



Reconsidering European Contributions to Global Justice

Equal Sovereignty

On the Conditions of Global Political Justice

Kjartan Koch Mikalsen

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Abstract

This paper discusses the role of state sovereignty in a just global order. The point of departure is two competing conceptions of global political justice: justice as non-domination and justice as impartiality. The former conception advocates an intergovernmental order of equally sovereign states, whereas the latter advocates supranationalism and play down the principle of equal sovereignty in favor of basic human rights. The arguments underpinning the sovereignty ideal of justice as non-domination are relatively weak, which makes this position susceptible to powerful counterarguments from justice as impartiality. Since justice as impartiality has problematic features of its own, I here present a stronger case for the equal sovereignty of states, drawing on a strand of republican thinking that Philip Pettit has dubbed 'Franco-German republicanism'. Specifically, I argue that instead of conceiving human rights and state sovereignty as core ideas of competing normative conceptions, we should see them as equally important aspects of the same conception. Respecting the sovereign rights of states is part and parcel of respecting the rights of individuals. Although equal sovereignty is not all there is to global justice, we cannot claim to promote justice globally without recognizing the equal sovereignty of states.

Keywords

Global justice, impartiality, non-domination, republicanism, sovereignty

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Introduction

In order to tell if the EU contributes to global justice, we need criteria to assess its external activities. To this purpose, the GLOBUS project has developed a conceptual scheme that distinguishes between three conceptions of global political justice: justice as non-domination, justice as impartiality, and justice as mutual recognition.¹ As conceptions of *political* justice, they are all concerned with the institutional background structure of political decision-making and the standing of actors. They also share the idea that being dominated, living under the sway of others, is fundamentally unjust. The dominated are subject to arbitrary power, and justice requires that we work towards the elimination of conditions that allow some actors to dominate others. This in turn requires us to develop or strengthen institutions that can regulate interaction between relevant agents (e.g. individuals, states, international public bodies, non-state groups, multinationals, NGOs, etc.) in an impartial way.

The general idea of a political conception of global justice can be worked out in different ways along a number of dimensions. In particular, how do we spell out the idea of dominance more precisely? When are we subordinated and when are we simply affected by the actions of others in trivial and non-dominating ways? What specific role do public laws and institutions play in avoiding dominance, and what kind of institutions do we need? Do we need global institutions with extensive powers in order to protect states and their citizens from dominance or could more minimal arrangements suffice?

The three conceptions of global political justice are all reasonable conceptions. For this reason, they are not mutually exclusive in every respect. Still, they give different answers to the above questions, and consequently emphasize different kinds of concerns. On some issues, they also pull in opposite directions, notably with respect to the question of institutional arrangements. While this question is of secondary importance for justice as mutual recognition, justice as non-domination pulls in an intergovernmental direction whereas justice as impartiality pulls in a supranational direction. The diverging views go back to differences regarding the balancing of state sovereignty and human rights. Where justice as non-domination emphasizes the sovereign equality of states, justice as impartiality gives priority to human rights not only domestically, but also internationally. At the same time, justice as non-domination does not provide a very strong defense of sovereignty, and it is susceptible to powerful counterarguments from justice as impartiality (see sections 1 and 2). Yet, justice as impartiality has weaknesses and blind spots of its own. There is not only the problem of power politics in humanitarian garb, but also of envisaging a supranational institutional arrangement compatible with democratic principles.² In addition, a

¹ E.O. Eriksen, 'Three Conceptions of Global Political Justice', *GLOBUS Research Paper 1/2016*, Oslo: ARENA.

² *Ibid.*, p. 17.

supranational cosmopolitan regime involves the risk of hollowing out the prohibition against aggressive war, which became part of international law during the 20th century.

Against this background, I will in this paper present a stronger case for the equal sovereignty of states. I will do so by drawing on a strand of republican political thinking that Philip Pettit recently has dubbed ‘Franco-German republicanism’, which is a tradition initiated by Jean-Jacques Rousseau and Immanuel Kant.³ Both Rousseau and Kant take political justice to imply a certain form of independence vis-à-vis others. They also recognize a close connection between independence and citizenship. In this respect, they share the core commitments of an otherwise heterogeneous republican tradition summed up by Quentin Skinner in the slogans ‘[i]t is possible to act freely [...] if and only if you are a freeman’ and ‘it is possible to live and act as a freeman if and only if you live in a free state’.⁴

Given their commitment to the ideas that political freedom is the opposite of subjection or domination and that living under a system of public laws is a condition for enjoying such independence in relation to others, it seems warranted to characterize Rousseau and Kant as republican thinkers. At the same time, the Franco-German tradition differs in important respects from the Italian-Atlantic form of republicanism favored by Pettit, which is a position close to justice as non-domination.⁵ With respect to the exact meaning of non-domination or independence and the way this notion of political freedom is supposed to work as a normative idea, Franco-German republicanism is aligned with justice as impartiality. Accordingly, it is an indisputably anti-paternalist form of republicanism that conceives of non-dominance as the condition where interacting parties can exercise their power of free choice, restrained only by universal laws recognizing their equal standing as free agents. However, if one takes the Franco-German tradition seriously, one should resist the common temptation to move directly from normative considerations about the universal rights of individuals to supranational institutional recommendations.⁶ Rather than treat human rights and sovereignty as basic normative ideas of competing normative conceptions, they should be treated as equally important aspects of one and the same conception. This is not to reject regional supranational arrangements, such as a federal union of European states. Internal to a federal structure, member states would no longer be sovereigns, but the federation as a whole still has territorial borders that are of fundamental normative importance, even if they have been drawn in arbitrary ways.

This defense of equal sovereignty reflects a specific view about what constitutes circumstances of justice. In contrast to broad strands of traditional and contemporary

³ P. Pettit, ‘Two Republican Traditions’, in A. Niederberger and P. Schink (eds), *Republican Democracy: Liberty, Law, and Politics*, Edinburgh: Edinburgh University Press, 2013, pp. 169-204.

⁴ Q. Skinner, ‘On the Slogans of Republican Political Theory’, *European Journal of Political Theory* 9 (1), 2010, 95-102 (here 98 f.).

⁵ See Eriksen, 2016, *op.cit.*, pp. 8 ff.

⁶ Two examples of authors that fall prey to this temptation are S. Caney, *Justice Beyond Borders: A Global Political Theory*, Oxford: Oxford University Press, 2005; and F. Tesón, *A Philosophy of International Law*, Boulder, Colorado: Westview Press, 1997.

political philosophy, justice and legal arrangements should not be seen as remedial responses to a troubling human condition. On the view defended in this paper, the need for public laws and institutions is not conditioned on moderate scarcity and limited altruism.⁷ The need arises wherever beings capable of free choice interact in time and space. A plurality of free and embodied beings might adopt incompatible ends and plans for how to achieve their ends, no matter how ‘well disposed and law-abiding’ they might be.⁸ Selfishness and corruption might be pervasive phenomena, but they are not the primary reason why we need public institutions to enforce justice. The basic rationale of coercive public institutions is to establish impartial procedures that enable us to harmonize each person’s pursuance of ends with everyone’s right to independence – not to make life among others more convenient.⁹ State authorities are freedom-enabling institutional arrangements, and *qua* freedom-enabling institutions they should be respected as sovereigns that enjoy legal protection against foreign interventions.

