

**Global justice and foreign policy
The case of the European Union**

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Abstract

Since its inception, the European Union has proclaimed an ambition to promote values and justice at the global level. In this paper, I discuss how we can assess a foreign policy that has such an ambition. There is no common understanding of how claims to justice beyond borders should be met. Further, in order to be relevant, any critical assessment of foreign policy must take into consideration the constraints of global politics, while at the same time not losing sight of normative requirements. In order to take heed of these concerns, I suggest an analytical framework based on three different conceptions of global justice. These conceptions come with strengths and weaknesses, as they prioritise some challenges to global justice over others. The differences between these conceptions facilitate the empirical effort of discerning inhibiting and facilitating factors for the conduct of a just foreign policy – of taking into account the constraints of global politics. At the same time, the framework acknowledges the contested nature of justice without compromising on the need to assess foreign policy practice against explicit normative criteria. The approach makes it possible for the analyst to provide a more nuanced assessment as well as one based on what might be considered feasible criteria for justice, and to specify the strengths and weaknesses of the observed foreign policy practice from different perspectives.

Keywords

EU External Policy – EU Global Strategy – Global Political Justice – Human Rights – Impartiality – Mutual Relations – Non-Domination

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Introduction¹

Foreign policy makers often appeal to justice when they explain to domestic and international audiences what they do. However, there is no consensus on what a just foreign policy would look like. While there is general acknowledgement of the fact of injustice, there is no agreement on what justice entails. There is no common understanding of how claims to justice beyond borders should be met. Different state and non-state actors have competing views not only on how to resolve key challenges in a manner that would be considered just, but also on what those key challenges actually are. What kind of justice might be achieved under conditions of disagreement?

Acknowledging that justice is contested, in this paper I discuss what might inhibit or facilitate different policies aiming to further reduce arbitrariness and strengthen conditions for justice at the global level. Aiming to take heed both of normative standards and of the constraints of global politics, I start out by highlighting the differences between the conceptions of justice as non-domination, impartiality and mutual recognition, as they have been laid out in the GLOBUS project (Eriksen 2016). I further discuss what kinds of foreign policies we should expect to emanate from the different normative prioritizations in these conceptions. Subsequently, I develop a brief and preliminary examination of what kind of resistance foreign policies resting on each of these approaches might encounter. In so doing I draw on examples from the EU's external policies and the reactions to them.

I pay particular attention to the normative arguments that are presented in support of or in opposition to the different approaches to justice. This is in line with the basic sociological insight that norms and values serve as the foundation of any social order and that they have behavioural consequences (Finnemore 1996; Weber 1978; Wendt 1999). This is not to deny that there may be resistance due to competing interests, or that power relations and dire material circumstances can undermine the very conditions for justice claims to be heeded. Power and interests are inherent in international politics. Still, a focus on power and material resources alone, will not take us very far in assessing whether or not resistance to a policy is reasonable. If we are to understand what might inhibit or facilitate any ambition to promote justice at the global level, we must also identify the normative arguments that may trigger contestation of different approaches and assess their relative salience as well as their validity.

Before embarking on the above analysis, however, I discuss why the European Union (EU) may be a worthwhile starting point for studying and trying to make sense of the dilemmas that arise in seeking to address claims to justice that transcend territorial borders.

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The European Union as a political experiment

The classic assumption of international politics is that governments' duties to citizens stop at the borders of their own state. European integration represents a distinct challenge to this assumption. The idea of Europe, as it was articulated at the end of World War II, was that by ensuring a common European market, bolstered by mutually binding legal obligations between states, future wars in Europe could be avoided. Through this process of integration, European governments have created a context in which claims of justice transgress borders. In turn, European governments are also brought to acknowledge, that solutions to practical problems are difficult to find within the borders of a single state.

The European Union may thus be seen as a political experiment in establishing a system of rights and duties that transcends state borders. The experiment is certainly unfinished. The institutionalisation of rights and duties, – what rights? to whom? and in what way? – is deeply contested amongst European governments as well as its citizens. This is more visible today than ever before. With the outcome of the British referendum on EU membership; the deep divisions amongst European states on what is the appropriate way to respond to the large number of refugees presenting themselves at the European borders; and the rise of populist movements question the very idea of integration, one might wonder if the experiment has failed altogether.

In spite of, or perhaps precisely because of these troubles, and due to its status as an experiment, the EU is a worthwhile starting point for studying and trying to make sense of the dilemmas that arise in seeking to address claims to justice that transcend territorial borders. It is so even for those who do not take any particular interest in European affairs as such.

While being a polity that grapples with its own internal dilemmas of justice, the European Union also presents itself as an actor at the global arena that seeks to promote and safeguard values, and thus, presumably as an actor that is committed to contribute to resolve the practical problems that arise also outside its own borders. In fact, representatives of the EU often describe it as one of the most important normative powers in the world (Barroso 2007). Scholars have also stressed the focus on export of norms and values as a distinctive trait of the EU's external policies and in that regard the EU can count a number of successes. It is a major donor of humanitarian assistance and development aid, human rights clauses are part of all its cooperation agreements, and its security policy is geared towards contributing to conflict prevention and peace missions.

