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Transnationalism: No Choice

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Recently, discussions of global justice have posited transnationalism as a way to get beyond the deadlock encountered in debates over global justice, between cosmopolitans on the one hand, anti-cosmopolitans -including statists, nationalists, communitarians and realists- on the other. Here transnationalism refers to structures that operate beyond the scope of the state, but at the same time are not necessarily fully global. While this is the only criterion shared by all theories of transnationalism, most add the further requirement that transnationalism be associated with sub-state structures, operations, or communities. Focusing on specifically socio-economic forms of justice and directing my attention to these recent articulations of transnationalism I aim to a) describe and identify what is developing as a new strain of thinking about global justice and b) critically examine the limitations of this approach. In this regard, I consider the voluntary nature of membership in many transnational communities, arguing that this is significant to our understanding of justice beyond the borders of the state.

I. Review the Debate

While it is beyond the scope of the present study to completely rehearse these debates, they constitute the context of transnational approaches to global justice, and therefore a brief sketch of the major points made on each side is a useful first step towards developing an understanding of transnationalism.

On the one hand, critics of cosmopolitanism and globalism present two major objections: objections concerning a global state and concerning moral universalism. First, they argue that justice requires institutionalized relations of mutually beneficial cooperation. This in turn means that a global approach to justice requires a global state. However, they argue, a global state does not exist, moreover a global state would be both impractical and undesirable. Second, objecting to moral universalism, they present a series of arguments,

arguments regarding (i) our moral orientation to others far and near, (ii) an affinity between universalism and imperialism, (iii) distributive versions of global justice, and (iv) the abstract individualism that subtends theories moral universalism.

On the other hand, in response to these criticisms and in objection to statism and nationalism, cosmopolitans respond to concerns about a global state and make one further argument against nationalism and statism. Responding to objections to the prospect of a global state, cosmopolitans maintain that while currently there does not exist a global state, there is enough institutionalization to establish a context for justice. They further respond to such fears by distinguishing between moral and political cosmopolitanism. Where political cosmopolitanism would require a global state, moral cosmopolitanism does not; rather, it simply speaks of the moral obligation we owe to our fellow human beings.¹ Cosmopolitans also make a distinct argument against nationalism and statism, arguing that the supposedly shared understandings of nations or states are spurious. A variation of this argument questions whether the borders of nations and states can be legitimately used in our theories of the sources and causes of global injustice, emphasizing that there are significant inequalities whose origin is global.²

II. A Transnational Subject: The Industrial Workers of the World (IWW)

In debates over global justice, two ideas regarding what or who constitutes the proper subject of justice are posited: on the statist/nationalist/communitarian side, it is maintained that the bounded communities of the nation or the state are the appropriate subject of justice. On the globalist side, it is argued that global humanity as a whole is the correct subject of justice. Transnationalism suggests a third option, arguing that transnational communities should also be taken up as an appropriate subject of justice. This view maintains that transnational communities allow us to reconfigure the subject of justice in a way that avoids the problems associated with cosmopolitan abstract individualism and

¹ See for example Beitz 1999 and Nussbaum 2000.

² See Pogge 2004, 264.

moral universalism and at the same time, accepts the fact of globalization, taking seriously the arbitrary nature of state borders.

Examples of such communities include things like The Central American Network of Women in Solidarity with Maquila Workers, International Ladies Garment Workers' Union, Civicus, and the IWW. Such communities are defined by three criteria: they involve a community that is beyond the scope of one state; they involve non-state actors and are thus inter-societal rather than intergovernmental or international; and, they are not fully global. Hence for example, the IWW goes beyond the borders of a single state, including members from the United States, Australia, the UK, Germany, Austria, Switzerland and Canada; is made up of workers and union organizers, not members of any government; and including only (some of) those who participate in or are concerned with the industrial work, is comprised of 100,000 members, a community far smaller than the cosmopolitan's global humanity.

Considering the nature of such transnational communities, Hye-ryoung Kang and Toni Erskine both recognize that membership in these communities is chosen. Unlike our membership in a state, our belonging in these transnational communities is not necessary. As Kang claims this means that transnational communities have a built in protection against domination and oppression: if such a community were oppressive, its members would elect to leave it. Thus Kang makes the tacit claim those transnational communities that thrive, are likely to be free of oppression.

