

7 Conclusion: rethinking and reimagining international LGBTI rights promotion

Abstract

The final chapter synthesizes the previous ones and critically reflects on these. Given the normative disparities, geopolitical pressures, and relative ineffectiveness of the European Union (EU)'s Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) promotion thus far, it asks if subsuming LGBTI rights under more generalized civil society, human rights, and democracy promotion efforts would result in improvements. Concludingly, it suggests that a change of policies away from existing conditionality and visibility strategies may be necessary. In addition, a recognition of diverse and often hybrid adaptations of Western LGBTI rights domestically, and a broader outlook that takes into account the quality of democracy, is required. Finally, alternative perspectives that may prove more useful for the sustainable promotion of LGBTI rights, are considered. Europe's foreign relations, and within it, the role of LGBTI rights, have been beset with a number of issues in the past so that only gradual improvements can take place. Despite the challenges, improvements are indispensable, given the current weakness of the EU's external status, its historical obligation to these countries, and the volatility of LGBTI populations around the globe.

I wish I could abort my government.

Demonstration poster at the largest Polish anti-government protest since the end of communism, following a restrictive anti-abortion court judgement, October 30, 2020.

The above quote is emblematic of the link between women's reproductive rights, sexual orientation and gender identity (SOGI) rights, and governmental accountability. It highlights how courts, such as those in Poland that are currently not truly independent, can undermine the judiciary oversight of contested policies needed in a liberal-democratic system. It also illustrates the tight connection between women's and LGBTI rights and broader gender equality, evidenced by the Polish government's objection to the new EU Action Plan on Gender Equality and Women's Empowerment in External Relations, insisting on the use of the binary 'equality between women and men' instead (Politico EU 2020). Poland is, as the current top recipient of

EU cohesion funding, not only on the verge of losing credibility among other EU members but is also leading the country into a polarized governance crisis evidenced by ongoing demonstrations. With regards to relations among EU states, rule-of-law injunctions in Poland and Hungary have led the EU to start the so-called Article 7 process against Poland, which requires governments to justify political–legal actions that are perceived to breach EU treaties. As a response, the Polish and Hungarian governments initially vetoed the EU’s rule-of-law monitoring mechanism for future fund disbursements, which in turn reduced political support by other member states. After a month-long resistance by both governments, a compromise solution allowed them to approve the rule-of-law mechanism for future EU budget appropriations, indicative of an increasing isolation of the Polish and Hungarian governments. In terms of the domestic crisis, the abortion prohibition that was signed into law based on a U.S.-sponsored international anti-abortion initiative (Euractiv 2020) has manifested some of the largest protests in Polish history in over 150 locations and produced a strong social movement that combines progressive forces and is led by women’s and LGBTI rights activists (Chmielewska-Szlajfer and Dunin-Wąsowicz 2020). Aside from the fact that 80% of Poles (and 85% of Hungarians) have expressed their desire to remain in the EU and over half of the population supports the linking of EU funds to the rule of law (ILGA Frontline 2020), Polish business associations have issued warnings to their government in unprecedented steps indicating further domestic opposition. Taken together, this vignette illustrates how the political contestation against LGBTI rights is embedded in a broader democratic regression that forces, but also enables, CSOs to build cross-issue alliances. This concluding chapter broadens the scope of analysis to make the case that the status of LGBTI rights needs to be approached in the context of larger socio-economic and governance changes and recapitulates some of the main lessons learned from the analyzed case studies.

As the preceding chapters have revealed, considerable constraints such as the volatile standing of EU LGBTI policies (within the bloc), rapid but only partial normative transformations (in the case of EU enlargement), limited incentives and selective engagement (in the case of EU Neighborhood Policy), post-colonial resistance and conditionality (in the case of development policy), and a politics of optics (in the case of LGBTI rights promotion at the UN) should prompt the EU to rethink existing promotion strategies. SOGI activists in Europe and elsewhere require sustained support as many are under attack from domestic and transnational opponents. Such support, however, should respond to CSO needs rather than EU objectives and be carefully calibrated so not to avoid the charge of being foreign-funded and influenced. When focusing on the institutional and non-state agents operating within these complex and sensitive contexts, the first step should be to acknowledge the EU's ambivalent performativity, that is, the unintended consequences of its political agency, in its norm promotion attempts. Ranging from the EU's selective trade and aid policies to the high-visibility and often self-serving Eurocentric objectives, the effects of such promotional policies may lead to geopolitical binaries, and a politicization and even securitization of LGBTI people. With this in mind, the following section summarizes the lessons drawn from the previous case analyses. Then the focus is broadened to foreground the broader democratic regressions or democratic 'backsliding', in which LGBTI rights are just one point of contention. The final section explores alternative perspectives that may prove more useful for the sustainable promotion of LGBTI rights.

Lessons drawn from chapter analyses

In terms of the EU's internal LGBTI policy incoherence noted in Chapter 3, it becomes apparent that, in order to project an impactful model externally, there needs to be internal coherence (of policies) and consistency (in application). The EU is not always a coherent actor in SOGI

policies, despite having formulated common external guidelines and policy conditionalities, as long as there are member states that do not agree with, or do not apply, similar LGBTI rights policies internally. While more equality policies were established across EU members over the past 20 years with some surprising advances by Ireland or Malta, for instance, a number of governments have remained stagnant, including Italy and Greece, or have even preemptively limited legal and political rights provisions as in several CEE states. From basic hate crime prohibitions, which are still missing in a minority of states, to the full recognition of same-sex relations and adoption rights, which most of the post-communist member states lack and some constitutionally exclude, there still exists a substantial inequality in legal provisions and political outcomes across the EU (ILGA Europe 2020, see also the Rainbow maps in Chapter 3). There are also issues with the consistency of policy applications over time since, rather than converging on common LGBTI rights policies, a number of governments have taken regressive steps and aim to limit a potential expansion of such policies. Evidence can be found in the examples of popular referenda or legal bills that have been introduced to constitutionally prevent more inclusionary policies. Especially for the newer member states, subsequent social learning and persuasion may take longer than is politically expedient. Part of the problem is that there was no real norm negotiation possible as these countries were largely absorbed into a pre-given West European membership format. The EU also has repeatedly applied a selective, politically expedient view of LGBTI progress in enlargement and neighborhood policy to certify those as compliant with its norms. While some improvements occurred there in terms of attempting to revise and mainstream human rights policies, a lack of implementation and resistance remain as well, which makes external norm promotion less valid and effective.