As the first part of the above quote from the 1992 adopted United Nations Framework Convention on Climate Change (UNFCCC) indicates, already at that time most actors acknowledged the magnitude of the problem and the necessity to quickly come to an effective and encompassing solution. In the following years, scientific evidence soon suggested that in order to ‘prevent dangerous anthropogenic interference with the climate system’ (UN 1992: 9), global warming would have to be limited to a maximum of two degrees relative to pre-industrial levels (IPCC 1995). To reach this goal, all states would have to curb their emissions substantively in the coming years. Subsequently, this led to the yearly Conferences of the Parties (COP) within the UNFCCC since 1995 and eventually to various international regimes to curb climate change with the Kyoto Protocol and the latest Paris Agreement standing out in particular.

⁷ Cf. D. Hume, *A Treatise of Human Nature* Oxford: Oxford University Press, 1978 [1739-40], Book 3, part 2, section 2; and J. Rawls, *A Theory of Justice* Oxford: Oxford University Press, 1971, pp. 126 ff.

⁸ I. Kant, *The Metaphysics of Morals*, in M.J. Gregor (ed.), *Practical Philosophy*, Cambridge: Cambridge University Press, 1996/1797, p. 456.

⁹ A. Ripstein, ‘Kant and the Circumstances of Justice’, in E. Ellis (ed.), *Kant’s Political Theory: Interpretations and Applications*, University Park: Penn State University Press, 2012, pp. 42-73.

1. The sovereignty ideal of justice as non-domination

Justice as non-domination comes close to Philip Pettit's neo-republican idea of a law of peoples, which is an ideal of 'globalized sovereignty'¹⁰ where individuals are 'protected against the domination of others by the undominating and undominated state'.¹¹ This ideal is more demanding than the minimalistic Westphalian ideal of non-interference, yet less utopian than the radical cosmopolitan ideal of a human rights based world order where the same principles of justice apply domestically as well as internationally.¹²

Dominance is here conceived as the capacity to interfere arbitrarily in the choice situation of others. The paradigmatic case of such a capacity is the power that a master wields over a slave. Since the master has an unchecked power to interfere with the slave, the slave is dominated, even if the master has an unlikely benevolent disposition, and never actually interferes with the slave. Given the asymmetry of their relationship, the slave lives under the sway of the master.

The defining feature of dominance, on this conception, is the unconstrained power to take away or attach negative sanctions to choices that would otherwise be open to others. The dominator is someone who can intentionally diminish the range of options open to others or the potential benefits connected to these options without having to consider the interests or opinions of those affected.¹³ Accordingly, enjoying non-domination is a matter of being reliably protected against harmful interferences. If there are in place effective control mechanisms that require all actors to respect the relevant interests of those affected by their actions, then no actor has dominating power over others. This means that interference is neither sufficient nor necessary for dominance to take place. Interferences that reliably track the interests of those interfered with are not instances of dominance (e.g. restrictions imposed by a just legal system, such as theft laws) and dominance is possible without interference (e.g. the master-slave relation).

According to justice as non-domination, freedom from dominance is a 'primary good' that every rational person should want, no matter what other wants they might have.¹⁴ Involving protection against insecurity, strategic deference, and subordination to others, non-domination is an overarching value that we should promote as far as possible. Further, since dominance refers to a capacity on the side of the dominator, freedom from dominance requires a publicly sanctioned legal regime. Relying on the goodwill of others is not an option. This would leave us at the mercy of the powerful, which is to say that we would remain dominated. We need an institutionalized system

¹⁰ P. Pettit, *Just Freedom*, New York: W.W. Norton & Company Ltd., 2014, p. 154.

¹¹ P. Pettit, 'A Republican Law of Peoples', *European Journal of Political Theory*, 9 (1), 2010, pp. 70-94 (here p. 77).

¹² *Ibid.*, pp. 72 f.

¹³ P. Pettit, *Republicanism: A Theory of Freedom and Government*, Oxford: Oxford University Press, 1997, pp. 52 ff. See also, Eriksen, 2016, *op.cit.*, pp. 8 f.

¹⁴ Pettit, 1997, *op.cit.*, pp. 90 ff.; On the term 'primary good', see J. Rawls, *A Theory of Justice*, Oxford: Oxford University Press, 1971, p. 62.

of public laws in order to restrain potential dominators. This the point of linking freedom to the status of a freeman living in a free state.¹⁵ The enjoyment of freedom from dominance is conditioned on one's status as citizen of a free republic.

The freedom of a republic depends both on its internal features and its external standing. Internally, a free republic is an *undominating* state. The purpose of a state's institutions and agencies is to serve as control mechanisms that counter the power of private agents (*dominium*). Yet, because of the danger that governmental bodies can be abused and become tools for arbitrary rule (*imperium*), it is also important to arrange the core institutions of a state so as to make them responsive to public interests. The main elements of such an arrangement are checks and balances, non-majoritarian institutions, and institutionalized processes of contestation.¹⁶ Externally, a free republic is an *undominated* state. No state exists in a vacuum. There are other states, multinationals, and international public bodies with which a state interacts, and because of huge disparities in military and economic power, such agents are potential dominators in relation to one's own state. To be citizen of a free republic is to be citizen of a state which not only has a certain kind of internal constitution, but also enjoys secure sovereign liberties in the international sphere.

Sovereign liberties refer to the common set of choices open to peoples organized as states. Such liberties concern behavior towards other states, exploitation of national and common resources, terms of trade, etc. Their precise limits must be negotiated in international forums where all states have equal standing, but two basic restraints limit the acceptable range of choices that should be open to states. First, sovereign liberties should not undermine domestic non-domination. Second, sovereign liberties should be co-enjoyable by all states – i.e., they should only allow choices that are consistent with all states enjoying similar choices.¹⁷

The first of these restraints by its own sets justice as non-domination apart from the international system established by the Peace of Westphalia. The peace treaties ending the European wars of religion in 1648 resulted in an international order where sovereignty signified an exclusive right to exercise political authority on a specific territory, including the right to determine the religion to be practiced within on one's own territorial borders. Since justice as non-domination restricts sovereign liberties to such that do not undermine citizens' enjoyment of non-domination, dictating the religion of citizens is not within the range of choices open to a state. In addition, this conception goes beyond the Westphalian system by requiring that states should be *secure* in their sovereign liberties. Actual non-intervention is not enough. Like individuals, states can be dominated without being interfered with. Powerful international agents can effectively limit the options open to a state without direct intervention, for instance by threatening to impose military, economic, or diplomatic sanctions if the state chooses to act in certain ways. Accordingly, protecting a state's

¹⁵ Cf. the Skinner-quote above, p. 2.

¹⁶ See Pettit, 1997, *op.cit.*, chapter 6.