On the other hand, the EU is also one of the largest trade blocs in the world, and amongst its members are the most powerful former colonial powers. Over time, it has expanded its system of duties and obligations to new states. Yet, to articulate a policy towards citizens and states that are further outside that political community, to promote justice globally, is a different matter from that of including states in the existing and domesticated system of justice. Here, the reality of the foreign will must

be factored in: it is not only a question of us (Europeans) but also of 'the other' and our obligations thereto as well as theirs towards us.

So, how precisely does this system, which itself is an unfinished order of institutionalised duties and obligations, project itself unto the global arena? What ideas and conceptions of justice, if any, underpin the external policies of the European Union? We cannot take the EU's self-description at face value. However, we can study the EU's approach in order to find out what may be reasonable approaches to strengthen global justice. This is important, as there is no agreement on what 'justice' entails. Different state and non-state actors have competing views not only on how to resolve key challenges in a manner that would be considered just, but also on what those key challenges actually are. Emerging powers, such as Brazil, China and India, as well as more established powers such as Russia, challenge the perceived hegemony of Europe and its allies. In the eyes of these states, the legitimacy of the international infrastructure of institutions and treaties, which has been championed by Europe as a key instrument in tackling problems of justice, is dwindling. Further, the Union's strategy of 'leading by example' in several policy spheres (e.g. climate change) has not brought immediate results while the Union's own commitment to its declared values is tested as tens of thousands of migrants, fleeing from war, oppression, and extreme poverty in search of safety, arrive at the borders of the Union.

Against this backdrop of uncertainty, risk and contestation one may even ask if it is possible at all to conduct a foreign policy with the ambition of increasing justice in global affairs. Such a task would be multifaceted, as injustices have different aspects and take different forms. At the macro-level, there is a need to contribute to the strengthening of an international infrastructure of institutions and treaties in a manner that invest these with legitimacy across the globe. At the same time, there is a need to develop policies at the micro-level that support the most vulnerable in ways that are consistent with the Union's own values. The former may require a radical redefinition of the principle of sovereignty in order to secure justice for all. Human rights trump sovereignty. The latter, on the other hand, may in fact require a reinforcement of sovereignty, in order to ensure that all states have an equal say, as not only human beings but also states are vulnerable and are dominated.

On the one hand, the EU could be suspected of hypocrisy, of merely using the language of humanistic values for strategic purposes. Human rights politics is often power politics in disguise. According to Carl Schmitt: 'The concept of humanity is an especially useful ideological instrument of imperialist expansion' (1932:54). However, even if one were to refute such suspicions, there is a risk that the EU's actions in the name of justice, however well intended, have poor outcomes. The EU might be seen as a hegemon, either because it imposes values that are considered alien in a different context or by failing to understand the interests and perspectives of other parties. On the other hand, ignoring human suffering such as that arising from human trafficking; the destruction of livelihoods and cultures from climate change;

oppression, torture, discrimination by gender or sexual orientation, all in the name of sovereignty and non-interference is unconscionable.

Hypocrisy may of course also be at display in the policies of other states. A foreign policy aiming to promote justice may encounter obstacles due to constellations of power beyond its own control. The EU works with allies, however, it may also encounter competitors – promoting alternative conceptions of justice. Other states may also become obstacles to the achievement of reduced arbitrariness and to the establishment of reciprocity in global politics.

The challenges to a foreign policy agenda claiming to promote justice are however all the more complex as there is no common understanding of the direction and significance of the ongoing changes to global politics. There are mutually reinforcing, but also ambiguous, or even contradictory trends. On the one hand, globalisation is intensified as flows of trade, people, and cultural impulses across borders are increasing. Political, economic and security challenges are both national and transnational in nature. On the other hand, there is evidence of a renewal of traditional geopolitical concerns and great power competition in an increasingly multipolar world. The onus on geopolitics is coupled with predictions of a shift of power from the old North to the new South and East. This is so even though the new South and East also experience disruption and turmoil, inter alia due to the collapse of weak states and illegitimate rule. The election of Donald Trump as President of the United States further increases the uncertainty with regard to global developments.

A just foreign policy? Three conceptions

In order to establish what may be reasonable objections to different approaches to justice, we need criteria to assess them. To this purpose, GLOBUS has developed a conceptual scheme that rests on three alternative conceptions of justice (Eriksen 2016). All three are reasonable conceptions (Mikalsen forthcoming 2017), yet they prioritise differently with regard to the concerns of justice. An important starting point for all is that the essence of justice is non-dominance. The term dominance refers to a particular kind of unfreedom that people experience when they are in the discretionary power of others. It signifies forms of unauthorized rule – the absence of constitutional provision – or lack of reciprocal power. Justice is unambiguously hostile to dominance (Shapiro 2012: 293-294).

While dominance carries the whiff of illicitness, it is also considered an important characteristic of global politics. Here, the rule of law is limited and might is often seen as right. In the so-called anarchical international society, different forms of dominance may develop and take root. Weak collective institutions and the absence of law enforcement agencies means that there is always a risk that the most powerful dictate what should be done and how, and press others into their service. Yet, also when a (formal or informal) hierarchy is established there may be dominance. Dominance could be value based, and entail the imposition of ideas that are considered alien to other cultures or religions, and perceived as illicit in non-

European contexts. Dominance could be material, and concern the control of key resources and their distribution. Dominance could also be direct and institutionalised, as for example through the Security Council of the United Nations, in which some powers have the privilege to decide over questions that affect all. In principle, it should be possible for those who have installed them, to eliminate relations of dominance. Yet, in global politics, dominance may also be an unintended consequence of good intentions. There is the risk that its actions, however well intended, have poor consequences.

