

## **Abnormal Justice**

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*for Richard Rorty, an inspiration in more ways than one*

In some contexts, public debates about justice assume the guise of normal discourse. However fiercely they disagree about what exactly justice requires in a given case, the contestants share some underlying presuppositions about what an intelligible justice claim looks like. They share ontological assumptions about the kind(s) of actors who are entitled to make such claims (usually, individuals) and about the kind of agency from which they should seek redress (typically, a territorial state). In addition, the disputants share assumptions about scope, which fix the circle of interlocutors to whom claims for justice should be addressed (usually, the citizenry of a bounded political community) and which delimit the universe of those whose interests and concerns deserve consideration (ditto). Finally, the contestants share social-theoretical assumptions about the space in which questions of justice can intelligibly arise (often, the economic space of distribution) and about the social cleavages that can harbor injustices (typically, class and ethnicity). In such contexts, where those who argue about justice share a set of underlying assumptions, their contests assume a relatively regular, recognizable shape. Constituted through a set of organizing principles, and manifesting a discernible grammar, such conflicts take the form of “normal justice.”<sup>i</sup>

Of course, it is doubtful that justice discourse is ever fully normal in the sense just described. There may well be no real-world context in which public debates about justice remain wholly within the bounds set by a given set of constitutive assumptions. And we

may never encounter a case in which every participant shares every assumption.

Whenever a situation approaching normality *does* appear, moreover, one may well suspect that it rests on the suppression or marginalization of those who dissent from the reigning consensus.

Nevertheless, and notwithstanding these caveats, we may still speak of “normal justice” in a meaningful sense. By analogy with Thomas Kuhn’s understanding of normal science, justice discourse is normal just so long as public dissent from, and disobedience to, its constitutive assumptions remains contained.<sup>ii</sup> So long as deviations remain private or appear as anomalies, so long as they do not cumulate and destructure the discourse, then the field of public-sphere conflicts over justice retains a recognizable, hence a “normal,” shape.

By this standard, the present context is one of “abnormal justice.”<sup>iii</sup> Even as public debates about justice proliferate, they increasingly lack the structured character of normal discourse. Today’s disputants often lack any shared understanding of what the authors of justice claims should look like, as some countenance groups and communities, while others admit only individuals. In the same way, those who argue about justice today often share no view of the agency of redress, as some envision new transnational or cosmopolitan institutions, while others restrict their appeals to territorial states. Often, too, the disputants hold divergent views of the proper circle of interlocutors, as some address their claims to international public opinion, while others would confine discussion within bounded polities. Likewise, present-day contestants often disagree about who is entitled to consideration in matters of justice, as some accord standing to all human beings, while others restrict concern to their fellow citizens. In addition, those

who argue about justice today often disagree about the conceptual space within which claims for justice can arise, as some admit only (economic) claims for redistribution, while others would also admit (cultural) claims for recognition and (political) claims for representation. Finally, today's disputants often disagree as to which social cleavages can harbor injustices, as some admit only nationality and class, while others also accept gender and sexuality.

The result is that current debates about justice have a freewheeling character. Absent the ordering force of shared presuppositions, they lack the structured shape of normal discourse. This is patently true for informal contests over justice in civil society, where it has always been possible in principle to problematize *doxa*—witness the affair of the Danish cartoons, which is better grasped as a species of abnormal discourse about justice than as a clash of civilizations, on the one hand, or as an exercise in liberal public reason, on the other. But abnormality also swirls around institutionalized arenas of argument, such as courts and arbitration bodies, whose principal *raison d'être* is to normalize justice—witness the dispute among the Justices of the US Supreme Court in a recent death penalty case over whether it is proper to cite opinions of foreign courts. As such contests over basic premises proliferate, deviation becomes less the exception than the rule. Far from appearing in the guise of anomalies within a relatively stable field of argument, abnormality invades the central precincts of justice discourse. No sooner do first-order disputes arise than they become overlaid with meta-disputes over constitutive assumptions, concerning who counts and what is at stake. Not only substantive questions, but also the grammar of justice itself, are up for grabs.

This situation is by no means unprecedented. Even the most cursory reflection suggests some historical parallels. One prior era of abnormal justice in Europe is the period leading up to the Treaty of Westphalia, when the feudal political imaginary was unraveling, but the system of territorial states had not yet been consolidated.<sup>iv</sup> Another is the period following World War I, when nascent internationalisms collided with resurgent nationalisms amidst the ruins of three major empires.<sup>v</sup> In those cases, absent a secure and settled hegemony, competing paradigms clashed, and efforts to normalize justice did not succeed. Such cases are scarcely exceptional. It is likely, in fact, that normal justice is historically abnormal, while abnormal justice represents the historical norm.

