

## Who counts?

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Who counts as a subject of justice? Whose interests and needs deserve consideration? When it comes to struggles for economic redistribution, cultural recognition, or political representation, who exactly belongs to the universe of those entitled to make justice claims on one another?

In the decades following World War II, this question was not a live issue, as struggles for justice proceeded against the background of a taken-for-granted frame. In that era, call it the period of the Cold War, it generally went without saying that the sole unit within which justice applied was the modern territorial state. That “Westphalian” view framed the lion’s share of justice discourse across disparate political cultures, notwithstanding lip service to human rights, proletarian internationalism, and Third-World solidarity<sup>1</sup>. Whether the issue was redistribution, recognition or representation, class differentials, status hierarchies or the legitimate exercise of political power, most claimants assumed the scope of justice coincided with the bounds of their political community. Only the members of such a community counted as subjects of justice for one another. The effect was to drastically limit, if not wholly to exclude, binding obligations of justice that cut across borders. By definition, then, this frame obscured transborder injustices.

The Westphalian understanding of the “who” went with a specific picture of political space, a Westphalian political imaginary. In this imaginary, political communities appeared as geographically bounded units, demarcated by sharply drawn borders. Associating each such polity with a state of its own, the Westphalian political imaginary envisioned the state as exercising exclusive, undivided sovereignty over its territory; seeking to bar “external interference” in the state’s “internal affairs,” it also rejected the view that the state should be constrained by any higher, international power. In addition, this view enshrined a sharp division between two qualitatively different kinds of political space. Whereas “domestic” space was imagined as the pacified civil realm of the social contract, subject to law and obligations of justice, “international” space was envisioned as a state of nature, a warlike realm of strategic bargaining and *raison d’état*, devoid of any binding duties of justice. In the Westphalian imaginary, accordingly, the subjects of justice could only be fellow members of a territorialized citizenry.

It is true, of course, that this mapping of political space was never fully realized. Great Power hegemony and modern imperialism belied the notion of an international system of equal sovereign states. Yet this imaginary exercised a powerful sway, inflecting the independence dreams of colonized peoples, who mostly yearned for Westphalian states of their own.

It is also true that international lawyers and cosmopolitan thinkers have sought over the course of three centuries to “pacify” international space, by subjecting it to legal regulation. Until recently, however, their efforts did not directly challenge the fundamental bifurcation between national and international space, nor the associated contrast between a territorially bounded realm, subject to the strictures of justice, and

another, exterior region, subject, even in the best case scenario, only to far more modest and minimal normative requirements. The effect was largely to ratify the Westphalian mapping of political space.

Today, however, the Westphalian mapping of political space is losing its hold. For one thing, its posit of exclusive, undivided state sovereignty appears increasingly counterfactual, given a ramifying human-rights regime, on the one hand, and spiraling networks of global governance, on the other. Equally questionable is the notion of a sharp division between domestic and international space, given novel forms of “intermestic” politics, practiced by new, trans-territorial non-state actors, including transnational social movements, intergovernmental organizations, and INGOs<sup>2</sup>. Also dubious is the view of territoriality as the sole basis for assigning obligations of justice, given patently trans-territorial problems, such as global warming or genetically modified agriculture, which prompt many to think in terms of functionally-defined “communities of risk” that expand the bounds of justice to include everyone potentially affected<sup>3</sup>. No wonder, then, that activists contesting transnational inequities reject the view that justice can only be imagined territorially, as a domestic relation among fellow citizens. Positing post-Westphalian views of “who counts,” they are subjecting the Westphalian frame to explicit critique.

Today, accordingly, both the “who” of justice and the mapping of political space are objects of struggle. As a matter of fact, the Westphalian “who” is now being challenged from at least three directions: first, by localists and communalists, who seek to locate the scope of concern in subnational units, such as “the Basque country” or the “Inuit peoples”; second, by regionalists and transnationalists, who propose to identify the “who” of justice with larger, though not fully universal, units, such as “Europe” or “Islam”; and third, by globalists and cosmopolitans, who propose to accord equal consideration to all human beings. Consequently, there are now in play at least four rival views of the “who” of justice: Westphalian, local-communalist, transnational-regional, and global-cosmopolitan. And these views increasingly collide. No sooner does one party issue a demand for justice, premised on one understanding of the “who” than others proceed to launch counterclaims, which are premised on rival understandings. The result is a veritable cacophony or heteroglossia of justice discourse, which I have called “abnormal justice.”<sup>4</sup>

I have coined this expression by analogy with Thomas Kuhn’s distinction between normal and abnormal science. For Kuhn, science is “normal” just so long as a single paradigm dominates inquiry to such an extent that dissent from it remains contained. Science becomes “revolutionary,” in contrast, when deviations cumulate and competing paradigms proliferate. In the first case, inquirers share a basic set of underlying assumptions, which gives their work an orderly, progressive appearance. In the second case, a shared grammar is lacking, and scientific discussions come to resemble dialogues of the deaf<sup>5</sup>. By analogy, I distinguish episodes of “normal justice,” when most interlocutors share a sense of the basic parameters, including with respect to “who counts.” By contrast, “abnormal justice” arises when such agreement is absent. It signifies a condition in which those who struggle for social justice assume competing views of such matters<sup>6</sup>. That, I claim, is our situation today<sup>7</sup>.