Even though dominance is prevalent in global politics, distributive justice has been the main concern. Indeed, global economic inequalities are major sources of injustice. Social and economic inequalities and the lack of access to food, shelter, health care and education of many stands in stark contrast to the wealth of others. However, the GLOBUS approach is based on the recognition that the risk of dominance will not disappear through a focus on distributive justice alone: A benevolent hegemon may also engage in redistribution (Eriksen 2016). Consequently, rather than discussing what would be a fair distribution, the three conceptions of justice developed in the GLOBUS project concern themselves with the underlying political question of how decisions (for example on distribution) are made and who actually makes them. They focus on the underlying structures of power within the global system, through what institutions and procedures problems might be settled, and by whom.

Arguably, peoples' exposure to dominance is heightened due to globalization. The ability of the state to function as an adequate shelter seems reduced. Political, economic and security challenges now originate in transnational and international, and not only national, contexts. Forces of global finance outpace the authority of elected governments to regulate them, and patterns of consumption, growth, and lifestyle in one part of the globe have measurable effects on the lives and well-being of citizens at the other end of the planet. Flows of communication blatantly ignore state borders and easily overcome the challenge of geographical distance. The global impinges on the local and vice versa. There is 'a new sense of vulnerability to transnational forces' (Fraser 2005: 71). Increased flows of migration, climate change, changing patterns of trade, and security risks challenge borders and affect people's interests without regard for their status of citizenship.

Theorists differ on the importance of globalization for our thinking about global justice. Some take the view that as boundaries between states are increasingly porous they cannot mark the limits of our obligations to others. Duties extend also to citizens that reside outside the political community. Others, while agreeing on the basic premise that all humans are entitled to equal moral consideration, borders are still consider an inescapable fact of global politics that must condition any reflexion on global justice.

While there is increased attention to the question of political justice in the context of globalisation, theorists prioritise differently. There are different understandings of what freedom from dominance implies. What does it mean not to be at the mercy of

others? They also hold divergent views on the role of political institutions and of how freedom from dominance may be achieved.

The three conceptions in GLOBUS prioritise differently with regard to such questions. In the following, I outline their main concerns and the normative arguments that they rest upon. I further discuss what kinds of foreign policies we should expect to emanate from the different normative prioritisations in these conceptions. The key concerns are also indicated in Table 1.

Table 1: Three conceptions of global justice

	Non-domination	Impartiality	Mutual recognition
Reasons for action	Duty of beneficence	Moral duty	Endangered vulnerabilities
Rightful claimants of justice	States	Individual human beings	Groups, individuals, states
Main concern	Non-interference	Autonomy	Due hearing
Core organisational principle of global politics	External sovereignty	Rights protection	Reciprocity
Institutional form	Multilateral	Supranational	Collaborative
Legal structures	International law	Cosmopolitan law	Democratic cosmopolitan law

As for the concept of justice as mutual recognition, it introduces difference as another important factor in the understanding of what it means to be at the mercy of others. It highlights the substantive differences between people as well as groups. It follows from this perspective that there is a need for procedures that treat people differently in order for them to be free.

The first conception of justice developed in the GLOBUS project, on justice as non-domination, freedom is linked to the absence of arbitrary interference. It rests on a relatively thin conception of liberty where the focus is on establishing mechanisms that prevent arbitrary interference. In this conception, ‘the republican infrastructure is primarily a sheltering mechanism for individual liberty’ aimed at securing ‘the realm of freedom of choice of persons against arbitrary interference’ (Forst 2015: 96). Freedom from arbitrary interference is considered best secured within bounded communities such as states, which are freedom enabling institutional frameworks. Following from this position, a main concern at the global level is to regulate how states should relate to each other in order to ensure their equal status. The question is ‘how well-ordered states ought to relate to one another and what collective projects they ought to pursue’ (Buckinx 2015: 8). This should not be seen as a de-prioritisation of human rights (Mikalsen forthcoming 2017). The important point in this conception is that the freedom of the individual is best protected within the state structure. Further, in order to ensure that states are able to fulfil their promise as freedom enabling institutional frameworks, other states must recognise them as equal and

refrain from interfering in their affairs. It should be added that the normative arguments that underpin this conception are developed on the assumption that that 'there is unlikely to be a sea change in the configuration of national regimes' (Pettit 2015:37). Further, it is a conception that is explicitly based on the concern of how best to provide each people with a 'collective version of individual freedom' (Pettit 2015: 38).

Thus, it would be a priority for a foreign policy resting on this conception to treat states equally, as well as to contribute to establish institutional mechanisms and procedures for interaction between states that respect this principle of equality as well as that of non-interference. It follows from this that international law would be a crucial mechanism for regulating interactions at the global level. Further, one would expect states to support the establishment of multilateral institutions to enable deliberation on common problems. Involvement in such institutions would however be voluntary, as would be the commitment to any agreement entered into during deliberations within the institutions. Duties at the global level would be duties of beneficence rather than a legal obligation.

