suggesting here a systematic comparison but rather some basic comparable traits. Having discussed some of the basic normative intuitions that underpin the extant analysis of differentiation and democracy, we turn to the empirical landscape to which such principles may apply. Many authors have proposed differentiation typologies each with its own rationale, depending on said authors' analytical purpose or normative bias. Here, we propose what could be termed a relational typology, i.e. a typology based on the nature of the relationships they reflect - each more or less prone to democratic incongruence.

Differentiation *in abstracto*: A rough relational typology

Countless variables are relevant to the mapping of the various orders of international differentiation, including for instance, their character as temporary or permanent, inclusive or exclusive, constitutional or policy, legal or intergovernmental, and so on. My starting point here is to hypothesize a *differentiation paradox*. On the one hand, overtime both the practice and the analysis of differentiation has become increasingly ... differentiated. Stubb for instance offered the first comprehensive

tripartite distinction, according to time (multi-speed EU), space (variable geometry EU) and matter (ie policy area, *à la carte* EU), although he recognised then already overlaps and complexities as a “matter [that can be] a decisive factor in variable geometry and *à la carte*.” (Stubb 1996). Twenty-five years later, patterns and processes of differentiation have exploded and moved on from more purely structural and binary options (ins/outs). To be sure, it may be that analysts simply recognise and classify practices that were there all along but that they now observe through the recognition lens. But it is fair to say that material developments in the real world have also obtained. And here lies the paradox: while differentiation has become more multi-dimensional, eg occurring in a greater variety of ways, it has also become more coherent or at least more visibly so. This does not mean that the advocates who argue for all-out *normalisation* of differentiation practices in the EU can easily ground their arguments in developments on the ground. Nor that there are not more fundamental fragmentation in the world system. Only that we can indeed increasingly speak of a ‘multilevel and polycentric system of differentiation’.

This trend has been reflected at the EU level in particular by Schimmelfennig et al, starting with the distinction between vertical and horizontal differentiation:

Vertical differentiation means that policy areas have been integrated at different speeds and reached different levels of centralisation over time. Horizontal differentiation relates to the territorial dimension and refers to the fact that many integrated policies are neither uniformly nor exclusively valid in the EU’s member states. Whereas many member states do not participate in all EU policies (internal horizontal differentiation), some non-members participate in selected EU policies (external horizontal differentiation). (Schimmelfennig et al 2015, 765)

Once this basic layout is available, it becomes easier to map out occurrences of differentiation across regional and global levels (Leuffen et al, 2013). In this research paper, we take territorial or horizontal differentiation as our analytical baseline, granting that each differentiated scheme of cooperation emerges from differences in preferences about vertical integration.

On this basis, we can single out two dimensions that can be considered as ontologically significant in a relational perspective, which we relate to these extant analytical schemes:

- 1) A first dimension central to the relational view has to do with the structural rules of the game, how and by whom are modes of differentiation defined, in terms of boundaries and conditions. These rules tend to reflect relative power between parties and can be explicitly spelled out by existing institutional constraints or implicitly governing the relationship through mutual expectations. Most simply, patterns of differentiated cooperation can be *exogenous* to the relationship itself eg not defined *by* the relationship, or *endogenous*. In the first case, the criteria for *membership* in a group are defined by that group itself (as a binary membership/non membership) and are *not* defined by the two parties in presence eg the group and those outside the group. Rules of interaction are not

defined *by* the relationship. In the second case, criteria are endogenous to the relationship, whereby differentiation emerges from rules of the game about various *categories* of members that have been designed in common (or at least adhered to ex-post facto).. Differentiated legal or political solutions may be Treaty-based or laid out in secondary law (in EU parlance). This dimension is often akin to the exclusive/inclusive distinction, but this is not necessarily the case. Exogenous membership-based differentiation can involve highly inclusive criteria, and endogenous category-based differentiation can ultimately define exclusionary relationships. We can also think of the first type as structural (eg you are member or not of NATO, Mercosur or the EU) and the second as more contingent (you fall in the category of least developed country one year but maybe not the next), but here again, given fluid membership rules and rigid category differentiations, these labels might be misleading.

- 2) The second dimension, also of fundamental importance from a relational perspective, has to do with the symmetric or asymmetric nature of the relationship, where we ask whether all actors in a differentiated system are subject to the same basic rules of differentiation and as a result, at least in theory, are in a relation of mutuality. Typically, the core defining relational characteristic of differentiation is that symmetric relations are not binary (eg member or not) but can be one of degrees of or conditions for recognition of respective rules or having to do with the degree of discretion viz shared norms.

As per Figure 3, we can identify four ideal-type relationships from these dimensions giving rise to different issues of domination and democracy. At a most level, there is a gradation in terms of the *potential* for greater democratic incongruence involved with these four kinds of differentiated relationships.

Figure 3: A relational typology of differentiated integration/cooperation

| <i>Mode of Differentiation</i> | | |
|--------------------------------|-------------------------------|--------------------------------|
| | <i>Exogenous (Membership)</i> | <i>Endogenous (Categories)</i> |
| <i>Asymmetric</i> | Selection | Distinction |
| <i>Symmetric</i> | Recognition | Discretion |

Selection. This first type of relationship revolves around ‘selection’, defining an asymmetric space where some are ‘members’ and others are not, where some are ‘gatekeepers’ and others are not. In other words, selection always involves an element of power asymmetry. Selection logics include all international regimes or groupings which involve ‘club-like’ structures - ‘organisations’, ‘agencies’, ‘groupings’- whereby criteria or standards for membership are defined by the club members themselves on an asymmetric basis under the age-old logic of gatekeeping. The emergent 18-19th century international ‘tiered-system’ is the purest instance of this selective logic whereby Europeans concocted ‘standards of civilisation’ in order to determine

eligibility in new international bodies such as health or communications (Barrett, 2003). Such clubs can be more or less 'open' and 'candidates' can be selected according to more or less formalised and visible criteria. This selective logic can also be the result of self-selection (akin to able vs willing), and thus of countries opting out as well as opting-in. Contemporary instances of exogenous membership differentiation at the global level fall in three categories: functional organisations with membership linked to *a priori* conditions such as level of development or representative status (OECD, G7, G20); plurilateral agreements with membership linked to ability and willingness to undertake obligations (eg services agreement under WTO); and of course regional agreements like the EU, Mercosur or ASEAN, mega-regional agreements, quasi-territorial defense organisation (CETO, NATO), Nuclear Weapon Free Zones and bilateral agreements. The EU itself and its structure of enlargement operates under a selection logic *par excellence*. Within the EU, groupings from Schengen to EMU constitute a mix between selection and self-selection, as does the idea of a core Europe. The Asia Infrastructure Development Bank is an example of a systemic opt-out led by China inverting the selection logic. It is important to point out however that such 'competing clubs' do not easily escape the selection logic. Once clubs are established they can easily become monopolies or at least oligopolies with an element of arbitrariness: if latecomers enter the club, they may have to follow rules made by early movers, while if they stay out, they may have limited means of forming alternative clubs of their own (Lord 2021).

Recognition. Second, it can be the case that differentiation in a system reflects symmetric relationships to the extent that all entities 'have the same shot at it.' Most fundamentally, states may be subject to universal rules of recognition which may lead to being recognised, misrecognised, or denied recognition through a quasi-universal process (although we would need to ask who set the term of recognition in the first place). At a most basic level, the prerequisite for the equality of states in international law is their recognition as states by all other states, leading to membership of the UN. Beyond existential recognition, recognition can be about rules and norms and their management by common conflict of law procedures. It can be formal or implicit, related to goods, services, culture, or political regimes. Such relationships can be labelled as such (mutual recognition agreements) or implicitly based on recognition as 'compatibility of system'. Kant's vision of an international society of democratic republics conceives of symmetric recognition (whereas the current talk of alliances of democracies veer on selection, see below). The contemporary geopolitical differentiation between global orders with decreasing degrees of common rules also pertains to this logic.

Distinction. Third, parties can enter differentiated relations by virtue of an overarching and shared set of rules which they have defined together and through which they organise among themselves the terms of their differentiated cooperation. Some states can be exempt from certain shared obligations (or be subject to greater interference) by virtue of their intrinsic characteristics or extrinsic position. Many international regimes distinguish between different categories of members with

different rights and obligations. Such distinctions can be more or less entrenched or permanent, from formal tiered membership (nuclear vs non-nuclear weapon states in nuclear regimes; ‘developing country status’ in WTO Special and Differentiated treatment in WTO; annex 1 countries in the Kyoto protocol) to contingent differentiation (creditor vs debtor countries in the IMF). There are also gradations in the degree of discrimination involved in the way actors are distinguished from one another. Arguably the climate change regime discriminates between producers vs consumers of CO₂. Internally, the EU operates under various distinction-based relations, including the compensatory logic involved with structural and regional funds, which relies on an (explicit) distinction between rich and poor but also an (implicit) between (more or less) beneficiaries from the single market. Here the lack of distinction in the single market (contrary to SDT in WTO) is compensated by aid differentiation between donor and recipient member-states or regions (a kind of contextual distinction which can change with changing circumstances). Externally, the EU operates a wide array of distinction-based relations which in turn determine differentiated rights of access and obligations of convergence (eg least developed countries for EBAs, neighbourhood countries, partnerships, EEA countries and so on).

Discretion. Finally, parties may cooperate under shared systems of rules which allow for variation in interpretation and above all implementation equally and symmetrically available to all members. Such allowance can be embedded in the rules themselves in the form of legally spelled out margins of interpretation or even bottom-up processes which apply equally to all and by which countries decide how and to what extent common rules are meant to be implemented. They can come in the form of allowance for safeguards, reservations or optouts, or they can be more implicit, through various understandings regarding *differentiated implementation* (a rising interest in the EU context, especially post-Brexit). To a great extent, the rise in soft law in the EU and globally and associated forms of informal governance opens up a vast space for differentiation understood as discretion. This category also points to forms of differentiation from below (Tortola, P. D. and Couperus, S. (2020)). But it is important to state here however that to count as differentiation in our relational approach, discretion cannot simply consist in ad hoc and unilateral decisions. This does not mean that differentiation needs occur *under the shadow of the law*, nor comply w agreed and formal roles (distinction), but it needs to reflect at least relational normative understandings which can find various expressions. The Paris agreement on climate change (COP25) put in place a system of formalised discretion where countries are invited to submit their own national plans while the common framework monitors their commitment – a dynamic that is supposed to ratchet up commitments over time (although this depends on the interpretation of art 6 and 13). To be sure, the main question with discretion applied to rule following within a group, is about the fine line between discretion and arbitrariness, which has to do again with the kind of relationship within which allowance for discretion is embedded.

To be sure, the **boundaries** between these types of relationship are often blurred, and determined in part by power relations. State recognition has historically been an

asymmetric relational type, a form of selection, bound up with the question of who decides (that you are a democracy for instance). More specifically, the exercise by the EU or the US of unilateral recognition of equivalence (finance, professional services) is clearly a form of differentiated asymmetric relationship (selection) but if such recognition is symmetrically assessed and granted it falls into the category of “mutual” and thus symmetric recognition. On another front, some international organisations which are universal can find their membership caucusing around regional groupings (selection) as a proxy for lack of enough discretion in implementing policies. Or: How should we interpret that the European Central Bank has an inner board and an outer board? Is this a structural instance of *selection distinction*?

Moreover, different types of relationships can be **embedded** within each other as we know from ‘regime complexes.’ The WTO allows its own members to enter discriminatory agreements under certain condition (GATT-art 24) so that regional trade groupings or bilateral FTAs can be considered as instances of distinction/discrimination within the system as a whole, while thereafter they function under the logic of selection. The governance of climate change evolved from a logic of distinction (Annex 1 countries) to a logic of discretion (country plans) while climate clubs and multilateral agreements tell us that the selection logic is on the rise in this field. There are arguments about whether there can be peaceful coexistence between these different logics (would selection crowd out discretion?). And so on.

For our purposes here, however, the core question has to do with how each of these types of relationships affects **democratic congruence**. This in turn depends both on whether they are more or less prone to vertical or horizontal domination, not just in terms of inter-governmental relations but domination all the way down, as it affects democratic equality *all the way down*. So selection clearly creates relations of domination by the ins onto the outs, but how detrimental to democratic congruence depends on the types of externalities at stake and the way in which arrangements internalise the requisites of non-arbitrariness, agency and authorship discussed above. Similarly, distinction can reflect and magnify power relations; but it can also constitute a means to compensate for undesirable democracy loss (allowing for greater agency for a category of actors). Mutual recognition is a way to enter a relationship of non-dominance, where conflict is mediated by the grounds for recognition, and shared rules about conflicts of law – but it can also in its own way create democracy loss, by (over) exposing citizens of one country to the rules and norms of another (Shaffer and Nicolaidis, 2005). *Prima facie* discretion logics are the least inimical to democratic incongruence, although as with all other cases, much depends on the quality of *national level* democratic decision making about supranational rule making and implementation.