Under current conditions, of “abnormal justice,” theorizing cannot proceed in the usual way. Unlike those who sought to theorize justice in the previous era, we cannot assume

that we already know who counts. Far from simply assuming the Westphalian “who,” as they did, we must explicitly pose the question of who counts as a subject of justice. We must ask: Given the clash of rival views of the bounds of justice, how should we decide whose interests ought to count? Faced with competing framings of social conflicts, how should we determine which mapping of political space is just?

The trick, I submit, is to reckon simultaneously with the positive and negate sides of abnormal justice. On the one hand, a viable approach must valorize expanded contestation concerning the “who,” which makes thinkable, and criticizable, transborder justices obscured by the Westphalian picture of political space. On the other hand, one must grapple as well with the exacerbated difficulty of resolving disputes in which contestants hold conflicting views of who counts. What sort of justice theorizing can simultaneously meet both of those desiderata? What sort of theorizing can both open up space for entertaining novel claims and also provide for the provisional closure needed to vet and redress them? The answer I shall propose here can be stated in brief: theorizing suited to abnormal times should be simultaneously reflexive and discriminating. Let me explain each part of this two-pronged proposal.

## **1. On Reflexivity as Meta-Political Critique: A Plea for the Concept of “Misframing”**

In order to valorize expanded contestation, reflection on abnormal justice must be open to claims that first-order questions of justice (whether for redistribution, recognition or representation) have been wrongly framed. To ensure that such claims receive a fair hearing, one should assume at the outset that it is possible in principle that some ways of delimiting the “who” of justice are themselves unjust, whether because they exclude some who deserve consideration or because they include some who should be excluded. Thus, abnormal justice theorizing must be reflexive, able to jump up a level to interrogate the justice (or injustice) of competing frames. Only by becoming reflexive can one engage the meta-level where framing itself is in dispute. Only by becoming reflexive can one grasp the question of the “who” as a question of justice.”

The need for reflexivity is especially acute when we confront new kinds of justice claims, which suppose non-hegemonic mappings of political space. Absent the ability to reflexively scrutinize established frames, theorizing tends to beg the question against those who would challenge Westphalian definitions of the “who” of justice. Theorizing suited to abnormal times must bend over backwards to avoid foreclosing novel claims. To validate contestation, it must turn reflexive.

How can one generate the reflexivity needed in abnormal justice? The strategy I shall propose extends the view of justice I have developed elsewhere. That view consists in a three-dimensional view of the “what” of justice, encompassing economic redistribution, legal-cultural recognition, and political representation, all of which are overarched by the normative principle of participatory parity<sup>8</sup>. Rather than rehearse that entire view here, I propose to zero in on the part of it that is most relevant to the problem at hand. To clarify abnormalities of the “who,” I shall focus on the dimension of representation. My claim is that, properly understood, that political dimension of justice can provide the

reflexivity needed to clarify disputes over the “who” in abnormal justice.

The reason is that political dimension applies at two levels, which I call “ordinary political” and “meta-political” respectively. Usually, theorists focus on the ordinary-political level, which concerns the structures of political representation within a bounded political community. Here, in contrast, I want to focus on the meta-political level, which concerns the divisions between political communities, hence the design of the broader political space within which they are situated. Let me explain the difference between these levels.

The ordinary-political level is intuitively familiar. At this level, representation is largely a function of a polity’s internal constitution, which sets the ground rules for the legitimate exercise of political power within its borders. The paradigm case, from the standpoint of mainstream political science, is electoral decision rules, which mediate the relations between voice and power in a bounded polity. Together with other fundamental features of political constitution, such decision rules establish the terrain of legitimate contestation within the polity. They set the terms on which those included in the political community air their claims and adjudicate their disputes. Shaping the terms on which members exercise political voice, ordinary-political representation takes the polity’s external boundaries as a given.

In principle, of course, the relations of ordinary-political representation are matters of justice. At this level, one can ask: are the relations of representation just? Do the polity’s decision rules accord equal voice in public deliberations and fair representation in public decision-making to all of its members? Are all who are counted as members able to participate on a par with all others? When the answer is no, we are confronted with what I call “ordinary-political injustices.” Ordinary-political injustices arise within a political community whose boundaries and membership are taken as settled. Thus, ordinary-political misrepresentation occurs when a polity’s decision rules deny some who are counted in principle as members the chance to participate fully, as peers. Recently, such injustices have given rise to demands for changes in the mode of ordinary-political representation—ranging from demands for gender quotas on electoral lists, multicultural rights, indigenous self-government, and provincial autonomy, on the one hand, to demands for campaign finance reform, redistricting, proportional representation, and cumulative voting, on the other<sup>9</sup>.