¹⁷ Pettit, 2014, *op.cit.*, p. 163.

sovereign liberties should guard not only against dominating interventions, but also against forms of domination that does not involve actual intervention.¹⁸ Without a system of equalized power where states can ‘force one another to display respect’, some states will be dominated, since they can only exercise their liberties at the goodwill of others.¹⁹

Although a state-based conception of global political justice, justice as non-domination does not prioritize the needs of states at the expense of the needs of individuals. It is a conception that assumes that territorial states will remain a persisting feature of the political world,²⁰ but the normative justification of sovereign liberties ultimately goes back to a concern with the freedom of the individuals who constitute a people. The normative ground of globalized sovereignty is the neo-republican ideal of freedom as non-domination, as this ideal applies to individuals. Since enjoying non-domination is tied to one’s status as citizen, domination of a state by external agents also involves domination of the state’s individual citizens, which is what we should seek to avoid as far as possible: ‘Let a people as a whole be dominated ... and the individual members of that people will be dominated [...] [I]t is this impact on individuals that argues for the importance international sovereignty among the peoples of the world’.²¹

Connected to normative individualism is also a third feature which sets justice as non-domination apart from the Westphalian system. Where the latter places domestic issues beyond the bounds of international affairs, the ideal of globalized sovereignty recognizes obligations towards those who suffer from poverty or oppression outside one’s own state. States owe special obligations to their own citizens and should generally respect the integrity of other states, but they also have moral grounds for rectifying the problems of the global poor and those living under repressive regimes. This could take the form of multilateral humanitarian assistance, peacekeeping missions, sanctions, or, in exceptional cases, military interventions.²² Such rectification is not grounded in a demand for political justice that aims at equal treatment of all human beings. Its ground is instead a minimal humanitarian morality concerned with the basic conditions of human freedom and welfare.²³

Justice as non-domination develops an ideal of global justice guided by a concern with feasibility. It takes ‘states as they are’, and asks ‘about the international order – the world – as it might be’.²⁴ Yet one can question to what extent this conception takes challenges related to globalization sufficiently into account. Arguably, intergovernmental cooperation is not enough to cope with collective action problems related to migration, security, global warming, or international trade.²⁵ Moreover, given its ideal

¹⁸ Ibid., pp. 160 f.

¹⁹ Pettit, 2010, *op.cit.*, p. 86.

²⁰ Ibid., p. 70. See also, P. Pettit, ‘The Globalized Republican Ideal’, *Global Justice: Theory, Practice, Rhetoric*, 9 (1), 2016, pp. 47-68.

²¹ Pettit, 2014, *op.cit.*, p. 154.

²² Pettit, 2010, *op.cit.*, p. 89; Pettit, 2014, *op.cit.*, pp. 177 ff.

²³ T. Nagel, ‘The Problem of Global Justice’, *Philosophy & Public Affairs*, 33 (2), 2005, pp. 113-147.

²⁴ Pettit, 2010, *op.cit.*, p. 70.

²⁵ Cf. Eriksen, 2016, *op.cit.*, p. 12.

of equalized power, it is less than clear that justice as non-domination points to satisfactory solutions. Acknowledging the enormous disparities of power between states, yet skeptical about the prospect of creating effective checks on power in the international realm, the focus of this conception is on strengthening international public bodies as deliberative forums and on organizing coalitions of weaker states.²⁶ International deliberative forums are supposed to spawn a common understanding of the limits of sovereignty and of how states cooperatively can handle common challenges with global reach. Coalitions of the weak are for their part supposed to reduce the risk that powerful international agents simply dictate solutions and terms of interaction. While such endeavors certainly can be of some value, it is at best an open question whether they are sufficient for establishing an international order that is non-dominating in the relevant sense. If non-dominance calls for a relatively equal distribution of power, then it is difficult to see how the remedies proposed by justice as non-domination could ever be enough.

Leaving the question of feasibility to one side, one should also note that justice as non-domination gives a relatively weak normative defense of state sovereignty. Although absence of dominance is intimately connected to citizenship in a free republic, the laws and institutions of a republican state are essentially conceived as *means* for realizing a specific political value. As a consequentialist good, non-domination signifies an ideal that is fully specifiable without reference to public laws or institutions. The latter serve our freedom from domination analogous to the way antibodies make us immune to diseases, but we ‘can understand what such freedom requires without knowing which institutions are required to support it [...] as we can understand immunity without knowing anything about antibodies’.²⁷ So even if certain institutional arrangements – e.g. rule of law and separation of powers – are vital for establishing non-dominating relations, they stand in an essentially instrumental relation to the highest political good (non-domination). They are means that serve to promote and entrench our status as free and equals as far as possible. In combination with the underlying normative individualism of justice as non-domination, this instrumentalist view leaves the door open for more radical, human rights based reforms of the international order. If sovereign liberties ultimately derive from the basic interests of individual human beings, then sovereignty is not a fundamental norm. And if the importance of sovereignty is not normatively fundamental, but important only because it serves more fundamental human interests, then we seem to lack a strong defense against the arguments underpinning cosmopolitan conceptions of global justice, such as, for instance, justice as impartiality.

²⁶ Pettit, 2010, *op.cit.*, pp. 82 ff.

²⁷ P. Pettit, *On the People's Terms: A Republican Theory and Model of Democracy*, Cambridge: Cambridge University Press, 2012, p. 124.

2. The cosmopolitan ideal of justice as impartiality

Where justice as non-domination aims at an international order of equal sovereigns, justice as impartiality aims at a cosmopolitan order with stronger supranational institutions and where the standing of states depends on their human rights record.²⁸ The basic concern is to uphold the rights and dignity of individuals. All political and legal institutions at all levels should be judged by how well they promote and protect basic human rights.

Justice as impartiality builds on the core idea of moral cosmopolitanism, which is the idea that all individuals are fundamental units of equal concern generating obligations on every other person.²⁹ The idea is compatible with an international legal order of equal sovereigns, but is often combined with advocacy for reforms that pull the international system in a decisively individualistic direction. Justice as impartiality follows this trend, and agrees that ‘protection of human rights ... should be a primary goal of the international legal system’.³⁰ Global justice requires that all individuals be recognized as equals in rights and liberties within a cosmopolitan legal order where the legitimacy of all legal and political arrangements rests on respect for basic human rights.³¹

The view that global justice calls for a transition from an order based on sovereign equality towards a human rights based order may seem to be a natural consequence of recognizing individuals as fundamental units of concern. Since individuals and their rights matter fundamentally, it appears quite natural to conclude that sovereignty can have nothing more than a derivative moral status. The view that sovereignty matters morally only if it protects or promotes basic human rights also seems to find support in the fact that states and their territorial borders have come about in arbitrary and unjust ways.³² Given the tainted history of states, it is tempting to conclude that there can be nothing morally basic about sovereignty. Since all individual lives matter equally, historically contingent borders seemingly cannot play any fundamental role when considering how to take into account the interests of other people.

The case in favor of a cosmopolitan order where individuals rather than states are recognized as the ultimate subjects of international law can be further strengthened by considering some difficulties that arises if one claims that sovereignty is of fundamental moral importance. For one thing, if sovereignty is fundamental, then considerations about individual rights seemingly cannot limit the legitimate exercise of political power. Hence, to defend the idea that sovereignty is fundamental appears to put the

²⁸ See Eriksen, 2016, *op.cit.*, pp. 13 ff.

²⁹ See, for instance, T. Pogge, *World Poverty and Human Rights*, Cambridge: Polity Press, 2002, p. 169.

³⁰ A. Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*, Oxford: Oxford University Press, 2004, p. 81.

³¹ Eriksen, 2016, *op.cit.*, p. 14.

