METAPHILOSOPHY
Vol. 32, Nos. 1/2, January 2001
0026–1068

AGENTS OF JUSTICE

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ABSTRACT: Accounts of international or global justice often focus primarily on the rights or goods to be enjoyed by all human beings, rather than on the obligations that will realise and secure those rights and goods, or on the agents and agencies for whose action obligations of justice are to be prescriptive. In the background of these approaches to international or global justice there are often implicit assumptions that the primary agents of justice are states, and that all other agents and agencies are secondary agents of justice, whose main contribution to justice will be achieved by conforming to the just requirements of states. This background picture runs into difficulties when states are either unjust or weak. The problems posed by unjust states have been widely noted, but the distinctive problems weak states create are less commonly discussed. In this paper I shall consider some reasons for and against viewing states as primary agents of justice, and will focus in particular on the importance of recognising the contribution to justice that other agents and agencies can make when states are weak.

Keywords: global justice, cosmopolitanism, human rights, obligations, agency, agencies, nonstate actors, states, realism, transnational corporations, John Rawls.

Cosmopolitan Principles and State Institutions

Many of the best-known conceptions of justice are avowedly cosmopolitan.[1] They propose basic principles of justice that are to hold without restriction. Whether we look back to Stoic cosmopolitanism, to medieval Natural Law theory, to Kantian world citizenship, or to twentieth-century theory and practice – Rawls and the U.N. Universal Declaration of Human Rights of 1948, for example – the scope of *principles* of justice is said to be universal or cosmopolitan, encompassing all humans. As is well known, such principles have been compromised in various ways, for example, by the exclusion or partial exclusion of slaves, women, labourers, or the heathen from the scope of justice; these exclusions have been a focus of much debate, and recent cosmopolitan conceptions of justice have condemned them.

[1] Some relativists, communitarians, and nationalists are avowedly anticosmopolitan, but often with less startling conclusions than the conceptual resources of their starting points might permit.

However, there are other, less evident exclusions created by the commonplace assumption that cosmopolitan principles are to be instituted in and through a system of states. Many recent challenges have argued that the exclusions that borders create are further injustices, and that they should be addressed by abolishing borders, or at least by reducing the obstacles they present to movements of people, goods, or capital. Some conclude that justice requires the construction of a world state;[2] others, that borders should be (more) open to the movement of peoples (Carens 1987); others, that powerful regional and global institutions can mitigate or redress inequalities that states and borders create (Pogge 1994; Held 2000). I am at least partly sceptical about those attempts to realise cosmopolitan principles through cosmopolitan or global institutions that do not show what is to prevent global governance from degenerating into global tyranny and global injustice. Big may not always be beautiful, and institutional cosmopolitanism may not always be the best route to universal justice. In this paper I begin to explore a more realistic, and also (I hope) a more robust, view of the plurality of agents of justice that might play some part in institutionalising cosmopolitan principles of justice.

A plausible initial view of agents of justice might distinguish *primary agents of justice*, with capacities to determine how principles of justice are to be institutionalised within a certain domain, from other, *secondary agents of justice*. Primary agents of justice may construct other agents or agencies with specific competencies: they may assign powers to and build capacities in individual agents, or they may build institutions – agencies – with certain powers and capacities to act. Sometimes they may, so to speak, build from scratch; more often they reassign or adjust tasks and responsibilities among existing agents and agencies, and control and limit the ways in which they may act without incurring sanctions. Primary agents of justice typically have some means of coercion, by which they at least partially control the action of other agents and agencies, which can therefore at most be secondary agents of justice. Typically, secondary agents of justice are thought to contribute to justice mainly by meeting the demands of primary agents, most evidently by conforming to any legal requirements they establish.