Nevertheless, today's abnormalities are historically specific, reflective of recent developments, including the break-up of the Cold War order, contested US hegemony, the rise of neoliberalism, and the new salience of globalization. Under these conditions, established paradigms tend to unsettle, and claims for justice easily become unmoored from pre-existing islands of normalcy. This is the case for each of three major families of justice claims: claims for socio-economic redistribution, claims for legal or cultural recognition, and claims for political representation. Thus, in the wake of transnationalized production, globalized finance, and neoliberal trade and investment regimes, redistribution claims increasingly trespass the bounds of state-centered grammars and arenas of argument. Likewise, given transnational migration and global media flows, the claims for recognition of once distant "others" acquire a new proximity, destabilizing taken-for-granted horizons of cultural value. Finally, in an era of contested superpower hegemony, global governance, and transnational politics, claims for representation

increasingly break the previous frame of the modern territorial state. In this situation of de-normalization, justice claims immediately run up against counterclaims, whose underlying assumptions they do not share. Whether the issue is redistribution, recognition, or representation, current disputes evince a heteroglossia of justice discourse, which lacks any semblance of normality.

In this situation, our familiar theories of justice offer little guidance. Formulated for contexts of normal justice, they focus largely on first-order questions. What constitutes a just distribution of wealth and resources? What counts as reciprocal recognition or equal respect? What constitutes fair terms of political representation and equal voice? Premised upon a shared grammar, these theories do not tell us how to proceed when we encounter conflicting assumptions concerning moral standing, social cleavage, and agency of redress. Thus, they fail to provide the conceptual resources for dealing with problems of abnormal justice, so characteristic of the present era.

What sort of theory of justice could provide guidance in this situation? What type of theorizing can handle cases in which first-order disputes about justice are overlaid with meta-disputes about what counts as an intelligible first-order claim? In this essay, I shall suggest a way of approaching questions of (in)justice in abnormal times. What I have to say divides into three parts. First, I shall identify three nodes of abnormality in contemporary disputes about justice. Then, I shall formulate three corresponding conceptual strategies for clarifying these abnormalities. Finally, I shall consider some implications for the theory and practice of struggles against injustice in abnormal times.

### **1. Nodes of Abnormality in a Globalizing World**

I begin by sketching a recent dispute over social justice:

Claiming to promote justice for workers at home and abroad, labor unions in developed countries seek to block imports whose production conditions do not meet domestic environmental, health, and safety standards. Organizations representing workers in the developing world object that, in imposing standards they cannot possibly meet at the present time, this seemingly progressive approach is actually a species of unjust protectionism. Debated in both domestic and transnational public spheres, the first position finds support among those who advocate the pursuit of justice through democratic politics at the level of the territorial state, while the second is championed both by proponents of global justice and by free-marketeters. Meanwhile, corporations and states dispute related issues in international legal arenas. For example, a NAFTA arbitration panel hears arguments from a US-based multinational, which contends that Canada's relatively stringent environmental and labor laws constitute an illegal restraint on trade. The US representative on the three-judge panel finds for the corporation, on free-trade grounds. The Canadian representative finds against, invoking the self-government rights of the Canadian citizenry. The Mexican representative casts the deciding vote; finding for the corporation, and thus siding with the United States, he invokes poor nations' right to development. At the same time, however, the legitimacy of these proceedings is disputed. In transnational civil society, demonstrators protest against NAFTA, the WTO, and other governance structures of the global economy. Pronouncing

these structures unjust and undemocratic, activists meeting at the World Social Forum debate the contours of an alternative “globalization from below.”

This is an example of “abnormal justice.” Traversing multiple discursive arenas, some formal, some informal, some mainstream, some subaltern, the locus of argument shifts with dizzying speed. And far from going without saying, the topography of debate is itself an object of dispute. Offshore contestants strive to pierce the bounds of domestic debates, even as nationalists and country-level democrats seek to territorialize them. Meanwhile, states and corporations work to contain disputes within regional juridical institutions, even as transnational social movements strain to widen them. Thus, the very shape of controversy, uncontested in normal discourse, is here a focus of explicit struggle. Even as they dispute substantive issues, then, the contestants also rehearse deep disagreements about who is entitled to address claims to whom concerning what; about where and how such claims should be vetted; and about who is obliged to redress them, if and when they are vindicated.

The abnormalities are not wholly random, however, as they constellate around three principal nodes. The first node reflects the absence of a shared view of the “what” of justice. At issue here is the matter of justice, the substance with which it is concerned. Given that justice is a comparative relation, what is it that justice compares? What social-ontological presuppositions distinguish well-formed from ill-formed claims? Such matters go without saying in normal justice—as, for example, when all parties conceive justice in distributive terms, as concerned with the allocation of divisible goods, which are typically economic in nature. In abnormal contexts, by contrast, the “what” of justice

is in dispute. Here we encounter claims that do not share a common ontology. Where one party perceives distributive injustice, another sees status hierarchy, and still another political domination.<sup>vi</sup> Thus, even those who agree that the status quo is unjust disagree as to how to describe it.