Important as such matters are, they do not exhaust the political dimension of justice. That dimension applies as well at what I am calling the meta-political level. Although less intuitively familiar, the meta-level concerns the design of the broader political space within which the bounded polities considered so far are embedded. At issue here are precisely those matters that were taken for granted at the previous level: namely, the setting of boundaries and the delimitation of membership. Here, accordingly, the crux of representation is inclusion in, or exclusion from, the community of those entitled to make justice claims on one another. If ordinary-political representation concerns the allocation of political voice among those who are counted as members, then meta-political representation concerns the prior establishment of who counts as a member in the first place. It tells us who is included in, and who excluded from, the circle of those entitled to just distribution, reciprocal recognition, and fair terms of ordinary-political representation.

Like ordinary-political representation, meta-political representation is a matter of justice.

At this level, too, one can ask: are the relations of meta-representation unjust? Do the boundaries of political membership wrongly exclude some who are actually entitled to voice? Does the division of political space *into* separated bounded polities deprive some of the chance to engage politically with others as peers on matters of common concern? When the answer is yes, we are confronted with what I call “meta-political injustice.” Meta-political injustices arise when a polity’s boundaries are drawn in such a way as to wrongly exclude some people from the chance to participate *at all* in its authorized contests over justice. In such cases, those who are constituted as nonmembers are wrongly excluded from the universe of those entitled to consideration within the polity in matters of distribution, recognition, and ordinary-political representation. The injustice remains, moreover, even when those excluded from one polity are included as subjects of justice in another—as long as the effect of the political division is to put some relevant aspects of justice beyond their reach. An example is the way in which the international system of supposedly equal sovereign states gerrymanders political space at the expense of the global poor. When that happens, the result is a special form of meta-political misrepresentation that I call *misframing*<sup>10</sup>.

Misframing is a reflexive idea. Pitched at the meta-political level, it permits us to interrogate the mapping of political space from the standpoint of justice. Taking the ordinary level as an object of scrutiny, the concept of misframing makes it possible to ask whether a given account of the “who” of justice is truly just. Enabling us to interrogate first-order framings of justice, this notion can help us parse disputes that encompass conflicting views of the “who.” As a result, the concept of misframing possesses exactly the sort of reflexivity needed in circumstances of abnormal justice. Although the term is certainly new, the idea of misframing has already some real traction in today’s struggles over globalization. This notion implicitly informs the claims of many “alternative globalization” activists, even though, of course, they do not use the term. For example, activists associated with the World Social Forum effectively contend that the Westphalian frame is unjust, as it partitions political space in ways that block those whom they call “the global poor” from challenging the forces that oppress them. Channeling their claims into the domestic political spaces of relatively powerless, if not wholly failed, states, this frame insulates offshore powers from critique and control<sup>11</sup>. Among those shielded from the reach of justice are more powerful predator states and transnational private powers, including foreign investors and creditors, international currency speculators, and transnational corporations<sup>12</sup>. Also protected are the governance structures of the global economy, which set exploitative terms of interaction and then exempt them from democratic control<sup>13</sup>. Finally, the Westphalian frame is self-insulating, as the architecture of the interstate system excludes transnational democratic decision-making on issues of justice<sup>14</sup>.

These claims are meta-political. Premised on the idea that first-order framings of justice may themselves be unjust, the concept of misframing permits claimants to pose the question of the frame as a question of justice. As a result it, it provides the reflexivity needed to parse disputes about the “who” in abnormal justice.

By itself, however, reflexivity is not a solution. As soon we accept that injustices of misframing can exist in principle, we require some means of determining when and where they exist in reality. Thus, a theory of justice for abnormal times requires a discriminating normative principle for evaluating frames. Absent such a discriminating



principle, we have no way to assess the alternatives, hence no way to clarify disputes that encompass conflicting understandings of the “who.”

## 2. On Discriminacy as Substantive Normative Critique: A Plea for the “All-Subjected Principle”

This brings me to the second prong of my two-part proposal concerning the “who.” Having just argued for reflexivity, I shall argue now that theorizing in abnormal times must also be discriminating—in the sense of including a substantive principle that can evaluate competing frames. Such a principle is needed to cope with the negative side of abnormal justice. Having just acknowledged the positive side, by opening a space for entertaining novel views of the “who,” I need now to accommodate the negative side, by envisioning the provisional closure that is necessary for adjudicating them.

What might a discriminating principle for evaluating frames look like? Currently, there are three major candidates on offer. Let me examine them one by one.

The first proposal for evaluating frames of justice is the principle of *political membership*. Proponents of this approach propose to resolve disputes concerning the “who” by appealing to criteria of political belonging. For them, accordingly, what turns a collection of individuals into fellow subjects of justice is shared membership in a single political community. As they see it, therefore, the “who” of justice should consist in those who belong together as fellow members of a polity.

Actually, there are at least two different variants of the membership principle, which hold different interpretations of political belonging. In one interpretation, political belonging is (or should be) a matter of shared nationality. For proponents of this approach, such as Michael Walzer and David Miller, justice finds its strongest support when political membership is undergirded by a shared pre-political ethos, a common matrix of language, history, culture, tradition or descent. For these theorists, accordingly, the “who” of justice is simply the nation.