There is no fundamental reason why a primary agent of justice should not be an individual, for example, a prince or leader; and in some traditional societies that has been the case. Equally, there is no fundamental reason why a primary agent of justice should not be a group with little formal structure, for example, a group of elders or chieftains, or even a constitutional convention; and in other instances this has been the case. However, in modern societies institutions with a considerable measure of

[2] There are many versions of the thought that supra-statal or global governance should replace states, often and perhaps inaccurately seen as a Kantian position (Lutz-Bachmann 1997; Habermas 1995; Mertens 1996).

formal structure, and preeminently among them states, have been seen as the primary agents of justice. All too often they have also been agents of injustice.

A low-key view of the matter might be simply this: it is hard to institutionalise principles of justice, and although states quite often do not do very well as primary agents of justice, they are the best primary agents available and so are indispensable for justice. Institutions with a monopoly of the legitimate use of coercion within a given, bounded territory often behave unjustly, both to those who inhabit the territory and to outsiders, but we have not found a better way of institutionalising justice. On such a view the remedy for state injustice is not the dismantling of states and of the exclusions their borders create, but a degree of reform and democratisation coupled with international (that is, interstatal) agreements.

This very general response seems to me to take no account of the fact that states may fail as primary agents of justice for a number of different reasons. Sometimes they have the power to act as primary agents of justice, but use that power not to achieve justice, but for other ends. When these ends include a great deal of injustice, we may speak of *rogue states*; and these are common enough. But on other occasions states fail because they are too weak to act as primary agents of justice: although they are spoken of as states, even as sovereign states, this is no more than a courtesy title for structures that are often no more than *dependent states* or *quasi states*.[3]

These two types of failure pose quite different problems for other agents of justice. Powerful rogue states confront all other agents and agencies with terrible problems. Compliance with their requirements contributes to injustice rather than to justice; noncompliance leads to danger and destruction. These problems and conflicts formed a staple of twentieth-century political philosophy, in which discussions of the circumstances that justify or require revolution and resistance against established states, or noncompliance with and conscientious objection to state requirements, have been major themes. But when failure of supposed primary agents of justice arises not from abuse but from lack of state power, the problems faced by other agents and agencies are quite different. In such cases it is often left indeterminate what the law requires, and the costs of complying with such laws as exist are increased, if only because others do not even aim to comply. Unsurprisingly, many of the stratagems to which agents and agencies turn when states are weak are themselves unjust. Where agents and agencies cannot rely on an impartially enforced legal code, they may find that in order to go about their daily business they are drawn into bribery and nepotism, into buying protection and making corrupt deals, and so ride

[3] There is considerable disagreement about whether states *in general* have become weaker as globalisation has progressed. Strange (1996) thinks that they have; Mann (1997) and Held (2000) think that the picture is mixed. However, there is little doubt that many of the member states of the United Nations are weak by almost any standard, and that some are no more than quasi states (see Migdal 1988 and Jackson 1990).

roughshod over requirements of justice. If the agents and agencies that could in better circumstances be secondary agents of justice are reduced to these sorts of action in weak states, why should we even continue to think of them as agents of justice?

Cosmopolitan Rhetoric and State Action: The Universal Declaration

These issues are often obscured because much of the cosmopolitan rhetoric of contemporary discussions of justice says little about the agents and agencies on which the burdens of justice are to fall. Nowhere is this more evident than in the text of the Universal Declaration of Human Rights of 1948. In this brief and celebrated text, nations, peoples, states, societies, and countries are variously gestured to as agents against whom individuals may have rights. Little is said about any differences between these varying types of agents, or about their capacities and vulnerabilities, and there is no systematic allocation of obligations of different sorts to agents and agencies of specific types. If we inhabited a world in which all states were strictly nation-states, and in which no nation spread across more than one state or formed more than one society, the failure to distinguish these terms and the entities to which these terms refer might matter rather less. But that is not our world. Few states are nation-states; many nations spread across a number of states; the individuation of societies, peoples, and countries is notoriously complex. It may seem a scandal that the Universal Declaration is so cavalier about identifying agents of justice.[4]