With regards to the enlargement and neighborhood policies covered in Chapter 4, a distinct qualitative difference in terms of the achievement of LGBTI rights is noticeable. While fundamentally, the incentive of joining the EU sets in motion policy reforms and, to some extent, adaptation to pluralistic norms, this mechanism appears to be lacking in the more distant neighborhood. Even accession negotiations are fraught with issues of pro forma ‘Potemkin’ adaptation from the side of the candidate countries, often with a corresponding lack of domestic internalization of tolerance norms. This process is reinforced by a selective monitoring of high-visibility and symbolic, rather than substantive, political progress by EU institutions – such as using gay pride marches as rights benchmarks. The tensions between Western and Eastern European member states over human rights and democracy illustrate the protracted nature of democratic consolidation and require a more reflective assessment by EU institutions and its member states. CSOs in accession countries are aware of this broader attack not only on LGBTI but also on other progressive groups such as environmental or migrant rights ones and grow increasingly disillusioned about the EU’s democratic stewardship role (ILGA Frontline 2020). In contrast, the ENP, as a stabilization tool for 16 neighboring countries on the EU’s southern and eastern borders, contains insufficient EU incentives, is often sidelined by broader geopolitical events and lacks a country-specific differentiation of objectives. It also suffers from an ambivalent EU diplomacy toward these governments that, at times, appears to prioritize stability over the uncertainty of democratic transitions, evident in the continued funding of (semi)authoritarian systems (Godfrey and Youngs 2019). Particularly, the MENA region is characterized by EU security concerns over immigration and terrorism. Pressure on or, alternatively, support of governments tends to be less effective than investment in domestic civil society groups to improve liberal-democratic goals. Such direct CSO support is more accepted in

affiliated accession candidates and ENP member states than elsewhere. Recognizing this, the European Commission's post-2020 EU budget proposal contains a new single instrument, the Neighborhood, Development, and International Cooperation Instrument (NDICI), which would set aside €1.5 billion (\$1.7 billion) for human rights and democracy and another €1.5 billion for civil society, out of a total of €68 billion (\$73 billion). This represents a 15% increase for democracy and human rights and a 6% rise for civil society, although a significant portion of it is to achieve technical, rather than political objectives (Godfrey and Youngs 2019).

In the EU's relations with the Global South, the question of the effectiveness of political conditionality to incentivize countries to follow its human rights guidelines or, alternatively, deter them from rights-restrictive policies, is central (see Chapter 5). This does not only concern the use of political conditionality as a questionable policy tool for norm promotion in the EU's largely asymmetrical relationship with developing countries but also the way in which they are (in)consistent applied. In this sense, Saltnes and Thiel (2021) have posited a differentiation between the contestation of the content of human rights norms embedded in aid agreements and the application of conditional aid provisions or cuts. A more fine-tuned EU reaction according to the nature of the norm contestation may evade the build-up of tensions and a broader homophile/phobe binary. Moreover, in today's age, marked by pandemics and increased climate vulnerability, a political conditioning of aid may further exacerbate global and domestic inequalities. Instead of aid cuts, for instance, a redirection of aid to civil society may be appropriate, which some European donor governments have already implemented in recent years after consultations with CSOs (Saltnes and Thiel 2021). Walton (2015, 2780), however, notes that "both democratic and authoritarian governments are increasingly incensed at western donors' attempts to reshape local politics and values through INGOs", which can in turn lead to

limitations placed on them. Unlike in accession or Neighborhood Policies, in more distant settings that are often characterized by residual post-colonial ambiguity, even soft power measures can result in resistance. Just as with Neighborhood Policies, more expressly self-interested relations are constructed by the EU with the primacy of EU trade and security objectives, including the introduction of Economic Partnership agreements over the past two decades, and the establishment of a migration-focused Trust Fund for Africa in 2015. Adding to this complexity, the geopolitical competition by less norms-oriented actors, such as China, means that human rights issues with development counterparts are seldom substantially enforced, but rather addressed in dialogs. While the latter is theoretically important in engaging norm-resistant counterparts, their effectiveness in furthering rights norms is questionable. The EU's rights promotion efforts in Global South countries will likely continue to remain sensitive and volatile, given the aforementioned reasons, but a less explicit focus on and pressure regarding LGBTI rights, combined with a strategic broadening of EU foreign policy to prioritize democracy support across governance levels, may mitigate some of the post-colonial culture wars.

Finally, the EU's strategies and relations in UN institutions, such as the UN Human Rights Council, while helpful in promoting LGBTI rights globally, are also fraught with normative as well as performative issues (see Chapter 6). The EU's normative discourse surrounding LGBTI individuals is not sufficiently effective for garnering support from states or regions that have different conceptions of such individual and group rights and feel that European states impose, rather than promote, these rights. Moreover, organizational issues emanate from the fragmentation of EU representative and executive functions. In the UN, the EU member states pursue their own policies in addition to the EU institutions, such as the EEAS, which results in a

drawn-out coordination process among the 27 states. The enhanced observer status of the EU also engenders certain envy over the exceptional status provided to the EU. The UN venue is well placed to diffuse LGBTI-friendly policies more broadly; yet, the ambiguity with which the majority of UN member states support Eurocentric LGBTI rights declarations and policy strategies makes it a volatile forum. This is especially significant since cultural-religious and autocratic opponents aim to delegitimize rights provisions with reference to the absence of SOGI characteristics in the UDHR and other conventions. The Human Rights Council can only be of limited importance in EU rights promotion efforts and cannot replace the bilateral exchanges with governmental and civil society partners across the globe. These have some success in connecting SOGI rights to more established rights, such as women's rights using CEDAW, for instance. CSOs have more recently begun to collaborate transnationally to engage religious organizations over discriminatory views (the Human Rights Campaign as well as ILGA Europe developed specific campaigns). Be it in the use of online propaganda or the adoption of restrictive laws, an internationalized counter-norm promotion strategy by opponents counters progressive norm diffusion in what Altman and Symons call 'queer wars' (2016). Investigative analysts have uncovered a largely U.S.-sponsored global network of financing rights-adverse lobbyists. They have produced evidence of over \$280 million spent by U.S. ultra-conservative groups to influence policy makers globally, with most of the money going to European homophobe causes, followed by African ones (Open Democracy 2020). Alliance-building in UN institutions with other progressive states may not yield the expected results. Beijing's pragmatic stance, combined with Russia's and the OIM's normative counter-narratives and a generalized residual anti-colonial stance in the Global South, indicates that the EU may need to end up lowering its profile rather than strengthening a rights-based one. Hence a stronger cooperation

between the EU and UN entities will not necessarily provide for a global reinforcement of Eurocentric LGBTI rights norms.