Divergent assumptions concerning the “what” suffuse the example just sketched. There, offshore workers’ economic claims, aimed at dismantling protectionist barriers, which maintain distributive injustice, collide with a territorial citizenry’s political claims, aimed at repulsing neoliberal encroachments, which imperil the democratic sovereignty of a bounded polity. The effect is a bewildering lack of consensus, even among professed democrats and egalitarians, as to how to understand the injustice, let alone how to redress it. The very “what” of justice is up for grabs.

A second node of abnormality reflects the lack of a shared understanding of the “who” of justice. At issue here is the scope of justice, the frame within which it applies: *who* counts as a subject of justice in a given matter? Whose interests and needs deserve consideration? Who belongs to the circle of those entitled to equal concern? Such matters go without saying in normal justice—as, for example, when all parties frame their disputes as matters internal to territorial states, thereby equating the “who” of justice with the citizenry of a bounded polity. In abnormal justice, by contrast, the “who” is up for grabs. Here we encounter conflicting framings of justice disputes. Where one party frames the question in terms of a domestic, territorial “who,” others posit “who’s” that are regional, transnational or global.<sup>vii</sup>

Divergent assumptions about these matters, too, pervade the example just sketched, which encompasses conflicting frames. There, some of the disputants evaluate Canadian

labor regulations in terms of their domestic effects, while others consider the effects on the larger North American region, and still others look further afield, to the interests of workers in the developing world or of global humanity. The result is a lack of consensus as to “who” counts. Not just the “what” of justice but also the “who” is in dispute.

The third node of abnormality reflects the lack of a shared understanding of the “how” of justice. Here the issue is in essence procedural: *how*, in a given case, should one determine the pertinent grammar for reflecting on justice? By which criteria or decision procedure should one resolve disputes about the “what” and the “who”? In normal justice, such questions do not arise by definition, as the “what” and the “who” are not in dispute. In abnormal contexts, by contrast, with both those parameters up for grabs, disagreements about the “how” are bound to erupt. Here we encounter conflicting scenarios for resolving disputes. Where one party invokes the authority of an interstate treaty, others appeal to the United Nations, the balance of power, and the institutionalized procedures of a cosmopolitan democracy that remains to be invented.<sup>viii</sup>

Uncertainty about the “how” suffuses the argument sketched here. In that case, states and corporations look to NAFTA for resolution, while anti-neoliberalism activists look instead to transnational popular struggle aimed at influencing global public opinion. Whereas the first appeal to a treaty-based regional arena of dispute resolution, the second appeal to a “World Social Forum” that lacks institutionalized authority to make and enforce binding decisions. Here, then, there is no agreement as to how disputes about the grammar of justice should be resolved. Not just the “what” and the “who,” but also the “how” of justice is up for grabs.

Together, these three nodes of abnormality reflect the destabilization of the previous hegemonic grammar. Today's uncertainty about the "what" reflects the decentering of that grammar's substantive understanding of the matter of justice. What has been problematized here is the view that identifies justice exclusively with fair economic distribution. That understanding organized the lion's share of argument in the decades following World War Two. Subtending the otherwise disparate political cultures of First World social democracy, Second World communism, and Third World "developmentalism," the distributive interpretation of the "what" tended to marginalize non-economic wrongs. Casting maldistribution as the quintessential injustice, it obscured injustices of misrecognition, rooted in hierarchies of status, as well as injustices of misrepresentation, rooted in the political constitution of society.<sup>ix</sup>

Analogously, today's uncertainty about the "who" reflects the destabilization of the previous grammar's frame. In this case, what has been problematized is the Westphalian view that the modern territorial state is the sole unit within which justice applies. That view framed most justice discourse in the post-war era. In conjunction with the distributive conception, it organized otherwise disparate political cultures throughout the world, notwithstanding lip service to human rights, proletarian internationalism, and Third-World solidarity.<sup>x</sup> Effectively territorializing justice, the Westphalian frame equated the scope of concern with the citizenry of a bounded political community. The effect was to drastically limit, if not wholly to exclude, binding obligations of justice that cut across borders. Constructing a set of territorially bounded domestic "who's," discrete and arrayed side-by-side, this frame obscured transborder injustices.<sup>xi</sup>

Finally, today's uncertainty concerning the "how" reflects the new salience of a previously unspoken feature of the postwar grammar. What has become visible, and therefore contestable, is a hidden hegemonic assumption. So long as the lion's share of justice discourse was governed by Westphalian-distributivist assumptions, there was little overtly perceived need for institutions and procedures for resolving disputes about the "what" and the "who." On those occasions when such a need *was* perceived, it was assumed that powerful states and private elites would resolve those disputes, in intergovernmental organizations or smoke-filled back rooms. The effect was to discourage open democratic contestation of the "what" and the "who."