Other membership theorists reject that interpretation, however, as objectionably racist, historically misleading, and generally unsuited to the polyglot, multicultural character of modern states. In their eyes, political membership need not rely on any substantive pre-political commonality. It is better conceived as a political relation all the way down. On this second interpretation, which is endorsed by Will Kymlicka and Thomas Nagel, one belongs to a political community simply by virtue of citizenship. Citizenship alone, irrespective of national identity, is sufficient to establish the relationship required for standing as a subject of justice. Thus, the “who” of justice is simply the citizenry<sup>15</sup>.

One might wonder, parenthetically, where John Rawls fits in this scheme. Certainly, the author of *The Law of Peoples* belongs in the ranks of membership theorists, as he conceives justice as a relation among fellow members of a “people” organized as a domestic political community. But what sort of membership theorist is he? Everything depends on what Rawls means by a “people.” Without pretending to parse the subtleties of his account, which I find equivocal, we can safely locate him somewhere in the grey area that lies between the nationality and citizenship variants of the membership

principle.<sup>16</sup>

Significant as they are, the differences between these variants of the membership principle are less important for my purposes here than the similarities. What they share is the conviction that what turns a collection of individuals into fellow subjects of justice is the condition of co-belonging to the same bounded political community. For all of them, moreover, that bounded political community turns out to be a modern territorial state. For the nationalists, every viable or “historical” nation should have such a state; for the citizenship thinkers, belonging simply means holding citizenship in such a state. The underlying reasoning runs something like this. Justice is by definition a *political* concept. Its obligations apply only to those who stand to one another in a *political* relationship. So determination of the “who” of justice depends on what exactly counts as a political relationship. The answer, for membership theorists, nationalist or otherwise, is co-belonging in a bounded political community, conceived on the Westphalian model. Nagel provides the most thoughtful explication of this point. What makes a relation political, he claims, is common subjection to a political authority that exercises coercive power in its members’ name and enlists their active cooperation or involvement. It is our connection to and through a coercive power that acts in our name and enlists our cooperation that makes us political fellows. Political relations arise, accordingly, by virtue of shared belonging in a territorially bounded unit with a sovereign state. Only relations among the members of such a unit count as political relations in the sense required to trigger obligations of justice<sup>17</sup>. Thus, the bounds of justice coincide with those established by the Westphalian frame. And the only legitimate “who” of justice is the Westphalian “who.”

What shall we make of this approach? The first thing to note is that the membership principle grounds obligations of justice in a determinate social relation. Rejecting the view that justice can bind people who bear no relation to one another, it insists that justice applies only among those who stand to one another in a certain specific, morally relevant social relationship: namely, a political relationship of shared belonging to Westphalian state. As a result, the membership principle has the advantage of expressing a robust sense of human sociality. Refusing recourse to abstract appeals to “Humanity,” it maintains that any defensible account of the “who” of justice must rest on real connections among those comprising it.

In addition, the membership principle has the advantage of realism. Its account of the morally relevant type of social relation jibes with widely appreciated features of existing institutional reality and widely held collective identifications. As such, it is no mere ought devoid of purchase on already existing commitments and self-understandings. Yet that last strength it is also a weakness. In practice, the membership principle serves all too easily to ratify the exclusionary nationalisms of the privileged and powerful—hence, to shield established frames from critical scrutiny.

But that is not all. By definition, this approach is barred from contemplating the possibility that in some cases the Westphalian framing of questions of justice may be unjust. Effectively foreclosing such misframing in advance, it is unable to provide a fair hearing for claims that assume non-hegemonic accounts of the “who.” Forfeiting the reflexivity needed to entertain such claims, the membership principle fails to meet the requirements for theorizing abnormal justice. Thus, it is not a viable option for abnormal times.

No wonder, then, that many philosophers and activists have sought a more critical approach. For some, the preferred alternative is the *humanist principle*. Seeking a more inclusive standard, proponents of this second approach, such as Martha Nussbaum, propose to resolve disputes concerning the “who” by appealing to criteria of personhood. For them, accordingly, what turns a collection of individuals into fellow subjects of justice is common possession of defining features of humanity. Exactly what those defining features consist in is a matter of controversy, however, as humanist theorists differ among themselves as to whether to stress autonomy, rationality, language use, capacity to form and pursue an idea of the good, or vulnerability to moral injury, among other possibilities.<sup>18</sup> Fortunately, those debates need not detain us here. More important than the precise definition of “the human” is the idea that all those in possession of it belong together in a single “who” of justice. That idea is shared by all proponents of humanism, notwithstanding their other disagreements.

What should we make of the humanist principle as a vehicle for evaluating disputes over the “who”? The first thing to note is that this approach provides a critical check on exclusionary nationalism. Because it delimits the frame of justice on the basis of personhood, it is capable of entertaining claims that suppose non-hegemonic understandings of the subject of justice. Nevertheless, the humanist principle is not genuinely reflexive. After all, this principle operates at such a high level of abstraction that it can discern nothing of moral significance in any particular configuration. Staking out a view from the commanding heights, it accords standing indiscriminately to everyone in respect to everything. Adopting the one-size-fits-all frame of global humanity, it forecloses the possibility that different issues require different frames or scales of justice.