From rights to *raison d'état*: reflecting on the EU's liberal illusion

It should have become evident throughout this book that the contentious SOGI politics in the EU and elsewhere are both “trivial and pivotal in populist radical right politics” (Spierings 2020, 41). These types of morality politics or ‘moral panics’ (Herdt 2009) are not exclusively based on the religious-cultural nature of national conservatives, but are in large part determined by competitive political agendas and conflicts over the framing of moral–ethical issues. These have outsized visibility and political resonance because they ultimately point to broader questions surrounding societal organization under individual-collectivist as well as religious-secular norms (Engeli et al. 2012). In Europe and across the world, LGBTI rights have become a proxy-argument for or against human rights and, beyond that, for the acceptance of (neo)liberal-democratic pluralism of the Western, Eurocentric kind. While the EU aims to internally uphold rights in a number of areas, such as LGBTI or gender policy, it is unable to sufficiently address broader normative, democratic deteriorations related to xenophobia, populism, and, ironically, European integration. Moreover, it appears that various norm-antipreneurs have learned from the transnationalization of pro-LGBTI activists, as they have increasingly connected with similar-minded forces across the globe to prevent further rights advances and promote authoritarian, nationalist viewpoints (ILGA 2020).

Such a conceptualization is more comprehensive than the often-cited, yet problematically conceived, ‘backlash’ against expanded LGBTI rights. This notion is both theoretically limited in its assumed dialectic progression and empirically flawed (Paternotte 2020). Rather, regressive policies and reactions to the EU’s rights promotion attempts constitute a broader movement

against democratic pluralism of various forms, be they SOGI or ethno-religious based.

Conservative, religious, or geopolitical strategic opponents encourage democratic regression through the weakening of pluralistic discourses, policies, and structures. The opposition to LGBTI rights by EU member states governments such as Poland or Hungary, or by non-EU states such as Turkey or Brazil, should not be myopically treated as targeted human rights violations without considering the overall governance context. In the case of the U.S., we have noticed how instead of SOGI, race has become a salient focal point of populist opposition in the run-up to the 2020 presidential elections, whereas, in Poland, it was LGBTI and abortion rights, and in the UK, EU membership and migration fears that dominated the discourse. In the latter case, ILGA Europe attests to a tripling of attacks on LGBTI individuals resulting from the populist discourse surrounding Brexit (ILGA Europe 2020), which illustrates the connectedness of apparently unrelated socio-political dimensions. The foregrounding of SOGI rights topics, while to some extent necessary to address inequalities, also serves opponents to distract from larger political polarizations over pluralist societies and politics. Politicized ‘culture wars’ surrounding LGBTI rights serve to manipulate citizens and to disguise semi-authoritarian policies, whether it is President Putin’s attempt to change to a self-serving constitution by a manipulated plebiscite in Russia, the Trump administration’s incitement of conflictive identity-politics in the U.S., Turkish President’s Erdogan’s conversion of the Hagia Sophia into a mosque, or Prime Minister Orban’s erosion of democratic safeguards in Hungary. SOGI issues may play a central or peripheral role in these political tropes and moves, but importantly, they aim to distract from actually occurring policy changes that advance authoritarian principles and policies.

Global polarization over LGBTI rights in many cases may not specifically result from cultural protectionism but manifests as a revisionist reaction to the larger post-modern changes that have occurred in late/post-modern, neoliberal societies. These include increased socio-cultural diversity and pluralism, gender equality, secularism, and a weakening of national identities as a result of globalization. Within the EU, European integration represents an added contributing factor. Manners et al. (2020) use the term ‘ontological insecurity’ to describe the challenges of coping with fast-paced changes and generalized insecurities in Europe. Threatening toxic masculinities, national chauvinism, regressions toward traditional societal norms, and populist discourse and politics are all reactive responses to the aforementioned changes in private and public spheres. This suggests that a dedicated focus on just one sector such as LGBTI rights, without taking into account the broader destabilizing ramifications of late modernity’s (Giddens 1991) challenges, will likely yield limited results. The contention surrounding human rights promotion is connected to complex and context-dependent arguments about sovereignty, nationalism, religion, etc. that are highlighted as reasons for resistance, but that, in reality, often mask manipulative authoritarian or populist strategies. While these are most strongly pronounced by homophobe actors, homophile state actors or the EU can similarly end up politicizing norms for political gains. When EU institutions selectively approve of LGBTI rights maintenance in enlargement candidates for geopolitical reasons (see Chapter 4), or conversely overlook the state of SOGI repression in migrant-sourcing or -hosting countries while securitizing them (see Chapter 5), they engage in similar manipulative strategies that politicize LGBTI rights. At the risk of such politicization, SOGI issues are easily exploited by political actors in a performative manner since they readily connect to people’s everyday lived experiences, be they erotic or family-oriented in character. By playing up and focusing on these issues and responding