Even if it is cavalier, I think that it is fairly easy to understand why the framers of the Universal Declaration felt no need for precision. The Declaration approaches justice by proclaiming rights. It proclaims what is to be received, what entitlements everyone is to have; but it says very little about which agents and agencies must do what if these rights are to be secured. Like other charters and declarations of rights, the Universal Declaration looks at justice from a recipient's perspective: its focus is on recipience and rights rather than on action and obligations. Hence it is about rights and rights holders that the Declaration is forthrightly cosmopolitan. It identifies the relevant recipients clearly: rights are ascribed to "all human beings" (Art. 1), and more explicitly, to "everyone . . . without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Art. 2). Rights are explicitly to be independent of an individual's political status: "no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing – or under any other

[4] I suspect that in the middle of the twentieth century it was usual to assume that all *states* were *nation-states*, and then to refer to them simply as *nations* (Morgenthau 1948; for the influence of this book, see Vasquez 1983 and 1988).

limitation of sovereignty" (Art. 2). Human rights are to reach into all jurisdictions, however diverse.

So far, so cosmopolitan: the universalist aspirations are unequivocal. However, since nothing is said about the allocation of obligations to meet these aspirations, we do not yet know whether these universal rights are matched and secured by universal obligations, or by obligations held by some but not by all agents and agencies. This is a more complex matter than may appear. Whereas traditional liberty rights for all have to be matched by universal obligations to respect those rights (if any agent or agency is exempt from that obligation, the right is compromised), other universal rights cannot be secured by assigning identical obligations to all agents and agencies. Universal rights to goods and services, to status and participation, cannot be delivered by universal action. For these rights the allocation of obligations matters, and some means of designing and enforcing effective allocations is required if any ascription of rights is to have practical import.

The Universal Declaration in fact resolves this problem by taking a nonuniversalist view of the allocation of obligations. For example, Articles 13–15 reveal clearly that the primary agents of justice are to be states (referred to in several different ways). In these articles the Declaration obliquely acknowledges that different agents are to be responsible for securing a given right for different persons, depending on the state of which they are members. The import of these articles is probably clearest if they are taken in reverse order.

The two clauses of Article 15 read as follows:

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Evidently the term "nationality" is not here being used in the sense that is more common today, to indicate a specific ethnic or cultural identity. If the Declaration used "having a nationality" to mean "having an ethnic or cultural identity," it would not need to prohibit deprivation of nationality, or assert rights to change one's nationality; it would need rather to speak of rights to express, foster, or maintain one's nationality. "Having a nationality" as it is understood in the Declaration is a matter of being a member of one or another state:[5] such membership is indeed something of which people may be deprived, and which they can change, and which some people – stateless people – lack.

[5] Evidently the framers of the Declaration could not speak of "citizenship," since they were working in a world in which there were numerous colonies, trust territories, and dependent territories whose inhabitants were not all of them citizens. Even today, when there are fewer such territories, the term "citizenship" would be inappropriate, since there are many members of states who do not enjoy full citizenship status, including minors and resident aliens, whose rights are nevertheless important.

A right to a nationality, in the sense of being a member of some state, is pivotal to the Declaration's implicit conception of the agents of justice. It is by this move that a plurality of bounded states – explicitly anticosmopolitan institutions – are installed as the primary agents of justice, who are to deliver universal rights. This becomes explicit in Articles 13 and 14, which make the following contrasting claims:

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each state.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

The rights proclaimed in Articles 13 and 14 make it clear that the Declaration assumes a plurality of bounded states and exclusive citizenship. It is only in a world with this structure that it makes sense to distinguish the rights of freedom of movement, of exit and of reentry, that an individual is to enjoy in whichever state recognises him or her as a member, from the quite different right to asylum which a persecuted individual may have in states of which he or she is not a member. Rights, it appears, may legitimately be differentiated at boundaries: my rights in my own state will not and need not be the same as my rights in another state. In a world without bounded states, these distinctions would make no sense. Here it becomes quite explicit that the Declaration views states as the primary agents of justice: a cosmopolitan view of rights is to be spliced with a statist view of obligations.