³² F. Tesón, ‘The liberal case for humanitarian intervention’, in J.L. Holzgrefe and R.O. Keohane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, Cambridge: Cambridge University Press, 2003, p. 103.

individual in a precarious situation vis-à-vis the state.³³ Conversely, if considerations about individual rights do impose limits on the legitimate exercise of political power, then it appears that sovereignty cannot be fundamental, because whatever imposes limits on power is fundamental.³⁴

Moreover, the idea that sovereignty is fundamental might seem metaphysically suspect. The view that states are moral agents of fundamental importance is often thought to rely on the dubious assumption that states have morally relevant properties similar to persons. Yet, since states are not human beings writ large, there does not appear to be any compelling reason why we should ascribe any fundamental importance to the sovereign rights of states. As Charles Beitz puts it, ‘it is difficult to know what to make of the idea of the state as a moral being analogous to the person. After all, states qua states do not think or will or act in pursuit of ends; only people (or perhaps sentient beings) ... do these things’.³⁵

Given its basis in the liberal idea that all individuals are equal units of moral concern, justice as impartiality has some intuitive appeal. At the same time, there seems to be something deeply problematic about the view that individuals are the primary subjects of international law and that the standing of states depends on how well they promote and protect basic human rights. Apart from problems related to democratic legitimation and ‘fake universalism’,³⁶ there is the risk of undermining one of the most important innovations of 20th international law: the prohibition against aggressive war. The latter problem has nothing to do with the suspicion that ‘the concept of humanity is an especially useful ideological instrument of imperialist expansion’.³⁷ Even when promoted by well-meaning cosmopolitans, human rights radicalism of the kind described above is a potent witch brew with dangerous political consequences.³⁸ With Jean Cohen, I find it important to avoid ‘*the conceptual trap that construes sovereignty and human rights as components of two antithetical, mutual exclusive legal regimes*’.³⁹ We should endorse the idea that all individuals are equal units of moral concern, but without drawing radical cosmopolitan conclusions regarding the moral standing of states. For this reason, I will in the following sections show how a robust defense of state sovereignty can be developed on the basis of an ideal of non-dominance understood as a deontic restraint rather than a consequentialist good.

³³ D. Moellendorf, *Cosmopolitan Justice*, Boulder, Colorado: Westview Press, 2002, p. 159.

³⁴ For this way of stating the problem, see A. Zylberman, ‘Human rights and the rights of states: a relational account’, *Canadian Journal of Philosophy*, 46 (3), 2016, pp. 291-317 (here p. 292).

³⁵ C.R. Beitz, *Political Theory and International Relations*, Princeton, New Jersey: Princeton University Press, 1999, p. 76; For similar considerations, see Caney, 2005, *op.cit.*, p.236.

³⁶ Eriksen, 2016, *op.cit.*, p. 17.

³⁷ C. Schmitt, *The Concept of the Political*, Chicago: The University of Chicago Press, 1996/1932, p. 54.

³⁸ The 2011 intervention in Libya is a case in point. Not only did the intervening powers overstate the threat to civilians, but they also caused the collapse of a relatively well-functioning (if authoritarian) state. See the report to The House of Commons Foreign Affairs Committee: *Libya: Examination of intervention and collapse and the UK’s future policy options*, available at: <https://www.publications.parliament.uk/pa/cm201617/cmselect/cmfaff/119/119.pdf> (downloaded 29.06.2017).

³⁹ J.L. Cohen, ‘Sovereign Equality vs. Imperial Right: The Battle over the “New World Order”’, *Constellations*, 13 (4), 2006, pp. 485-504 (here p. 497).

3. Non-dominance as deontic restraint

As a deontic restraint, non-dominance is a universal right to be one's own master. With Kant, we can describe this as an innate right to 'independence from being constrained by another's choice ... insofar as it can coexist with the freedom of every other in accordance with a universal law'.⁴⁰ The right to independence reflects a principle of reciprocity that prohibits subordination and requires that we interact on terms compatible with our equal standing as free agents. As such, it involves a prohibition against using others as means for one's own purposes without their consent and a right against others that they respect your freedom to choose what purposes to pursue. Thus understood, non-dominance does not refer to a valuable end to be pursued, but to the condition of pursuing ends of one's own choice without violating the freedom of others.

To be committed to this idea of non-dominance is to be less concerned with the range and quality of secure options that a person has than with his or her right to independence as a free agent among other equally free agents. To be a free and rational agent is to be the one who decides what ends to pursue, whereas dominance implies that someone else deprives you of your power to decide how to act. As Rousseau puts it, freedom 'consists less in doing one's will than in not being subject to someone else's'.⁴¹ That someone has the power to arbitrarily close off certain options or create hindrances for you does not by itself violate your right to independence. Only if that power also involves taking control of your means, such as your bodily powers or your property, does it imply dominance.

The latter point can be illustrated by considering two different ways in which a person can be prevented from achieving an end, such as acquiring a lamb rib. One way is to buy the last available lamb rib. Another is to steal the money that the other person needs in order to buy it. In both cases we arbitrarily close off an option otherwise open to the other person, but only in the latter case do we violate his or her right to independence. Since independence concerns control with one's own means – and thus the capacity to adopt projects of one's own – the fact that our purpose is frustrated in the former case does not as such touch on our right to independence vis-à-vis particular others. To be one's own master is to be subject only to constraints that are necessary for ensuring equal freedom for all, in this specific sense. Interferences that do not ensure the equal freedom of all are always forms of dominance, even if they are for our own good. They compromise our right to independence, because even benign interferences arrogate the power to set ends for oneself.

The idea of non-dominance as a universal right to be one's own master is a well-chosen starting point for a theory of justice. As a principle that denies anyone a natural right to rule over others, it should sit well with both political liberals and republicans of

⁴⁰ Kant, 1996/1797, *op.cit.*, p. 393.

⁴¹ J.-J. Rousseau, 'Letters Written from the Mountain', in C. Kelly and E. Grace (eds), *Collected Writings of Rousseau*, vol. 9, Hanover: Dartmouth College Press, 2001, p. 260.

different shades. It is also well suited as a normative baseline of the legal systems of modern, pluralistic societies. Understood as a restraint on the conduct of others, the right to independence does not require any special relation between a 'higher' and a 'lower' self⁴² or commitment to a 'comprehensive moral doctrine'.⁴³ Far from implying commitment to a particular view about what is good and valuable in life, its point is to protect interacting persons' independence from each other's arbitrariness. It leaves all persons free to pursue their own conceptions of the good as long as they do not undermine the freedom of others. As such, it is a reasonable political principle compatible with the co-existence of diverse and incompatible conceptions of the good.⁴⁴

Interestingly, it is also possible to ground a strong case for the equal sovereignty of states on the basis of non-dominance conceived as a deontic principle of reciprocal constraints. Unlike the sovereignty ideal of justice as non-domination, this defense does not rest on the assumption that 'an order of states of the kind with which we are all familiar is more or less bound to continue in existence'.⁴⁵ Nor does it imply that states are or should be insulated entities, disconnected from the rest of the world. The present defense of equal sovereignty instead turns on the idea that public laws and institutions not only play an instrumental, but also a constitutive role in establishing relations of equal independence. On this idea, the public institutional framework of states makes non-dominance possible by giving interacting individuals access to public and impartial procedures for resolving conflicts over rights. Absent such a freedom-enabling institutional framework we would necessarily be dependent on the arbitrariness of others. For this reason, we have to recognize the equal sovereignty of states in order to respect each person's equal right to independence.