Let us turn to a discussion of some differentiation instances against the backdrop of this typology.

Global differentiated economic cooperation: functionalism meets politics

The idea and practice of differentiated cooperation was not born in the EU. Indeed, the working peace system conceived by David Mitrany and his liberal friends in the interwar period could be read as a system of ‘global differentiated cooperation’, built around international agencies set up by those among states who could agree on managing shared problems together (and of course with much earlier predecessors). If “peace is more than the absence of violence,” he and his liberal functionalist friends believed, it needed to be grounded in a network of lean *functional agencies* tasked with functional responsibilities around special purposes, to reflect material interdependence between states. Such distributed collective governance would thus not emerge from grand design but from an internal dynamic as states would integrate first in limited functional, technical, and economic areas but eventually covering a growing number of issue-areas, including under the aegis of the United Nations (Mitrany, 1933:101; 1965). In this vision, regional integration was at best an unnecessary detour and at worse an obstacle on the path to a more cooperative world.

The post war cooperation system more or less followed Mitrany’s functionalist plan albeit supplemented by a shallow core political nexus in the form of the UN and its security council. Hence the kind of differentiation that emerged later in the EU was baked in globally from the origins both as functional differentiation, with different areas subject to different degrees of mutual constraints and centralisation (what in the EU context is referred to as vertical differentiation, See Leuffen, Rittberger, and Schimmelfennig, 2012); and as territorial differentiation (eg horizontal differentiation, *ibid*). If the aim of the EU is the ever closer union of a club of European states whose contours are in flux, that of global governance is in theory universal membership of states in multilateral task-specific institutions covering all policy fields, crowned by the UN as a general-purpose orchestrator, a much more minimal integrative function than in the EU. Since the last wave of decolonisation, the recognition of states as part of the UN system has tended to lead to their accession in most international organisations. As a result, global differentiation which had been the result of *selection* and formal membership structures - since most global post-decolonisation agencies are also quasi-universal in membership- turned to *distinction* logics, eg differentiated rights, obligations and status, and formal or informal *discretion*. Perhaps unsurprisingly, with EU enlargement and growing heterogenous membership, the regional started to resemble the global rather than vice-versa. At the same time, the growing importance of clubs like the G20 at the global level, testify to the enduring appeal of *selection* logics at the global level.

Overall, if IOs play the role of poles in regime complexes, such poles, apart from administering their own remit, must deal with exogenous shocks and endogenous crisis factors of fragmentation (gaps, overlaps) and hierarchisation (deference, contestation, conflict) among other policy areas. Some functions may be complementary in the sense

that separating them is crisogenic (eg the trade-competition-taxation nexus). Other functions may be necessary to detect and deal with crises, both endogenic and exogenic such as surveillance in health and finance, cf. Haldane 2013, and last resort guarantee in trade and finance (cf. Kindleberger, 1986, and the wider financial stability and hegemonic stability literature). Detection and resolution of crises bleed into each other, as prudential measures or can be crisogenic themselves if they are perceived as inadequate or leading to politicisation and contestation (cf. the debates over the level of IMF reserves and ECB Outright Monetary Transactions).

To be sure, regional integration in general is a particular form of differentiated cooperation in the global system. One does not need to be an anti-(European)federalist, as Mitrany was, or an imperialist, to abide by the idea that global rather than (differentiated) cooperation, ought to be the ultimate end of the European project. The shared challenges arising from globalisation have made this imperative ever clearer in the last three decades. This does not mean that global differentiated cooperation ought to look like the EU-light writ large. At the same time, the EU has served as canary in the mine for a tension that Mitrany (and the functionalist school more broadly whether in its global or in its regional guise) failed to appreciate at the time. That is the tension between the demand for inter-state cooperation on the one hand, and the demand for equal rights and recognition for equal standing within and between states on the other. The latter is often equated with a global democratic agenda although it does not usually pertain to popular but to state sovereignty.

In short, differentiated functional cooperation *a la Mitrany* may have served as the blueprint for global governance in the after-war period, but its evolving contours at the regional level truly bring into focus its democratic causes and implications.

The need to reconcile interstate cooperation with domestic imperatives was at the heart of the Bretton Woods system's institutionalisation of what Ruggie has called «embedded liberalism» (Ruggie 1982). John Maynard Keynes and Harry Dexter White -- the artificers of the post-war international order--may have shared an enthusiasm about the virtues of trade and economic integration so typical of economists, but one balanced by an acute awareness of the need to ultimately prioritise domestic socioeconomic objectives over openness, not only as precious for their own sake. Instead, as they saw it, such a philosophy represented the *ultima ratio* for substantially free trade to survive the vagaries of mass politics. The Bretton Woods system of monetary management, together with its associated General Agreement on Tariffs and Trade (GATT) regulating international trade, emerged as an embodiment of such a goal and established two key institutions for that purpose, the International Monetary Fund (IMF) and the World Bank. The success of this institutional setting in overcoming the protectionist dynamics triggered by the outbreak of the First World War is beyond discussion, and bolsters the case for the provision of certain global public goods through a functionally driven system designed to embed liberalism in domestic constraints.

Nevertheless, the kind of embeddedness described by Ruggie had more to do with performance or output legitimacy (a wide-ranging and pluralist assessment of domestic interest) rather than a process or input legitimacy, in other words national democratic processes of authorship per se (Schmidt, 2020).

Of course, the balancing act between global openness/coordination and respect for local outcomes and to a lesser extent (democratic) structures is an inherently dynamic one, as it depends, amongst other factors, on the perceived benefits and costs of increased cooperation vs domestic autonomy. Indeed, the structural differentiation made possible by the *discretion* that prevailed as of the 1970s whereby developing countries started to pursue their own developmental strategies and developed countries built their own national «varieties of capitalism» (Hall & Soskice 2001), came to an end under the pressures of two oil shocks but also as a result of reconsiderations of the costs of states' interference in the economy. If governments' sphere of discretion had to be limited for the benefit of market openness, then global cooperation had to be stepped up through the creation of more powerful global institutions with greater coercive powers. The WTO was designed in 1994 to correct the perceived deficiencies of the GATT, its predecessor, namely its partial scope and its precarious enforcement and sanction powers. To be sure, these aspects were not mere deficiencies, but features of a system that was supposed to leave maneuvering room to national legislators. The pathologies of "disembedded liberalism" that became entrenched after the end of the cold war have certainly demonstrated *a contrario* the superiority of the original concept if not always the practice (Howse and Nicolaidis, 2001). The WTO is now one of the most "constitutionalised" regimes in global governance, and perhaps not coincidentally, the one which has been most thoroughly contested in recent years, with the Trump administration dealing it a near-fatal blow.

Admittedly, the recent backlash against the institutions in charge of global economic cooperation has come after years of what Dani Rodrik (20 called «hyperglobalisation», itself facilitated by the extension of trade agreements far beyond their traditional focus on import restrictions and tariffs touching every aspect of national legislations that can generate frictions and therefore transaction costs across national borders (Rodrik, 2011, 2020). This project might appear appealing under the guise of 'normative powerhood,' (Manners, 2002) but the price to pay is the subordination and displacement of competing and usually localised social goals and contracts for the sake of economic liberalisation and free trade. Under hyperglobalisation, nation-states are compelled to adapt to an ultra-competitive environment in which becoming attractive to international investors and trade becomes crucial. Therefore, national regulations, fiscal policies and service provision must adapt to these economic imperatives that act as a straightjacket on the policy scope of states and, therefore, on democratic politics (*ibid.* 200-2).

In short, growing globalization has comes with *functional* and political *challenges* that may be in tension. On the one hand, because global economic processes such as transnational financial transactions, or in a different realm, international criminal

activities, have decreased the capacity of nation states and their respective policies to control or regulate such global developments on their own, they need to cooperate to reassert control over the public sphere, and differentiation is usually the shortest pathway to get there (Strange 1996). But, on the other hand, in order to avoid a normatively undesirable state of domination – by states or non-state forces (TNCs, financial markets, market or religious fundamentalist epistemic communities, etc) they need to commit to minimal democratic standards between the collaborating states (Bellamy, Kroger and Lorimer, forthcoming, p. 10).

To what extent can differentiated cooperation help states or peoples collaborate to forestall such domination? Or put in another way, can these paradigm shifts tell us about the appropriateness of differentiated cooperative arrangements through the democratic lens?

A thorough answer to these questions would call for the kind of analytical overview which is beyond the scope of this paper. We can only suggest some avenue for research. For one, the causal link between (hyper)globalisation and cooperation is far from straightforward – greater globalisation may require more cooperation in some areas (capital flows, intellectual property rights, trade liberalisation) and less in others. It may empower certain groups which have traditionally been less powerful (eg consumers) or more to the point, actors (eg corporations) capable of playing the arbitrage game involved with open economic borders, irrespective of democratic domestic constraints.

Moreover, as we are starting to see in the wake of the global pandemic, the kind of cooperation required to push back against hyperglobalisation may or may not involve differentiation. To be sure, differentiated cooperation may be antithetic to the reassertion of a certain degree of national or local regulatory autonomy if it simply allows for either renewed coercive *selection* by some states or free riding and the weakening of state functions (eg tax havens). At a very general level, we can simply say that differentiation is more likely to support democratic assertion when a uniform set of rules could not fairly guarantee the governability and even survival of some international arrangements. Different rules and institutions might be necessary depending on the economic, political, social and cultural characteristics of participating parties. Accordingly, there are no homogeneous sets of rules or institutions that could be suitable for all the participants in the global economy given actual levels of social, political and economic heterogeneity.

The trade-off between increased supranational cooperation/integration and democracy discussed above has long been noted empirically (although not always systematically) and captured by Rodrik's famous trilemma, according to which if hyperglobalisation and the state system are retained, the most likely consequence is the hollowing out of democratic politics and the technocratic isolation of economic policy (Rodrik, 2011). Conversely, if democracy is to be saved without hampering economic and trade integration, the nation-state should be put aside. Alternatively, the current

talk on sovereign autonomy and supply chains attests to the idea that globalisation ought to be reined in (Rodrik 2020).

Here, as per table 2, we suggest that a different response to this trilemma involves a transformation of each of its three prongs arguably by reasserting an updated form of embedded liberalism which could be called *differentiated embedded liberalism*. In this vision, global cooperation is anchored in local capacity with different forms and degrees of cosmopolitan commitments to other-regarding democracy on the part of different states, depending on their inclination and capacity. In this sense, cosmopolitan duty is reactivated as present, demo(i)cratic practice: institutional action for global governance comes to comport with other-regarding, self-reflexive democratic norms following the imperative of non-arbitrariness discussed in Part I. We will come back in Part III to the conditions under which such a design can lead to dynamic equilibrium.

Ultimately, and this speaks to the relevance of European DI for the challenges of global governance, while the so-called “constraining dissensus” that emerged in the EU context to replace the permissive consensus that had obtained for decades (Hooghe and Marks, 2009) contributed to demand for DI, there has been no such formal safety valve at the global level. Why? In part because the EU is indeed a ‘system’ with core norms and institutions that can provide the glue in a system of differentiation (and even this is a tough call), while the global core is incredibly and increasingly shallow (see Part III).

Figure 4. Differentiated embedded liberalism at the global level

| | <i>Embedded liberalism</i> | <i>Disembedded liberalism</i> |
|-------------------------------------|--|--|
| <i>Undifferentiated cooperation</i> | Cooperation norms prioritise domestic requirements for all states. | Global cooperation and liberalisation as a means of fostering extensive hyperglobalisation |
| <i>Differentiated cooperation</i> | Customised cooperation to manage differentiation & accommodate different vulnerabilities | <i>Differentiated embedded liberalism</i> Polycentric soft core and the global governance complex |

As per Figure 4, it does not seem plausible that we are moving back to the kind of embedded liberalism of yesteryear, in part because, the modes and extent of domestic embeddedness themselves need to vary as a function of the demand and capacity of not only states but of all the levels of governance now involved in the game. Most probably, and as with the climate regime, different kinds of embeddedness will coexist as different modes of differentiations (eg selection, recognition, distinction, discretion) are adopted in concert. But, you may ask, how far can this logic take us? Let us turn

here to some of the empirically grounded but theoretically framed models that may help us here.