The root trouble, I think, is that the humanist principle takes no account of actual or historical social relations. Cavalierly oblivious to such matters, it is, in this respect, the antithesis of the previous principle. Whereas membership theory sought to ground obligations of justice in what turned out to be an overly restrictive type of social relation, this one assigns such obligations with no regard whatever to such relations. As a result, it rides roughshod over the forms of life it wishes to regulate and over the self-understandings of those whom it claims to obligate. Effectively handed down from some lofty perch, high above the world of real human doings, the humanist insistence that everyone counts in every matter at every time, regardless of what anything does or thinks, carries an unmistakable whiff of authoritarianism.

Humanism’s lofty abstraction may help explain, moreover, its historic affinity with imperialism. Although it would be wrong to posit a necessary relation here, there may well be a subterranean connection between the “view from nowhere” this approach assumes and the relatively powerful somewhere from which that view is usually assumed. This is not to say that the disadvantaged do not sometimes couch their claims in the idiom of shared humanity; they surely do. But, as Hannah Arendt shrewdly observed, that is typically the idiom of last resort, the one adopted when all else has failed, hence an expression of weakness or lack of other, more robust entitlement. On Arendt’s reading, to appeal for justice in the name of abstract humanity is implicitly to admit that one is owed little or nothing on the basis of one’s actual relationship to the powerful and privileged.<sup>19</sup> The effect, when the actual relation is one of predation or exploitation, is to obscure some important facts about the world in which claims for



justice arise. In that sense, the humanist principle can appear to express, indeed to ratify, the perspective of the powerful and the privileged.

In any case, the principle's one-size-fits-all globalism suffices to disqualify it as a viable approach to justice theorizing in abnormal times. To say that every question of justice always necessarily implicates everyone is every bit as *a priori* as to say that every question of justice is necessarily national. In both cases, the matter is always already decided in advance, and the capacity for reflexive questioning of frames is thereby surrendered. For equal if opposite reasons, then, neither the humanist principle nor the membership principle is able to parse disputes encompassing conflicting understandings of the "who" of justice. Neither can adequately handle problems of abnormal justice, so characteristic of the present era.

Understandably, then, many philosophers and activists reject both membership and humanism. Seeking to avoid approaches that pretend to settle every question in advance, they prefer a third principle for evaluating justice frames, namely, the *all-affected principle*. Endorsed by many who believe that the "who" of justice is neither always national nor always global, this principle promises to make it possible to conceptualize *transnational* justice. The root idea is intuitive and simple. Proponents of the all-affected principle propose to resolve disputes about the "who" by appealing to social relations of *interdependence*. For them, in other words, what makes a group of people fellow subjects of justice is their objective co-imbrication in a web of causal relationships.<sup>20</sup> Whoever is causally affected by a given action nexus has standing as a subject of justice in relation to it. Thus, the "who" of justice is a function of the scale of social interaction. As the latter varies from case to case, so does the former.

This approach, too, has several distinguishable variants. Peter Singer offers an empiricist-utilitarianism version of it, while Jürgen Habermas incorporates it into his famous principle "D" of discourse ethics. Here too, however, the differences are less important than what they share. The defining crux of this position is its identification of the "who" of justice with a "community of risk" figured in terms of causality. Those who count are those whose actions impact and impinge on one another.

What should we make of the all-affected principle as a standard for evaluating conflicting "who's"? The first thing to note is that this principle eschews the humanist strategy of defining a class of beings who share a common property, regardless of their interconnections. As opposed to that approach, it shares the membership-theoretical commitment to ground obligations of justice in actual relationships. At the same time, however, proponents of this third principle reject membership theory's understanding of the morally relevant kind of social relation. Finding both nationality and citizenship too restrictive, they seek to broaden the bounds of justice to include all whose actions affect one another.

At first sight, therefore, the all-affected principle appears to avoid the weaknesses of the previous two. It simultaneously provides a critical check on self-serving notions of membership, while also taking cognizance of social relations. Yet this principle is disturbingly objectivistic. By conceiving justice-triggering relations in terms of causality, it treats human beings on the model of colliding billiard balls, ignoring the constitutive force of social mediations. In its utilitarian incarnation, moreover, the all-affected principle is objectionably scientific. By reducing the question of the "who" to the question of who is affected by whom, affectedness treats it as a simple matter of

empirical fact, which could be settled by social science. Thus, this approach effectively authorizes social scientific experts to determine the “who” of justice.

In fact, however, the question of the “who” cannot be handed off to social-science experts on structural causality. Given the so-called butterfly effect, one can adduce empirical evidence that just about everyone is affected by just about everything. What is needed, therefore, is a way of distinguishing those levels and kinds of effectivity that are deemed sufficient to confer moral standing from those that are not. Social science, however, cannot supply such criteria. On the contrary, such judgments necessarily involve a complex combination of normative reflection, historical interpretation and social theorizing. They are inherently dialogical and political.

In general, then, the all-affected principle falls prey to the *reductio ad absurdum* of the butterfly effect. Unable to identify *morally relevant* social relations, it treats every causal connection as equally significant. Painting a night in which all cows are grey, it cannot resist the very one-size-fits-all globalism it sought to avoid. Thus, it too fails to supply a defensible standard for determining the “who” in abnormal times.