It would however be voluntarily subscribing to the same understanding of equality and taking, it upon themselves to assist other states when or if they fall prey to acts of dominance. Further, also the expectation that stronger states would encourage and support weaker states in order to make them better equipped to counter the dominance of stronger states. It would seem that the reasons for any supportive action at the global level would thus be based on a duty of beneficence. It would not be a legal obligation, as such obligations are considered to be limited at the global level. That is, a duty that cannot really be demanded, but that would depend instead on the actor's own sense of responsibility to assist those who find themselves in need of assistance through no fault of their own. Such a duty also be the basis for humanitarian aid for example, as well as for interventions in the case of genocide or crimes against humanity.

In the second conception of justice as impartiality individuals are units of ultimate concern. Freedom is linked to the autonomy of the individual, that is, to her ability to be a 'co-determining agent'. Here, a thicker understanding of freedom is in operation than in the conception of justice as non-domination. In this conception, it is not a matter only of securing the individual from non-arbitrary interference, but of ensuring her autonomy (Forst 2015: 98). In this conception, the individual can only be free if she is author of the laws that she has to obey.

In this conception, political communities have a relative value. Their particular shape or form depends on their ability to best ensure the individual's right to autonomy. If decisions taken within the boundaries of one state affects the autonomy of individuals in another state, there would be a need for legal structures and institutions that allow for co-determination. This may lead to an expectation on states to go further in submitting themselves to common laws or to the authority of collective institutions than what is entailed in the conception of justice as non-domination.

In this conception, the normative prioritisations do not from the outset assume a specific legal or social context. However, in order to identify what kinds of institutions and structures would be best suited to ensure the individual's ability to be a co-determining agent, the context must be specified.

This conception does not require to 'do way with' states, but rather to ensure international procedures and structures that give individuals the key status as rightful claimants of justice. This opens for supranational authority as well as legal arrangements that enhance the ability of individuals to influence those decisions that affect them. The need for such stronger legal instruments beyond the states, as well as for institutions that have authority beyond the states themselves, is linked to the concern that there is dominance beyond the state. '[J]ustice as impartiality underscores the need for authoritative institutions that interpret and enforce valid norms. Without a higher-ranking third party that can interpret and make the abstract idea of equal freedom effective, dominance is unavoidable' (Eriksen 2016: 15).

It points to the need for criteria for justice that may be applicable to all, in all contexts. Also, it emphasises the need to find some sort of neutral, unbiased solution, that may in principle be seen a justifiable from the perspective of all.

Acts of interference that do not aim at ensuring equal freedom for all are necessarily instances of dominance, even if they are for our own good. Such acts are unjust because they compromise the right to determine one's own ends. In this approach, justice represents a context transcending principle, establishing a neutral standard for dealing with colliding interests, values and norms.

(Eriksen 2016: 14).

The rights of the individual (to autonomy) 'trump not merely collective goals but also national sovereignty understood in particular way' (Dworkin 2011, as cited in Eriksen 2016: 14).

While not contesting the importance of the individual as the ultimate unit of moral concern, in the conception of justice as mutual recognition, there is a shift in focus. The concern in this perspective is that in order for justice to be developed, there is a need to recognise difference. In contrast to the conception of justice as impartiality, in this perspective there is a concern that the same solution to problems of justice may not be suitable for all actors and in all contexts. There are particular experiences, different histories, as well as unequal access to resources. There is a need to establish mechanisms that each perspective is given its due hearing.

The upshot is a need to search for solutions to justice that are well suited to the actors and their particular experience, rather than to rely on universal solutions. 'Justice as mutual recognition makes us aware of the fact that people may be treated unfairly under just formal procedures' (Eriksen 2016: 19). Rather than an emphasis on the equal treatment of all, there is a focus on the unique identity and experience of each one and a concern that in order to ensure justice their viewpoints must be heard.

Without such due hearing, we cannot know what is just. In this perspective, there is thus a call for collaborative institutional frameworks that make it possible to establish solutions that are context sensitive and that take heed of the particular concerns and vulnerabilities of those affected.

It is a conception of global justice that speaks to a more complex global context in which states, non-state actors, as well as individuals are potential claimants of justice with a more complex set of power asymmetries that may cut across different types of actors.

The existing literature: the EU, foreign policy and norms

As already noted, due to its history, the EU is a worthwhile starting point for studying the dilemmas that arise in seeking to address claims to justice that transcend territorial borders. Two strands of literature on the EU's global role may be particularly relevant for our analysis. First is the literature on the EU's promotion of norms in its foreign policy. Second is the literature on external perceptions of the EU. While there is no mention of the question of justice, or indeed the question of global political justice, in these two literatures, there are nevertheless some common concerns. Most importantly, both literatures bring up empirically relevant knowledge on the conditions of disagreement. The literature on external perceptions of the EU matches our concern with taking into account the perspective of state and non-state actors outside of Europe (Chaban, Elgström and Holland 2006; Chaban and Elgström 2014; Lucarelli 2014; Elgström 2010; Fioramonti and Lucarelli 2010; Knodt, Piefer and Nielsen 2015). It provides insights into the degree to which there is a mismatch between the EU's and third states' understandings of global issues, as well as what the mismatch consists in. The contribution in this literature is however different from that in GLOBUS in that it maps how the EU is seen from the perspective of external actors without linking the findings to specific normative concerns. Further, this literature does not aim to account for the way in which external actors understand the EU.