Today, however, none of these three normalizing assumptions goes without saying. The hegemony of the distributive "what" has been challenged from at least two sides: first, by diverse practitioners of the politics of recognition, ranging from multiculturalists who seek to accommodate differences to ethno-nationalists who seek to eliminate them; and second, by diverse practitioners of the politics of representation, ranging from feminists campaigning for gender quotas on electoral lists to national minorities demanding power-sharing arrangements. As a result, there are now in play at least three rival conceptions of the "what" of justice: redistribution, recognition, and representation.

Meanwhile, the hegemony of the Westphalian "who" has been challenged from at least three directions: first, by localists and communalists, who seek to locate the scope of concern in subnational units; 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.

Finally, the silent sway of the hegemonic “how” has been challenged by a general rise in democratic expectations, as mobilized movements of all these kinds demand a say about the “what” and the “who.” Contesting hegemonic institutions and frames, such movements have effectively challenged the prerogative of states and elites to determine the grammar of justice. Inciting broad debates about the “what” and the “who,” they have put in play, alongside the hegemonic presumption, populist and democratic views of the “how” of justice.

The appearance of rival views of the “what,” the “who,” and the “how” poses a major problem for anyone who cares about injustice today. Somehow, we must work through these meta-disputes without losing sight of pressing problems of first-order justice. But with all three parameters in play simultaneously, we have no firm ground on which to stand. Abnormality confronts us at every turn.

## **2. Strategies for Theorizing Justice in Abnormal Times**

What sort of theory of justice could provide guidance in this situation? To find a convincing answer, one must start with a balanced view of the matter at hand. The key, I think, is to appreciate both the positive and negative sides of abnormal justice. The positive side is an expansion of the field of contestation, hence the chance to challenge injustices that the previous grammar elided. For example, the decentering of the distributive “what” renders visible, and criticizable, non-economic harms of misrecognition and misrepresentation. Likewise, the de-normalization of the Westphalian

“who” makes conceivable a hitherto obscure type of meta-injustice, call it “misframing,” in which first-order questions of justice are unjustly framed— as when the national framing of distributive issues forecloses the claims of the global poor.<sup>xii</sup> If we assume, as I think we should, that misrecognition, misrepresentation, and misframing belong in principle in the catalogue of genuine injustices, then the destabilization of a grammar that obscured them must rank as a positive development. Here, then, is the good side of abnormal justice: expanded possibilities for contesting injustice.

But abnormal justice also has a negative side. The problem is that expanded contestation cannot by itself overcome injustice. Overcoming injustice requires at least two additional conditions: first, a relatively stable framework in which claims can be equitably vetted; and second, institutionalized agencies and means of redress. Both these conditions are absent in abnormal justice. How can demands be fairly evaluated and injustices be legitimately rectified in contexts in which the “what,” the “who,” and the “how” are in dispute? Here then is the negative side of abnormal justice: amidst expanded contestation, reduced means for corroborating and redressing injustice.

Those who would theorize justice in abnormal times must keep both sides of this equation in view. What sort of theorizing could simultaneously valorize expanded contestation and strengthen diminished capacities of adjudication and redress? Without pretending to present a full answer, I propose to hunt for clues by re-examining the three nodes of abnormality just described. Considered in turn, each can tell us something important about how to think about justice in abnormal times.

### **2.1. The “What” of Justice: Participatory Parity in Three Dimensions**

Consider, first, the problem of the “what.” Here, the question is: what sort of approach can validate contestation of reductive distributivism while also clarifying prospects for resolving disputes that encompass rival understandings of the matter of justice? The short answer is: an approach that combines a multidimensional social ontology with normative monism. Let me explain.

In order to validate expanded contestation, a theory of justice must hold out the prospect of a fair hearing for disputants’ claims. If it is to avoid foreclosing demands in advance, the theory must be able to entertain claims that presuppose nonstandard views of the “what” of justice. Erring on the side of inclusiveness, then, it should begin by assuming that injustice comes in more than one form and that no single view of the “what” can capture them all. Rejecting social-ontological monism, it should conceive justice as encompassing multiple dimensions, each of which is associated with an analytically distinct genre of injustice and revealed through a conceptually distinct type of social struggle.

Consider three possibilities I have already alluded to. As seen, first, from the standpoint of labor struggles, justice comprises an economic dimension, rooted in political economy, whose associated injustice is *maldistribution* or class inequality. As seen, second, in contrast, from the perspective of struggles over multiculturalism, justice encompasses a cultural dimension, rooted in the status order, whose corresponding injustice is *misrecognition* or status hierarchy. As seen, finally, through the lens of democratization struggles, justice includes a political dimension, rooted in the political constitution of society, whose associated injustice is *misrepresentation* or political voicelessness.