Erskine points out that it is important to view transnational communities as offering a supplement to more traditional forms of community (the nation or the state). The reason for this is that it is only in this way that transnational community avoids become embroiled in a contradiction between a community based self on the one hand and an choice-making self on the other. If we are reject a morality based in abstract individualism, and as a corollary require that the moral subject is understood as being to some degree constituted by social relationships and if we allow for transnational relationships to contribute to the definition of our moral agent, do we not end up in a contradiction? In particular, is there not a contradiction between a moral agent who is constituted by relationships and a moral agent who has the capacity to critically choose its relationships? In other words, they very idea of choosing relations and communities which then constitute us, requires that there be

some pre-social self, but this goes against the initial premise of the rejection of abstract individualism.

In this sense, Erskine's conception of the self departs from traditional (conservative) communitarianism –a doctrine prioritizes our existence within the communities that we are born into, a prioritization that is, problematically, both conservative (in so far as it seeks to protect such communities) and exclusive (if you are not born into it, you can't elect to join)– in two significant ways. First, she argues for an *on-going* communal constitution of the subject, whereby our first position is embedded and situated within a community, and from there we are then able to (critically) choose membership in other communities, which will, in turn, constitute us in new ways. Second, as a corollary to the idea that the constitution of the self is an on-going process, she argues that we are constituted by *multiple and varied* communities: hence while the community we are born into exerts a critical influence on who we become, the communities we choose also become significant influences, so that in the end we are constituted by a mixture of all of the various communities we belong to.

Addressing worries over cosmopolitanism and globalism, theories of a transnational political subject avoid the difficulty of abstract individualism. As Kang points out, thinking of people as members of collectivities has the advantage of avoiding the problems associated with abstract individualism. This is particularly significant for minority or oppressed populations as it affords members the advantage of strength in numbers, allowing oppressed individuals to band together and mutually support one another. Erskine furthers this point, arguing that transnationalism, in recognizing the priority of communal life, begins from the assumption that the self is always embedded and situated. Moreover, this understanding of the self as embedded overcomes worries regarding moral universalism, because it recognizes the importance –be it functional, epistemological or motivational– of the thick ties of our communal lives.

Theories of a transnational subject also respond to concerns that globalism and cosmopolitanism require an unfeasible and undesirable global state. While it is thought that a global state would be too unwieldy, if we approach justice from a transnational perspective then as Slaughter argues, it becomes apparent that the traditional state is now disaggregated into a multitude of transnational political networks. These networks, can

accomplish the work of a global state, while avoiding the problems argued to be associated with such a massive political structure. Moreover, as Gould argues, the solidarity which is thought to be impossible within a global context, finds fertile ground within transnational communities, where people are bound together, in thick ways, because, as a self-selecting group, they share concerns and values.

On the other side of the debate, theories of a transnational subject overcome criticisms waged against the nationalist/statist approach to global justice. In particular, this approach offers a solution to the issue of the arbitrary nature of state borders and the shortcomings of explanatory nationalism: First, the claim that transnational communities of choice participate in determining the subject, indicates the concept of a situated self, is not bound to a conservative communitarianism. This in turn means that transnational communities are able to avoid the cosmopolitan's critique of the reification of state borders that characterizes statist approaches and the uncritical acceptance of a unified nationalism that defines nationalist approaches to global justice. Transnational communities, unlike states, are not necessarily bounded or territorially situated; they are 'dislocated' communities. Erskine argues that this lack of territoriality means that the transnational community avoids the problem of borders, which plagues the state. In other words, where the state depends on an arbitrary border, the transnational community is borderless, thereby impervious to the critique of borders. Second, if we follow Erskine's approach, accepting a dislocation of the subject of justice, we are able to take state borders for what they are: arbitrary. With this, our thinking about justice is able to extend beyond the operations of discrete states. Thus, there is a paradigm shift which gets us past explanatory nationalism/statism. Shifting our focus from the state, to wider transnational networks, allows us to appreciate the ways in which current global inequities have origins in structures that transcend the boundaries of a single state.