The statism of the Declaration should not surprise us. Its preamble addresses member states who "have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms." Yet since states cannot implement justice, let alone global justice, without constructing and coordinating many other agents and agencies, it is a matter for deep regret that the Declaration is so opaque about allocating the obligations of justice. The reason for regret is that in the end obligations rather than rights are the active aspects of justice: a proclamation of rights will be indeterminate and ineffective unless obligations to respect and secure those rights are assigned to specific, identifiable agents and agencies which are able to discharge those obligations (O'Neill 1996, 1999).

If the significant obligations that secure rights and justice are to be assigned primarily to states, much would have been gained by making this wholly explicit. In particular, it would have exposed the problems created by rogue states and weak states, and the predicaments created for other agents and agencies when states fail to support justice. Such explicitness might also have forestalled the emergence of the free-floating rhetoric of rights that now dominates much public discussion of justice, focuses on recipience, and blandly overlooks the need for a robust and realistic account of agents of justice who are to carry the counterpart obligations. This rhetoric has (in my view) become a prominent and persistently damaging feature of discussions of justice since the promulgation of the Universal Declaration.

Cosmopolitan Rhetoric and State Action: Rawls's Conception of Justice

It is not only in the Universal Declaration of Human Rights and the attendant culture of the human rights movement that we find cosmopolitan thinking about justice linked to statist accounts of the primary agents of justice. This combination is also standard in more theoretical and philosophical writing that assigns priority to universal rights: as in declarations of rights, so in theories of rights, giving priority to the perspective of recipience distracts attention from the need to determine which agents of justice are assigned which tasks. More surprisingly, statist views of the primary agents of justice can also be found in theoretical and philosophical writing on justice that does *not* prioritise rights.

A notable example of hidden statism without an exclusive focus on rights is John Rawls's political philosophy. This is the more surprising because Rawls hardly ever refers to states, and then often with some hostility. He claims throughout his writings that the context of justice is a "bounded society," a perpetually continuing scheme of cooperation which persons enter only by birth and leave only by death, and which is self-sufficient.[6] In his later writing he increasingly relies on a *political* conception of bounded societies, seeing them as domains within which citizens engage in public reason, which he defines as "citizens' reasoning in the public forum about constitutional essentials and basic questions of justice" (Rawls 1993, 10, cf. 212ff.; 1999, 132–33). He consequently views *peoples* rather than states as the primary agents of justice. Yet his account of peoples is surprisingly state-like: "Liberal peoples do, however, have their fundamental interests as permitted by their conceptions of right and justice. They seek to protect their territory, to ensure the security and safety

[6] This formulation is to be found from the first pages of John Rawls, *A Theory of Justice* (1971). In later work his emphasis on bounded societies continues, but their liberal democracy and the citizenship of their members are increasingly emphasised; these shifts are corollaries of his shift to "political" justification. For some further textual details, see O'Neill 1998.

of their citizens, and to preserve their free political institutions and the liberties and free culture of their civil society" (1999, 29).[7] Rawls, however, maintains that in speaking of a bounded society and its citizens he is *not* speaking of a territorial state. This is surely puzzling: if nobody is to enter except by birth or leave except by death, the boundaries of the polity must be policed; the use of force must be coordinated, indeed monopolised, in the territory in question. If there is a monopoly of the use of legitimate force for a bounded territory, we are surely talking of entities which fit the classical Weberian definition of a state.

The reason why Rawls so emphatically denies that states are the primary agents of justice appears to me to be that he has in mind one specific and highly contentious conception of the state. In *The Law of Peoples* he explicitly rejects the realist conception of state that has been of great influence in international relations. He sees states as "anxiously concerned with their power – their capacity (military, economic, diplomatic) – to influence others and always guided by their basic interests" (Rawls 1999, 28). He points out: "What distinguishes peoples from states – and this is crucial – is that just peoples are fully prepared to grant the very same proper respect and recognition to other peoples as equal" (Rawls 1999, 35). In Rawls's view states cannot be adequate agents of justice because they necessarily act out of self-interest; they are rational but cannot be reasonable.