in equal force, often instrumentalizing the rainbow flag, LGBTI individuals do not only inadvertently become pawns in a political game, but this hypervisibility also contributes to hiding other governance issues in the countries concerned. Visibility as part of symbolic politics often operates on the emotional, rather than the cognitive level, with a resulting contentious increase in the salience of these issues. Whether in counter-demonstrations to pride marches, the gender-conform need of trans* people to 'pass' as such, or the ambiguous recognition procedures for LGBTI asylum seekers, LGBTI rights are not only 'hyper-visible', but visibility politics also functions as a double-edged sword for societies. In the diplomatic realm, regimes of visibility produce gendered national conceptions or reinforce unequal power relations (Edenborg 2017). The highlighting of performative issues points to broader failures of domestic politics or, in this case, to the EU substantially engaging its counterparts, be it in the way corruption is still a major governance issue or pluralistic structures are weakened in politics and media even within the EU. All of this occurs on the backdrop of EU funding mechanisms such as internal cohesion funding or external development aid which, at times, sustain rather than address and thus help change countries' problematic governance issues. Accordingly, the EU runs the risk of being perceived as hypocritical when speaking out against rights deteriorations in member states and becomes instrumentalized as apparent suppressor of sovereign democracy and an overly liberal promoter of non-traditional SOGI. Even beyond its borders, it runs the risk of being portrayed by Global South countries as a neo-colonial and neoliberal intervening force.

In terms of potential change agents referenced in this book, Inglehart and Norris (2003) argued that the visibility and role of women in politics have changed over the past few decades through higher labor participation rate, higher relative economic independence from male-led households, and better education levels. The emergence of a distinct female vote bloc is also

connected to the higher post-materialist values women tend to embrace compared to male counterparts, further increasing an attitudinal and voting gender gap on SOGI issues (ibid.). This provides an opportunity for LGBTI individuals and CSOs to not only follow in the historical emancipatory footsteps of gender equality movements in the public and political spheres but also ally with a politically emerging demographic that is by and large more supportive of SOGI concerns. In this sense, it would not only increase SOGI-sensitive representation but also augment the substantive inclusion of those topics in domestic and foreign policies. On the surface, more representation exists in public and private sectors, although despite an EU gender equality directive, women are still paid 15% less than their male counterparts for the same labor, on average (Arabadjieva 2021). In foreign relations, there have been noticeable strategic reorientations on national and EU-levels as well in the emulation of a feminist foreign policy over the past few years, with at least five (West) European states adopting such a stance (Wright et al. 2020). It appears that the first female-led European Commission that was confirmed in 2019, while not quite gender-balanced nor ethnically diverse, has already put more emphasis on gender equality issues in and beyond the Union, including the EU LGBTI roadmap and the Gender Action Plan. In the process, resistance from a ‘toxic masculine’ disempowered minority is inevitable, as, for instance, in several CEE countries, from Poland to Italy, there has been a coinciding attempt to restrict women’s rights such as abortion at the same time as LGBTI rights are curtailed (European Parliament Research Service 2018). Yet, a concerted effort to elect more progressive female and LGBTI policy makers could provide added benefits and protections to both minorities. Given that these political strategies require complex changes in attitudes, Inglehart et al. (2017) prognosticated that states that develop into high-income countries embrace ‘individual choice’ rights including abortion, homosexuality, and divorce after a 40–50-year lag.

While this generally bodes well for an eventual change in the more resistant member states, it also predicates it on economic security and implies a progressive linearity resembling modernization theory. Many CEE countries, as well as Global South states, still lack such economic conditions – the EU being one of the reasons for it – and thus declining support for rights norms in 12 of 15 post-communist states examined in this study was detected (18). More generally, EU institutions and member states are faced with post-modern governance conditions of borderless insecurities, the primacy of markets relative to politics and societal in/exclusions, in which the EU represents simultaneously a cause and an outcome. Women’s and SOGI rights are closely interlinked, and even though the former often appears preeminent based on broader and earlier agency, both seem to be contingent on the socio-economic contexts present in Europe’s late/post-modern stage.

Hence the perspective on unequal participation and uneven socio-economic development needs to be expanded to include an intersectional view on inequality. Socio-economic inequality produces grievances and insecurities domestically and comparatively among states.

Intersectional analyses that go beyond adding identity-based categories offer a more in-depth analysis of the way societal relations, power, inequality, and social justice imprint on specific issues (Collins 2019). Whether in the way women are more visibly represented without substantive equality, the fact that LGBTI individuals of color are more exposed to discrimination or how member states in CEE have had to deal with shock liberalization and a domination of West European influence in the private and public sectors, these multifaceted changes produce more profound challenges than a narrow focus on SOGI issues suggests. The EU is unable to sufficiently contribute to the democratic consolidation of post-communist socio-economic structures, an arguably complex process. In many cases, however, it did not mitigate challenges

to democratic consolidation, but rather amplified issues. With the tacit understanding that cohesion funding and social learning may help to reduce the resulting governance issues, the EU expected an adaption to its normative and political expectations, a so-called 'Europeanization' of states. This did not happen to the extent that was anticipated, producing uneven development in political, economic, and societal terms. To illustrate, CEE parties that once embraced the liberalization of economies during EU accession now attack those neo-liberal structures as part of their nationalist program and connect those to an expanded policy scope in the interest of national survival ranging from social policy to foreign policy (Varga 2020). Such EU-internal socio-economic inequality, in addition to slower moving adaptation processes to EU governance, is largely responsible for the lagging transformation of CEE countries in becoming neoliberal, pluralistic rights champions.

In those states within and outside the EU, a fatigue with (neo)liberal transformations and their effects, following an imperfect post-socialist transformation or post-colonial independence, has set in. In fact, for the first time, since 2001, autocracies consist of the majority of the world's governments, and Hungary is singled out as Europe's first electoral authoritarian regime. At the same time, pro-democracy protests and resistance by mobilized individuals and civil society has been growing (V-Dem Institute 2020). A similar global 'retreat of democracy' as measured by the Economist Intelligence Unit (2020) reports the lowest levels of democratic indicators since the early 2000s. The populist-nationalist forces that have emerged across the globe, including in selected European states ranging from Italy to Poland, provide further evidence of democratic retrenchment. Governments not suffering from democratic backsliding are often too pre-occupied by the various financial, environmental, refugee, or health-crises to counteract a regression in democracy and human rights elsewhere. To the extent that the EU, as the