“Functional, Overlapping, Competing Jurisdictions”: a step too far?

In short, it is in light of the challenge of stretching democracy beyond its usual local or national boundaries that differentiation offers both more promise and risk. Indeed, supporters of DI/DC point out that differentiated rights and obligations and the membership criteria that justify such heterogeneity can help fulfill important normative values. In this section, we critically engage with the normative underpinnings of different forms and intensities of differentiation in the EU, as well as in federal systems more generally and potentially global systems. We are not able to do justice to the breadth of justifications and institutional arrangements proposed from different disciplines, but pick and choose some illustrative examples.

If differentiation relates to debates concerning the notion of sovereignty and the normative status of the nation-state under conditions of interdependence, one of the core aspects of sovereignty is the freedom and capacity to choose whether to engage or not in international cooperation. If we understand sovereignty as a legal status associated with a bundle of rights that protects states against incorporation and external interference and grants them treaty-making powers in the international arena (Buchanan 2003: 263), a sovereign state can choose to constrain itself by signing international treaties without losing its sovereignty, as long as it retains at least the formal option to *exit*, as discussed above under the democratic lens (Cheneval & Nicolaïdis 2017: 10). Arguably, this is the core democratic justification for DI/DC.

Most normative assessments of differentiation have to do with such a circumscribed notion of state sovereignty, assuming full agency on the part of the agents supposed to participate in different arrangements and engage in international cooperation in the most fundamental ‘constitutional moments’ of the management of interdependence.

Such agents need not necessarily be nation states. Taken to its extreme implication, differentiation leads to a post-sovereigntist view of political authority (MacCormick 1999) in which sovereignty is dispersed and disaggregated beyond the state and in which the state is simply one actor among others (Warleigh 2002a; Hix 1998). This is the idea that Frey & Eichenberger (1999) sought to analyse under the label of “Functional, Overlapping, Competing Jurisdictions” (FOCJ) which stretches the analytical account of ‘global differentiated cooperation’ *a la* Mitrany to its limits. FOCJ can be considered at the end of the spectrum of DI (Wohlgemuth & Brandi 2006: 19), whereby nation-states no longer enjoy the status of internal sovereignty that entitles them to decide the terms of international cooperation for all their constituent parts. Instead, collective goods are provided by clubs that need not be composed only by states, but also sub-national units — regions, communes, etc. — or even individuals.

As a normative, rather than descriptive-analytical concept, FOCJ is mainly based on neoclassical economic theory with a narrow focus on efficiency considerations and a naïve enthusiasm by the virtues of jurisdictional competition. In contrast, a demoicratic view tends to adopt a state-centric understanding of the *demoi* and assume an identity between *demoi* and the citizenry of successfully constituted nation-states. However, nothing precludes demoicrats from assuming a different position in which constituted units should be disaggregated to better reflect stake-holder groups whose rights or interests are not being taken into account (Bohman 2005). Both FOCJ and the more *transformalist* version of demoicracy support the abandonment of the ideal-type of the unitary state in favor of an alternative view in which state sovereignty is disaggregated and the peoples engaged in DI/DC may be de-territorialised (Besson, 2006).

But despite the emancipatory potential that such a normative order could have for national minorities and the functional advantage of tailoring the scope of political decisions to fine-tuned preferences, this vision also comes with its own deficiencies.

For one, there is a problem with assuming, as FOCJ does, that allowing small territorial units like *communes* to form their own clubs for the provision of public goods would enhance democracy understood as *citizen sovereignty*. This view rests on a clear analogy between the *citizen* and the *consumer*, emphasizing ways in which competition between clubs or jurisdictions can enhance *citizen sovereignty* in the same way that competition enhances *consumer sovereignty* in the market by making economic agents more responsive to individuals' interest. Under this perspective, jurisdictional competition can make a valuable contribution to the improvement of democracy, by strengthening the exit and voice options of citizens, thus making self-interested politicians and government bureaucrats more responsive to their interests (Vanberg 2000b: 363). Accordingly, jurisdictional competition is democracy-enhancing inasmuch as it prevents governments "from acting against the interests of some or even all of its citizens" (Vanberg 2000a: 89). In this sense, FOCJ is supposed to better advance both democracy and the common interest of citizens that classical (territorial) federalism (Vanberg 2000b: 363-9) where the different layers of government are (1) multi-purpose i.e. they offer inseparable bundles of goods, (2) territorially defined and (3) beholden to monopolist suppliers.

More generally, the (un)bundling of supply of different collective goods affects the exit options for individuals or firms, where the more they bundle the less options to actively express disaggregated preferences, to the point of moving physically out of a jurisdiction (or a club of country) as the only (costly) option available (Hirshman, 1970). At one extreme, global undifferentiated cooperation forestalls the exit options while at the other FOCJ maximises by (1) unbundling collective goods, (2) allowing the fragmentation of units to the smallest possible ones (i.e. communes) or even to accepting non-territorial jurisdictions composed by individuals and (3) allowing for competition in the supply of public goods when those goods are excludable and do not pose an externality problem (Frey & Eichenberger 1999:29).

Such enthusiasm for breaking public monopolies and opening service provision to competition have a clear elective affinity with usual calls for the privatization of public services and collective goods (Vanberg 2000b: 378) whenever technically possible. This should not be surprising, since FOCJ seem to presuppose a neo-liberal or quasi-libertarian normative basis in which voluntariness is the cornerstone for political legitimacy. Not for nothing has the theory of FOCJ been labeled a “voluntary exchange theory of government” (Vanberg 2007: 7). However, this normative basis is rarely made explicit, let alone critically examined. This is clear when we pay attention to how the *common interest of citizens*, to which jurisdictional competition is supposed to make a positive contribution, is defined. On the one hand, jurisdictional competition is supposed to trigger a process of discovery and experimentation that should help to find those policies that would better benefit citizens, thus giving rise to more optional institutional arrangements that are supposed to benefit everyone in the long run. But, on the other hand, jurisdictional competition is also praised for limiting the state’s capacity to act against the interests of some or all citizens, thus limiting exploitation (Vanberg 2000a: 89). Nevertheless, exploitation is a morally thick and contested notion, and the narrow understanding of exploitation that FOCJ presupposes is far from uncontroversial as a normative yardstick.

To opponents who argue that such differentiation hampers democratic equality between citizens as the object of regulation of economic activities, taxation, and the provision of public goods or distributional policies (Sinn 1997a, 1997b), proponents respond by distinguishing between the legitimate exercise of exit-options (i.e. from both benefits and costs) and pure free-riding (i.e. consuming jurisdictional services without paying the price) (Vanberg 2000a: 99). In the case of taxation for example, they hold that a race to the bottom will not happen as long as taxation is optimal and non-exploitative. They take us back to Wicksell’s (1896) “New Principle of Just Taxation” where taxation according to benefit is elevated to the status of a principle of justice as it correlates with the quality and quantity of jurisdictional services provided rather than *the ability-to-pay* on a progressive scale. But if it is true that jurisdictional competition might not trigger a race to the bottom if the quality of collective goods compensates for the high levels of taxation, this approach drastically constrains any redistributive effect of taxation. In this sense Sinn (1994: 101) is right when he claims that eventually “all countries will settle at an equilibrium where only benefit taxes are charged, and no redistribution policies are carried out”. Advocates of FOCJ do not deny but celebrate this empirical claim:

If, as Sinn appears to do, one sees in the restriction to “benefit taxes” an undesirable limitation of the power of government, one ought to explicate on what grounds one considers it desirable and legitimate for governments to be allowed to burden citizens or jurisdiction-users with the costs of schemes from which they derive no advantage whatsoever (Vanberg 2000a: 99-100)

The core relational intuition here has to do with the ultimate contours of individual freedom in a relationship. FOCJ is supposed to enhance both exit and voice options of

citizens, thus combining market and direct democracy mechanisms (Frey & Eichenberger 1999:18). But in the end, and in keeping with the classical trade-off between exit and voice (in which excessive *openness* simply reduces the incentives to participate) unrestricted right to exit ends up making voice options simply redundant (Vanberg 2000b: 383).

To be sure, considerations of the cost and benefit of an extremely differentiated system from the global viewpoint offer different trade-offs. But in all cases, such jurisdictional cherry-picking of collective goods, erodes the capacity of *political production* of the state with its bounded spaces of citizenship in which the restriction of exit options enables the use of voice without potential threats of blackmailing minorities or mobile agents (see Bartolini 2005 for the case of the EU or Sunstein 1991). This is so because exit options do not empower all the agents in the same manner but benefit mostly those who are more mobile, better off and less attached —*loyal*— to the system of cooperation at hand. In this context, normative theories of democracy like republicanism or liberalism must be supplemented by contextualised and empirically-informed forms of politico-moral reasoning. It is easy to see how republicans concerned with the arbitrary use of state power —*dominium*— and the oppression of permanent minorities might sympathise with the idea of more fluid forms of authority and increased exit options (see Taylor 2017 for a republican defense of exit-based remedies over voice). That republicanism is also deeply concerned with the moral justifiability of the reasons that guide agents, anchors it to conceptions of bounded citizenship united by common sympathies and deliberative processes of political will formation and self-government that are likely to be undermined with opting out options (Sunstein 1991). At least, FOCJ has the virtue of bringing to light the dark side of the promise of a post-sovereign world in which the state as a territorial provider of bundles of collective goods is disaggregated, reminding us that, as Stefano Bartolini (2005: 48) accurately expressed, “the ‘full-exit’ world is, therefore, a world without voice”.

Naturally, less extreme forms of DI/DC can be supported without questioning the normative logic of state sovereignty. Wohlgemuth & Brandi (2006), for instance, discuss the case of differentiated integration in light of Buchanan’s constitutional economics (Buchanan & Tullock 1962). They stress that in every decision making process, individuals face different costs related to measures that would either serve their interests but will not be taken under current rules (so these rules should be changed); or that run against their interests but will or could be taken under these rules. Applied to a heterogeneous polity such as the EU, they argue that giving up the unanimity rule will make the latter but not the former more likely. In these circumstances they suggest that DI might be useful in order to avoid the trade-off. In their view, economic theory when applied to the provision of collective goods provides enough guidance to determine the distribution of competences at different levels of governance and the scope of the membership for each collective good.

Accordingly, more differentiation serves democratic self-determination. The status quo is suboptimal and the most desirable scenario would consist in shrinking the *acquis*

communautaire into a core *acquis* comprising only those policies that should be harmonised at the broadest possible level i.e. the Single Market (Wohlgemuth & Brandi 2006: 17). Beyond, they advocate various forms of *enhanced cooperation* for those agents willing and capable to do so, turning the EU as a club-of-clubs that would allow for a process of experimentation and discovery leading to the creation of mutually beneficial networks of cooperation for the provision of different collective goods. This vision of integration *à la carte* through the economic theory of clubs was theorised by Majone (2009) whereby common institutions monitor inter-state and inter-jurisdictional competition with the EU serving as a «broker», «monitor» and «arbiter» between the variable structure of cooperation that is likely to arise (*ibid.* 17). The *core acquis* helps protect the Single Market from risks of fragmentation as one of the main courses in a menu to be shared by everybody while “additional ones can be consumed according to individual preferences” (Ahrens & Hoen 2002: 41). *A la Mitrany*, some would argue that such an approach ought to ideally extend to the whole world where the spectrum of options ranges from no exit option to full exit options, with different degrees of agency domination, and voice in between.

But this is not a dominant view. This vision corresponds to one end of the spectrum in terms of differentiation, an ideal type which has not been approximated in practice but can serve as a referent. From there, at least two analytical strategies are on offer: a) to list the rationale for departing from this approach; or b) to explore the other end of the spectrum where the normative default is undifferentiated cooperation. They converge in contesting the grounds for ‘extreme’ differentiation, either incrementally (a) or radically (b). While the application of public/club goods theory to DI has highlighted that members of international organisations might rationally prefer differentiated cooperation in smaller groups to avoid high levels of heterogeneity within the groups that they form to obtain collective goods, such choices are not only determined by different patterns of preferences. Moreover, synergies and negative externalities between different policy areas must be taken into account. But it is on the normative front that objections might be the strongest, to which we now turn.