In the literature on the EU's promotion of norms, the main issue is to identify any possible distinctiveness of the EU as a foreign policy actor. A number of different concepts have been promoted, all of which in different ways link the EU's distinctiveness to a commitment to promote norms globally. There is no link to the theoretical debate on global justice, however, in these analyses. It has been suggested that the EU is a distinctive foreign policy actor in that it 'acts in a normative way', and that it is capable of shaping understandings of what is 'normal' in global politics (Rosecrance 1998; Smith 2000; Aggestam 2008; Manners 2002; Whitman 1998; Diez and Manners 2007). For example, scholars have described the EU as a gentle power (Padoa-Schioppa 2001), an ethical power (Aggestam 2008), a civilian power (Rosecrance 1998; Smith 2000; Telò 2006; Whitman 1998), a normative power (Manners 2002; Diez and Manners 2007; Onar and Nicolaidis 2013), and as carrying out a 'structural' foreign policy (Keukeleire 2004). Alternatively, as suggested by Andrew Linklater:

We may view the development of the EU as an example of the planned extension of the civilising process beyond the nation states – as an outlook, more sensitive to the existence of linguistic and cultural differences within nation states, and more willing to redistribute wealth towards the less affluent societies of the region. Those values inform the EU's relations with other parts of the world.

(Linklater 2011: 456)

The perception of the EU as a distinctive and 'normative' actor takes inspiration from Francois Duchêne's (1972) classic text on the European Union as a 'civilian' power. According to Duchêne, the EU's novelty as an international actor is due to its focus on ensuring stability and security through economic and political rather than military means. Contrary to the realist understanding of international politics, scholars promoting such conceptions of the EU's foreign policy assume that it is possible for a non-state actor that does not possess the traditional means of power to make its mark on global politics. In this sense, the understanding of these scholars runs counter to Christopher Hill's famous dictum regarding the EU's capabilities-expectations gap (Hill 1993). Hill's argument is that because the EU does not have the capabilities of a state in terms of foreign policy, it is unable to live up to the expectations it has created with respect to its role and influence in global politics. A potentially dangerous capabilities-expectations gap has thus developed between the EU's hype and what it is actually capable of delivering.

Much of the literature on the particularity of the EU is focused on the means the Union draws upon when conducting foreign policy, rather than the norms and principles that guide the use of such instruments. In fact, some suggest that it is only because the EU has such a specific set of instruments that it conducts a unique type of foreign policy. In this vein, Robert Kagan establishes a contrast between the (in his view 'realistic') United States, which relies on military power and subscribes to a perspective on international relations consistent with the 'Hobbesian' war of all against all, and the EU's 'Kantian' approach focusing on 'soft' civilian means (Kagan 2003). In his view, however, the EU's uniqueness is merely a product of its circumstances. If the EU were to obtain military capabilities, he would expect it to act like any other power. Incidentally, the idea that the EU has no choice other than to be a 'civilian' power is also to some extent echoed by Duchêne who asserted that 'the one thing Europe cannot be is a major military power' (Duchêne 1972: 37). This statement was clearly conditioned by the assumption that the Cold War and the division between Eastern and Western blocs were core elements of both international and European security. Moreover, he emphasised that it is not possible to define what the EU should do without taking into consideration what it actually can do. However, according to Duchêne, it was not only the international context that made the prospects of a military EU unimaginable. His scepticism with regard to the realistic nature of such an idea was also tied to his assumption (voiced in the early 1970s) that a European federation was at best a far-fetched notion. Consequently, he predicted that in future the EU would play only a modest role 'in military issues of world peace and war' (Duchêne 1972: 38; see also Smith 2000).

To be sure, the instruments that an actor has at its disposal are critical in terms of what it might be able to achieve in its foreign policies, as well as how it might go about achieving its goals (Bull 1982). However, it is far from certain that instruments alone determine policy. It would be more in line with the purposes of this paper to consider that the principles that guide an actor's foreign policy determine how instruments are used (or not used), as well as to what end.

This literature provides useful insights to what the EU does in its external policies as well as on whether or not its policies are somehow shaped by concerns for making a 'better world'. When the EU's unique nature as a 'normative' or 'ethical' power is highlighted, however, the arguments tend to be based on an indiscriminate view of norms. The point is that the EU is different in that it promotes norms as opposed to interests. This literature is different from the analysis conducted here in that it does not draw on the theoretical debates on global justice. Further there is no consideration of the implications of competing views of what is just for the definition of the EU's normative or ethical power. Those who are sceptical to the normative power argument tend to point to inconsistencies in the EU's approach, which is seen as an indicator of hypocrisy on the part of the Union (Hyde-Price 2006; Smith 2006). The distinction between different conceptions of global justice facilitates the identification of inhibiting or facilitating factors to the enhancement of justice other than those linked to competing interests, or constraints of power. It allows for a more nuanced reflection on the role of norms. It also provides conceptual tools for identifying whether or not there are reasonable alternative perspectives to those favoured by the EU, as well as how this should impact on our thinking of global political justice as well as the Union's contribution.