preeminent regional IGO, can maintain or, in the best case, promote, democratic norms, it is well advised to do so in a manner consistent with its values. The “EU cannot credibly support democratic change and engagement with civil society abroad while those values suffer at home” (Balfour 2020). Critical self-reflection and a review of its own practices are required. While it is important to view CSOs as important, local change agents, their activities need to be viewed in a more contextualized manner, taking into account the broader repercussions of EU support – as funding and public framing can make them targets in authoritarian systems – and linking those more strongly to resiliency-oriented democracy promotion (Youngs 2020). There are positive signs of a stronger linkage of human rights and democracy matters, with the adoption of the EU’s third ‘Human Rights & Democracy Action Plan’ spelling out the main areas of concern for its foreign policy in this regard for the years 2020–2024 (see below). Recognizing the linkage of rights and democracy, the new European Commission’s plans

are ambitious, maybe overly so [...] the EU Action Plan on Human Rights and Democracy, the EU “Magnitsky Act”, or the Rights and Values Program are just some of the new initiatives in the offensive against democratic backsliding, the erosion of the rule of law, or the shrinking space for civil society at both levels.

(Havlicek 2020)

The ideal of democracy itself, however, always remains imperfect and a Weberian ‘ideal’ type, which means that variations of democratic governance need to be acknowledged and tolerated, but also addressed. Just as LGBTI individuals do not only singularly express their SOGI in its multifaceted complexity, so too are nations not uniformly progressive or conservative. Even more repressive countries are made up of multitudes of sub-cultures, associations, and interest groups. These may embrace and take on certain aspects of international LGBTI rights norms,

while alternatively rejecting other. This contingency, together with the performativity of advocates, opponents, and domestic and international public policy institutions, direct the trajectory of norm promotion processes in and beyond the EU. If there is a common EU norm regarding inclusive democracy, it is the ambition of striving toward an improved democratic quality over time.

Another SOGI politics is possible: reimagining international rights promotion

In 2020, EU institutions and member states were negotiating the upcoming multiyear budget, which includes substantial civil society support and funding for human rights and democracy policies across the globe. Around \$1.5 billion for each of these policy sectors are part of the prospective budget for 2021–2027. Such massive funding, while essential for many activists around the globe, also potentially politicizes activists in their home countries and the EU’s relationship with its governments (Youngs 2020). Moreover, the third ‘EU’s Action Plan for Human Rights & Democracy 2020–24’, developed jointly by the European Commission and the High Representative for Foreign & Security Affairs, aims to focus on human rights defenders and make those twin goals a strategic objective of EU foreign policy. Its main objectives are to protect and empower individuals; build resilient, inclusive, and democratic societies; promote a global system for human rights and democracy; address challenges posed by the use of new technologies; and deliver by working with a range of (non)state and intergovernmental actors (European Council 2020). In it, LGBTI individuals are mentioned as one of the many addressees, alongside women, children, the elderly, the Covid19-vulnerable population, etc., indicating the ambition to advance universal rights for everyone. Yet, human-rights CSOs, while generally supportive of the inclusion of emerging challenges such as new technologies, environmental

changes, and shrinking civil society space, have criticized their limited involvement in the planning of the report and the lack of transparency with regards to country-level assessments (European Human Rights and Democracy Network 2020). Similarly, with the adoption of a Gender Equality Action plan 2021–2025, the EU commits to redirect substantial resources for the achievement of gender equality in foreign relations that includes sexual and reproductive rights. Yet, feminist scholars caution to not “revert to a white liberal feminist conception of states in the Global North ‘saving’ women in the Global South” (Wright et al. 2020).

In these instances of ‘damned if you do, damned if you don’t’, the EU’s ongoing worldwide support of human and LGBTI rights defenders as an expression of its core values, ambitions, and interests poses a complex challenge for the bloc. Stipulating a holistic approach, Weitz (2019), in his rights historiography, reminds us that “human rights advances emerge out of a confluence of popular struggles, state interests, and the workings of the international community”, cautioning though that “never did activism in and of itself suffice” (410). Concludingly, this book makes the case that the international promotion of human rights for LGBTI individuals is contingent on the interplay of a number of political actors and that a unilateral push by only a few selected stakeholders, be they state or non-state actors, may produce counterproductive effects that hinder rather than advance rights attainment. The reliance on norm diffusion, assuming that rights challengers will eventually follow a ‘logic of appropriateness’, has proven to be too idealistic. This fact seems to be increasingly recognized by EU institutions in their ambition to be more geopolitical in the coming years, although it is far from clear how this rhetoric move may impact on future rights promotion. The augmented emphases on support for (non)state norm entrepreneurs alone may not be sufficient to produce human rights compliant policies in extraterritorial jurisdictions and may expose CSOs to the politicization and securitization of

SOGI rights. Material incentives combined with conditional benefits may not be the most useful strategy as they reinforce unequal power relations and neo-colonial perceptions between governments. A sound approach should be equally shared by actors ‘from below’, meaning civil society from within and ‘above’, that is, government institutions, and necessitates transnational activism, sensibly supported by outside (inter)governmental actors and activists. This vertical vector ought to be complemented by a horizontal broadening of domestic advocacy to include a number of intersectionally conceived CSOs to build wider social justice networks.

Such a balanced multiactor strategy is better apt to tackle a wide range of inequalities in the advocacy of pluralistic democracies. More specifically, it avoids a narrow heteronormative inclusion model for LGBTI individuals built on either family reproduction, contribution to the economy or fitting into the prevailing cultural-religious character. A forceful push for LGBTI rights, if perceived of as being led by external Eurocentric forces, seldom leads to the type of accountability pressures that exist for governments when domestic issues of importance are at stake. Research on the strength of domestically supporting human rights instruments, such as NHRIs, finds that these can prove resilient even when operating in more adverse environments as long as there are various regional human rights mechanisms upon which they can rely (Lacatus 2019). NHRIs not only engage primary the national governments but also coordinate with UN human rights bodies, support domestic CSOs, and thereby contribute to much-needed ‘localization’ and bridge-building processes (Hafner-Burton 2013). Applied to the cases discussed here, it means that the domestic LGBTI rights norm debates should be supported by coordinating intergovernmental organizations that aim to create legally binding instruments for domestic rights maintenance and promotion.