General purpose vs task-specific authority beyond the state

We started with Mitrany and the main structural difference at hand: the EU is a regional and “general purpose” organisation, whereas many international regimes are “task-specific”, restricted to a “narrow” set of policy fields (Lenz et al 2014). Thus, at the global level, it is first and foremost other, geographically-based regional integration projects that fall into the same category as the EU. Here, the differentiated integration scholarship enters into a dialogue with comparative regionalism to detect why, how, and to what extent regions other than Europe integrate transnationally, and what lessons can be drawn from these differences in patterns of regional integration. Regions lie on a spectrum of “region-ness”, meaning they are integrated and differentiated in different ways (Warleigh-Lack 2015; Hettne & Söderbaum 2000). In this conception, the EU is at the more integrated pole of the spectrum, with eg ASEAN, NAFTA, and APEC down the line. All kinds of DI/DC phenomena are observed

across and within regional groupings along this spectrum (cf. Wunderlich 2012, Aimsiranun 2020, Gaens et al 2020), and the literature underlines that while lessons can be learned from comparative regionalism, there is no normative ideal or teleological process of integration that can be derived from it. A comparative regional study of DI is beyond the scope of this research paper, but the growing importance of regional IOs as actors should be noted along with the trend of their increased competence and move towards more general-purpose models (Lenz 2022).

As discussed above, it is not general purpose IOs that shape global governance, however but mostly multilateral, task-specific functional ones, such as the WTO, whose specific task is to administer the trade regime. If sovereignty is a legal status associated with a bundle of rights, it is also the right to be the exclusive provider of a bundle of public goods. As remarked previously, international integration and global collective action problems demonstrate the need for solutions that take away some of this exclusivity (or that recognise that exclusivity never really existed in the first place). If global governance, like regional governance is a process of state transformation (Bickerton, 2012; Hameiri & Jones 2016), differentiated along multiple lines - territorially, trans- and intra-sectorally, temporally, and in terms of material interests and capacity, this *transformative logic* also pertains to the democratic contracts which support it. The management of interdependence in the post war era has involved a third *transformative way* between *entrenching* the prior state system and *transcending* it, through new structures of cooperation transforming the state along the way (Nicolaidis, 2003). As a result the mutual effects of DI at EU and global level can be causally difficult to separate.

Differentiation, membership scope and integrative functions

Up to now, we have implied that the state of anarchy in international relations allows for constant arbitrage between differentially integrated regimes with no “global sovereign” to balance things out. In contrast, a general-purpose organisation like the EU allows for different degrees of integration across functional fields with different membership structures, while its institutional and policy seem to hold the all edifice together. But in fact, the EU can be remarkably siloed, with different policy areas working separately or at cross purposes, reflecting at the supranational level the specialisation drift of the Weberian state, whereby parts of the bureaucratic apparatus fail to talk to one another. At the same time, the UN, G-formations, or the Bretton Woods institutions are often involved in exploring linkages between their respective remits. We illustrate this (partial) convergence through two integrative mechanisms, relevant to both the EU and the global system of differentiation.

First linkages. In the EU context, the European Council and its subordinate formations in the form of Council of Ministers, COREPER make possible strategic and substantive linkages that might have been lost in the meanders of functionally differentiated comitology structure (on types of linkages, See Nicolaidis, 2020). As a result, and in these configurations, member states that might belong to different differentiation

configurations are able to discuss and bargain over the linkages between them (although to different degree as EMU governance illustrates).

At the global level, there are of course, numerous spaces that may allow for linkages. For instance, competition concerns have long lurked in the halls of the WTO (see Working Group on the Interaction between Trade and Competition Policy), as have “trade and” debates since the 1990s (trade and labor, environment, human rights). The international financial regime complex has stepped up its integrative work, under the impulse of the G20 and with a strong role for the IMF in coordinating rules for the different policy aspects of surveillance, prudential practice, and crisis resolution. In fact, the original plan for the BW institutions explicitly linked *all* of these aspects, with the aim of a kind of dynamic stability (an explicitly homeostatic institutional design). In Keynes’ vision, an International Trade Organisation would have had some remit over competition, and an International Clearing Union would have cleared international trade transactions with a synthetic world currency (bancor). Each state would have been incentivised to keep their balance close to zero, by taking some of a country’s surplus as reserves, or lowering the exchange rate of a deficit state to make imports more expensive and exports cheaper. While differentiated membership as such was not envisaged in such a holistic Keynesian system, the actual Bretton Woods system that has evolved in the post-war has involved more subtle forms of distinctions between members and discretion for members as discussed in our original relational typology.

Nota: At this stage, we suggest that the development of extraterrestrial settlements and the incipient international cooperation and competition in outer space will change the picture of membership considerably and with it the identification of risks of membership. To be sure, international space law is highly subject to the risk of domination, as only wealthy and powerful actors have the capacity to travel to space (cf. the development of prospective mining of extraterrestrial bodies by states and corporations, Toosi 2019). But at least until now, space law has been universal in membership by design since its inception.

The second integrative mechanism in a system where differentiated regimes interact and overlap has to do with shared core rules and conflict of law system. The EU has addressed this question by insisting on the adoption and continued updating of its so-called *acquis communautaire*, namely the collection of all laws, legal acts and court rulings that make up EU law spanning from legislation on small and medium-sized enterprises to transport policies and the environment. At the same time, it has deepened and fine-tuned its own edifice of conflict-laws to deal with conflicts of law between states as well as between groups of its member-states (Joerges, 2014). Even if it is clear that the depth and breadth of EU law is of a different order of magnitude than international EU law, it is perhaps harder to see what the consequences of this ‘legal hard-wiring’ are when it comes to DI. On the one hand, EU law seems to have accommodated the demands of DI, which suggests that, even at the global level, legal orders do not stand in the way of institutional engineering and tailor-made forms of cooperation. On the other hand, the *acquis communautaire* may actually be seen as a

precondition for certain forms of DI (e.g. internal DI), in the sense that the body of rules provides the common denominator with opt-outs being managed within the same organisational structure. This system is not exempt from extreme tensions and democratic challenges. National supreme courts chafe at ECJ rulings (German Solange rulings, French reaction to the ruling on military work time) and some member states are now in direct clash with EU institutions and long-held principles of constitutional order (Poland, Hungary).

While international law might be less intrusive and comprehensive when it comes to global governance, nevertheless, strong task-specific IOs, networked epistemic communities, in areas such as competition, banking, tax, or technical standards regulation professionals, can craft surprisingly robust, (softer or harder) rules-based regimes that avoid trans- and intra-policy field clashes except exceptionally, even among highly heterogeneous actors. Despite their politicization potential, they tend to be integrating, rather than fragmenting, like the trade regime.

In sum, and unsurprisingly, while the global system is much more weakly integrated and more differentiated than the EU, if we abstract from specifics, there are many threads that run through all levels of governance. Why then is this the case?

3. Why? Differentiation, from functional to political drivers

Why then are we more or less likely to witness differentiated cooperation? What are the common or different causal factors which may determine where states end up in the differentiation game at the regional and global levels? In other words what are the independent variables in this story and how do we explain variance across states who embark or not in differentiated integration schemes, as excluder or self-excluded, insiders or outsiders, subject or objects of these schemes? In the spirit of this research paper, we review a small sample of the relevant categories suggested by the literature with an eye to whether concerns about democracy and domination figure in these different stories which come in different guise and under different theories: issue-related, eg the nature of the global public good meant to be provided or maintained; agent-related, eg the character of the heterogeneity between the actors in question (in particular socio-cultural differences); structure-related, eg the cooperative framework within which DI takes place and the interdependence and politicisation of the authority meant to manage it; and running through all of these factors, actors' strategies that are dynamically co-constructed within them (Wendt 1987) and power relations which underpin much of the patterns of cooperation we observe globally.

Issues - Categories of public goods and issue differences

There are many different factors that determine i) what kinds of areas and contexts of cooperation are more conducive to differentiation, ii) what dynamics obtain once differentiation occurs, eg stable, integrative, disintegrative, and iii) whether this raises

political and normative problems that call for changing the rules of the game to mitigate the trends that we observe.

To be comprehensive, we would first need to define and list policy fields (see eg Hooghe et al 2017; Fabbrini and Schmidt, 2019), assess risks of free riding and negative spillovers (eg international tax optimisation or evasion) due to low degree of institutionalization, whose opportunities are magnified by a high degree of institutionalization (say of global trade and finance), and assess under what conditions substantive linkages between policy fields (eg trade and competition, banking and financial safety nets, the imperative of linking climate change mitigation and adaptation to all others) translate into institutionalised linkages.

We start here at a more abstract level however, by probing what many view as the ‘rational’ underpinning of alternative forms of transnational cooperation and differentiated integration, namely to ask what kind of collective action problem states may be facing in different issue-areas. This angle is best provided by the extensive scholarship on collective action problems and Global Public Goods (GPGs), which aims to explain functional pressures towards differentiation due to the existence of public goods (provided to all) across borders, whose provision create externalities and spillovers.

A public good is provided by the institutionalisation among a group of states of a solution to a collective action problem, in the cases we are interested in either at regional or global level. Accordingly, public goods thinking can be most useful when it proceeds from a “thick” analysis of actors’ preferences (Roberts 2019). So analysts ask, both why collaborate on the provisions of such goods in the first place (Barrett, 2007) and at what scale or to what degree of differentiation is it most effective to do so. Building on Kölliker (2001, 2006) we can theorise integration paths and the likelihood of DI according to a version of Samuelson’s classical quadripartite classification of public goods, to which Kölliker adds two categories of more or less excludable network goods (Figure 5). Although the DI literature tends to focus on a subset of categories (most recently and thorough Lord (2021), it is useful to remind readers of the six-fold typology.

Figure 5: Categorisation of collective goods in economic theory and DI incentives

| | | Excludability | |
|--------------------|--------------------------------|--|---|
| | | High | Low |
| Consumption | Rival | Private goods (cohesion funds) ++++ | Common pool resources (fish stocks, mobile tax basis/regulatory competition) + |
| | Neutral (non-rivalrous) | Club goods (free movement, custom union) +++++ | Public goods (defense, pollution control) ++ |
| | Complementary | Excludable network goods (Schengen information system) ++++++ ⇒ DI | Non-excludable network goods (technical product standards) +++ |

Source: author, adapted from Kölliker (2006).

In this schema, two dimensions are taken into account:

- The first dimension, ‘excludability’ reflects the extent to which agents who wish to consume the good in question can easily be kept from doing so. If not, why would they incur the costs of a cooperation scheme? Only if the positive effects from membership are greater than the positive externalities for non-members will they have an incentive to cooperation.
- The second dimension, ‘consumption,’ in the original scheme covered two options, either rival consumption (if you have more I have less) or neutral consumption, to which Kölliker adds the possibility of complementary consumption in the form of networks which offer joint benefits (the more you use them the more I am inclined to use them myself).

Indeed, collective good theory is a relational theory *par excellence*, originally designed to describe relations between individuals and scaled up in our context to extrapolate to inter-state relations. Crucially, these dimensions operate like budget constraints or the structure of a game theoretical matrix. For sure, they indicate the sets of incentives that individuals, groups or states may be subject to, but they do not predict behaviour. For

this we would need to take into account extraneous factors, and among those democratic sustainability and congruence (see below).

With these caveats in mind, and while this not the place to review the many implications discussed by scholars in the field, we can indicate a few relevant directions.

The six categories of goods stemming from these two dimensions can be ranked according to the centripetal character of the cooperation involved in their provision, eg the incentive for outsiders to join (Kölliker 2001, p. 136-37). Kölliker asks how initially unwilling states end up participating in cooperation schemes or why initially willing states might be hesitant to go it alone through differentiation - which depends on the possibility of and payoffs from exclusion from cooperation schemes:

In fig 5, the + signs indicate the intensity of this incentive which increases with:

- the benefit to each participants of an increase in overall participation *and*
- the difficulty of free riding.

In this schema the incentives for DI are roughly proportional to the incentive to join after creation. Unsurprisingly, the strength of centripetal, integrative effects is strongly conditioned by *excludability* (Kölliker 2001, p. 136-37) Excludable goods in general, are amenable to differentiation as insiders can appropriate the benefits thus created and thus reap benefits most proportional to their costs. By the same token, non-participation in the cooperation scheme means being excluded from its benefits: outsiders will tend to want to join. But only if the added consumption of the good increases its value for all (complementary goods) will insiders welcome more members and thus encourage others to join. It is therefore not surprising that excludable network goods are most prone to centripetal effects after differentiation since increasing participation leads to rapidly growing benefits while free-riding is difficult without access to the said benefit (say criminal data basis for Schengen). A caveat here are 'stability externalities' stemming from neighbouring jurisdictions.