4. Public authority as a condition of equal independence

If non-dominance is understood as an equal right to independence, then legal standing in a system of public laws and institutions arguably is not only empirically indispensable, but also a defining feature of a condition where individuals interact as free and equals. Apart from promoting and entrenching non-dominating relations between interacting people, public authorities that make, apply and enforce laws are crucial for determining and concretizing our status as free and equals in a rightful way.

This connection between public authority and non-dominance arises from the problem of reconciling a scheme of private law with the innate right to independence. As free and equals, we are entitled to acquire rights to things external to ourselves (e.g.

⁴² I. Berlin, 'Two Concepts of Liberty', in H. Hardy (ed.), *Liberty*, Oxford: Oxford University Press, 2002, pp. 166-217 (here pp. 178-181).

⁴³ J. Rawls, 'Justice as Fairness: Political not Metaphysical', *Philosophy and Public Affairs*, 14(3), 1985, pp. 223-251 (here 245-246).

⁴⁴ L.-P. Hodgson, 'Kant on the Right to Freedom: A Defense', *Ethics*, 120 (4), 2010, pp. 791-819 (here pp. 791-802).

⁴⁵ P. Pettit, 'The Globalized Republican Ideal', *Global Justice: Theory, Practice, Rhetoric*, 9 (1), 2016, pp. 47-68 (here p. 48).

property or the services of others). Although such rights, unlike the right to our own person, are not innate, we must nevertheless be allowed to obtain them, because a general prohibition against the use of things separate from us would be an arbitrary, and thus unjust, restriction of freedom.⁴⁶ However, unless complemented by a public law arrangement, no scheme of private law could possibly conform with each person's right to independence.⁴⁷ Absent a public legislative authority, no one could authorize acquisition of exclusive right to external things consistently with the right to independence. Absent a public judicial authority, no one could apply generally binding norms to particular cases consistently with the right to independence. Absent a public executive authority, no one could enforce acquired rights consistently with the right to independence.

The problem is in each case the lack of an impartial authority to carry out the relevant function (legislation, adjudication, or enforcement). Where there is no public authority, all coordination is based on the private judgements of interacting parties, which in turn means that those who interact unavoidably subject each other to arbitrary choice. Any authorization, adjudication or enforcement would be the act of a particular person, but imposing someone's particular will on others is incoherent with their equality. Unless a system of public law is in place, interacting people would therefore lack recourse to procedures for establishing conclusive rights – i.e. determinate rights that can be enforced in conformity with the universal right to be one's own master. There could only be 'possession' based on 'the effect of the force or the right of the first occupant', but no 'proprietary ownership ... based on a positive title'.⁴⁸ Since contact with other people cannot be avoided completely, interaction without recourse to public and impartial authorities would leave everyone systematically dependent on rather than mutually independent of each other. Accordingly, public laws and institutions are not simply means that help us establish non-dominance, conceived as a moral end fully specifiable without reference to laws and institutions. Rather than mechanisms for realizing or approximating what ultimately matters, they are constitutive of a condition where our moral status as free and equals can be rightfully positivized and worked out in more concrete terms.

This non-instrumentalist view on public laws and institutions is linked to a non-voluntarist account of political obligations.⁴⁹ Since each person's right to independence cannot be harmonized with the equal right of all others outside of a public legal regime, we are obliged to comply with political authorities organizing legislative, executive, and

⁴⁶ B. Ludwig, 'Whence Public Right? The Role of Theoretical and Practical Reasoning in Kant's Doctrine of Right', in M. Timmons (ed.), *Kant's Metaphysics of Morals*, Oxford: Oxford University Press, 2002, pp. 159-183 (here pp. 175 f.).

⁴⁷ On the following, see A. Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, Cambridge, MA: Harvard University Press, 2009, pp. 145 ff.

⁴⁸ J.-J. Rousseau, *On the Social Contract*, in D.A. Cress (trans./ed.), *Jean-Jacques Rousseau: The Basic Political Writings*, Indianapolis and Cambridge: Hackett Publishing Company, 2011/1762, p. 167.

⁴⁹ H. Varden, 'Kant's non-voluntarist conception of political obligations: Why justice is impossible in the state of nature', *Kantian Review*, 13 (2), 2008, pp. 1-45.

adjudicative bodies wherever they exist.⁵⁰ Consensual subjection to such bodies is not necessary, because anyone who refuses to accept their authority would fail to recognize the universal right to be one's own master. Unwillingness to unite with others under 'public lawful external coercion' is incompatible with respect for each person's right to independence, and thus 'wrong in the highest degree'.⁵¹ For this reason, the unwilling suffer no wrong when forced to accept the authority of the public legal institutions governing their interactions with others. Since public legal institutions are necessary 'moral background conditions' for interaction on terms of equal freedom, lack of voluntary assent makes no moral difference with respect to their legitimacy.⁵² This, I take it, is also the basic idea behind Rousseau's claim that being forced to obey the general will is the same as being 'forced to be free'.⁵³ Enforcement of positivized legal norms is what gives effect to the legal system that enables individuals to enjoy independence vis-à-vis others. Law enforcement for this reason protects the freedom even of the unruly subject who wants to break the law.

5. Sovereignty as the flip-side of legitimate domestic authority

It follows from the above argument that sovereignty is no less morally fundamental than human rights. The argument shows that recognizing all individuals as equal units of concern, generating obligations on everyone else does not necessarily lead to radical cosmopolitan conclusions regarding the moral standing of states. To the contrary, if public authority is partly constitutive of the universal right to be one's own master, then sovereignty cannot be a derived value that only matters instrumentally. External sovereignty instead protects states conceived as freedom-enabling institutional frameworks where individuals can interact on equal terms. Unless protected by the principle of non-intervention and the prohibition against aggressive war, foreign powers would have the right to contest and intervene against a state's decisions whenever they found these decisions problematic. This would in turn deprive individuals of a final authority that could determine the boundaries of their rights. Accordingly, we might say with Michael Walzer that 'the recognition of sovereignty is the only way we have of establishing an arena within which freedom can be fought for and (sometimes) won'.⁵⁴

This way of justifying equal sovereignty in no way presupposes that states are human beings writ large. The argument does not imply that states have properties similar to persons. Instead, it rests on the assumption that states are indispensable arenas for realizing equal freedom. *Qua* such arenas, they deserve recognition as sovereigns with an exclusive right to exercise jurisdiction on their respective territories. Consequently,

⁵⁰ A. Stilz, 'Nations, States, and Territory', *Ethics*, 121 (3), 2011, pp. 572-601 (here pp. 581 f.)

⁵¹ Kant, 1996/1797, *op.cit.*, pp. 452 and 456.

⁵² A. Stilz, *Liberal Loyalty: Freedom, Obligation & the State*, Princeton and Oxford: Princeton University Press, 2009, p. 54.

⁵³ J.-J. Rousseau, 2011/1762, *op.cit.*, p. 167.

⁵⁴ M. Walzer, *Just and Unjust Wars*, New York: Basic Books, 1977, p. 89.

in their external relations, states should respect each other as equals analogous to the way citizens should respect each other as equals within the state, even if they are artificial and historically contingent entities.