This puts the primary focus, but hopefully not onus, on domestic and transnational CSOs. Beyond LGBTI rights norm promotion, the welfare for a host of similarly marginalized constituencies should also be considered, which most governments should care about to avoid delegitimization – as popular protests have sprung up in a variety of (semi)authoritarian states over the past decades. In a letter to governments and development institutions, Civicus, the world’s largest network of CSOs, emphasizes the need to protect the most vulnerable from repression and marginalization, including women, children, the elderly, people living with disabilities, LGBTQ people, indigenous peoples, people living in poverty and other precarious circumstances, and other groups who are marginalized (Civicus 2020). LGBTI CSOs, such as Outright Action International, have been quick to gather data on the detrimental repercussions of the Covid19 pandemic, which highlights the abuse of state power through emergency measures, including restrictions on health care access or legal changes for LGBTI populations. They also link these particularistic measures to a larger decrease in civil rights (Outright International 2020), making alliance-building of like-minded CSOs that pursue social justice a primary avenue for the diffusion of repressive state pressures. These complaints have been addressed by the UN’s Independent expert on SOGI and the European Parliament. Without a sensible and effective strategy for EU foreign policy, however, declaratory statements and pressuring appeals may increase already existing tensions and put these populations at further risk.

Framing the issue differently, that is, less in terms of a normative prescription for the countries of the Global South and more as a matter of self-interest for those governments, may present a useful alternative. Attempts to economically analyze the negative impact of homophobia have been conducted in conjunction with the World Bank, which “estimated that the Indian economy may have lost up to \$23.1 billion in 2012 in direct health costs alone, owing to depression,

suicide, and HIV treatment disparities caused by anti-gay stigma and discrimination” (Alimi 2014). In addition, lower earnings potential through shortened life expectancy and relegation to lower education of those individuals was cited as a negative effect. In view of the contentious nature of moral-normative rights propositions, and in the absence of any substantial international legal provisions guaranteeing LGBTI human rights, a pragmatic interest-based argument about the heightened costs of discrimination could appeal to the ideologically adverse mindset of country leaders in need of economic development. Highlighting the removal of the effects of HIV/AIDS, for example, may further stigmatize already marginalized populations. As LGBTI economist Badgett sees it, “every country is a developing country when it comes to enacting rights for LGBT people” (2020, 12), which relativizes the apparent advanced status of Global North countries and recognizes the threat of intersectional inequalities to human security worldwide. This could open up a more rational negotiation, but it also represents a reductionist reasoning in its focus on savings and neoliberal values. While the latter is what the EU in part represents, it clashes with its other objective of advancing an inherently rights-based notion of LGBTI human rights.

The reality is that CSOs across the globe in large part either willingly appropriate the LGBTI identities, strategies, and discourses originating in Europe or they reframe or translate novel right norms skillfully into local and domestic contexts to make them appear more connected to local traditions, values, and practices (Ayoub 2019). A renewed focus on local needs by today’s transnational CSOs, independent of EU-structured objectives, is an important signifier of the sovereign power of citizens and domestic activists are viewed as more genuine and legitimate this way. In this sense, Langlois (2017) cautions that:

to the extent that human rights are used as an institutional policing tool, they provide limited scope for lasting change and run the risk of undermining sustained outcomes. By contrast, to the extent that they embody a grass-roots, indigenous, collective, self-determining movement for change, they can work wonders.

(242)

A strategic widening of the SOGI rights discourse where governments tighten civil space, and sexual and reproductive rights more generally (for instance in Indonesia), or where it affects health service provision in HIV/AIDS matters and other activity areas (as in Uganda, Jamaica, and in much of the Global South), builds alliances and dilutes a minoritizing focus on LGBTI rights. Domestic civil society is an essential conduit in this complex norm diffusion process, but domestic CSOs are not always cognizant of the broader geopolitical repercussions at play (such as when Transvanilla, Hungary's trans* NGO, wanted the EU to cut regional funds to the country, which arguably further politicizes LGBTI individuals there). More importantly, civil society should not have the onerous task of rectifying problematic policies that originate at more powerful levels of governance, as they have limited resources and are potential targets for rights-adverse governments. In this regard, Youngs (2020) has developed some helpful recommendations in view of the EU's future budgeting, such as mainstreaming civil society support in all foreign policies (so as to make core values more explicit and avoid the impression of foreign intervention), engaging with a broader range of actors in third countries (not only the 'usual suspects' of progressive transnational CSOs), focusing more on systemic resilience to democratic regression (as an early warning system of shrinking civil society space), and considering the impact of other EU policies on local activism (which often have contradictory results).

Applied to the case of the EU's promotion of LGBTI rights, this would mean to more strongly embedded civil society support throughout the EU's foreign relations, an explicit commitment to localize CSO support even if it does not necessarily advance EU objectives. It also includes a focus on the maintenance of democracy and human rights rather than highlighting specific group to the detriment of others, and lastly, to be cognizant of the impact of other EU policies such as trade, the migration-security nexus, or developmental conditionality on SOGI minorities. As thoughtful as these reform suggestions are, they may still potentially politicize civil society as agents and may sound too paternalistic or normative to some if used in external promotion efforts. Within the EU, however, the increased direct funding of domestic and transnational CSOs in member and candidate states that is already practiced should be more acceptable than supporting CSOs in third countries. The fight for civil space and democratic improvements cannot just be left to CSOs, but necessarily includes other non-state actors such as universities and the media. Not surprisingly, these have been attacked in the EU's illiberal states as well as in foreign (semi)authoritarian ones and reinforce the argument made about a broader attack on democratic norms and institutions.