At the other end of the spectrum, states might be less prone to entering a differentiated form of cooperation where they risk being 'suckers,' eg exploited by other, starting with common pool resources where they might for instance agree to restrict their capacity to lower taxes to attract foreign corporation. These involve the weakest centripetal effects, since in this case exclusion from benefits is impossible and in fact these benefits for outsiders are potentially higher than for co-operators. So outsiders may not be concerned from finding themselves outside. As Kölliker remarks, there may even be centrifugal effects or incentives to leave depending on unfolding dynamics, including the extent to which the good provided creates positive externalities for non-compliers.

Classic public goods - whereby it is hard to keep non-participants from being affected by the externalities created - may in theory be more amenable to DI since at least benefits to outsiders do not detract from benefits to insiders. This is the case for many environmental policies, although to the extent that these affect the competitiveness of

home industries (through an emissions trading system for instance) their consumption becomes rivalrous.

Club goods are also prone to differentiation (restricting benefits) but with less incentives to expand (Nordhaus, 2014). Shared ability to pay and common interest lead to such club goods, where the default to differentiation is no cooperation at all. The key is the benefit from burden-sharing compared to the distance between a state's preferences and characteristics of provision. In the global context, we can think of plurilateral agreements on trade or investment as club goods or even 'excludable network goods' whereby complementary of consumption allows for the network effect whereby trading blocs like the EU can continue to leverage a considerable amount of power in the international trade network (Fan et al 2014) .

To come back to our initial caveats, since all of these configurations describe *relationships*, the analyst needs to ask about the varied factors within which the decisions about the modes of provision of different types of 'public goods' are embedded.

Hence, such provision at any level may be constrained by different political or normative claims - some cooperative scheme may be subject to higher normative claims for a duty to support them (for outsiders) or a duty to be inclusive (for insiders) than others. Thus common pool resources may encourage free riding and therefore self-exclusion from cooperation schemes but at the same time they may have a higher normative claim for a duty to participate, regardless of DI functional pressures (Bellamy et al, 2021).

One way to capture such variation is to think of the nature of '*public goods relations*' as a broader category than the nature of public goods in and of themselves. Different kinds of public goods relations have quite different implications for whether DI can be justified on grounds of democratic autonomy or of non-domination (Leruth and Lord, 2015). A forthcoming piece by Lord (2021) under EU3D programme provides an extensive and enlightening discussion of the democratic implications related to the differentiated provision of three categories of collective goods (public, club, common resources) which will not be summarised here but can be used as a starting point for further research.

Suffice to say that theories of club goods and global public goods in general help point to where restrictions on differentiation might be unjustified interferences in a country's ability democratically to choose among co-operation arrangements. But other factors to take into account include technocratic autonomy and democratic preference for cooperation, which in turn might point to the kind of differentiation designs most likely to be sustainable.

If bounded solidarity within an exclusive group, for instance, is predicated on some kind of thicker attachment than cosmopolitan concerns would have it, then some kind of exclusion is necessary to strengthen it. But if the strength of centripetal, integrative

effects is strongly conditioned by excludability, the solidarity literature highlights that if political will is brought to bear, the kind of good under consideration may change, with different integrative effects. For example, if the opportunity to emit greenhouse gasses is considered an open-access CPR, suffering a tragedy of the commons (Edenhofer et al 2013), the establishment of carbon border adjustment mechanisms would effectively establish some form of exclusivity and push it towards the territory of a private or even club good. The next question however would relate to a given polity's attitude to outsiders, including its concerns for *non-arbitrariness* as discussed in part I, as well the outsiders' polity *agency* or capacity to bear a fair burden from its own actions (or lack thereof).

On one hand, it can be argued that club goods (as with a CBAM-protected EU climate change club) decreases democratic congruence viz outsiders and increases the risk of domination, in that there is a loss in the scale of voice of concerned actors, descending from the global to the regional level. On the other hand, it can be argued that this increases democratic congruence and decreases the risk of domination, in that it is the establishment of a locally democratically congruent instrument for solidarity and mitigating unaccounted externalities.

These considerations can be discussed more systematically across the six different categories laid out in Figure 5 and from both potentials of externalizing harms and exploiting opportunities to free ride. Focusing on club goods, public goods and common resource goods, Lord (2021) points out how the core problem is that are quite different in their ability to deal with externalities. Accordingly, "international co-operations aimed at providing *club goods* can solve the problem by simply internalising externalities. As seen, they can reserve positive externalities to those who pay for their provision. In contrast, co-operations aimed at international or regional *public goods* may struggle to exclude free riders. Likewise, co-operations aimed at avoiding the depletion of *common resources* that cross political frontiers - climate, fishing stocks or the credibility of rules aimed at stabilising financial systems or preventing arms racing (Mansbridge 2014: 8) - may struggle to exclude all those able to over-exploit those resources (*emphasis added*, Lord, 2021).

Ultimately however, we can also ask whether the standpoint provided by the collective goods scholarship is necessarily the relevant frame in context where payoffs and relationship are highly uncertain and contested. Hale's (2020) extremely fruitful notion of "catalytic cooperation" provides an inspiring alternative to the dilemma highlighted by public good theory and its variations on collective action, prisoner dilemma-like structures. Accordingly, if joint products of and increasing returns from cooperation can be identified with more fine-grained attention paid to actors' heterogeneous preferences for cooperation (and for our purposes, democratic dynamics) actions by a small number of actors can catalyse effective collective action. In effect, it may be that we have been "prisoners of the wrong dilemma", paralysed by an excessive focus on the risk of free-riding by actors outside of the cooperating circle; rather, attention should be turned to circumventing "non-conditional non-cooperators"

(Aklin & Mildenerger 2020). These actors are the least interested in expanding solidarity to provide a public good, and most interested in the issue to hamper cooperation, making inaction (or in the best of cases, DI) more likely.

In sum, we need institutions to ensure a normatively acceptable (differentiated) integration with change- and future-facing functions to tackle the problems of the Anthropocene (quasi-maximal in scale and scope), many of which involve the sustainability of common-pool resources (ie those with the least centripetal effects). The “climate complex”, with the UNFCCC acting as a beleaguered hub for global climate action, is dizzyingly diverse yet evinces a certain stability, if not effectiveness (Keohane & Victor 2011; Draguljic 2019; Barrett 2016). The system relies on the kind of move from selection to distinction to discretion described in the typology presented in Part II where differentiation becomes increasingly fine-grained. In such a context it is easier to pursue democratic congruence through the kind of shared authorship ultimately made possible by more inclusive schemes. Clearly however, free-riding remains harder to address, short of relying on *internal* democratic pressure with the states in question.

If this is the case, it is important to turn to the *agents* of the story. The public goods baseline can only tell us which areas will be more prone to differentiation *qua* issue areas. Different states will have more propensity or reluctance to participate in different differentiation schema (eg in the production of these different types of goods - and sometimes bads), both as a function of the structure of their relationships or of their own characteristics. Moreover, functional pressures must be supplemented by actors’ perception of what is considered acceptable behaviour. We turn to these considerations next.

Actors - Facets of heterogeneity and agent differences

As we turn to the characteristics of actors in the differentiation game, the relational approach comes all the more into focus, since its core focus is on the management of differences, and asking not about the fact of differences or diversity (a trivial fact) but about heterogeneity, asking ‘what do we make of it’. Indeed, authors have argued that differentiation is primarily driven by issue-specific patterns of functional demand or need for cooperation and supply side resistance to cooperation on the part of actors, as a function of the politicisation of interdependence (Schimmelfennig et al 2012, Schimmelfennig, 2019). Moreover some fascinating survey research is starting to explore the determinants of public opinion about differentiation (Aydin-Düzgit, Kovár, and Kratochvíl, 2020; Bellamy, Kroger and Lotimer, *forthcoming*).

On this basis, we need to turn to the heterogeneity between actors themselves and distinguish between two ways in which the fact of heterogeneity enters the differentiation picture.

First, structurally, the overall fact of differentiation stems fundamentally from the need to both retain and manage heterogeneity between states (and most generally, non state actors) under conditions of interdependence, notwithstanding disagreements over trends or whether we are witnessing global convergence or divergence (Baldwin, 2016). Much of the DI literature starts with this basic fact. The increased heterogeneity of the EU in the context of the 2004-07 CEE enlargement in particular can, in this sense, be seen as a *de facto* driver for DI and its theorisation since the 1990s. In this context, differentiation was necessary to both face the obstacles and leverage the dynamic opportunities regarding economic policy of heterogeneity through the more flexible accommodation of differences regarding socio-economic development, and, more broadly, questions of financial performance and market efficiency (Mack, 2020). *A fortiori*, heterogeneity is a determining factor globally where differences are vastly greater in levels of development, modes and areas of government intervention or ownership (trade regimes), or preferences for different types and levels of taxation or reliance on attraction of FDI through tax rate (*Taxation regimes*) as well as cultural-political heterogeneity. In short, heterogeneity makes universal cooperation harder and autonomy more desirable, unless some desirable form of differentiated cooperation can be found.

Secondly, however, we need to characterise this heterogeneity and ask when it matters, assuming away for our purposes variance in levels of interdependence (we can assume a threshold above which at least some states will value some degree of further cooperation). Heterogeneity is disaggregated and assessed in order to probe ‘the difference between differences’, in other words, what kind of differences between states or other actors matter and explain different patterns of differentiation and focus on socio-economic heterogeneity, heterogenous economic systems and heterogeneity regarding policy preferences or capacities: given the characteristics of issues, how do we explain that different states will take different positions and follow different course of action with regard to differentiation whether regionally or globally?

While heterogeneity might point to diversity regarding preferences and capacities, and while it might indeed lead to fundamental questions of identity and values, differentiation is due to different types of differences (Schimmelfennig & Winzen, 2014). We start with Winzen’s distinction between capacity and sovereignty DI which, in turn, can be related to different forms of demand and supply of DI (Winzen, 2020; Bellamy & Kröger, 2017; Bellamy et al., forthcoming, p. 5) and add a third category which we label cultural DI.

As per below, different states might face differences in capacity to carry out common goals, sovereignty concerns, or cultural outlook, making them alternatively unable, unwilling or un-amenable to either undifferentiated cooperation or to available paths for differentiation.

a) Unable? Fairness and capacity DI

The most basic difference between states lies with their different capacity to enter and maintain the obligations associated with cooperation. As a result, not all states will have the same propensity to participate in the delivery of public goods. Such “capacity DI” (Schimmelfennig & Winzen, 2014, p. 355) is predominantly connected to the enlargement of the EU, where a transitional and temporary policy was required to allow the adaptation of the new member states to the EU’s legal and economic framework or “the extension of market freedoms“ (Schimmelfennig & Winzen, 2014, p. 355).

In some cases, such differentiation comes in the form of *distinction* and *discretion* as discussed in our relational typology whereby states request exemptions from rules that apply to all. As mentioned earlier, the best example of *distinction* in the global realm is Special and Differential treatment in the WTO whereby poorer developing countries were granted at the outset a general exemption from having to reciprocate in the lowering of tariffs viz a viz other countries as well as exclusion or only partial integration of sensitive sectors (agriculture, textiles, services...) or final users (government procurement) (Basedow 2018). Here differentiation is justified by differences in degrees of development and relative vulnerability to openness. In effect, their imports schemes are exempt while their exports benefit from the most favoured nation treatment. In fact, some countries within that group are given even more ‘special treatment’ such as the ‘least developed countries’ benefitting from EBA (everything but arms) zero tariffs from the EU. To the extent that countries can also invoke safeguards in the field of trade, such general exemption can turn into allowance for discretion that are more temporary and conditional.

Here the rationale has to do in part with reflecting considerations of fairness into rules by noting that ‘treating unequal countries equally’ can itself be considered a form of discrimination. Differentiation becomes embedded as a structural deviation from the original rules of the institution in part because its overall approach reflected the interests and political philosophy of incumbents. Similarly in the EU, treating new members equally meant resorting to selection and selecting them out when they could not meet the commitments involved (Eurozone), or on the contrary when the existing members were not ready to take in cheaper labour (free movement exemptions after enlargement).

Finally, work on international regimes (and complexes) highlight the role of leadership, either of a dominant state or a critical mass coalition of states; this work is extended by its formalisation in the case of networks (Galeotti et al 2010). Asking which states are able to take on that role are a key part of this diagnostic.

b) Unwilling? Politization and sovereignty DI

But of course, it is not only the case that countries fail to participate in a cooperation scheme or exclude others from doing so on grounds of capacity. Differentiation can be

the result of more political agency whereby certain countries, or specific governments in power are typically motivated by and related to “concerns about national sovereignty and identity” (Schimmelfennig & Winzen, 2014, p. 355) and thus simply unwilling to cede sovereignty in given areas. To be sure, it is not always straightforward to clearly draw the line between unable and unwilling. Winzen (2016, 2018) for instance argues that states may not have (or perceive themselves to have) the material capacity for full and immediate integration, or the “ideational capacity” to cede (upload) national sovereignty over certain matters to the EU. He draws a temporal link between the two: “Initially a response to capacity problems arising in relatively poor Member States and in the Union’s market, agricultural and regulatory policies, differentiation has recently become a result of Member State efforts to protect their sovereignty.” (Winzen 2016, 101).