It should also be noted that sovereignty, as it is understood here, is not a Westphalian concept. The concept involves no Eurocentrism, no right to pursue rights unilaterally by means of war, and no immunity against prosecution for political officials guilty of crimes against international law (genocide, war crimes, the crime of aggression, etc.). As a basic principle of just international relations, equal sovereignty – as defined in art. 2 of the UN Charter – protects and limits the rights of all states in relation to other states.⁵⁵ Recognizing states as equal sovereigns implies prohibiting wars and interventions for other than defensive purposes. Aggressive wars are unjustifiable, and there can be no punitive wars against presumed unjust states.⁵⁶ Sovereignty is a legal status that protects a state's territorial integrity against the arbitrary power of other states. At the same time, it limits the legitimate exercise of political authority to a state's own territory.

Grounding sovereignty in the universal right to be one's own master also opens up for seeing sovereignty as limited, even if fundamental. If sovereignty were unlimited, then states could not solve the problem they are supposed to solve. Unlimited sovereignty would simply replace relations of horizontal dominance with a relation of vertical dominance. Hence, a 'necessary condition of a state's legitimacy is that its actions be compatible with its members' reciprocal independence. And so, illegitimacy is a sufficient condition for a given state to lose its authority'.⁵⁷ It is crucial that the latter claim is not taken as a requirement of perfect justice. Justifying the rights of states with reference to their freedom-enabling function does not make the recognition as sovereign state dependent on having a just inner constitution. Ideally, a state is a self-legislating legal community where citizens collectively author the laws that bind them and where binding laws are limited to such that serve the purpose of harmonizing the freedom of each person with the freedom of all others. In order to bring themselves into conformity with their own normative basis, all states must continually approximate this ideal.⁵⁸ Yet, the principle of non-intervention not only protects just states, but also undemocratic states that issue unjust laws. Although non-democratic lawmaking procedures and unnecessarily restrictive laws are objectionable, they do not provide other states with just cause for intervention. Nor do they justify treating states as second-rate members of the international society. Unjust governments owe their own citizens political reforms towards a condition that conforms with each person's right to independence, but the present internal injustices of a state do not affect its international

⁵⁵ See the Charter of the United Nations: <http://www.un.org/en/sections/un-charter/chapter-i/index.html>

⁵⁶ Kant, 1996/1797, *op.cit.*, p. 485.

⁵⁷ Zylberman, 2016, *op.cit.*, p. 302.

⁵⁸ J. Weinrib, *Dimensions of Dignity: The Theory and Practice of Modern Constitutional Law*, Cambridge: Cambridge University Press, 2016, 59 f.

standing. Since they are partly constitutive of individuals' mutual independence, states are legitimate authorities on their own territories, even if they are unjust.

The circumstances are of course different if state authorities either cause or fail to prevent systematic murder on grounds of nationality, ethnicity, race, or religion. We are not obliged to stand by and watch as atrocities are taking place. In cases of massive violations of human rights, such as genocide or ethnic cleansing, the above rationale for the principle of non-intervention does not hold. In such cases, we are not dealing with unjust public authorities, but with illegitimate employment of organized force by one group against another. Rather than an instance of unjust government, a regime that turns its coercive apparatus against parts of the population living on its territory is an inhumane organization that annihilates the freedom of specific groups. Recognizing non-intervention as a basic principle of international law is compatible with permitting interventions against such regimes, because they fail to constitute freedom-enabling institutional frameworks. Interventions against regimes committing atrocities do not undermine a state-sanctioned legal order that enable citizens to resolve conflicts through impartial procedures, but serve to stop and prevent mass murder and arbitrary expulsion of people from a territory.

Having said that, one should not conceive of interventions as enforcement of individual human rights. Military interventions are emergency-measures that aim at bringing exceptional situations to an end and at establishing normal conditions where individual rights can be ascribed and enforced. It should also be noted that such interventions are permissible, but never mandatory. No state does wrong by declining to engage in conflicts foreign to its own territory.⁵⁹ To the contrary, unless permitted to avoid engagement in violent conflicts beyond their own borders, states would be dependent on the arbitrary choices of whoever does not succeed in solving disputes peacefully. A duty to intervene is for this reason not only incompatible with the right to independence of states, but also of individuals, who cannot be obliged to risk their lives as long as their own state is not threatened.

⁵⁹ H. Varden, 'Diversity and Unity: An Attempt at Drawing a Justifiable Line', *Archiv für Rechts- und Sozialphilosophie*, 94 (1), 2008, pp. 1-25.

6. Sovereignty compatible with international public authority

The idea that there is an analogy between international interpersonal relations might seem to complicate things for the present defense of equal sovereignty. If there really is an analogy here, then it seems that states are obliged to subject to a second-order public authority in order to establish terms of interaction compatible their equal right to independence. Yet, if states were to do so, they would at most become subunits of a global federal state, and no longer sovereigns.

The complication is related to Kant's comparison of international relations and the interpersonal state of nature.⁶⁰ This analogy is often thought to imply that a there should be established a 'state-like union ... between existing states'.⁶¹ The latter claim is based on the idea that if individuals must form a state with legislative, adjudicative, and executive authority in order to resolve their conflicts in a rightful way, then states must form a state of states in order to do the same. As I see it, we should accept the analogy, but deny that a world state is required to overcome the international state of nature. Although there is need for some kind of international public authority if states are to settle disputes in a way compatible with their equal independence, a voluntary league vested only with an analogue to the judicial authority of first-order state authorities is in principle sufficient for solving the problem.⁶²

The voluntary league is sufficient for overcoming the international state of nature because there is only a partial parallel with the original state of nature between individuals. Like individuals, states can reasonably disagree about the scope of their respective rights. For instance, they can disagree about border drawing or use of natural resources that transcend borders (e.g. water or oil). At the same time, no single state can decide how such disagreements should be settled, because claims made by one state against another have no more merit than claims made by one individual against another. This explains why there is need for a shared international authority. Absent a shared authority to decide on disputed issues, any judgement is the particular

⁶⁰ See, for instance, I. Kant, *Toward Perpetual Peace*, in Gregor (ed.), 1996/1795, *op.cit.*, pp. 325 f., and Kant, 1996/1797, *op.cit.*, p. 482.

⁶¹ O. Höffe, *Kant's Cosmopolitan Theory of Law and Peace*, New York: Cambridge University Press, 2006, p. 193. See also B.S. Byrd and J. Hruschka, 'From the State of Nature to the juridical State of States', *Law and Philosophy* 27 (6), 2008, pp. 599-641; and L.-P. Hodgson, 'Realizing External Freedom: The Kantian Argument for a World State', in Ellis (ed.), 2012, *op.cit.*, pp. 101-134.

⁶² This is usually held to be Kant's position as well, although some contest this interpretation, arguing that the league is only an intermediary step towards the ideal of a world state. See, for instance, G. Cavallar, *Kant and the theory and practice of international right*, Cardiff: University of Wales Press, 1999; and P. Kleingeld, 'Approaching Perpetual Peace: Kant's Defence of a League of States and his Ideal of a World Federation', *European Journal of Philosophy*, 12 (3), 2004, pp. 304-325. In the literature, this line of interpretation represents a minority position, which I do not find convincing. For a counterargument, see K.K. Mikalsen, 'In Defense of Kant's League of States', *Law and Philosophy*, 30 (3), 2011, pp. 291-317.

judgement of one state, which means that disputes cannot be solved without subjecting some party to someone else's arbitrary choice.