With regards to universities and educational policies, LGBTI rights norm contestation is often accompanied by a policy focus on restricting academic freedoms, especially when it comes to women and gender studies. Beyond the narrow response to progressive SOGI discourses, governmental interventions in these areas are indicative of a strategic dismantling of fundamental civic rights and opportunities, with far-reaching impacts on future generations. Whether in the case of the Polish, Brazilian, or Bulgarian state contestation of gender studies programs, the forced displacement of one of the EU's most prestigious universities, the Central European University (CEU) from Hungary to Austria, or in Russian or American LGBTI exclusionary

educational policies, the attacks on education are justified as a fight against gay propaganda and used to prevent a destabilization of patriarchal authoritarianism (Redden 2018). This preemptive strategy is also detected in a comparatively measured 13% decline in academic freedoms across (semi)authoritarian governments worldwide (V-Dem Institute 2020). In reality, however, educational institutions not only expand the critical discourse surrounding SOGI but also contribute to better research on this emerging topic. The need for more evidence-based knowledge, upon which national policymakers can rely and which domestic CSOs can use to invoke and substantiate rights claims, has been highlighted by the UN's SOGI expert in his 2019 report (UN Human Rights Council 2020). Better data development makes use of cost-effective technology, is easier to diffuse even in rights-adverse settings, and helps to dismantle an international homophile/homophobe binary through the measurement of more differentiated indicators. Importantly, it could potentially evade the highly visible contestation over rights and identities as it is hard to argue with good data. The control of educational institutions thus goes hand in hand with CSO repression and generalized restrictions on civic freedoms of assembly and expression.

The media sector represents an ambivalent symptom as well as cause democratic backsliding and impacts on the popular perception of LGBTI rights as well. Media concentration by oligarchs close to ruling governments and state-restrictions or takeover of other outlets, as in Hungary, deleteriously diminishes press freedoms. So do harassment and killings of investigative journalists, media censorship, and limiting media access elsewhere (V-Dem Report 2020). These problems with the political (in)dependence of media outlets are compounded by declining levels of trust in media coverage, the echo chamber effect of social media platforms, and various misinformation campaigns by (non)state actors of various kinds (Reuters Institute 2020). Aside

from access to independent, pluralistic media outlets as guarantors of democratic norms, the way these portray LGBTI individuals specifically impacts, but also mirrors, tolerance toward minorities. State pressure to cancel TV shows that contain LGBTI content, as occurred when Netflix canceled a Turkish production after the government complained about its gay content in 2020, attempt to invisibilize LGBTI people. Inclusionary media exposure to such topics may have an informational positive impact on opinion formation, especially among younger people. Because of the border-transcending diffusion of media content, this applies even in more restrictive contexts (Ayoub and Garretson 2017). Moreover, digital media has improved political organizing and exercising influence for LGBTI activists, thus making it more intersectional, more pluralistic, and more participatory (Billard and Gross 2020). These characteristics make the media a preeminent ‘fourth estate’ in governmental systems and explain states’ preoccupation with them.

Another potential avenue represents the involvement of the EU-based private sector. Companies are ‘natural’ partners for the EU, which, at its most fundamental level, represents a single market. In recent years, organizations such as the UN have approached the private sector to adhere to the UN’s Global Compact, created in 2000, given the linkage of economic and human rights. It voluntarily binds companies in over 160 countries to ten ethical principles, two of which are human rights related. While some have remarked on its transformative potential, others have found it little more than a social corporate responsibility exercise. Similarly, the EU has been working on ‘due diligence’ proposals that would institute a rights assessment for EU-based companies and their foreign subsidiaries (European Parliament 2020). Over 100 CSOs have called for the strengthening of such accountability mechanisms and, given that companies often exert significant influence over trade and businesses in third countries, these could be

powerful allies in the support for LGBTI rights globally. Even within the EU, Polish business associations have, for instance, called out the government over its Eurosceptic policies, fearing an exclusion from the single market. Businesses may support LGBTI rights within their human resource structures, but they often are less willing to promote those externally in the more rights-adverse settings they operate in (Saragih 2020). Moreover, a stronger alliance of companies with already business-friendly EU institutions would lead to further accusations of neoliberal interventionism and hegemonic 'homo-capitalism' (Rao 2015). Within Europe, the economic and financial structures have produced a crisis-prone region and have, in post-communist countries, led to shock liberalization followed in some cases by nepotistic statism. And externally, the EU's neoliberal trading regime appears often primarily self-interested. The private sector, while potentially impactful, should only be considered in a supportive role, as it cannot replace government policies and is often not bound to the same type of accountability as the latter.

For existing EU states and prospective members, many framework conditions for LGBTI rights promotion are already in place, such as CSO support, institutional EU advocacy, and foreign policy guidelines. The emergence of rights-contesting governments has exposed discrepancies and inconsistencies with EU strategies. As a result, the EU has put an increasing emphasis on rule-of-law, democracy, and rights issues through dialogues, score cards, and a newly developed EU-internal rule-of-law audit. The latter examines the justice systems, the fight against corruption, media pluralism and freedom, and checks and balances more broadly (European Parliament Research Service 2020). The report not only sounds the alarm over judicial independence in Hungary and Poland but also notes similar problems in Bulgaria, Romania, Croatia, and Slovakia. Threats against journalists are particularly worrying in Bulgaria, Croatia, Hungary, Slovenia, and Spain (Politico EU 11/24/2020). Not surprisingly, the corruption

watchdog Transparency International ranked Hungary at the bottom of EU states at 69 out of 180 examined countries, together with Bulgaria and Romania, and with Poland not faring much better as 45th ranked country. Poland and Hungary also distinguish themselves by having deteriorated in this respect since 2012, whereas other CEE states did not (Transparency International 2021). In this context, an important instrument to delimit democratic backsliding in member states could be the rule-of-law conditionality for member governments to receive funds from the 2021 to 2027 EU budget and the Covid-recovery fund, both accounting for a massive 1.8 trillion Euros. As noted at the beginning of this chapter, only Poland and Hungary initially vetoed this new conditional mechanism. After the other member states, as well as the EU institutions, threatened to proceed without these two countries, at the end of 2020, a compromise was found that prescribes that the EU's application of internal rule-of-law sanctions needs to be verified by the EU's top court. Unlike political conditionality applied to the Global South, consensus among European 'equals' eventually prevailed. This alleviated Polish and Hungarian government fears that they would face political recriminations and shows that, even in such conflictual relationships, the independence of courts is still respected.