Applying this perspective, we see, for example, while a given individual may have been born in Canada, their membership in a community such as the IWW may be more meaningful to them, and if not more meaningful, perhaps equally meaningful, and if not equally meaningful, it may just be meaningful. In any case, that fact that membership in the IWW is meaningful, in any degree, allows us to understand how our purview of concern, the subject of justice, is both embedded -and therefore neither abstract nor universal- in

specific communities and at the same time, because the IWW is not-territorial proscribed, not limited to the arbitrary constructions of nation and state. A member of the IWW, may be Canadian by birth, however their membership in the IWW is a second (second in time though not necessarily second in priority) meaningful community to which they belong, and by which they are -partially- constituted. Moreover, being situated within the IWW, while determining various aspects of who that person is, does not require a conservative reification of Canada.

III. A Transnational Agent

A second form of transnationalism requires us to focus on how justice operates, that is, what are the mechanisms and who are the actors through which justice is brought about. This formulation of transnationalism leans towards the cosmopolitan/globalist side of the debate over global justice in so far as it accepts cosmopolitan individualism and universalism and insists that we recognize limitations of the nation-state (both in terms of its legitimacy and in terms of its usefulness in explaining global injustice). With these cosmopolitan commitments, this formulation focuses its concern on a single issue within the debate; in particular, it addresses the question of how to bring about justice without recourse to the nation-state *while at the same time* avoiding the dangers and or difficulties thought to be associated with a unified global state. To this question it offers the idea of a transnational agent of justice as a solution. There are (at least) two variations of this approach, one arguing that the current methods of justice can be adapted to a transnational context, a second maintaining that the fact of globalization requires that the operation of justice, be conceptualized in a new way.

The World Commission on Dams

The first variation of this approach defends the position that transnational communities, unlike global communities, are not necessarily afflicted with a democracy deficit.³ Hence, Daniel Weinstock argues that the potential difficulties involved in achieving democratic legitimacy in transnational contexts, are actually no different than the difficulties that were faced in developing democratic legitimacy within nation-states. Moreover, he points out

³ Daniel Weinstock and Carol Gould make similar points.

that those who charge transnational governance with a democracy deficit employ a conception of democracy that is already obsolete in the large societies of the contemporary world. Therefore, he argues, democratically legitimate transnational governance is a viable prospect: “nationalists who claim that broadening the scope of democratic institutions would erode the values of democracy and citizenship overestimate the naturalness of the fit between citizenship and democracy and the nation-state” (2006, 66)

Substantiating Weinstock’s argument, in *The New Transnationalism*, Klaus Dingwerth argues for the democratic potential of transnational rule making processes. He reaches this position through an empirical analysis of three distinct transnational communities; the World Commission on Dams, representing a commission model, in which the initiators of the rule making process delegate decision making to a small non-permanent body of either experts or stakeholder representatives, who after a predetermined period present results in a final report; the Global Reporting Initiative, representing a foundation model, which is similar to the commission in that its internal decision making is led by a small group of individuals, but extends the commission model in its temporary dimension by creating a permanent organization; and the Forest Stewardship Council, representing an association model which is similar to a foundation in that decision making occurs within a permanent structure, but differs in so far as it has a defined membership that acts as the supreme authority of the organization. All three forms are distinctively transnational in so far as they a) span more than one state b) involve non-state actors working to regulate particular areas of global governance and c) differ from intergovernmental alliances (in which states cooperate with each other through their governments) and from transgovernmental alliances (in which members of national bureaucracies judiciaries and parliaments cooperate across borders to address problems).

A first step in his work involves considering what democratic legitimacy means in a context beyond the state. In response to this question, he identifies four sets of criteria: normative context, which determines whether people have good reasons to accept decisions as rightful (so, for example, in an intergovernmental rule making body, the strength of the normative context would be that the intergovernmental process is authorized by governments who are in turn authorized by their electorates); participation and inclusiveness, which assesses the scope and quality of the participation within the rule

making body; democratic control, including an assessment of accountability and transparency; and discursive quality, involving an assessment of the universality, rationality and reciprocity of the deliberative processes.