Enhancing conditions for global justice: inhibiting and facilitating factors

In the following, I sketch out a preliminary examination of what kind of counter-arguments foreign policies resting on each of the three conceptions of justice as non-domination, impartiality and mutual recognition might encounter. I do so by drawing in particular on examples from the EU's external policies and the reactions to them.

In the conception of justice as non-domination, there would be an expectation on actors to recognize all states as equal. This seems to be accompanied by a concern that one should refrain from arbitrary interference in the domestic affairs of other states, although the specific criteria for what would be considered arbitrary interference are not entirely clear. Human rights are evidently important also in this perspective, but it may be difficult to promote them as this would probably collide with the principle of non-interference. A system in which states and their external sovereignty is allowed to remain intact is preferred, as it is expected to lead to less domination than an integrated global political structure. The latter would be more in line with a conception of justice as impartiality (Mikalsen 2017). A strong emphasis on the importance of human rights is considered a key trait of its foreign policy. Has this led to criticism of arbitrary interference, and to a claim that the EU demonstrates

a lack of consideration for the principle that all states should be treated equally, as expected according to the conception of justice as non-domination?

In key documents of the EU (the Treaty of Lisbon as well as the EU's Charter of Rights), the EU is described as an entity that subscribes to the principles of human rights. The Union's core features, its normative ideals, are the rights of the human person; democracy; and the rule of law. As Mattias Kumm argues: 'These values are the bedrock' (Kumm 2005: 15). The EU's commitment to these principles thus seems unquestionable. With the Lisbon Treaty, the Common Foreign and Security Policy of the EU (CFSP) was embedded in the general EU constitutional framework, meaning that its development is subject to the same fundamental principles as any other area of EU competence (such as respect for fundamental rights) and to the Charter of Rights.

The EU's concern with ensuring respect for democratic principles and human rights is in evidence in the Union's international agreements (Börzel and Risse 2009). A 'human rights clause' is incorporated into all cooperation and association agreements, and development and technical aid is accompanied by a conditionality clause requiring states to commit to certain political principles (Saltnes 2013). In addition to this across-the-board emphasis on human rights, the EU has also launched issue-specific initiatives, for example the EU's 1998 initiative on torture and the death penalty, raising the issue on a bilateral and multilateral basis worldwide, as well as through the UN. The EU has worked to influence the overall human rights situation (in particular, with regard to the abolition of or reduction in capital punishment) in Cyprus, Poland, Albania, Ukraine, Azerbaijan, Turkmenistan, Turkey and Russia through various means and measures (Manners 2002: 249-250). And, as Karen Smith has shown, the EU's member states, acting collectively, are influential actors in the UN Commission on Human Rights as well as in Third Committee of the General Assembly of the UN (Smith 2006: 170-171).

Looking back at the history of the EU, it is possible to find further evidence that a concern for human rights has been translated into foreign policy and at times has played an important role. This is perhaps most strikingly so with regard to enlargement. The concern for human rights and respect for democratic principles was important, for example, in the decision to enlarge to Greece. The principles of human rights and democracy are often mentioned in the same breath, and it seems that the main emphasis was on ensuring stable democratic institutions. The democratic criterion for membership first appeared on the European stage with the European Parliament's Birkelbach report, which was issued in response to Greece's potential membership candidature in the early 1960s (European Parliamentary Assembly 1962). And according to Susannah Verney, once the issue of Greek accession had been turned into a question of democracy, rejecting its membership for economic or administrative reasons would have meant a major loss of Community credibility and legitimacy (Verney 2006). With the enlargement to the countries of Central and Eastern Europe (the CEEs), respect for human rights was made an explicit condition for the initiation of membership negotiation (Copenhagen Declaration), while the commitment to ensuring respect for these principles is widely

considered to have been critical in mobilising support for this costly ‘big bang’ enlargement (Schimmelfennig 2001; Sedelmeier 2005; Vachudova 2005; Sjursten 2002). With regard to Turkey, the concern for human rights was in the early 2000s even more to the forefront. Turkey had for a long time been a valued member of NATO, but its membership in the EU was postponed, with the human rights record of successive Turkish regimes being a major obstacle.

The EU’s emphasis on human rights, for example in its trade agreements, has not been universally acclaimed (Fioramonti and Kotsopoulos 2015). This contrasts with the emphasis on political criteria for membership in the Union, which has not been questioned. The human rights clauses are a standard element in all trade agreements and are matched by a formal commitment to such principles in the EU Treaties. It would therefore be reasonable to consider the human rights clauses as inspired by a concern for enhancing global justice in a manner in line with the expectations of the conception of justice as impartiality. However, such an emphasis on human rights may be tricky. The EU and its member states are amongst the wealthiest in the world, and thus negotiations on trade agreements are not necessarily conducted on an equal footing. The other party in the negotiations is in many cases also like to be more dependent on the getting an agreement than the Union itself. The conception of justice as non-domination might remind us that in such situations, introducing political requirements may be experienced as an act of (arbitrary) dominance.