However, this supposedly realist conception of the state is only one among various possibilities. Rawls's choice of peoples rather than states as the agents whose deliberations are basic to justice beyond boundaries is, I think, motivated in large part by an inaccurate assumption that states *must* fit the "realist" paradigm and hence are unfit to be primary (or other) agents of justice. Yet states *as we have actually known them* do not fit that paradigm.[8] The conception of states and governments as having limited powers, and as bound by numerous fundamental principles in addition to rational self-interest, is part and parcel of the liberal tradition of political philosophy and is central to contemporary international politics. States as they have really existed and still exist never had and never have unlimited sovereignty, internal or external, and have never been exclusively motivated by self-interest.[9] States as they actually exist today are committed by numerous treaty obligations to a limited conception of sovereignty, to

[7] Note also the following passage: "The point of the institution of property is that, unless a definite agent is given responsibility for maintaining an asset . . . that asset tends to deteriorate. In this case the asset is the people's territory and its capacity to support them in perpetuity; and the agent is the people themselves as politically organised" (Rawls 1999, 39).

[8] Theorists of international relations acknowledge that many of the states we see around us fall far short of the realist paradigm of statehood: they speak of quasi states and dependent states. Rawls acknowledges that realism provides a poor account of state action – yet leaves realists in possession of the concept of the state (Rawls 1999, 46).

restrictions on the ways in which they may treat other states, and by demands that they respect human rights. Peoples as they lived *before* the emergence of state structures probably did not have bounded territories; those peoples who developed the means to negotiate with other peoples, to keep outsiders out and to make agreements, did so by forming states and governments by which to secure bounded territories.

The motive of self-interest ascribed to states or other agencies in would-be realist thinking is so open to multiple interpretations that I do not believe that we are likely to get far in trying to determine whether agents or agencies – whether states or companies or individuals – are or are not always motivated by self-interest, or *necessarily* motivated by self-interest, however interpreted. I suspect that ascriptions of self-interest often have a plausible ring only because they are open both to a tautologous and to an empirical interpretation. If the empirical interpretation of self-interested motivation fails for agents and agencies of any sort (as, according to Vasquez, it fails for states), the tautologous interpretation lingers in the background, sustaining an unfalsifiable version of "realism" by which the action of states (or companies, or individuals) is taken to define and reveal their motivation and their interests.

Once we have shed the assumption that all states (or other agents and agencies) must conform to this "realist" model, we can turn in a more open-minded way to consider the capacities for action that agents and agencies of various sorts, including states, actually have. In particular, we may then be in a position to say something about predicaments that arise when some states are too weak to act as primary agents of justice.

States as Agents of Justice: Motivation and Capabilities

Once we set aside the "realist" paradigm of state agency, many questions open up. Perhaps states are agents of a more versatile sort than "realists" assert, and are capable of a wider range of motivation than self-interest (as has been argued by various "idealist" theorists of international relations). Perhaps states are not the only agents of significance in building justice: various nonstate actors may also contribute significantly to the construction of justice. Perhaps a system of states can develop capacities for action which individual states lack.

[9] A recent comment runs: "From the days of E. H. Carr . . . on, realists have claimed that their theories are empirically accurate, robust and fruitful, empirically sound guides to practice, and explanatorily powerful. . . . But what has been found is that the realist paradigm has not done well on any of these criteria" (Vasquez 1988, 372). Although a "revealed" (ascriptive, interpretive) view of self-interest may seemingly rescue the claim that states act only out of self-interest from this and other empirical defects, this is a Pyrrhic victory. As with analogous moves in discussions of individual motivation, a "realist" insistence that state action *must* be self-interested survives only by offering a trivialising and unfalsifiable interpretation of motivation.

These are very large questions, and the literature on international relations has dealt in part with many of them. However, for the present I want to take a quite restricted focus, with the thought that it may be useful to work towards an account of agents of justice by attending specifically to their powers rather than to their supposed motives.