Applying these criteria, Dingwerth's results show that transnational communities have both democratic strengths and weaknesses, which vary depending on the specific way a given rule making body is structured (eg. some are set up as temporary commissions, others as permanent foundations, and others as a membership association). Based on these results he concludes that *if* designed carefully, transnational rule making processes can be as democratic as those occurring between governments. From his study we learn that the WCD had a high degree of democratic legitimacy in some areas: for example, in making all documents available via the Internet established a high degree of transparency; and in bringing two highly relevant opposing perspectives (the pro-dam lobby and the anti-dam movement) it succeeded in establishing a balance discoursed. However, it is noteworthy that while its final report has become a significant point of reference in governmental and corporate policy decision-making, its rules are not prescriptive or legally binding; they are only 'guidelines with a small g.'(Dingwerth, 67). Hence, in developing countries and emerging markets, where officials have been highly critical of the report, its recommendations have been rejected in the name of national sovereignty. India, for example, has cancelled the commission's regional consultation in some states. This opting out draws our attention to the fact that membership in the WCS is voluntary, to be adopted when convenient and not otherwise.

Starbucks

Like Weinstock and Dingwerth, Onora O'Neill argues for a theory of transnational justice that considers how justice is achieved. Yet where Weinstock and Dingwerth argue for an extension of current methods and processes, O'Neill maintains that it is necessary to reconfigure our understanding of the agent of justice. Her theory, highlighting the status of imperfect duties within the work of global justice, points out that one of the most significant difficulties in envisioning relations of justice beyond the state is that it is no longer clear to whom the principles of justice should be addressed. Beyond the boundaries of the state, where the agents and agencies whose action produce, distribute and control resources are

not only numerous but heterogeneous, it becomes difficult, if not impossible, to establish how justice ought to be executed.

Arguing that beyond the state we no longer have a clear account of the agent of justice, O'Neill maintains that in a transnational context, it is necessary to reconceptualize how justice should be approached. She contends that because the transnational agent of justice is neither unified nor homogeneous, it no longer makes sense to approach justice from the perspective rights. The problem with beginning with rights is that in a transnational context, with the unmooring of the agent of justice, it becomes impossible to determine who is responsible to secure and protect these rights. Thus she holds, we need to reconfigure our very understanding of how justice should operate. She calls on us to abandon the framework that begins with rights for an approach that begins with obligations.

O'Neill's approach is distinctly Kantian, requiring that "Any action is right if it can coexist with everyone's freedom in accordance with a universal law" and "the universal law of right, so act externally that the free use of your choice can coexist with the freedom of everyone in accordance with a universal law, is indeed a law that lays *obligation* on me." (emphasis mine: Kant 1996). Hence we are proscribed a method through which to determine our principles of justice: through the test of universalizability we are able to establish abstract principles of obligations, which are then to be used to structure institutions and guide choice regarding the more specific principles we encounter in laws, policies, and in the practices and norms of social life.

O'Neill emphasizes that her approach does not simply mirror an account of universal rights. The reason for this is that her position depends on the understanding that human beings have a strong capacity for action and autonomy and at the same time are mutually vulnerable. More specifically, this perspective (unlike the libertarian position which focuses only on rights) in its understanding that human beings are vulnerable and needy, recognizes that their capacities to act freely are easily undermined. This means that mere respect for liberty rights is unlikely to achieve justice. Where agents are mutually vulnerable, justice requires a dual strategy of a) disciplining the action of the powerful and b) seeking to empower the powerless to make them less vulnerable.

From this conception of how justice ought to operate, O'Neill turns to issues of global justice. Here she proposes two claims: first that we can assign obligations to

institutions; and second, that assigning an obligation to a given agent (be it an institution or an individual) only makes sense if that agent has the corresponding capacity. “Only if we conclude that an agent –individual, institution, or collectivity –*can* carry a certain obligation does the further question arise as to whether it *ought* to carry that obligation” (250). Accepting these claims requires us to recognize the limitations of weak states and weak international institutions (eg. the UN): we cannot coherently expect them to carry out tasks for which they are incompetent. The work of global justice, hence, requires that we build up weak states and international institutions. However, this could take a long time so we should look for a quicker supplemental strategy.