Unsurprisingly sovereignty-based differentiation is more likely in areas where concerns for sovereign autonomy and levels of politicisation are high, which in turn is more likely if the policy area touches upon core state powers, eg defense, money, and public administration/welfare state (Börzel and Risse, 2020; Howorth 2019). But not all states are equally concerned about encroachment on such core state power, especially taking into account their relative ability to shape differentiation in order to minimise risks of domination.

Alternatively referred to as “constitutional DI” to refer to the object of concern eg constitutional issues, this kind of differentiation is predominantly connected to the “deepening” of the EU via the transfer of core competencies (Schimmelfennig & Winzen, 2014, 2021). Here differentiation is more permanent in nature in keeping with the distinction introduced by Stubb (1996) whereby the *Europe à la carte* is the most entrenched. This will probably continue to apply in particular to the field of migration, where different countries will avail themselves of different instruments and mechanisms overseen by the EU (discretion model).

To be sure, sovereignty-based differentiation can be seen as a response to risks of increased democratic incongruence from instances where countries fear being forced to do something they believe is not in their interest (convergence criteria) although one has to disentangle unwillingness and inability which can only stem from democratically made tradeoffs. Schimmelfennig et al (2015) have largely explored the role of asymmetric politicisation of interdependence where politization varies across countries leading to differentiated attitudes to cooperation in particular areas.

At a global level and in an increasingly fragmented geopolitical context, politization is increasingly a structural challenge whereby countries resist not the fact of cooperation per se, but cooperation with specific countries or under the same roof as specific countries.

Zürn (2018), abstracting as we do from the specifics of the level of interdependence, discusses politicization at a supranational level and introduces a further distinction between two categories of actors namely, incumbents who hold the power to shape the rules of the game and rising powers who seek to exploit changing power dynamics in order to redefine and control those rules. Either type can decide to put in place a differentiated scheme which they can more easily control in the face of politicization challenges *for the overall system*. Zürn describes a *reactive sequence* triggered by politicisation of international authority which occurs when an authority runs into legitimation problems and is contested by states and societal actors. He specifies four such reactive sequences for the global level: Undermining via politicisation, Reinforcement via politicisation, Counter-institutionalisation by rising powers, Counter-institutionalisation by incumbents. Thus, differentiation impulses which strain the baseline encoded structure stem not from features (politicization) internal to the countries in question but from their relative position in the international system.

c) *Un-amenable ? Heterodoxy and cultural DI*

Finally, we suggest here a third form of heterogeneity, which has been hitherto broadly captured under sovereignty differentiation but which we believe falls more appropriately in a category of its own. Perhaps the most entrenched form of “heterogeneity” has to do with entrenched socio-cultural distinctiveness and diversity which is pervasive and multifaceted and can lead to domestic political resistance to various forms of supranational harmonisation. This is particularly the case when socio-cultural issues are politicised. LGBTQ rights, euthanasia, and abortion are typical topics in this regard. But these differences also concern issues such as the stance on minority rights within internally diverse nation states which tend to be connected to sovereignty DI (Bellamy et al., forthcoming, p. 4).

But in the rare cases when they are discussed, these topics remain linked for the most part, to a narrow notion of “culture” and, by extension, of “diversity”. Rather, they actually refer to practices of everyday life, of socio-cultural memory, aesthetic preferences and to patterns of micro-social solidarity. While difficult to pin down empirically, this dimension of cultural diversity matters arguably as much to questions of diversity and solidarity in the EU and globally, than economic heterogeneity (Symank, forthcoming).

The salience of socio-cultural differences tends to increase the likelihood of DI through dynamics of politicization and demands for sovereign democratic control. The more a socio-cultural issue is politicised on a national level (e.g., gay marriage in Poland) the harder it will be to keep legal-institutional outcomes on the EU level circumscribed. At the same time however, the potential for differentiation here depends on the extent to which these issues are considered part of a non-negotiable core related to the rule of law and basic rights in member states of the EU or the UN (eg say minority rights) vs rights that depend on cultural autonomy claims (eg gay marriage or right to adoption).

A broad question beyond the scope of this research paper is to what extent this cultural dimension is driving what kind of differentiation. More specifically, it may also be the case that the socio-cultural dimension of DI poses a special threat to democratic values and institutions in the EU and globally. Especially when politicised domestically, such differences may serve as pretexts or reasons for strengthening the grip of populist political parties, making democratic backsliding easier while opting out from the core European club (Bartolini, 2005). The debate is open whether DI facilitates violations around the rule of law, democratic values, and civil and human rights and more generally democratic backsliding, or whether on the contrary it forestalls reactions against integration by forestalling the erosion of MS' national cultures (Bellamy & Kröger, 2021, see also Rawls, 1999). If, in turn, the EU better accommodates cultural diversity, then the cultural dimension might indeed ground an argument in favor of DI.

Differentiation due to cultural heterogeneity or incommensurable conflicts of values may be the most fundamental cause of differentiated cooperation at the global level. Even if one does not subscribe wholesale to Huntington's clash of civilisations, the modern condition translates in gradual, wholesale societal change in values over time around patterns which differ across the world along several dimensions (cf. eg the work of Inglehart & Norris). Thus, "cultural heterogeneity" may cover differentiating impulses over who we consider has the "right to have rights", in other words, over whom we tolerate domination. Arendt's diagnosis of the exhaustion of the nation-state as the prime locus of democracy and the necessity of supranational institutions to guarantee "certain basic rights" reverberates differently in different regions of the world (Rensmann, 2020). Nationally and internationally, the granting of rights and increased protection have worked within the normative horizon of individual rights, which has always sat uneasily with the underlying assertion of these rights by individuals *qua* part of a (dominated) community, as stressed by communitarian political philosophers. Such individual-based rights are encoded into international treaties and instruments, short of course of their effective realisation, and have become a site of increasing contestation and undermining from within of actors alleging cultural differences to undermine protections afforded by the current human rights framework. Such contestation may start with classic non-compliance but eventually lead to wholesale withdrawal from treaties and regimes (eg Turkey's withdrawal from the Convention on the rights of Women, Saudi chairmanship of the UN Committee on Rights). Unsurprisingly then differentiation which is politicised along socio-cultural lines is likely to become increasingly entrenched.

Complexity - The transitivity of differentiated internal/external differentiation

Once analysts have laid out and discussed these different explanatory factors, we are left with many open questions: how do they combine in determining a given outcome and under what conditions do some prevail over others? How constraining is the collective goods character of a given issue area, etc? How do institutional rules of decision making affect the recourse to differentiation? And so on. No doubt the

explanatory puzzle is itself complex, all the more so given that democracy itself is increasingly a complex calling in our modern societies (Innerarity, 2020).

Brexit has undoubtedly brought these dynamics into focus (Leruth, Gänzle, and Trondal, 2019; Markakis, 2020; Piris, 2021). For one, the fear of exit contagion has translated into ambivalent political attitudes to differentiation to say the least, resisting it if considered as a slippery slope to exit, or conversely adopting it as an alternative to exit (Bongardt, and Torres, 2021). Moreover, in addition to Brexit acting as a trigger for dynamics of differentiated disintegration (Schimmelfennig 2019), the hard Brexit deal that has finally obtained is the story of the failure of devising mutually acceptable forms of external differentiation by Theresa May in the first stage of the negotiations (Nicolaidis, 2021). Conversely, the kind of performative independence which has characterised the Johnson government's approach illustrates the grip of sovereignty as a driver for not only differentiation but its extreme form, namely disintegration, in spite of the countervailing features of an issue area (economies of scale) or of a country's economy, eg open and global (Bickerton, 2019). This is the realm where differentiated disintegration meets constitutional theories of secession (Buchanan, 1997).

Differentiation in the Brexit context cannot be isolated from the broader picture of external differentiation in the field of trade. The EU has not only negotiated a vast array of external agreements (FTAs, Association agreements, UK-TCA) for their own sake, but has used them over time to project a certain conception of its own internal identity (for early treatment see Howse and Nicolaidis, 2001). These agreements are differentiated in terms of timing (Chile, 2001 vs CETA 2020; level of development (EPAs vs FTAs); whether they include a customs union (Turkey) or not; whether they include dynamic regulatory alignment (EEA) or not (CETA); their degree of geographical proximity (neighbourhood eg Ukraine or Maghreb involving *acquis* vs Vietnam or Japan); or last but not least whether they only serve to promote trade liberalisation or include non-market values (eg export of social and environment standards), or whether they emphasise regulatory autonomy.

Perhaps ultimately, the most important factors involve the broader and geopolitical political context that drives these negotiations - from the rise of unilateralism and obsolescence of the WTO to the role of alliances with China and systems competition. As a result, these different territorial entities not only correspond to different degrees of harmonisation/integration (eg vertical differentiation) but have become insurance mechanisms, making trade commitments and other diplomatic relations more legally secure.

We are left with a mixed picture here. The EU tries to simplify external differentiation patterns, by ensuring that the UK is not a "half member", proclaiming that one is either in or out, a member or a third country (Nicolaidis, 2019). But at the same time this stance is negated by the many different versions and gradation of differentiation that obtain externally and dock in differentially to the various schemes of internal differentiation.

One way to simplify such complexity is to invoke the question of transitivity of differentiation, in other words how does a differentiated relation between A and B, and in parallel between B and C, affect the existence and nature of differentiation between A and C (A and B can be countries or groups of countries). The relationship between EU internal and external differentiation can serve as illustration. As stated earlier, the link is important because patterns of external differentiation are not only the result of material interest-based drivers but can be seen as political signalling devices on behalf of both the EU and its external ‘partners.’ On trade, the transitivity question arises as say financial recognition is negotiated with the US by the EU, with the UK by the US - but when the EU-UK side is stalled. Or when EEA countries envisage at once new relations with the EU and the UK. The question arises whether a policy occurring under enhanced cooperation (eg minimal participation by 9 member states) can authorise third country participants who will therefore be more ‘integrated’ with a group of EU states than some other member states. Or if an EU country has asked for and been given a permanent opt-out (Denmark on defense opt-out) or ad-hoc opt-outs (under JHA) while non-members participate, differentiation defines increasingly complex networks of differentiated relationships.

Similarly much differentiation has occurred on the security front from PESCO to the European intervention initiative emanating from the EU, but also emanating from the UK’s heightened involvement with different configurations involving EU states, from NATO of course to say, minilateral relationships with the Nordic states. Can these differentiated forms of cooperation act as proxy for a more systematic agreement with the EU? If in the field of security, the EU is itself a complex system of differentiation open in different ways to external differentiation, there may be scenarios where third countries become leaders in projects involving EU member states. More broadly the overlap and compatibility between international law and EU law plays a critical role. The Vienna convention itself can at times be interpreted in flexible and dynamic ways, where EU law might just be too constraining or rigid to allow for the desired level of external differentiation. And even if not ad-hoc, differentiation can occur through pathways that make it difficult to identify, as when some EU states caucus in the UN (eg UN human rights, Macaj 2022; editorial, European Papers, 2021, N1).

More specifically, the EU’s vision of the Brexit TCA was to use it to limit the kind of “transactional approach” that it saw the UK promote. But at the same time it sought to make it a wholistic agreement where different issues could be negotiated under one roof using art 217 association agreement framework rather than an FTA legal base, and indeed less than half the provisions are actually about trade. Within this framework it is fair to say that a lot of the content can be read through the lenses of differentiation, or flexible adaption to the bilateral context, including the fact that the two sides started with no tariff between them.

To be sure, even if the aim of the UKTCA was to ensure that no tariff would be erected, trade defence instruments (countervailing duties or safeguards) were introduced, and some restrictions to trade explicitly envisaged (which allowed the unfortunately

momentary export restriction for vaccines adopted by the EU in 2021). New restrictions can concern for instance financial or professional services, cabotage, etc.