A focus on the powers of states may seem to return us to classical discussions of sovereignty. That is not my intention. An analysis of *state power* is not an account of *state powers*; nor is an analysis of the *power* of other agents and agencies an account of their *powers*. The powers of all agents and agencies, including states, are multiple, varied, and often highly specific. These specificities are worth attending to, since it is these capacities that are constitutive of agency, and without agency any account of obligations (and hence any account of rights or of justice) will be no more than gesture.

Amartya Sen has introduced the useful notion of a *capability* into development economics; it can also be helpful in discussing the powers of states, and of other agents and agencies.[10] Agents' capabilities are not to be identified with their individual capacities or with their aggregate power. An agent or agency, considered in the abstract, may have various capacities or abilities to act. For example, a person may have the capacity to work as an agricultural labourer or an ability to organise family resources to last from harvest to harvest; a development agency may have the capacity to distribute resources to the needy in a given area. However, when a social and economic structure provides no work for agricultural labourers or no resources for a given family to subsist on or for an agency to distribute, these capacities lie barren. From the point of view of achieving justice – however we conceptualise it – agents and agencies must dispose not only of capacities which they could deploy if circumstances were favourable, but of capabilities, that is to say, of *specific, effectively resourced capacities which they can deploy in actual circumstances*. Capabilities are to capacities or abilities as effective demand is to demand: it is the specific capabilities of agents and agencies in specific situations, rather than their abstract capacities or their aggregate power, that are relevant to determining which obligations of justice they can hold and discharge – and which they will be unable to discharge (Sen 1999, 18–19, 38–39, 72–76, 288). The value of focusing on capabilities is that this foregrounds an explicit concern with the action and with the results that agents or agencies can achieve in actual circumstances, and so provides a *seriously realistic starting point for normative reasoning*, including normative claims about

[10] For present purposes I do not intend to discuss the links which Sen draws between capabilities and their actualisation in an agent's functionings, or his arguments to identify which functionings, hence which capabilities, are valuable (Sen 1993, 1999; Nussbaum 2000). The usefulness of a focus on capabilities does not depend on basing it on one rather than another theory of value, or on one rather than another account of justice, rights, or obligations.

rights.

A focus on capabilities quickly reveals how defective weak states may be as agents of justice, and makes vivid why it is important also to think about other possible agents of justice in weak states. Weak states may simply lack the resources, human, material, and organisational, to do very much to secure or improve justice within their boundaries. They may lack capabilities to regulate or influence the action of certain other agents or agencies, or to affect what goes on in certain regions of the state, or to achieve greater justice. They may fail to represent the interests of their citizens adequately in international fora and may agree to damaging or unsupportable treaties or loans. They may lack the capabilities to end or prevent rebellions and forms of feudalism, insurgency and secession, banditry and lawlessness, or to levy taxes or enforce such laws as they enact in the face of powerful clans or corrupt factions. Often when we speak of such entities as "states," the term is used in a merely formal sense, as a largely honorific appellation, and it is widely acknowledged that they lack capabilities that would be indispensable in any primary agent of justice.

Sometimes the lack of capabilities of states arises because other agents and agencies within or beyond the state have usurped those capabilities. The weakness of the Colombian state reflects the military and enforcement capabilities acquired by Colombian drug cartels; the weakness of a number of African states reflects the military capabilities achieved by secessionist and insurgent groups and movements within those states. However, even in cases where certain nonstate agents have acquired selected state-like capabilities, which they use to wreak injustice, they do not enjoy the range of capabilities held by states that succeed in being primary agents of justice. When weak states lack capabilities to be primary agents of justice, there is usually no other agent or agency that has acquired these missing capabilities. The fact that a state is incapable of securing the rule of law, or the collection of taxes, or the provision of welfare within its terrain is no guarantee that any other agent or agency has gathered together these missing capabilities. An unpropitious bundling or dispersal of capabilities may simply leave both a weak state and all those agencies that are active within and around it incapable of securing (a greater measure of) justice.