Given the respective deficiencies of membership, humanism, and affectedness, what sort of discriminating principle can help us evaluate rival frames in abnormal justice? I propose to submit allegations of misframing to what I shall call the *all-subjected principle*. According to this principle, all those who are jointly subject to a given governance structure have moral standing as subjects of justice in relation to it. On this view, what turns a collection of people into fellow subjects of justice is neither shared citizenship or nationality, nor common possession of abstract personhood, nor the sheer fact of causal interdependence, but rather their joint subjection to a structure of governance, which sets the ground rules that govern their interaction. For any such governance structure, the all-subjected principle matches the scope of moral concern to that of subjection.<sup>21</sup>

Thus, this principle, too, rejects humanism’s disregard of social relationships. Like membership and affectedness, it insists that justice obligations arise from social relations. Unlike affectedness, however, it rejects the view that mere causal interdependence constitutes a sufficiently robust relation to trigger obligations of justice. Like membership, rather, it insists that the relation in question must be political. Unlike membership, however, it rejects the view that identifies political relations exclusively with co-belonging in a Westphalian state. From the perspective of the all-subjected principle, justice-triggering political relations exist whenever a collection of people is jointly subjected to a governance structure that sets the ground rules governing their interaction.

Of course, everything depends on how we interpret the phrase “subjection to structure of governance.” I propose to understand this expression broadly, as encompassing relations to powers of various types. Not restricted to states, governance structures also comprise non-state agencies that generate enforceable rules that structure important swaths of social interaction. The most obvious examples are the agencies that set the ground rules of the global economy, such as the World Trade Organization and the International Monetary Fund. But many other examples could also be cited, including transnational structures governing environmental regulation, atomic and nuclear power, policing, security, health, intellectual property, and the administration of civil and criminal law. Insofar as such agencies regulate the interaction of large transnational

populations, they can be said to subject the latter, even though the rule-makers are not accountable at present to those whom they govern. Given this broad understanding of governance structures, the term “subjection” should be understood broadly as well. Not restricted to formal citizenship, or even to the broader condition of falling within the jurisdiction of such a state, this notion also encompasses the further condition of being subject to the coercive power of non-state and trans-state forms of governmentality. Understood in this way, the all-subjected principle affords a critical standard for assessing the (in)justice of frames. An issue is justly framed if and only if everyone subjected to the governance structures that regulate a given swath of social interaction is accorded equal consideration. To deserve such consideration, moreover, one need not already be an officially accredited “member” of the structure in question; one need only be subjected to it. Thus, sub-Saharan Africans who have been involuntarily disconnected from the global economy as a result of the rules imposed by its governance structures count as subjects of justice in relation to it, even if they are not officially recognized as participating in it.<sup>22</sup>

The all-subjected principle remedies the major defects of the previous principles. Unlike membership, it pierces the self-serving shield of exclusionary nationalism so as to contemplate injustices of misframing. Unlike humanism, it overcomes abstract, all-embracing globalism by taking notice of social relationships. Unlike affectedness, it avoids the indiscriminateness of the butterfly effect by identifying the morally relevant type of social relation, namely, joint subjection to a governance structure. Far from substituting a single global “who” for the Westphalian “who,” the all-subjected principle militates against any one-size-fits-all framing of justice. In today’s world, all of us are subject to a plurality of different governance structures, some local, some national, some regional, and some global. The need, accordingly, is to delimit a variety of different frames for different issues. Able to mark out a plurality of “who’s” for different purposes, the all-subjected principle tells us when and where to apply which frame.

## Conclusion

In general, then, I am offering a constructive proposal for deal with conflicts over the “who” in current conditions of abnormal justice. Specifically, I propose to submit claims against injustices of misframing to the all-subjected principle. This approach, I contend, can illuminate justice conflicts that encompassing competing views of the “who.” More important than the specifics of this proposal, however, is its general conceptual structure. What is crucial here is that this approach is simultaneously reflexive and discriminating. It combines the reflexive questioning of justice frames with a discriminating evaluative principle. In this way, it reckons with both the positive and negative sides of abnormal justice. Thanks to its reflexivity, the concept of misframing validates contestation of the Westphalian frame. Because it is pitched to the meta-level, this concept permits us to entertain the possibility that first-order questions of justice have been unjustly framed. Thus, it opens space for non-hegemonic understandings of the “who.” At the same time, thanks to its discriminating character, this approach offers a way of assessing the justice of rival “who’s.” By submitting proposed frames to the all-subjected principle, it enables us to weigh their relative merits. Thus, it provides some

provisional closure for adjudicating disputes. All told, then, this approach holds considerable promise for clarifying disputes about the “who” in abnormal times. Most important of all, however, is the general problem I have outlined here. Under conditions of abnormal justice, previously taken-for-granted assumptions about the “who” of justice no longer go without saying. Thus, these assumptions must themselves be subject to critical discussion and re-evaluation. In such discussions, the trick is to avoid two temptations. On the one hand, one must resist the reactionary and ultimately futile temptation to cling to assumptions that are no longer appropriate to our globalizing world, such as passé Westphalianism. On the other hand, one should avoid celebrating abnormality for its own sake, as if contestation were itself liberation. In this essay, I have tried to model an alternative stance, which acknowledges abnormal justice as the horizon within which all struggles against injustice must currently proceed. Only by appreciating both the perils and prospects of this condition can we hope to reduce the vast injustices that pervade our world.