However, since states are public agents, there is no need for a full-fledged global state. Unlike individuals, states have no private purposes. As artificial and public legal structures, they cannot *set* their own ends, because there is only one end which they are entitled to pursue: to maintain and improve themselves as institutional frameworks within which citizens can interact on terms of equal freedom. The sovereignty of a state in relation to other states concerns its freedom to *pursue* this end freely. Although not permitted to pursue ends of their own choice, states are free to organize internally in whatever way they find favorable without answering to any higher authority.

Because of the public nature of states, a state's territory should not be conceived of as an external asset, but as its 'spatial manifestation'.⁶³ Private property is the means a person has an exclusive right to use for whatever purpose he or she wants. By contrast, territory primarily defines the range of a state's jurisdiction. Territory can be conceived of as a state's embodiment, which sets it apart from other states. In this perspective, territorial borders demarcate the limits of a state's 'inner lawgiving', and not the quantity of means with which it can pursue private purposes. Externally, from the perspective of other states, these limits are constitutive of a state's international personhood.

The distinction between property and embodiment is important in this context because the full range of problems related to interpersonal interaction only arise with respect to acquired rights to external things.⁶⁴ Since territory is not an external asset, but the international analogue to a person's body, the demand that other states respect the territorial integrity of a state is not a unilateral imposition of contingent obligations. Certainly, borders fall where they fall because of contingent events in the past, but in resisting aggressors, a state does not act as a unilateral will that enforces property rights. Instead, it acts defensively to maintain itself as a freedom-enabling institutional framework. This explains why there is only a partial parallel between international relations and the hypothetical state of nature between individuals, as well as why there is no need for a second-order state authority that would compromise the sovereignty of the primary state units. Although an international authority analogous to a domestic system of courts is necessary, justice among states is possible without a global sovereign vested with legislative and executive power. The Kantian league of states may not guarantee against aggression, but in providing public and impartial procedures for deciding disputes, it enables states to resolve conflicts in a way compatible with their standing as equal sovereigns. Put otherwise, the league provides necessary institutional preconditions for just international interaction.

⁶³ Ripstein, 2009, *op.cit.*, p. 228.

⁶⁴ See section 4 above.

7. Cross-border interaction and globalization

The defense of equal sovereignty is compatible with acknowledging the increased interconnectedness and emerging global challenges that call for closer cooperation beyond state borders. Understood as ‘the radius of the validity of the democratic constitution’ borders are ‘predisposed ... to make border-crossing possible’ and ‘permeable to anyone who recognizes [the] legal and constitutional order’ established on a territory.⁶⁵ This is not to say that justice requires open borders or a universal right to free movement across borders. There could only be a right to free movement with global scope if free movement across borders were an indispensable part of our rightful independence vis-à-vis others. Only if denying someone the right to cross borders at will were somehow in conflict with recognizing them as free and equals could there be a basic right to travel freely around the world. The universal right to be one’s own master consists in the right to pursue – not to achieve – the ends we set for ourselves, but such a right seems fully compatible with the rejection of a universal right to border crossing. The denial of passage might frustrate the purposes of visitors, yet it deprives them of nothing. The basic norm regulating border-crossing should therefore be limited to the principle of ‘universal *hospitality*’, which consists in the right of foreigners to visit the land of other peoples without being treated with hostility, and the right on the part of those being visited to turn non-citizens away as long as it does not lead to their destruction.⁶⁶ There is no right to be citizen of whichever state one favors, so states are entitled to adopt either restrictive or permissive immigration policies as they see fit. They are also permitted to protect their own economies by putting restrictions and conditions on imports. Visitors are for their part entitled to make proposals with respect to trade, cooperation, settlement, etc., which permanent residents are free to reject on the condition that refusing interaction with the visitor is compatible with his or her continued existence. Understood in this way, universal hospitality enables communication and trade across borders and, at the same time, protects the weaker party in asymmetrical relations.⁶⁷

None of this conflicts with the view that processes of globalization places the traditional nation state under pressure. I do not want to deny that coping with global challenges related to climate change, migration, security issues or regulation of trade and finance may require closer cooperation across borders. Nor do I want to deny that increased cross-border interaction may reduce the capacity of states to regulate and intervene in the society delimited by their own territories, and thus represent a challenge for their internal democratic order. If empirical analysis can show that there is a problematic

⁶⁵ I. Maus, ‘From Nation-State to Global State, or the Decline of Democracy’, *Constellations*, 13 (4), 2006, pp. 465-484 (here p. 467).

⁶⁶ Kant, *Toward Perpetual Peace*, in Gregor (ed.), 1996/1795, *op.cit.*, pp. 328 f.

⁶⁷ E.g. a shipwrecked sailor washed ashore on foreign lands, a refugee from a war-zone, a non-state people interacting with powerful European nations in the age of discovery, or a contemporary developing country trading with developed ‘first-world’ countries. See O. Eberl, *Demokratie und Frieden: Kants Friedensschrift in den Kontroversen der Gegenwart*, Studien der Hessischen Stiftung Friedens- und Konfliktforschung, Bd. 4, Baden-Baden: Nomos, 2008, pp. 228 ff.

mismatch between the formal authority of states and their actual capacity to legally regulate interaction on their respective territories, then there is a justice-based case for political integration beyond the nation state. Lack of correspondence between formal jurisdiction and real power to uphold an autonomous and effective legal order necessarily frustrates reforms towards just government. Accordingly, to the extent that the power of unaccountable and uncontrollable agents effectively undermines the capacity of national legal systems to reform themselves in accordance with the demands of justice, national governments are obliged to establish democracy-enabling forms of political cooperation beyond their own borders.

This is not the place to consider what specific form such cooperation should take, but, following a proposal by Jürgen Habermas, one might imagine the formation of regional political bodies at a mid-level between the traditional nation states and the UN.⁶⁸ Contra Habermas, I find it hard to see how such regional bodies could aim at anything less than a federal governmental structure without compromising the principle of popular sovereignty.⁶⁹ Within such a structure, member states would no longer be independent sovereigns, but relatively autonomous unit parts whose authority is limited by the federal constitution. However, admitting that much does not make talk about sovereign equality superfluous. A federation is still a particular polity with external borders that have fundamental normative importance. Just like first-order unitary states, a federation has both a rightful claim to territorial integrity against the arbitrariness of foreign powers and a duty to limit its exercise of political authority to the range of its own territorial borders.

8. Equal sovereignty and global obligations

According to the view defended above, no polity can promote global justice without respecting the rights of legitimate states or without being committed to working out interstate conflicts within the framework of an inclusive international authority. Like persons in relation to each other, all states are equals, and no single state can make authoritative decisions that bind other states. For this reason, a just EU foreign policy would regard the UN as the institutional backbone of international cooperation. It would also support the established principle that apart from self-defense, all legitimate use of force in the international sphere must be sanctioned by the UN. Non-

⁶⁸ J. Habermas, *The Divided West*, Cambridge: Polity Press, 2006, pp. 139 ff. As Habermas suggests, such regional 'regimes' might serve a variety of functions. First and foremost, they might help states regain and preserve some of their action capacities, and thus enable democratic control with those who have decisive decision-making power. Second, they might facilitate fairer terms of negotiation on transnational issues by reducing the number and equalizing the power of negotiation parties. Third, if most of the challenges related to increased transnational interdependency might be worked out politically at this mid-level, the UN can specialize and deal more effectively with international peace and human rights issues.