When states fail as agents of justice, the problem is not, therefore, simply a general lack of power. It is rather a lack of a specific range of capabilities that are needed for the delivery of justice – and specifically for the coordination, let alone enforcement, of action and obligations by other agents and agencies. Unfortunately, weak states often retain considerable capabilities for injustice even when wholly unable to advance justice. In these circumstances other agents and agencies may become important agents of justice.

Nonstate Actors as Agents of Justice

The odd phrase "nonstate actor" as currently used in international relations is revealing. It identifies certain types of agents and agencies *by reference to what they are not*. In an area of inquiry in which states have classically been thought of as the primary agents (not only of justice), the phrase "nonstate actor" has been invented to refer to a range of agencies that are neither states nor the creations of states (Risse-Kappen 1995). Etymology might suggest that all agents and agencies other than states – from individual human agents to international bodies, companies, and nongovernmental institutions – should count as nonstate actors. In fact, the term is usually used more selectively, to refer to institutions that are neither states, nor international in the sense of being interstatal or intergovernmental, nor directly subordinate to individual states or governments, *but that interact across borders with states or state institutions*. Some nonstate actors may acquire capabilities that make them significant agents of justice – and of injustice.

Examples of nonstate actors in this relatively restricted sense include (at least) those international nongovernmental organisations that operate across borders (INGOs), transnational or multinational companies or corporations (TNCs/MNCs), and numerous transnational social, political, and epistemic movements that operate across borders (sometimes known as "global social movements" or GSMs).[11] Here I shall refer to a few features of INGOs and TNCs, but say nothing about other types of nonstate actors.

Nobody would doubt that some nonstate actors aspire to be, and sometimes become, agents of justice; others may become agents of injustice. However, their mode of operation in weak states is quite different from the standard activities of secondary agents of justice. Nonstate actors do not generally contribute to justice by complying with state requirements: in weak states those requirements may be ill defined, and where they are adequately defined, compliance may contribute to injustice. Sometimes INGOs seek to contribute to justice in weak states by helping or badgering them into instituting aspects of justice which a state with more capabilities might have instituted without such assistance or goading. INGOs may do this by mobilising external powers (other states, international bodies, public opinion, GSMs), by doing advocacy work that assists weak states in negotiations with others, by mobilising First World consumer power, or by campaigning for and funding specific reforms that contribute to justice in a weak or unjust state. The typical mission and raison d'être of INGOs is to contribute to specific transformations of states, governments, and polities – quite often to a single issue or objective. Although INGOs cannot

[11] For discussion of ways in which global social movements may act transnationally, see O'Brien et al. 2000.

themselves become primary agents of justice, they can contribute to justice in specific ways in specific domains. Even when they cannot do much to make states more just, they may be able to help prevent weak states from becoming wholly dysfunctional or more radically unjust. Their difficulties and successes in doing so are not different in kind from the long and distinguished tradition of reform movements and lobbies within states whose ambitions for justice do not extend beyond improvements within (certain aspects of) that particular polity or state.

Some nonstate actors, in particular INGOs, may contribute to justice precisely because the states in which they operate are relatively weak, because they can act opportunistically and secure an unusual degree of access to some key players, and because they are not restricted by some of the constraints that might face nonstate actors in states with greater and better-coordinated capabilities. Their successes and failures as agents of justice are therefore analogous neither to the achievements and failures of stronger states with the capabilities to be primary agents of justice, nor to those of secondary agents of justice within stronger states.

Other nonstate actors are not defined by their reforming aims, and it may seem that they are less likely to be able to contribute to justice in weak states. For example, TNCs are often thought of as having constitutive aims that prevent them from being agents of justice at all, except insofar as they are secondary agents of justice in states that have enacted reasonably just laws. If this were correct, TNCs could not contribute to justice in weak states where laws are ill defined or ill enforced, and the very notion of compliance with law may be indeterminate in many respects. Companies, we are often reminded, have shareholders; their constitutive aim is to improve the bottom line. How then could they be concerned about justice, except insofar as justice requires conformity to law?