Moreover, the inclusion in the TCA of a chapter on “level playing field and sustainable development” (including competition/state aid, taxation, and labour and environmental law) is both an exemplar of differentiation among external trade agreements and between them and internal EU rules. To be sure, these kinds of clauses were first inserted in the last generation of EU trade agreements with the 2008 EU-CARIFORUM deal with almost no effect and were never invoked (see the Bilal and Hoekman, 2019 and other contributions to the RESPECT project). Here differentiation treads a fine line between allowing and limiting regulatory autonomy, ranging as it does from soft commitments without dispute settlements on standards to the treatment of state aid replete with unprecedented provisions for dispute settlement, allowing for direct retaliation rights such as customs duties as remedies for possible divergence. One could argue that this difference in differentiation is a function of a fundamental lack of trust between the parties at the time or timing rather than a structural difference in economic structures between them which arguably is much greater with other partners. But we are more likely to witness a certain degree of spillover from the UK TCA and its introduction by the back door of a more specific right for re-balancing measures through tariffs, an instrument proposed by the French and Dutch for other contexts.

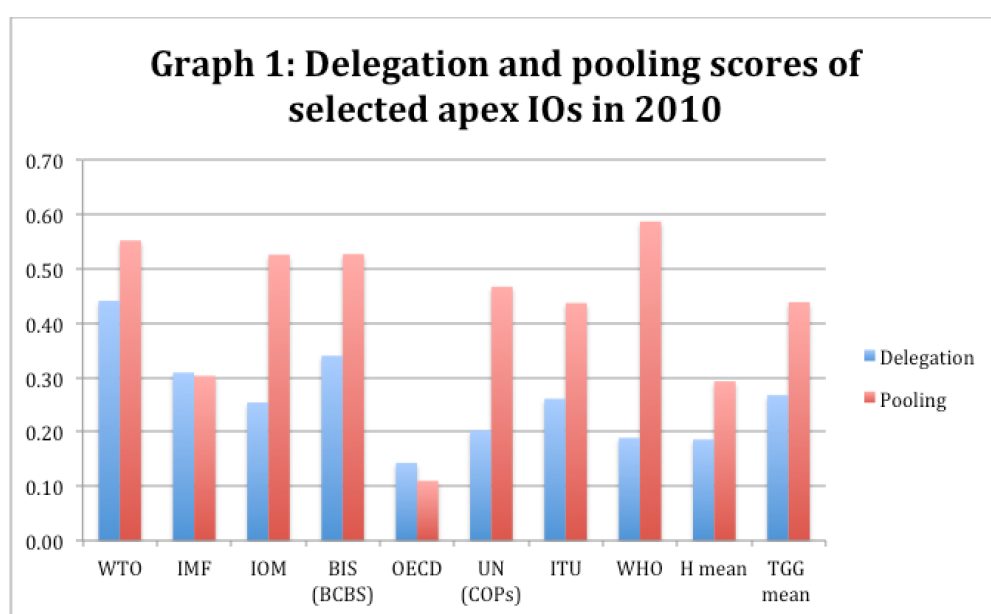
Will the TCA influence other future EU trade or association agreements? Does it open or close new possible forms of differentiation? Will it be seen as attractive by others and will it even be seen as attainable? It would not be far fetched to assume that it has been negotiated in part with these kinds of spillovers in mind on the part of the EU. For one, there is little doubt that it will be a blueprint for possible EU member states exiting the EU who would thus enter the category of ‘former member states’. Moreover, it might also become an example for countries outside the EU that might be increasingly disgruntled by a status of rule taker that is increasingly visible politically, today Switzerland but possibly even Norway. For other countries and other continents (America, Africa), the agreement with the UK can conversely offer more ambitious horizons on some issues and lower ambitions in other.

Another front where the nature of such agreements relates to democracy has to do with whether agreements can be disputed before domestic courts, in other words whether they involve some form of direct effect as provided by EU law. In the case of the Brexit TCA for instance, individuals have no recourse since the agreement is under international law between two states or state-like entities, including state-to-state dispute settlement (the UK insisted on a clause (art 4) that made it formally impossible to apply EU law). To be sure this was the case for the initial FTAs but was softened in later cases and might evolve over the years. Similarly the fact that the agreement does not involve investor protection (ISDS) is also significant from a democracy perspective.

Structures –Types of supranational authority and linkage potentials

Beyond issue-specific and actor-specific relational determinants, differentiation does not happen in a vacuum but proceeds from underlying conditions, a baseline of integration or cooperation whether in the EU or globally. This baseline is encoded in a structure that produces constraints on actors, who react by engaging or not in differentiation. This can either be to promote more integration dynamic in the face of pushback by some, or to forestall fragmentation and a lowering of the cooperation baseline (Zürn 2018).

This baseline, or context, matters, relating in particular to the nature of supranational authority in various areas which in turn shape the incentives faced by states.



Source: Adrien Bradley, Transformation of Global Governance project, unpublished working paper (adapted from data from Hooghe et al 2017)

It would be useful in this regard to draw on studies that provide systematic assessments of supranational authority to assess whether different kinds of supranational authority are more or less prone to differentiation. Perhaps the two most exhaustive studies in the field provide reliable benchmarks. Zürn et al (2021) (International Authority Database) quantify authority broadly along IO autonomy and bindingness of rules over seven different policy *functions*. Hooghe et al (2017) compile measures of authority for 76 IOs over 1950-2010, disaggregating “authority” into *delegation* and *pooling* (delegation describes the autonomous capacity of international actors to govern. Pooling describes collective governance by states themselves. *ibid* p. 24), for which they provide complex compound measures (see also Hooghe, Lenz, and Marks 2019). Combined, these measures indicate the capacity of an apex IO to orchestrate international collective action among its fellow network actors within its issue area.

(Graph 1). The EU is not included above but would clearly figure at the highest end of the spectrum.

To be sure these measures do not determine an IO's effectiveness or its vulnerability to contestation (Zürn 2018). Hence, in Hooghe et al the OECD has the lowest delegation and pooling scores, yet, mandated by the G20 after the global financial crisis, it has conceived ambitious reforms of international taxation, and overseen the implementation of a fair amount of them, culminating in an imminent global minimum tax rate. The WTO's overall delegation score is the highest of the sample apex IOs, due in large part to the binding character of Appellate Body decisions but also to its role in monitoring and implementing existing agreements, and assist in negotiations for subsequent revisions as well as provide interpretations, and ultimately adjudicate.

WTO is also second-highest for pooling of both stages of agenda setting and final decision-taking. These are high in part because state-dominated bodies control the process through the Ministerial and General Councils, where decisions are binding without needing ratification, and taken, in theory, by majority voting. But recoded for unanimity which obtains in practice, this score appropriately drops to zero. This expresses the double-edged nature of the WTO as truly a "member-driven" organisation, but only if and when all have decided to move, highlighting the sometimes significant gap between rules-in-use and rules on paper (Ostrom 2005).

It would be interesting to assess whether and how these patterns of delegation and pooling affect the likelihood of DI. On one hand, given the formal unanimity rule and thus low pooling, states have less reason from fearing domination under universal and undifferentiated membership. After all WTO's strong non-discrimination rules are clearly targeting the diversion effect of exclusionary trade liberalisation and have dampened moves from differentiation.

On the other hand, the trade regime has legalised regional agreements on grounds that trade creation in agreements covering 'substantially all trade' will be greater. The same logic informs plurilateral agreements mentioned at the outset of this paper (Hoekman and Sabel, 2021). Yet even as the trade regime pursued further integration, reaching behind-the-border measures and encroaching further on national prerogatives, the deepening of substantive linkages ("trade and...") has mitigated against further differentiation. Hence for instance the kind of integration of national competition policies meant to replace countervailing measure as witnessed in the EU has not happened globally, neither for the whole membership nor even for small groups of 'willing and able' countries (although we have since some 'comity' competition decisions among some of the membership). Since trade and competition have been two key "exclusive competence" of the EU since its inception, the extent of *delegation* in this context has clearly dampened the possibility for differentiation in the EU context, while globally differentiation has followed different paths in trade vs competition. The same questions can be posed about more differentiated policy fields such as taxation or

financial regulation which need to account for policy spillovers and overlapping jurisdictions of other apex IOs.

Ethos - Solidarity and its limits

Beyond formal institutional design, structures are also ideational. Here we point to another line of enquiry about the causes for differentiation which has more to do with the ethos of the polities under consideration. We started this quick overview of ‘causes’ by asking how collective action patterns - as outlined above - mitigated by de facto inequality between states, give rise to conflict over relative contributions to the public good. If differentiation is about relationships, we can ask how different publics and their leadership relate to various kinds of cross border inequalities regarding general living conditions that might be either entrenched by ‘clubbising’ gains or mitigated by producing positive externalities. Will publics be happy to see such inequalities structurally entrenched in the name of autonomy, rather than contested in the name of solidarity? Does mere recognition of differing capacities to cooperate run the risk of essentialising such differences — once differing performance capacities are acknowledged, they might be discursively reproduced over time. In other words, a combination of rhetorical and institutional entrapment might occur. This is true between EU member states but orders of magnitude greater at the global level.

In the EU context, a case in point is the White Paper of the Commission on the “Future of Europe” (European Commission, 2017) which establishes a conceptual link between performance and increased returns, which might — at least discursively — neglect the structural and historical conditions of such performances. Even though DI would be part of several scenarios, it is closest to “Scenario 3” of the European Commission’s White Paper (European Commission, 2017, p. 20). Analogous to “coalitions of the willing”, this scenario follows the motto “Those Who Want More Do More” and thus encourages willing member states to integrate in specific policy areas such as security or social policy (European Commission, 2017; Michailidou, and Trenz 2020; Martinsen, and Wessel, 2014). But if DI might risk essentialising differences within the EU, then this risk might spill over into external relations as well. The same obtains at the global level. Fossum et al 2021 argue that the EU – as compared to comparable states of the same size – is particularly vulnerable to external differentiating pressures.

We will not delve here into long standing debates over the optimal scope of political community. Suffice to say that against the cosmopolitan argument that democratic rights and duties should extend to all of humanity, the state as a political community of bounded solidarity grounded in exclusion has been defended on various counts. Crucially, it offers the most sustainable boundaries for the provision of collective goods, a provision which in turn continues to legitimise it. Solidarity in this context may be the outcome of political efforts to organise it, rather than a pre-existing condition that politics can only work with at the margins. Banting and Kymlicka (2015) sum up its three aspects: civic/social, democratic, and redistributive which in turn relate differently to diversity:

“While diversity has an independent effect on solidarity, above and beyond other contemporary social and economic trends, the relationship between diversity and solidarity is complex and context-dependent. Different types of diversity seem to affect solidarity in different ways; and diversity has distinct effects on three dimensions of solidarity. Civic tolerance and redistributive solidarity in particular may follow different trajectories in a neoliberal age.” (p.10)

The authors allow for the possibility of a virtuous circle of projection of solidarity from states that enjoy particularly strong solidarity among themselves already, citing the activist foreign policy and financial commitments tied to the national self-image of states like Sweden or Canada. This possibility must be taken with a grain of salt however, given for example Sweden’s large military industry or Canada’s progressive uncovering of its dominating past towards indigeneous peoples. But the point remains that internal solidarity patterns in complex diverse societies will affect the propensity of states to engage with others where differences might be greater.

The expansion of solidarity supranationally as analysed by Bauböck (2017) is activated by two elements, legislation that determines who is included and with what kind of rights, and political discourses and narratives that strengthen or undermine solidarity. “Rules for determining citizens and their rights must mirror a coherent multilevel conception of political community and must be complemented with public narratives about corresponding collective identities that can be widely shared among citizens.” (p. 83) While Bauböck posits that building supranational (and infranational) overlapping “citizenship regimes” expands solidarity by reinforcing democratic congruence, he concedes, like Banting and Kymlicka, that expansion of solidarity is a slow process, likely multi-generational, and requires hard work through political institutions and actors.

In this context, cooperation arises when a group of countries has reached a certain threshold of congruence between conceptions of rights and corresponding political narratives allowing for a potential expansive dynamic but vulnerable to potential backlash as population react to widespread free-riding behaviours. The sustainability of differentiated cooperation will also depend on these broader narratives.

Endogenous DI dynamics

Finally, DI may be driven by interdependence and politicisation, but analysts also investigate its endogenous dynamics across different orders (as with the public goods analysis we started with). For one, differentiation dynamics are ripe with path dependency and the importance of junctures (from changes of government) that would be underlined by historical institutionalists.

Moreover, jurisdictional overlaps or gaps can produce unsatisfactory outcomes which fuel contestation (Morse & Keohane 2014) or even be exploited through arbitrage, which can lead to order weakening through confrontation or duplication; or order strengthening through deference and hierarchisation (Pratt 2018, cf. also Zürn's reactive sequences, *supra*). As stated before, these processes do not start *ex nihilo*: Henning and Pratt (2020) sketch out expected outcomes based on initial states of hierarchy and differentiation, and so on.