Here, then, are three different views of the “what” of justice. Insofar as each of them corresponds to a bonafide form of injustice that cannot be reduced to the others, none can be legitimately excluded from contemporary theorizing. Thus, ontological monism with respect to injustice is deeply misguided.<sup>xiii</sup> Contra those who insist on a single monistic account of the “what,” justice is better viewed as a multidimensional concept that encompasses the three dimensions of *redistribution*, *recognition* and *representation*.<sup>xiv</sup> Such a conception is especially useful in abnormal times. Only by assuming at the outset that claims in all three dimensions are in principle intelligible can one provide a fair hearing to all claimants in disputes that harbor multiple views of the “what.”

But why only three? The examples just given suggest that, rather than being given all at once, the dimensions of justice are disclosed historically, through the medium of social struggle. On this view, social movements disclose new dimensions of justice when they succeed in establishing as plausible claims that transgress the established grammar of normal justice, which will appear retrospectively to have obscured the disadvantage their members suffer. But in the moment before a novel understanding of the “what” becomes broadly intelligible, the irruption of transgressive claims sparks abnormal discourse.<sup>xv</sup> At such times, it remains unclear whether a new dimension of justice is being disclosed. It follows that any attempt to theorize justice in these conditions must allow for that possibility. Whoever dogmatically forecloses the prospect declares his or her thinking inadequate to the times.

What follows for a theory of justice for abnormal times? At the outset, one should practice hermeneutical charity with respect to claimants’ nonstandard views of the

“what,” according them the presumption of intelligibility and potential validity. At the same time, the theory should test such views by considering whether they do in fact render visible genuine forms of injustice that the previous grammar foreclosed: and if so, whether these newly disclosed forms are rooted in hitherto overlooked dimensions of social ordering.<sup>xvi</sup> In today’s context, this means accepting as well-formed and intelligible in principle at least three distinct views of the “what” of justice: namely, redistribution, recognition and representation.<sup>xvii</sup> Provisionally embracing a three-dimensional view of justice, centered on economy, culture, politics, the theory should nevertheless remain open to the disclosure of further dimensions through social struggle.

By itself, however, a multidimensional social ontology is not a solution. As soon we admit multiple genres of injustice, we need a way to bring them under a common measure. Thus, we need a normative principle that overarches them all. Absent such a commensurating principle, we have no way to evaluate claims across different dimensions, hence no way to process disputes that encompass multiple views of the “what.”

What might such a principle look like? My proposal is to submit claims in all three dimensions to the overarching normative principle of *parity of participation*. According to this principle, justice requires social arrangements that permit all to participate as peers in social life.<sup>xviii</sup> On the view of justice as participatory parity, overcoming injustice means dismantling institutionalized obstacles that prevent some people from participating on a par with others, as full partners in social interaction. As the forgoing discussion suggests, such obstacles can be of at least three types. First, people can be impeded from full participation by economic structures that deny them the resources they need in order

to interact with others as peers; in that case they suffer from distributive injustice or maldistribution. Second, people can be prevented from interacting on terms of parity by institutionalized hierarchies of cultural value that deny them the requisite standing; in that case they suffer from status inequality or misrecognition.<sup>xix</sup> Third, people can be impeded from full participation by decision rules that deny them equal voice in public deliberations and democratic decision-making; in that case they suffer from political injustice or misrepresentation.<sup>xx</sup>

Here, then, is an account in which three different types of injustice lead to a common result: in each case, some social actors are prevented from participating on a par with others in social interaction.<sup>xxi</sup> Thus, all three injustices violate a single principle, the principle of participatory parity. That principle overarches the three dimensions and serves to make them commensurable.<sup>xxii</sup>

The exact details of this account are less important than its overall conceptual structure. What is paramount here is that this view of the “what” of justice combines a multidimensional social ontology with normative monism. As a result, it accommodates both the positive and negative sides of abnormal justice. Thanks to its ontological multidimensionality, it validates contestation of normalizing distributivism. Stipulating that misrecognition and misrepresentation are genuine injustices in principle, it provides a fair hearing for claims that transgress the previous grammar. At the same time, thanks to its normative monism, this approach brings the three genres of injustice under a common measure. Submitting claims for redistribution, recognition, and representation to the overarching principle of participatory parity, it creates a single discursive space that can accommodate them all. Thus, this approach offers the prospect of evaluating claims under

conditions of abnormal discourse, where multiple views of the “what” of justice are in play.

And yet: a major question remains. Parity of participation *among whom? Who* exactly is entitled to participate on a par *with whom* in *which* social interactions? Unless we can find a suitable way of addressing the “who” of justice, this approach to the “what” will not be of any use.

## **2.2. The “Who” of Justice: Misframing and Subjection**

I turn, accordingly, to the second node of abnormal justice, concerning the “who.” For this issue, too, the pressing need is to accommodate both the positive and negative sides of abnormal justice. What sort of theorizing can valorize contestation of the Westphalian frame, while also clarifying disputes that encompass conflicting views about who counts? The short answer is: theorizing that is simultaneously reflexive and substantive. Let me explain.