This view of TNCs seems to me sociologically simplistic. Major TNCs are economically and socially complex institutions of considerable power; their specific capabilities and constitutive aims are typically diverse and multiple. To be sure, they have to worry about their shareholders (even institutions that lack shareholders still need to balance their books and worry about the bottom line). Yet a supposition that companies must be concerned *only* about maximising profits seems to me on a par with the "realist" supposition that states can act *only* out of self-interest. The notion of the *responsible company* or *responsible corporation* is no more incoherent than the notion of the liberal state; equally, the notion of the *rogue company* or *rogue corporation* is no more incoherent than that of the rogue state. If these notions seem incoherent, it may be because claims that some company pursues only economic self-interest (understood as shareholder interest) are shielded from empirical refutation by inferring interest from whatever is done: whatever corporate behaviour actually takes place is defined as pursuit of perceived shareholder interest.

Much popular and professional literature on TNCs wholly disavows this

trivialising conception of the pursuit of self-interest, and accepts that TNC action can be judged for its contribution to justice – or to injustice. For example, TNCs have often been criticised for using their considerable ranges of capabilities to get away with injustice: for dumping hazardous wastes in states too weak to achieve effective environmental protection; for avoiding taxation by placing headquarters in banana republics; for avoiding safety legislation by registering vessels under "flags of convenience" or by placing dangerous production processes in areas without effective worker protection legislation. If the critics who point to these failings really believed that TNCs cannot but maximise profits, these objections would be pointless; in fact, they assume (more accurately) that major TNCs can choose among a range of policies and actions. Yet surprisingly little is said – outside corporate promotional literature – about the action of companies that insist on decent environmental standards although no law requires them to do so, or on decent standards of employment practice or of safety at work even where they could get away with less. In some cases TNCs operating in weak states with endemic corruption may go further to advance justice, for example, by refusing complicity with certain sorts of corruption or by insisting on widening the benefits of investment and production in ways that local legislation does not require and that local elites resist.

These commonplace facts suggest to me that it is more important to consider the capabilities rather than the (supposed) motivation of TNCs. Many TNCs are evidently capable of throwing their considerable weight in the direction either of greater justice, or of the status quo, or of greater injustice. In many cases it may be a moot point whether their motivation in supporting greater justice is a concern for justice, a concern to avoid the reputational disadvantages of condoning or inflicting injustice, or a concern for the bottom line *simpliciter*. However, unclarity about the motivation of TNCs does not matter much, given that we have few practical reasons for trying to assess the quality of TNC motivation. What does matter is what TNCs can and cannot do, the capabilities that they can and cannot develop.

If these thoughts are plausible, it is plain that TNCs can have and can develop ranges of capabilities to contribute both to greater justice and to greater injustice. Shareholder interests are, of course, important to all TNCs, but they underdetermine both what a given TNC can and what it will do. Fostering justice in specific ways is an entirely possible corporate aim; so, unfortunately, is contributing to injustice. Although TNCs may be ill constructed to substitute for the full range of contributions that states can (but often fail to) make to justice, there are many contributions that they can make, especially when states are weak. Corporate power can be great enough to provide the constellation of individuals and groups with influence in weaker states with powerful, even compelling, reasons to show greater respect for human rights, to improve environmental and

employment standards, to accept more-open patterns of public discourse, or to reduce forms of social and religious discrimination. Corporate power can be used to support and strengthen reasonably just states. Equally, TNCs can accept the status quo, fall in with local elites and with patterns of injustice, and use their powers to keep things as they are – or indeed to make them more unjust.

In the end, it seems to me, any firm distinction between primary and secondary agents has a place only where there are powerful and relatively just states, which successfully discipline and regulate other agents and agencies within their boundaries. But once we look at the realities of life where states are weak, any simple division between primary and secondary agents of justice blurs. Justice has to be built by a diversity of agents and agencies that possess and lack varying ranges of capabilities, and that can contribute to justice – or to injustice – in more diverse ways than is generally acknowledged in those approaches that have built on supposedly realist, but in fact highly ideologised, views of the supposed motivation of potential agents of justice.

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