⁶⁹ For the notion of a multinational European federal state, see E.O. Eriksen and J.E. Fossum, 'Europe's challenge: reconstruction Europe or reconfiguring democracy?', in E.O. Eriksen and J.E. Fossum (eds) *Rethinking democracy and the European Union*, Abingdon: Routledge, pp. 14-38.

intervention is the default international norm, which can be set aside only in exceptional circumstances and only when there is proper authorization. Although one should not be ignorant of the flaws of the UN, any coordination of interaction between states which does not entail an organization with universal membership would perpetuate hegemony and dominance in the international sphere. Hence, defects are grounds for supporting reforms of the UN rather than simply bypassing it.⁷⁰ Further, and in contrast to the recommendations of justice as impartiality, reforms should aim at a more egalitarian UN,⁷¹ and not at an organization that discriminates between member states based on of how just their internal political order is. Since sovereignty is grounded in the legitimacy, and not the justice of governments, one cannot justify legal discrimination of states by reference to domestic injustice.

However, it is important to note that the present defense of sovereignty does not restrict global obligations to showing respect for the territorial integrity of other states. All polities are obliged to exercise their right to territorial jurisdiction consistent with the rights of both foreign individuals and other polities. This is a requirement of global political justice which not only has implications for other policy areas, but also is compatible with policies that point beyond respect for the equal sovereignty of states. For one thing, there seems to follow from each person's right to independence that states must grant residence to refugees. The right to independence involves a right to exist somewhere, so even if a state need not allow entrance to everyone showing up at its borders, no state can justifiably turn away those fleeing persecution or the hazards of war, at least as long as the latter have nowhere else to go. Contrary to Seyla Benhabib, I believe this aspect of universal hospitality is not simply an imperfect moral obligation,⁷² but a requirement of global political justice that limits state authorities' rightful use of coercion against non-citizens.

Moreover, like the sovereignty ideal of justice as non-domination, so this defense of sovereignty recognizes that there can be humanitarian grounds for assisting people living outside the borders of one's own state. The moral ground for such assistance is less a concern with global political justice than with the suffering of the oppressed and those living in extreme poverty. The immediate aim is to rectify the poor living condition of those in grave need, although helping out can also contribute to the establishment of just institutions in the longer run. As argued above (section 5), there are special cases where assisting people outside one's own state might take the form of a military intervention. Under extreme circumstances, intervening or contributing to peace-keeping missions on foreign territory can be permissible, and perhaps even meritorious. Yet, a state never does wrong if it abstains from engaging in an ongoing conflict outside its own borders. If obliged to risk the lives of its own citizens or its own

⁷⁰ H. Varden, 'A Kantian conception of global justice', *Review of International Studies*, 37, 2011, pp. 2043-2057.

⁷¹ Egalitarian reforms could for instance involve making the Security Council a less privileged organ or strengthening the General Assembly in relation to the Council.

⁷² S. Benhabib, *The Rights of Others: Aliens, Residents and Citizens*, Cambridge: Cambridge University Press, 2004, p. 36.

existence by getting involved in violent conflicts beyond its own borders, then a state and its citizens would be dependent on the arbitrariness of others, but this conflicts with the universal right to be one's own master.

Additional obligations seem to follow if one takes into consideration contingent, yet well-founded empirical assumptions. Today, anthropogenic climate change not only threatens the welfare of millions of people, but also endangers the very existence of some states, which would deprive the citizens of these states of their common political membership. The prospect of such a scenario in combination with the view that domestic public authority is constitutive of interaction on terms of equal freedom, means that continuing emissions of greenhouse gases at current levels is likely to undermine the institutional conditions for justice among people in some parts of the world. This in turn gives us sufficient conceptual resources for arguing that promoting global political justice requires drastic reductions of greenhouse gas-emissions. Although we cannot be held responsible for maintaining the freedom-enabling institutions of others, promoting global political justice is incompatible with impairing the material conditions for sustaining such institutions. Surely, there are many hard questions about responsibility and distribution of burdens that have to be sorted out, but it seems fair to say that commitment to global justice implies willingness to take on considerable emission cuts. Sovereign polities that do not develop policies for reduced emissions of greenhouse gases obstruct progress towards a more just world.

Increased economic activity across borders might also be consequential for our global obligations. In the first instance, requirements of distributive justice apply to the domestic context, where they concern the possibility of setting up a genuine public authority. Without public redistribution in the form of taxation of the wealthy and support of the poor, exercise of governmental power is inconsistent with the universal right to be one's own master because it enforces a legal system that opens up for systemic dependency relations between citizens.⁷³ Since the enforcement of private property rights is limited to a state's own territory, this unconditional public duty to support the poor cannot be global in scope. At the same time, justice requires that interaction across borders is structured in such a way that citizens of one state, either individually or collectively, do not dominate the citizens of other states. Accordingly, an international trade regime that involves systematic cross-border dependency relations is unjust, and must be reformed. As long as a state is incapable of or does not want to back out of trade relations with others, questions concerning distributive justice arise beyond territorial borders, because 'the principles of justice imposed inside the state must be compatible with the equal freedom-as-independence of persons outside it as well'.⁷⁴

⁷³ E.J. Weinrib, 'Poverty and Property in Kant's System of Rights', *Notre Dame Law Review*, 78 (3), 2003, pp. 795-828.

⁷⁴ Stilz, 2009, *op.cit.*, p. 104.

Global political justice cannot screen out distributive concerns, even if distributive standards are not identical in the domestic and the international contexts. There is a special relationship between a state and its citizens that does not exist beyond territorial borders, but global political justice calls for more than charity and humanitarian aid in response to emergencies and the general poor living conditions in many parts of the world. A legal framework that establishes fair terms of international trade is indispensable in order to respect the right to independence of persons living outside one's own state. The long term ideal of such a framework might be a set of rules and institutions that accord with a principle of non-discrimination. Yet, given the vast differences in economic development across countries, it is hard to imagine a fair system of international trade without permitting differentiated treatment and one-sided trade protection measures in the short and medium term. Although such differentiation is not part of global justice as an ideal, it is a justifiable response to non-ideal conditions that tend to generate unfair outcomes even under formally just rules and procedures.⁷⁵ When some groups are systematically disadvantaged, differentiation may be a permissible remedy. As a remedy, differentiation is not an element of a just global order, but a response to unjust state of affairs. In addition to easing some of the burdens of the disadvantaged here and now, it can be favorable to economic development, and thus bring about conditions where today's developing countries can compete on equal terms with others.

The above-mentioned demands related to climate justice and global distributive justice can be understood as forward-directed duties of solidarity.⁷⁶ Duties of solidarity cannot be enforced, even if they concern the struggle for political justice. They are not enforceable because no authority could possibly enforce them in a rightful way. Yet, they still belong to a political morality inasmuch as they refer to the satisfaction of the right to reciprocal independence belonging to all persons. Satisfying this right most likely will require more of us than respect for sovereignty, but any measure taken towards its realization must be compatible with the equal sovereignty of states. Global political justice is a more demanding ideal than what is entailed in respect for the integrity of states, but unless we accept the restraints of sovereignty when striving for justice there is no chance we will ever get things right.

⁷⁵ Eriksen, 2016, *op.cit.*, p. 19.

⁷⁶ E.O. Eriksen, 'Structural Injustice: The Eurozone Crisis and the Duty of Solidarity', *ARENA Working Paper 4/2017*, pp. 13 ff.

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