In order to valorize expanded contestation, reflection on abnormal justice must be open to claims that first-order questions of justice have been wrongly framed. To ensure that such claims receive a fair hearing, one should assume at the outset that injustices of misframing could exist in principle. Thus, abnormal justice theorizing must be reflexive. In order to apply the principle of participatory parity to first-order questions of distribution, recognition, and representation, one must be able to jump to the next level, where the frame itself is in dispute. Only by becoming reflexive can one grasp the question of the “who” *as* a question of justice.

How can one generate the reflexivity needed in abnormal justice? The strategy I propose draws on a distinctive conception of the political dimension. So far, I have considered this dimension in the usual way, as concerned exclusively with injustices of “ordinary-political misrepresentation.” These are political injustices that arise within a political community whose boundaries and membership are widely assumed to be 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>xxiii</sup>

Important as such matters are, they represent only half the story. In addition to ordinary-political injustice, which arises *within* the frame of a bounded polity, we can also conceptualize a second level, of “meta-political injustice,” which arises as a result of the division of political space *into* bounded polities. This second level comprehends injustices of *misframing*. Such injustices occur when a polity’s boundaries are drawn in such a way as to wrongly deny some people 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.

Although they do not use the term, the notion of misframing implicitly informs the claims of many “alternative globalization” activists, associated with the World Social Forum. In their eyes, the Westphalian frame is unjust, as it partitions political space in ways that block many who are poor and despised 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>xxiv</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>xxv</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>xxvi</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>xxvii</sup>

Such, at any rate, are the claims of some World Social Forum activists. Their concerns pertain to our second level of justice, the meta-political level, which encompasses wrongs of misframing. Oriented to the possibility that first-order framings of justice may themselves be unjust, this level grasps 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 deciding when and where they exist in reality. Thus, a theory of justice for abnormal times requires a substantive normative principle for evaluating frames. Absent such a substantive principle, we have no way to assess the alternatives, hence no way to clarify disputes that encompass conflicting understandings of the “who.”

What might a substantive principle for evaluating frames look like? Currently, there three major candidates on offer. Proponents of the *membership principle* 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 citizenship or shared nationality.<sup>xxviii</sup> Because this approach delimits frames on the basis of political membership, it has the advantage of being grounded in existing institutional reality and/or in widely held collective identifications. Yet that strength is also its 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.

No wonder, then, that some philosophers and activists look instead to the *principle of humanism*. Seeking a more inclusive standard, they 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 distinguishing features of humanity, such as autonomy, rationality, language, or capacity for suffering.<sup>xxix</sup> Because this approach delimits frames on the basis of personhood, it provides a critical check on exclusionary nationalism. Yet its lofty

abstraction is also its weakness. Cavalierly oblivious to actual or historical social relations, 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.

Understandably, then, yet another group of philosophers and activists rejects both the exclusionary nationalism of membership and the abstract globalism of humanism. Aiming to conceptualize *transnational* justice, proponents of the *all-affected principle* propose to resolve disputes about the “who” by appealing to social relations of interdependence. For them, accordingly, what makes a group of people fellow subjects of justice is their objective co-imbrication in a web of causal relationships.<sup>xxx</sup> This approach has the merit of providing a critical check on self-serving notions of membership, while also taking cognizance of social relations. Yet by conceiving relations objectivistically, in terms of causality, it effectively relegates the choice of the “who” to mainstream social science. In addition, the all-affected principle falls prey to the *reductio ad absurdum* of the butterfly effect, which holds that everyone is affected by everything. Unable to identify *morally relevant* social relations, it has trouble resisting the 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 substantive 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 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>xxxii</sup>

Of course, everything depends on how we interpret the phrase “subjection to structure of governance.” I 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 (the Kyoto protocols), atomic and nuclear power (the International Atomic Energy Agency), policing (Interpol), health (the World Health Organization), and the administration of civil and criminal law (the World Intellectual Property Organization, the International Criminal Court, and Interpol). 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 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 justice of frames. An issue is justly framed if and only if everyone subjected to the governance structure(s) that regulate the relevant swath(s) 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>xxxii</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, 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—and thus, who is entitled to parity of participation with whom in a given case.

For this proposal, too, however, the details are less important than the overall conceptual structure. What is crucial here is that this approach combines the reflexive questioning of justice frames with a substantive evaluative principle. In this way, it accommodates 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. At the same time, thanks to its substantive character, this approach offers a way of assessing the justice of various “who’s.” By submitting proposed frames to the all-subjected principle, it enables us to weigh their relative merits. Thus, this approach holds considerable promise for clarifying disputes about the “who” in abnormal times.

And yet: another major question remains. *How* exactly ought we to implement the all-subjected principle? By way of what procedures and processes can that principle be applied to resolve disputes about who counts in abnormal times? Unless we can find a suitable way of addressing the “how” of justice, this approach to the “who” will not be of any use.