Claims that, at least at first sight, would be in line with concerns of ensuring justice in line with non-domination are also evident in other domains than trade agreements. One example would be the calls by countries such as Brazil and South Africa to enhance representation of the third world in the Security Council of the United Nations (UN). Another example might be the Libyan conflict in 2011. According to Fioramonti and Kotsopoulos:

The North saw it [the bombing of Libya] as a necessary act of assistance during the euphoric early ‘Arab Spring’ phase, as well as the deposition of a notorious dictator. Jacob Zuma and others saw it as in insult, a failure of the North to heed any of its own rhetoric about ‘partnership of equals’ or assisting the continent with its pledge to find ‘African Solutions for African Problems’.

(Fioramonti and Kotsopoulos 2015: 472)

Even though not realised, the conception of justice as non-domination does in many ways seem to be the least demanding of the three conceptions of global justice outlined in the GLOBUS project. Due to its focus on the importance of states and multilateral institutions, it could be seen to represent more or less the status quo of international affairs, and even to be close to the perspective of Realist scholars in International Relations. However, the emphasis on states as key to resolving issues of injustice is linked to their status as freedom enabling institutions. This justification establishes a difference to a Realist position. The difference is even more evident when one bears in mind that justice in this perspective would demand that all states are in a ‘non-dominated status in relation to other states and other international agencies’ (Pettit 2015: 38). In this conception, adequate solutions to problems of

global justice may only be found if all states are able to have their say on an equal basis.

In its Global Strategy (2016), the EU does seem to highlight such concerns, due to the emphasis on multilateral cooperation: 'The EU will promote a rules based global order with multilateralism as its key principle and the United Nations at its core[...]. Through our combined weight we can promote agreed rules to contain power politics and contribute to peaceful, fair and prosperous world' (European Council 2016: 15). This emphasis on international law and multilateralism is a consistent feature of the EU's foreign policy that can be found also in the predecessors of the Global Strategy (the European Security Strategies of 2003 and 2008) as well as in the EU Treaties. As Marise Cremona notes, 'the EU characteristically shapes its external relationships through legal instruments, and the promotion of a rule-based approach to international relations is threaded through its Treaty-based external objectives' (Cremona 2017: 39). According to the Treaties, the EU's aim is to 'promote an international system based on stronger multilateral cooperation and good global governance' (Article 21.2 TEU).

The approach described in EU documents could potentially be in line with a conception of justice as non-domination. However, the lack of parity in relations of power (material and ideational) between states means that solutions that are advantageous to dominant powers such as some of the EU's member states and their citizens, are structured into existing multilateral institutions. These institutions, championed by the EU, are increasingly contested by emerging states for just this reason.

Consequently, the ideal of multilateralism, which is as Ruggie (1992) has shown in line with a conception of justice as non-domination. In fact, the earliest multilateral arrangements were designed to ensure that states are treated equally, to prevent the seizure of territory and to guarantee the right to exclude others from one's own territory. A key element of the identified solution was that the same rule would apply to all states irrespective of their size, domestic political regime or material resources. What is distinctive about multilateralism is its qualitative dimension: 'it coordinates national policies in groups of three or more states [...] on the basis of certain principles of ordering relations among those states' (Ruggie 1992: 567, my emphasis). However, this ideal is not put into practice. The very existence of the Security Council is inconsistent with the principle of multilateralism, as it implies that some states are more equal than others are. While there is some evidence of the EU working to reform the UN system, this work does not have a prominent place in its policies.

The conception of justice as non-domination is demanding. However, at the same time many suggest that this conception may not be sufficient in order to tackle the multifaceted challenges, in particular in the context of globalisation. It fails in deterring certain forms of dominance. What to do, for example, if states systematically violate the basic rights of their citizens? And how to tackle the question of migration, which hits states asymmetrically? Is there not a duty of other states to share in the costs of receiving immigrants and refugees, a duty in addition to

that of receiving immigrants and refugees, but also to alleviate the costs to those states that receive the largest amounts of refugees? In order to ensure that all states pay their dues with regard to such issues, there may be a need for stronger institutions.

Deliberation and 'coalitions of the weak' may not be enough in order to tame the power of dominant states, or they may merely pave the way for new rising powers who in turn neglect the interests of the weak. Further, formal measures that constrain the sovereignty of states may also be necessary in order to ensure that all states take heed of the interests and perspectives of the individuals living within and without their borders. A strong defence of the principle of sovereignty may function as a legitimisation of abuses of human rights. And if multilateralism is only reformed in order to take heed of the demands of the strongest powers in the third world, there is little guarantee that these states, in turn, will not neglect the interests of the weak. Such concerns are evident, for example, in regard to South Africa's status in southern Africa. Thus, in order to ensure a just global order, more thorough reforms than what is implied in the conception of justice as non-domination may be required.

If we return to the question of human rights, the conception of justice as non-domination does not deny its importance. Yet it is not clear on when within this conception, the principle of non-interference would be breached and under what conditions. Most likely, the kind of dialogue on human rights that is established between the EU and China, for example, may be more in line with a conception of justice as non-domination, as this puts the parties on an equal footing. However, the dialogue with China also then illustrates the challenges to such a conception of global justice, as it is usually described as an empty exercise in which European states fail to support those individuals in China whose freedom is compromised due to their fight for basic rights.