<sup>1</sup> For an account of the Westphalian frame, see Nancy Fraser, “Reframing Justice in a Globalizing World,” *New Left Review* 36 (November-December 2005), pp. 69-88; reprinted in Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World* (Columbia University Press and Polity Press, 2008). Some readers have suggested that colonized people never accepted the legitimacy of the Westphalian frame, hence that this frame was never truly normalized. In my view, however, the great majority of anti-colonialists in the post-World War II era sought to achieve independent Westphalian states of their own. In contrast, only a small minority consistently championed justice within a global frame—for reasons that are entirely understandable. My claim, then, is that, far from contesting the Westphalian frame per se, anti-imperialist forces generally sought rather to realize it in a genuinely universal, even-handed way. Thanks to Ann Laura Stoler for forcefully raising this issue, although she will not be satisfied with my answer.

<sup>2</sup> “Intermestic” is a neologism coined by James Rosenau, combining elements of “international” and “domestic” so as to indicate the blurring of that standard divide. See Rosenau, *Along the Domestic-Foreign Frontier. Exploring Governance in a Turbulent World* (Cambridge University Press: 1997).

<sup>3</sup> The expression “community of risk” was coined by Ulrich Beck, in his *Risk Society: Towards a New Modernity* (Sage Publications, 1992).

<sup>4</sup> Nancy Fraser, “Abnormal Justice,” *Critical Inquiry* vol. 34, no. 3 (2008): 393-422. Reprinted in Fraser, *Scales of Justice*, op. cit.

<sup>5</sup> Thomas S. Kuhn, *The Structure of Scientific Revolutions* (Chicago, 1996).

<sup>6</sup> If one were faithfully to follow Kuhn’s terminology, one would speak rather of “revolutionary justice.” But given that expression’s associations, I prefer to take my cue from Richard Rorty and speak instead of “abnormal justice.” Rorty distinguishes “normal” from “abnormal discourse” in Richard Rorty, *Philosophy and the Mirror of Nature* (Princeton, N.J., 1979) and *Contingency, Irony, and Solidarity* (Cambridge, 1989).

<sup>7</sup> For the full argument, see Fraser, “Abnormal Justice,” op. cit.

<sup>8</sup> For my original two-dimensional view of justice, see Nancy Fraser, “Social Justice in the Age of Identity Politics,” in Nancy Fraser and Axel Honneth, *Redistribution or*

*Recognition? A Political-Philosophical Exchange*, trans. Joel Golb, James Ingram, and Christiane Wilke (London: Verso, 2003). For the revised, three-dimensional, view, see Fraser, "Reframing Justice in a Globalizing World," op. cit.

<sup>9</sup> For discussions of such issues, see R. Ritchie, and S. Hill, "The case for proportional representation," in *Whose Vote Counts?* ed. R. Ritchie and S. Hill (Boston: Beacon Press, 2001), pp. 1-33. Lani Guinier, *The Tyranny of the Majority* (New York: The Free Press 1994). S.M. Rai, "Political representation, democratic institutions and women's empowerment: the quota debate in India," in *Rethinking Empowerment: Gender and Development in a Global/Local World*, ed. J. L. Parpart, S.M. Rai and K. Staudt (New York: Routledge, 2002), pp. 133-145. Mala Htun "Is Gender like Ethnicity? The Political Representation of Identity Groups," *Perspectives on Politics* 2, 3 (2004): 439-458. Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (London: Oxford University Press, 1995). Melissa Williams, *Voice, Trust, and Memory: Marginalized Groups and the Failings of Liberal Representation* (Princeton, NJ: Princeton University Press, 1998).

<sup>10</sup> I first introduced the term "misframing" in Fraser, "Reframing Justice in a Globalizing World," op. cit.

<sup>11</sup> Thomas W. Pogge, "The Influence of the Global Order on the Prospects for Genuine Democracy in the Developing Countries," *Ratio Juris* 14, 3 (2001): 326-343; and "Economic Justice and National Borders," *Revision* 22, 2 (1999): 27-34. Rainer Forst, "Towards a Critical Theory of Transnational Justice," in *Global Justice*, ed. Thomas Pogge (Oxford: Blackwell Publishers, 2001), 169-187; and "Justice, Morality and Power in the Global Context," in *Real World Justice*, ed. Andreas Follesdal and Thomas Pogge (Dordrecht: Springer, 2005), 27-36.

<sup>12</sup> Richard L. Harris and Melinda J. Seid, *Critical Perspectives on Globalization and Neoliberalism in the Developing Countries*, (Boston: Leiden, 2000). Ankie M.M. Hoogvelt, *Globalization and the Post Colonial World: The Political Economy of Development* (Baltimore: John Hopkins University Press, 2001).