Indeed as Hannah Arendt captured with her musings on “natality”, relationships are always in flux, reflecting the first that birth itself gives rise to the possibility of change, the foundation of something entirely new, which also precludes eternal (totalitarian) domination (Arendt 1958 [1998], Vatter 2006). Stability can only be attained by continuous re-legitimation of the regime in question through present, demo(i)cratic practice. Thus, concerns about DI leading to disintegration should not take as point of departure an analysis of deviations from a uniform benchmark of stable equilibrium, but rather an analysis of the conditions of a dynamic equilibrium. Differentiation may be “the way things work”, but differentiation in some areas may disrupt the possibility of attaining this kind of dynamic equilibrium, materialised as a “meta-stable” polycentric soft core: eg rule of law (cf. Kelemen 2019) or democracy.

4. How? Pathways to differentiation and the concern for democratic congruence

Our fourth and final question, is prescriptive: how is differentiation conducted in a sustainable manner, a manner that addresses or fails to address democracy and domination concerns, and how should it be? While much of the DI/DC literature has been analytical in nature, it has tended to become more normative, especially in the wake of Brexit and the ensuing ‘existential’ nature of differentiation, including as schemes of internal and external differentiation are compared and weighted against each other. Concurrently, attention is paid to the political nature of the exercise. For instance, Bellamy Kroger and Lorimer (forthcoming) focus on an assessment of the exemptions and exclusions resulting from DI in an ideal theory perspective, but also assess the *perception* of these policies by party political actors from different ideological backgrounds and therefore their positions about these policies. Other analysts also highlight that citizens’ support for DI hinges on a fair design of DI ((Leuffen, Müller and Schuessler, 2020; Leuffen, de Blok, Schuessler, Heermann and De Vries, 2021) as well as its effectiveness (Lavenex and Križić, 2019).

Many general ideas have been expressed in this debate which can apply both to the regional and global level from a relational perspective. We come back to our three-prong democratic congruence test laid out at the end of Part I, and extract a few themes.

Democratic anchoring

This most fundamental concern calls on differentiation instances not to threaten the equal opportunity of citizens, both outside and inside of the integrated policy area, democratically to influence the operation of their respective states.

In other words, this is a negative test which can be addressed first by ensuring that differentiation includes ways of ensuring the non-arbitrariness of the rules and actions that follow from differentiation in how they affect other peoples, their preferences and the ways in which they have been aggregated through their national or local contracts. Moreover, states and peoples who are at the receiving end of asymmetric relationships of selection or distinction (as per typology) ought to be able to exercise their agency through deliberate and deliberative exercises which filter their effects on their own polities. It may be the case that external actors offer ways to empower such agency. To ameliorate this process, we might find that different types of differentiation may serve as “better proxies”, where specific policies can be dealt with through alternative means say distinction or even discretion when they might have involved selection (such as aid-for-trade globally or regionally and cohesion funds in this way in the EU whereby less competitive countries have been induced to take part in the single market through side payments).

Horizontal non-domination and empathy

Second, our democratic congruence test calls for ensuring that differentiation instances do not entrench positions of advantage or disadvantage that permanently threaten the status of countries on the global stage.

For one, differentiation ought not to be associated with a “European model” reminiscent of the imposition of standards of civilisation of yesteryear (Acharya, 1997, Lenz & Nicolaidis, 2019, p. 92). At least in a republican perspective, we would need to work with the distinction between forms of legitimate influence and structural domination in integration processes, and what normatively undesirable axioms lie in the genealogy of integration and external differentiation itself.

More operationally, this concerns the ways in which the norms of non-arbitrariness, agency, or authorship are applied in different contexts. In particular, the perennial question of who decides must be adjudicated fairly as well as the mechanisms or clauses for openness surrounding differentiation, and transparency of the criteria and procedures for exclusion and inclusion. Hence, the design of the EU’s enhanced cooperation under article 20, with the European Commission as a neutral arbiter. At the global level, we ought to pursue systematically multilateralised democratic gate-keeping. In this context, attempts to formalise and legitimise the idea of clubs has been on the rise for some time, arguing that they can function like international regimes, to establish behavioral expectations, reduce information asymmetries and transaction costs, but with added bite thanks to penalties for non-participants

(Nordhaus: Climate Clubs: overcoming free-riding, 1341). Accordingly, a climate club is an agreement by participating countries to undertake harmonized emissions reductions through and “international target carbon price” using whatever mechanism they choose. This is for instance the logic behind the EU setting in place an external tariff (CBAM) in the field of climate change mitigation. But how are nonparticipants to be penalized? On what basis are penalties fixed? Even if not a free-for-all differentiation needs to remain open under the broader rules of the game of the international system.

It can also be argued that when it comes to the EU’s external differentiation, risks of horizontal dominance are heightened by the inflexibility of EU law in the name of ‘integrity’ (Nicolaidis, 2020). Can the EU engage in a systematic exercise of assessment of democratic congruence in this regard? For one whereas internal DI can give rise to tailored solutions of democratic congruence (cf. eg proposals for a Eurozone parliament or committee in the EP), the domination risks of external differentiation ultimately require a greater degree of authorship on the part of all stakeholders. Moreover, I have argued elsewhere (Garcia Bercero and Nicolaidis, 2021) that the default condition for mutual market access could fruitfully shift towards unilateral alignment (‘the Brussels effect’) to *regulatory compatibility, managed mutual recognition and legal empathy*, principles which combined can help minimise horizontal domination. To be sure empathy requires a certain degree of similarity or "affective matching" between parties, but beyond, it refers to the process of mutual learning involved in a relationship (Nicolaidis, 2016, 2017; Garcia Bercero and Nicolaidis, 2021; Van Leeuwen, 2021).

Vertical non-domination and flexible solidarity

Finally, the third element of our test on democratic congruence is to ensure that differentiation does not lead to the erosion of the kind of shared principles and solidarity needed to administer the management of externalities in a fair way.

Whether differentiated or not, much of regional and global cooperation is subject to anti-democratic pathologies (or at least democratic deficits) associated with Weber’s iron cage of bureaucracy, the technocratic drift, conflict minimising strategies and “executive multilateralism” (eg multilateralism led by national executives rather than other state institutions). This has to do with the inequality of status between states, their respective voices in the system as well as their respective handling of domestic authorisation for their global action. Therefore, we need to ask what is the glue that still holds the global system of cooperation together, in other words, the shared rules of the game however much these may be put into question by the current geopolitical rift. In order to avoid vertical domination, what kind of non-differentiated core do we need across and within issue areas or regime complexes? Integration has proceeded with the assumption of unity: if not now then later, if not with all then with most or at least those willing and capable. In the EU, the dynamics of integration itself have given rise to a relatively undifferentiated core of integrated states within central core institutions in which all member states take part even quite often when they have opted out of a policy.

In the EU, the Single Market and its four freedoms have long been held to be this kind of core, and EU institutions have negotiated regimes of harmonisation and mutual recognition to achieve this. On a deeper level, a battle is taking shape over differentiation in the rule of law itself, with the emergence of increasingly autocratic and illiberal practices by states like Poland and Hungary where differentiation seems non-permissible even considering the normative value of constitutional pluralism (Kelemen 2019). But even in the later case areas are progressively carved out which fall under the kind of ‘cultural differentiation’ discussed earlier.

Most intriguing is the case of the EU Asylum and Migration policy where the sharing responsibility and solidarity has long and repeatedly been invoked by those seeking to reform the current broken Dublin system. For sure, solidarity and common rules ought to be the rule if we are to respect the logic of the Schengen area – although of course these developments come at a time when the Schengen area itself suffers from disintegration pressures (Somer, Tekin, and Meissner, 2020). And yet the EU Commission has formally sought in 2020 to codify differentiation in this field too, under the label of flexible solidarity (Chebel d’Appollonia, 2019, Okyay, Lavenex, Križic, and Aydin-Düzgit, 2020). The label is in keeping with the deep meaning of solidarity, as opposed to justice and solidarity obligations that come with belonging to the same state: solidarity beyond the state ultimately is a choice, and it better be a democratic choice (Nicolaidis and Viehoff, 2012, 2015). The Commission proposal stems from two connected observations: 1) that a bridge needs to be built between Mediterranean countries who believe that extant relocation schemes are much too timid (eg 8 months, non compliance) and Visegrad countries which remain opposed to any kind of reinforcement of relocation obligations; 2) differentiation on the internal and external fronts are intimately intertwined and the scheme can only be improved by externalising the management of people to our neighbor. As a result, the Commission suggests for member states to serve the ideal of solidarity but in flexible and voluntary ways where states choose how to combine relocation, return sponsorship and capacity building. In this differentiated scheme, a member state can sponsor the return of a refugee located in another member states to a third country while also supporting local integration elsewhere. To be sure, many questions arise from this idea of flexible solidarity, including how do we assess and measure the contribution of different member states or whether external differentiation can work here (will France use its relations with countries in the Maghreb to help Mediterranean countries)? Will this lead to concentric circles of refugee management? Is external differentiation simply a way to ignore solidarity altogether? Who is handling the migration and asylum policy of the EU - the member states or third countries through readmission agreements?

Beyond the EU, we need to discuss the features of the international system which correspond to the kind of non-differentiated cores compatible with a sustainable global system of differentiation. The UN system and its sectoral, task-specific IOs can be said to represent, to different degrees, such "integrated" cores – though characterised by all kinds of differentiation as discussed in this research paper. Given this, it may be more analytically productive to view these kinds of cores as soft, polycentric cores (Schmidt

2019; Ostrom 2010, 2012). This “softness”, or fuzzy contours of overlapping clusters and communities should not belie the existence or value of a hard “kernel” (Fabbrini 2019), which can emerge when the system’s Kompetenz-Kompetenz is tested, often in a state of exception or crisis (Matthijs et al 2019). And they are more effective when incorporating transnational provisions that include non-participating third countries (Eisl and Rubio, 2021). As discussed in part II, more stratified and dynamic forms of transnational governance exist which can better approximate the imperatives of efficacy as well as democratic legitimacy or various forms of polycentric solidarity (cf. Nicolaidis & van Zeben 2019). Accordingly, it is helpful to focus on the types of functions such as cooperative cores, differentiated or otherwise, are meant to carry out, in view of what kind of good, at what scale and scope, and under what modalities.

Conclusion: The end of ambiguity?

Is differentiated integration both regionally and globally bound to increase and if so, does this reflect a certain entropy of the international society of states or conversely an evolving, more sophisticated and complex model of global cooperation? This research paper has not addressed this question or ventured into predictions. Instead, it has explored through a *relational* lens some of the concepts put forth by the scholarship in this vein, and the agenda of EU3D in particular, through four fundamental questions:

- 1) *Whether* differentiation is desirable and for whom if we seek to maximise democratic congruence, including vertical and horizontal non domination. We highlighted the importance of non-arbitrariness, agency and authorship in ensuring such congruence and suggested a three-pronged test to help us adjudicate the question in specific instances.
- 2) *What*, a question referring to the landscape encompassing the spectrum of relationships that span the ambit from close, highly integrated groupings to loose informal forms of differentiation (hardly captured by the contrast between differentiated integration vs cooperation), presenting a relational typology consisting of selection, recognition, distinction and discretion.
- 3) *Why* delves into the many categories of causes or factors explaining why states engage in differentiation at the EU and the global level – reading functional and political drivers as indicators of patterns of relations, distinguishing in particular between states that are un-able, unwilling or unamenable when considering joining integration schemes.
- 4) Finally under the question ‘*How*’ we offer a few preliminary thoughts on how or under what conditions, DI/DC can pass the democratic congruence test we set out at the beginning.

Ultimately, the future of differentiation may hinge on how we relate to the pervasive ambiguity that characterises relationships in general and relations between states and their peoples in particular, especially when they exhibit vastly different versions of the kind of democratic standards we embrace in this research programme. Differentiation

is a product of such ambiguity, to the extent that the the constant state of flux these relationships are in is only very imperfectly described by the rules of the game that we can observe as analysts. At the same time, if the global system becomes increasingly fragmented and divided between radically estranged sides, differentiation will become the structural expression of the end of ambiguity. If the common lodestar of cooperation should remain our critical interrogation of the conditions of demo(i)cratic legitimacy, non hegemony and planetary sustainability, we need only to retain the right kind of ambiguity. It remains for those of us who believe that differentiation offers a possible compass on this journey to continue to try to help chart the route, humbled by the complexity of this never-ending task.

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