### **2.3. The “How” of Justice: Institutionalizing Meta-Democracy**

This brings me, finally, to the problem of the “how.” For this issue, too, the trick is to accommodate both the positive and negative sides of abnormal justice. What sort of justice theorizing can valorize expanded contestation, while also clarifying disputes in

which there is no shared understanding of the “how” of justice? The short answer is: theorizing that is at once dialogical and institutional. Let me explain.

In order to valorize expanded contestation, a theory of justice for abnormal times must abjure two approaches that have already surfaced in the previous considerations. First, it must suspend the hegemonic presumption that powerful states and private elites should determine the grammar of justice. As we saw, this view went without saying in normal justice, when disputes about the “who” were sufficiently rare and restricted to be settled in smoke-filled back rooms. Today, however, as social movements contest the Westphalian frame, they are challenging such prerogatives—by the mere fact of treating the question of the frame as a proper subject of broad public debate. Asserting their right to a say in determining the “who,” they are simultaneously problematizing the hegemonic “how.” Above and beyond their other demands, then, these movements are effectively demanding something more: the creation of new, non-hegemonic procedures for handling disputes about the framing of justice in abnormal times. This demand, too, deserves a fair hearing. In order to avoid foreclosing it in advance, a theory of justice for times such as these must entertain non-standard views of the “how.”

Second, a theory of justice for abnormal times must reject what I shall “the scientific presumption.” Supposed by some proponents of the all-affected principle, this understanding of the “how” of justice holds that decisions about the frame should be determined by normal social science, which is presumed to possess uncontroversial facts concerning who is affected by what, and thus who deserves consideration in respect of which issues. In abnormal justice, however, disputes about the frame are not reducible to simple questions of empirical fact, as the historical interpretations, social theories, and

normative assumptions that necessarily underlie factual claims are themselves in dispute.<sup>xxxiii</sup> Under conditions of *injustice*, moreover, what passes for social “science” in the mainstream may well reflect the perspectives, and entrench the blindspots, of the privileged. In these conditions, to adopt the scientific presumption is to risk foreclosing the claims of the disadvantaged. Thus, a theory committed to expanded contestation must reject this presumption. Without denying the relevance of social knowledge, it must refuse any suggestion that disputes about the “who” be settled by “justice technocrats.”<sup>xxxiv</sup>

What other possibilities remain? Despite the differences between them, the hegemonic presumption and the scientific presumption share a common premise. Both propose to settle framing disputes monologically, by appeal to an authority (in one case power, in the other case science) that is not accountable to the discursive give-and-take of political debate. A theory of justice for abnormal times must reject this monological premise. To validate contestation, it must treat framing disputes *dialogically*, as political conflicts whose legitimate resolution requires unconstrained, inclusive public discussion. Rejecting appeals to authority, abnormal justice theorizing must envision a dialogical process for applying the all-subjected principle to disputes about the “who.”

Thus, a theory of justice for abnormal times must be dialogical. By itself, however, dialogue is not a solution. As soon as we accept that conflicts concerning the frame must be handled discursively, we need to envision a way in which public debates concerning the “who” could eventuate in binding resolutions. Absent an account of the relation between contestation and legitimate decision-making, we have no way to implement the all-subjected principle, hence no way to process disputes in abnormal justice.

How should one conceive this relation? One approach, call it “populism,” would situate the nexus of contest and decision in civil society. Thus, this approach would assign the task of applying the all-subjected principle to social movements or discursive arenas like the World Social Forum.<sup>xxxv</sup> Although it appears to fulfill the dialogism requirement, populism is nevertheless unsatisfactory for at least two reasons. First, even the best civil society formations are neither sufficiently representative nor sufficiently democratic to legitimate their proposals to reframe justice. Second, these formations lack the capacity to convert their proposals into binding political decisions. Put differently, although they can introduce novel claims into public debate, by themselves civil society actors can neither *warrant claims* nor *make binding decisions*.

These limitations suggest the need for a second track of the dialogical process, a formal institutional track. This second track should stand in a dynamic interactive relation to the first track. Conceived as one pole of a two-way communicative process, the formal institutional track must be responsive to the civil-society track.<sup>xxxvi</sup> But it should differ from the latter in two respects. First, the institutional track requires fair procedures and a representative structure to ensure the democratic legitimacy of its deliberations. Second, the representatives, while accountable via publicity and elections, must have the capacity to take binding decisions about the “who” that reflect their communicatively generated judgment as to who is in fact subjected to a given structure of governance.

The upshot is that abnormal justice requires the invention of new global democratic institutions where disputes about the frame can be aired and resolved. Assuming that such disputes will not go away anytime soon, and may not be susceptible of any definitive, final resolution, the approach I propose views them as an enduring feature of political life

in a globalizing world. Thus, it advocates new institutions for staging and provisionally resolving such disputes democratically, in permanent dialogue with transnational civil society.