<sup>13</sup> Robert W. Cox, "A Perspective on Globalization," in *Globalization: Critical Reflections*, ed. James H. Mittelman (Lynne Rienner, 1996), 21-30; and "Democracy in Hard Times: Economic Globalization and the Limits to Liberal Democracy," in *The Transformation of Democracy?* ed. Anthony McGrew (Cambridge: Polity Press 1997), 49-72. Stephen Gill, "New Constitutionalism, Democratisation and Global Political Economy," *Pacifica Review* 10, 1 (February 1998): 23-38. Eric Helleiner, "From Bretton Woods to Global Finance: A World Turned Upside Down," in *Political Economy and the Changing Global Order*, ed. Richard Stubbs and Geoffrey R. D. Underhill (St. Martin's Press, 1994), 163-175. David Schneiderman, "Investment Rules and the Rule of Law," *Constellations* 8, 4 (2001): 521-537. Alfred C. Aman, Jr., "Globalization, Democracy and the Need for a New Administrative Law," *Indiana Journal of Global Legal Studies* 10, 1 (2003): 125-155. Servaes Storm and J. Mohan Rao, "Market-Led Globalization and World Democracy: Can the Twain Ever Meet?" *Development and Change* 35, 5 (2004): 567-581. James K. Boyce, "Democratizing Global Economic Governance," *Development and Change* 35, 3 (2004): 593-599.

<sup>14</sup> John Dryzek, "Transnational Democracy," *Journal of Political Philosophy* 7,1 (1999): 30-51. James Bohman, "International Regimes and Democratic Governance," *International Affairs* 75, 3 (1999): 499-513. David Held, "Regulating Globalization?"



*International Journal of Sociology* 15, 2 (2000): 394-408; *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Cambridge: Polity Press, 1995), 99-140; "The Transformation of Political Community: Rethinking Democracy in the Context of Globalization," in *Democracy's Edges*, ed. Ian Shapiro and Cassiano Hacker-Cordón (Cambridge: Cambridge University Press, 1999), 84-111; "Cosmopolitanism: Globalization Tamed?" *Review of International Studies* 29, 4 (2003), 465-480; and "Democratic Accountability and Political Effectiveness from a Cosmopolitan Perspective," *Government and Opposition* 39, 2 (2004): 364-391.

<sup>15</sup> For the citizenship variant of the membership principle, see Will Kymlicka, "Territorial Boundaries. A Liberal-Egalitarian Perspective," in *Boundaries and Justice: Diverse Ethical Perspectives*, ed. David Miller and Sohail H. Hashmi (Princeton University Press, 2001), pp. 249-275; and Thomas Nagel, "The Problem of Global Justice," *Philosophy & Public Affairs* 33 (2005): 113-147. For the nationality variant, see David Miller, *On Nationality* (Oxford University Press, 1995), especially chapter 3.

<sup>16</sup> John Rawls, *The Law of Peoples*, new edition (Harvard University Press, 2001).

<sup>17</sup> For the full argument, see Nagel, "The Problem of Global Justice," *op cit*.

<sup>18</sup> The most prominent proponent of this approach today is Martha Nussbaum. See, for example, her "Patriotism and Cosmopolitanism," in Martha C. Nussbaum with Respondents, *For Love of Country: Debating the Limits of Patriotism*, ed. Joshua Cohen (Beacon Press, 1996).

<sup>19</sup> Hannah Arendt, *The Origins of Totalitarianism*, new edition (New York: Harcourt Brace Jovanovich, 1973), p. 298 ff.

<sup>20</sup> Proponents of this approach include Peter Singer, *One World: The Ethics of Globalization*, 2nd edition (Yale University Press, 2004); Thomas W. Pogge, *World and Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Cambridge: Polity Press, 2002) and Iris Young, "Responsibility and Global Justice: A Social Connection Model," *Social Philosophy and Policy* 23, 1 (2006): 102-130. Until recently, I myself considered the all-affected principle the most promising candidate on offer for a "postwestphalian principle" of frame-setting, even though I criticized its standard scientific interpretation and its "butterfly-effect" indeterminacy, as explained below. Now, however, I believe that these difficulties are so serious that the better course of wisdom is to abandon the all-affected principle in favor of the alternative presented here. For my earlier views, see Nancy Fraser, "Democratic Justice in a Globalizing Age: Thematizing the Problem of the Frame," in *Varieties of World-Making: Beyond Globalization*, ed. Nathalie Karagiannis and Peter Wagner (Liverpool: Liverpool University Press, 2006), pp. 193-215; and Nancy Fraser, "Reframing Justice in a Globalizing World," *op. cit*.

<sup>21</sup> The expression "all-subjected principle" is my own, but the idea can be found in Joshua Cohen and Charles Sabel, "Extra Republicam Nulla Justitia?" *Philosophy & Public Affairs* 34 (2006): 147-175; and in Rainer Forst, "Justice, Morality and Power in the Global Context," in *Real World Justice*, ed. Andreas Follesdal and Thomas Pogge (Dordrecht: Springer, 2005), pp. 27-36.

<sup>22</sup> James Ferguson, "Global Disconnect: Abjection and the Aftermath of Modernism," in Ferguson, *Expectations of Modernity: Myths and Meanings of Urban Life on the Zambian Copperbelt*, (Berkeley: University of California Press, 1999), pp. 234-54.

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## Notes

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