O’Neill argues for what she names an ‘opportunistic approach’ by which we regard transnational corporations (TNCs) and non-governmental organizations (NGOs) as potential agents of justice. If we accept O’Neill’s assertion that can implies ought, then it follows that TNCs and NGOs with the power to secure respect for certain aspects of justice, have an obligation to do what they can. “Where either sort of institution (NGO or TNC) is capable of acting to improve justice, obligations of justice come into play” (254). On this view a TNC such as Starbucks, becomes a significant agent of global justice. While never replacing the state as a primary agent of justice that holds the power to assign specific obligations, it has a stronger role than secondary agents of justice who merely follow proscribed policies. The obligations of Starbucks correspond to its capacity: hence, since Starbucks has the power to support fair trade coffee, it is obligated to do so. As a corollary, since Starbucks, does not have the power to guide politics in Libya, it is not obligated to do so.

IV. Power is Universal

Rainer Forst’s theory of transnationalism takes a different approach to the debates over global justice. Rather than negotiate a compromise between the extremes, his analysis goes deeper identifying a common denominator, which finds questions of justice at all levels. Identifying power as a fundamental root, and arguing “the question of power is the first question of justice,” (167) his perspective allows us to see how the various contexts of justice are all interconnected, thereby resolving the key opposition of the debates. If we

take power as primary, then the nation, the state, transnational communities, and global networks are all just various ways in which power is organized.

One benefit of this approach is that in thinking about power, we are immediately required to consider not only those who have power, but those who do not: to think of power is to think of domination. From this perspective, we thereby come to see individuals and communities as existing in a situation of multiple domination, subjected to governments, local elites, warlords, and global actors. In the case of women and children these forces of domination may also include the family and the local community.

Beginning with a focus on power and domination, Forst's theory of transnationalism, maintains that power is justly arranged when it can be justified reciprocally and generally to all those affected in a relevant way (168). Here reciprocity means that no one may claim certain rights or privileges that it denies to others, and generality means that *all* those affected have an equal right to justification.

Forst further argues that this right to justification guides other conceptions of justice. On his view, as a demand to treat all human beings with dignity and as an imperative to do away with all forms of arbitrary domination, it is the fundamental motive behind all talk of justice and human rights. Thus he challenges distributive and political conceptions of justice,' maintaining that the 'right to justification' is more fundamental; it is this right which is at the core of the work of all approaches to justice. Referring specifically to conceptions of justice which take human rights as the primary concern he explains "one claim underlies all human rights, namely, human beings' claim to be respected as autonomous agents who have the right not to be subjected to certain actions or institutional norms that cannot be adequately justified to them" (2010, 712)

In addition to being more fundamental than other articulations of justice, Forst argues that the right to justification is able to avoid the relativism vs ethnocentrism opposition of the debates over cosmopolitanism. Where other conceptions of justice threaten on the one hand to become forms of neo-imperialism when implemented on a global scale, or to fall back into an ineffective relativism on the other, the right to justification has the power to operate as a transnational principle of justice and as the same time avoids the charge of ethnocentrism. The principle of the right to justification operates as a single starting point, which can then be translated into multiple and various

contexts, from the local to the global. Taking this right to justification as primary, differs from approaches to global or cosmopolitan justice, specifically those that tend towards ethnocentrism, in two ways: it considers particular political contexts as contexts of justice in their own right, and it can be applied to relations between autonomous political communities (i.e., in recognizing the autonomy of these political communities differs from the globalist approach). On the other side of the debate, taking this right to justification as primary, differs from statist views in two relevant ways: it begins with a universal individual right, and considers the global context an essential context of justice. The right to justification is at once a universal right, and a right that makes sense only when employed in particular contexts.

While Forst's theory maintains a commitment to individual rights, thereby employing an abstract individualism, it does not require moral universalism. Recall the criticisms of moral universalism are a) it inverts the priority of our moral obligations b) it is tacitly a form of imperialism or ethnocentrism, and c) it requires that we adopt a doctrine of abstract individualism, which problematically fails to understand the ways in which community and environment shape human beings. The right to justification, taking the individual as primary, rejects a communitarian ontology, i.e., the idea that individuals exist *qua* individuals only by virtue of their communal existence, but in so far as it requires that relations of domination *be justified in a way that is relevant to those affected*, does support the normative view that cultural traditions are significant and communities are valuable. This means that it does not undercut those local and near attachments that anti-cosmopolitans believe to be the sources (functionally, epistemologically or motivationally) of a moral concern for distant others. This appreciation for tradition and community, also means that any tendency towards imperialism is cut short. Finally, this means that abstract individualism is only taken as a metaphysical starting point, thereby lessening