This illustrates that auxiliary judicial institutions, such as national and European courts – among the latter, the Court of Justice of the EU (CJEU) and the European Court of Human Rights of the Council of Europe – are significant guarantors of rights. Domestic and international courts are not only statutorily independent legal bodies in European democracies and in many democracies that the EU interacts with, they also tend to be among the most highly respected political bodies. In the EU, a slight majority of citizens consistently support the EU's highest court, although this support may be rather diffuse (Voeten 2013). Even though the court has become more salient in public discourses and thus, somewhat politicized, its widely accepted stature makes it a

significant promoter of rights: internally, following the incorporation of the Fundamental Rights Charter, its scope has been broadened, and unlike the European Court of Human Rights, its judgments are enforceable. The CJEU has proved to have an increasing impact externally as well especially in the refugee/asylum areas (see Chapter 3). It is in the latter where governments, guided by courts, can expand protections for LGBTI asylum seekers when those are threatened in their home countries. Similarly, domestic supreme or constitutional courts have a preeminent standing as constitutionally neutral arbiters and are recognized and supported as such by the EU institutions. This is why some of the most egregious homophobic governments have also started to delimit their courts' independence. In fact, in 2020, the European Commission started legal proceedings against the Polish government for its weakening of the independence of the Polish court system. Moreover, the EU Court of Justice intervened in a number of rights-restrictive cases in other countries, including in Hungary, where it found its asylum policy, its planned NGO-transparency law, and its educational restrictions for universities in breach of compliance with fundamental EU freedoms (Makszimov 2020). Domestic courts, with the added oversight of supranational courts, have already become more significant in rights maintenance and enforcement, and civil society makes regular use of the legal invocation in case of contentious rights issues.

In the complex and ambiguous field of norm promotion, there are no magic silver bullets available, and each policy comes with attendant trade-offs. Aside from pointing to certain blind spots in the EU's ambitious but incoherent LGBTI rights promotion, the preceding sections broaden our understanding of norm contestation embedded in larger governance issues. They also suggest to extend the scope of actors and activities to provide a more comprehensive, or 'holistic' approach, to speak in EU lingo. One needs to keep in mind, though, that even an

inclusive normalization of LGBTI rights and their improved standing in the international human rights regime may not be the be all and end all. An expanded focus on democracy promotion, of the Western (neo)liberal kind, will likely engender resistance as well in a multipolar international system. Moreover, as much as democratic norm negotiation practices are inherently antagonistic, so are the various positions of gay and lesbians, trans* people or queer individuals toward any type of power-laden authority, be it institutional, economic, or normative. Hopgood et al. (2017) succinctly summarize the future promises and pitfalls of the international human rights regime marked by a more geopolitically challenging system:

Accepting the importance of both backlash and localization is to understand that human rights will evolve at different speeds, will not be achieved in all cases any time soon, and will be defined very differently than they might be in Western capitals. Listening to local demands, compromising on human rights maximalism, and sharing resources more widely through the network of human rights supporters are identified as ways to create a more truly global movement. But by going down this pragmatic path, some of the aspirations of the mainstream model may have to be abandoned as clearly stated universal aims.

(322)

Conclusion

It is important to reiterate that the internationalization of human rights norms seldom occurs in a conflict-free, linear matter, no matter whether the issue is the death penalty, female genital mutilation, or LGBTI rights. Differences over who is a rights holder and to what extent various rights should be accorded vary across space and time. Those tensions are augmented when powerful norm entrepreneurs, such as the EU, together with European states, advance a relatively

novel rights agenda through high-visibility symbolic and pressure politics. Given the contextual, structural, as well as agent-centered issues, a self-reflective impact assessment by political stakeholders is essential. This will likely stress CSOs as essential vehicles and domestic governments as primary targets for social learning and norm negotiation. Besides these political moves, the global circulation of information and ideas, supported by internet technologies and civil societies, help spread a slow and uneven, but simultaneously resilient, global SOGI rights awareness. Since 2000, improvements in public opinion and civic mobilization are evident in many emerging key states across the globe, from Mexico to the Philippines, with attitudes strongly correlated to national wealth, age, and education (Pew Research 2020). A temporarily longer, as well as thematically broader, perspective is advised, which does not fit neatly into multiyear electoral windows or budgets for that matter. If Dahrendorf's (1990, 99) abbreviated dictum is correct that 'it takes six months to replace a political system, six years to transform an economic system, and sixty years to change a society', then reflective, sustainable norm negotiation strategies are advised to support domestic attitudinal and political changes in countries of concern. These ought to be complemented by policies that reduce socio-economic inequalities in labor, education, and other public policy sectors.

Essential self-reflective practices that adequately address complex, intersectional rights issues (Collins 2019) in an international environment are predicated upon the analytical recognition of interconnected factors. Among the most prominent are the interlinkages between EU-internal policies and external impacts, the connection between economic inequality, democracy, and human rights, and the intersecting relations between SOGI, ethnic, racial, and other social justice causes and advocates. Such a reflective approach also admits that while LGBTI and gender equality strategies are relatively well developed in the EU, ethno-religious immigrant and

structural racism are still less acknowledged by political actors there. More importantly, a particularistic focus on specific constituencies needs to be embedded in a broader assessment of pluralistic, democratic sustainability. Without the latter, an expressed focus on LGBTI rights ends up relegating other pertinent issues to a lower priority and encourages apparent culture wars and identity-politics that make it more difficult to achieve sustainable solutions. Improvements are contingent on a number of domestic factors (such political elites, independent courts, socio-economic and cultural-religious conditions, and quality of democracy) interacting with international ones (influence of international organizations, transnational mobilization of activists, access to information, issue-linkages, and conditionalities). In the EU, this ‘international-domestic’ contingency is increasingly blurred by the materialization of the EU’s supranational power in European domestic contexts. Both policy arenas are more strongly connected in the region than elsewhere, which introduces a somewhat Eurocentric foreign policy bias that tends to be applied to the rest of the world. As should have become evident throughout this book, norm contestation is integral to norm emergence, alteration, and diffusion. While it is commendable that the EU is one of the most visible LGBTI rights promoters globally, not only is normative learning and negotiation required by its counterparts, but a consistent reflective and intersectional practice is also required from the EU and its member states. This may possibly augment the human rights of LGBTI individuals worldwide and may bring Europe closer to its much-touted ‘Unity in diversity’ on these issues.

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