It could however be that some of the criticisms of the emphasis on human rights and democratic rule in the EU's trade policies has less to do with a concern for justice as non-domination. Instead, it might rest on a concern for justice as mutual recognition. This is so as there is already some acceptance within the global system of the need for stronger tools than those available in the conception of justice as non-domination. We may see this for example in the debates regarding how to exercise the conception of 'Responsibility to Protect' within the UN. Most importantly, there is, for example, a formal agreement on certain norms and rules of conduct, as well as on basic rights made binding through the UN Charter. Some would even talk of a constitutionalisation of supranational 'commons' emerging in the wake of the UN Charter, or a societal constitution (as scholars like Held and Koenig-Archibugi 2005; and Brunkhorst 2011 maintain). In addition, the sanctions against apartheid in South Africa, which were widely supported, seem to provide evidence of a certain acceptance of the even more demanding conception of justice as *impartiality*.

Representatives of states that have negotiated with the EU also emphasise that they do not disagree with concerns for human rights. However when negotiating with the EU it is as if the EU's representatives 'believe we do not know what democracy is'.

Also representatives from the EU's institutions are concerned that the EU's negotiators do not have the skills nor the cultural knowledge required to conduct negotiations in a manner that would be more akin to the requirements in a conception of justice as mutual recognition. Similar findings are reported in the literature on the external image of the EU. Here, it is stated that the EU is better at 'talking to' than 'talking with' representatives of third states. The EU is described as engaging in top-down, one way communication rather than developing a horizontal dialogue led two way communication process between equal partners (Chaban, Knodt, Verdun 2017).

The negative reactions to discussions regarding human rights in the context of trade agreements then, could perhaps rather be in line with a conception of justice as mutual recognition. The EU is considered to have failed to establish participatory processes in which concerns are discussed and adapted with reference to the specific context in which they are to be applied. The establishment of such processes would require more attention to all parties being given a due hearing.

The European Union seems to some extent to have recognised these challenges. In the Global Strategy (European Council 2016) the concept of resilience is flagged. As noted by Ben Tonra (2017), it is meant to signal a concern by the EU to help enhance the capacity of states and their societies to resolve their own problems on their own terms. Relevant partners do not need only to be states. They could also be cities, local authorities, or even private entities. The concern for resilience is also similar to the concern for ownership that one finds as a core principle of the EU's aid policies (Saltnes 2017).

According to one of the main authors of the Global Strategy, the conception of principled pragmatism, which is also highlighted as an important innovation, should also be understood as part of this new foreign policy approach (Tocci 2017). Representatives of the Union describe 'principled pragmatism' as an approach that should allow the EU to look at the world 'as it is' rather than as it 'ought to be', and to develop policies on this basis while not compromising on its principles. Yet, they fail to escape the ambiguities of such a position when they write that: 'our interests and values go hand in hand. We have an interest in promoting our values in the world. At the same time our values are embedded in our interests'.

This instrumentalisation of values is amongst the arguments that go in favour of ensuring a conception of justice as impartiality as this would ensure that the values to be pursued are legally binding for all, and thus would be pursued regardless of whether or not they should correspond to the interests of a particular actor. Incidentally, the position also presents the Union with a more practical problem: if it promotes certain values – or conceptions of justice – because it is in its interests to do so, it will be difficult to convince others of its sincerity. It will make it harder to gain acceptance for its views on how to resolve problems of dominance (unless it plans to accompany its position with the use of force), particularly if the principles it proposes are aligned with the EU interests and entail costs for third parties.

Conclusions

When political theorists make claims about what ought to be key concerns in global injustice, as well as how challenges to justice ought to be resolved, they do so not only based on normative reasoning. Their position also rests on certain empirical assumptions regarding what is feasible or realistic given what they see as the key characteristics of global politics. However, these empirical assumptions are often contestable. International Relations scholars and analysts of foreign policy on the other hand, often draw on implicit normative assumptions when aiming to establish facts about the world and to develop recommendations on what are adequate practical solutions to justice dilemmas. However, they often fail to ground their recommendations in normative theories, and rely instead on ad hoc assumptions of what is 'right' or 'good'.

By building bridges between scholarly work in political theory and international relations, we should be able to both improve on the empirical foundations of a normative theory of global political justice, and strengthen the normative reasoning behind substantive analyses of International Relations. This twin aim is particularly important if we are to make a realistic assessment of what a foreign policy that claims to promote justice potentially could achieve, while at the same time adhering to acceptable normative standards. The GLOBUS project draws on insights from both disciplines in its analysis of how we can conceive of a policy that would contribute to reduce arbitrariness and increase justice in global affairs.

In this paper, I have contributed to this discussion of what kind of justice we might realistically expect to achieve under conditions of disagreement. In doing so, I have drawn on a conceptual scheme that takes into account that the concept of justice is contested and delineates three different conceptions of global political justice (Eriksen 2016). These conceptions, which are derived from political theory, diverge on what are key concerns. They also imply different answers to problems of dominance in global politics. I have discussed what kinds of foreign policies we should expect to emanate from the different prioritisations in these conceptions. The differences between them facilitate the effort of discerning inhibiting and facilitating factors for the conduct of a just foreign policy – of discerning and assessing the counter arguments that might emerge in the face of different approaches to foreign policy.

I have not sought to draw conclusions with regard to what kinds of policies might best balance diverging requirements. Rather, the aim has been to suggest how we may proceed with such an endeavour by drawing on examples from EU foreign policies.

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