Applying Forst's theory to the communities discussed above demonstrates its distinctiveness. In all three cases, the IWW, the World Commission on Dams and Starbucks, the voluntary character of membership in these communities -to some extent- substitutes for or operates as justification. Since the relations within these communities are not coercively enforced, at least at a formal level, 'if you don't like it leave' is a *de facto* justification. It would be going too far to say that, for this reason, these communities fall

outside the purview of justice; however, recognizing the importance of power relations and the requirement of justification raises questions about what justice looks like beyond the borders of the nation-state, i.e. a community in which membership is effectively not optional. The issue here is that as we seek to theorize justice beyond the state, we should take the question of voluntary membership seriously, and consider whether ‘if you don’t like it leave’ constitutes a legitimate justification.

III. Assessment

In efforts to negotiate between globalism and nationalism/statism, theories of a transnational subject, mechanism or agent, underestimate the significance of the voluntary character of membership in transnational communities and institutions.

If we consider a transnational community as a subject of justice, then the members of that community follow under our purview of concern. This in turn means, that as we design laws, policies and institutions, we will do so in a way that prioritizes the needs of the members of the given community. Thus if we belong to the IWW, we will support those laws, policies and institutions that protect and promote the wellbeing of industrial workers throughout the world. This is understood to be useful to the work of global justice in so far as it situates the work of justice in a specific community to which one has thick and concrete ties, commitments and obligations. However, my worry here is that one’s commitment to the IWW, while thick and concrete, is nonetheless optional; there is no coercive force that requires us to maintain membership in the IWW and moreover, there is no coercive force that requires us to meet demands made by the IWW. If for example, the IWW imposed a tax on its members in rich countries in order to support the struggles of its members in less well off countries, what would compel its rich members to pay that tax?

If we consider a transnationalism as either a mechanism of justice or as an agent of justice, as do Dingwerth and O’Neill, then that institution is thought to hold obligations: the World Commission on Dams is obligated to its stakeholders and Starbucks is obligated to advance respect for human rights where it is able. In these cases, a transnational institution’s success is impaired by a lack of coercive power, and as a corollary by the voluntary character of their membership. The WCD a transnational commission which

developed recommendations for rules governing the production and operation of dams throughout the world. Yet its rules are legally non-binding and participation in its consultations are optional. The case of Starbucks raises similar concerns: given that, at least some of the membership in Starbucks is voluntary, the obligations that Starbucks holds can be easily abandoned. Focusing on those who are members of the Starbucks community because they shop at Starbucks, the issue is that while some one may elect to buy Starbucks coffee and thereby support fair trade coffee via the coordination offered by Starbucks, it is simply too easy to choose an alternate coffee. Ties of consumer choice are too fickle and too easily abandoned, with the result that the relations between consumers are too thin to support justice.

These observations indicate that if we want to situate justice in a transnational context we should think seriously about the fact that transnational communities are often voluntary. In particular, it is important to consider what kind of justice exists in and through an optional community? And, does the optional character of such communities mean they offer a justice that is in some ways different from justice of non-optional communities (of which the nation-state is one example). If we consider the IWW, the WCD and Starbucks as communities of justice, by virtue of the fact that membership in these communities is voluntary, is their contribution to justice either qualitatively or quantitatively different from that which would we expect from a coercive community? Moreover, if there is a difference in either quality or quantity, do we need to maintain the state, or some other coercive community, in order to make up for this difference?

If following Forst, we take a) justice to be about the various ways in which power operates, such that justice is achieved when power relations are justified, and b) from this understand that the work of justice is located in those communities where power relations are not justified, then a further issue emerges. In particular, if when thinking beyond the borders of the nation-state, we turn to an optional community then we must ask, is the ‘if you don’t like it leave’ justification an acceptable form of justification? The issue here is that Forst’s conception of the right to justification is spelled out with reference to relations of domination, relations that are not voluntary. This is straightforward in the case of a state, but becomes more complex in a transnational context where many communities are optional, or at least less enforced. How does this concept of justification work in

communities of choice? Do they simply not register as a context of justice, or do we accept ‘if you don’t like it leave’ as a legitimate justification?

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