Certainly, much more needs to be said about the design and workings of such arrangements. But in this case, too, the details are less important than the overall conceptual structure of the proposal. What is paramount here is that this view of the “how” of justice combines dialogical and institutional features. As a result, it accommodates both the positive and negative sides of abnormal justice. Thanks to its dialogism, it validates contestation of previously taken-for-granted parameters of justice. Rejecting monologism, it seeks a fair hearing for claims that hegemonism and scientism foreclose. At the same time, thanks to its two-track character, it overcomes the legitimacy and decisional deficits of populism. Submitting meta-claims for the reframing of justice to a process of two-way communication between civil society and new global representative institutions, it envisions procedures for implementing the all-subjected principle in contexts of disagreement about the “who.” Thus, this approach holds out the prospect of provisionally resolving conflicts over the frame in abnormal justice.

But that is not all. By providing a means to sort out meta-problems, this proposal clears a path to the pressing first-order problems with which we began. Coming to terms with injustices of misframing, it simultaneously opens the way to tackling injustices of maldistribution, misrecognition, and misrepresentation. Thus, this approach enables us to envision political scenarios for overcoming or reducing injustice in abnormal times.

It is with the aim of fostering that end that I have devised the argument of this section. I have argued here that a theory of justice suited to conditions of abnormal

discourse should combine three features. First, such a theory should encompass an account of the “what” of justice that is multidimensional in social ontology and normatively monist—for example, an account that submits claims for redistribution, recognition, and ordinary-political representation to the principle of participatory parity. Second, such a theory should encompass a view of the “who” that is simultaneously reflexive and substantive—for example, a view that submits claims against injustices of misframing to the all-subjected principle. Finally, a theory of justice for abnormal times should encompass a view of the “how” that is simultaneously dialogical and institutional—for example, a view that envisions new global representative institutions where meta-political claims can be submitted to deliberative-democratic decision-procedures.

More important than these specifics, however, is the general problem I have outlined here. Under conditions of abnormal justice, previously taken-for-granted assumptions about the “what,” the “who,” and the “how” 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 things. 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 reductive distributivism and passé Westphalianism. On the other hand, one should avoid celebrating abnormality for its own sake, as if contestation were itself liberation. In this section, 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 now pervade our world.

### 3. A New Normal or Reflexive Justice? Concluding Conceptual and Political Reflections

Before closing, I want to consider some of the larger conceptual and political implications of my overall argument. To this point, my discussion has encompassed two heterogeneous parts, one diagnostic, the other reconstructive. In the first, diagnostic, section, I characterized the present as an era of abnormal justice, in which the basic parameters of political contestation are up for grabs; identifying three distinct nodes of abnormality, I mapped the contours of a (Westphalian-distributivist) discursive formation in the throes of de-normalization. In the second, reconstructive, section, I proposed three corresponding strategies for reflecting on justice in abnormal times; noting that our familiar theories of justice presuppose conditions of normal discourse, I sought to develop alternative models of theorizing better suited to contexts in which there is no agreement as to the “what,” the “who,” and the “how” of justice. Given the heterogeneity of these two parts of my argument, a question arises as to the relation between them. What conceptual logic and political aspiration links my *Zeitdiagnose* of the present conjuncture with my attempts at theoretical reconstruction?<sup>xxxvii</sup>

Two possibilities suggest themselves. On one reading, the negative features of abnormal justice are sufficiently disabling of struggles against injustice to warrant efforts at re-normalization. This view stresses the impossibility of emancipatory change in the absence of a relatively stable framework for vetting and redressing claims. Given that premise, the goal should be to reconstruct such a framework for the current conjuncture. The result, were things to go well, would be a new paradigm of normal discourse about justice, premised on new interpretations of the “what,” the “who,” and the “how,” more appropriate to a globalizing world. On this reading, therefore, my specific proposals

would be aimed at constructing such a paradigm. The point of the overall exercise would be to develop “a new normal.”

Certainly, one could do a lot worse than devising a new normal able to reframe justice conflicts in forms suited to a globalizing world. Yet there are reasons to doubt that such an approach could be adequate to the present situation. For one thing, re-normalization risks closing down prematurely new avenues of contestation, before they have had a fair shot at establishing their plausibility. For another, it risks instating a new, restrictive predefinition of what counts as an intelligible claim for justice, thereby entrenching new exclusions. Finally, the proposal to establish a new normal risks enshrining a fixed set of justice assumptions at a historical juncture when the circumstances of justice are in flux and demand flexibility. For all these reasons, it is worth considering another reading of the overall argument presented here.

The second reading I have in mind envisions an outcome that unsettles the distinction between normal and abnormal justice. Underlining the respective shortcomings of each of those genres of discourse, this reading seeks an alternative model that avoids their defects, while incorporating the best features of each. Unlike abnormal discourse, the desired model would have sufficient structuring capacities to stage today's justice struggles as *arguments*, in which the parties *confront* one another, compelling the attention and *judgment* of those looking on. Unlike normal discourse, however, the hoped-for model would have sufficient self-problematizing capacities to entertain novel claims about the “what,” the “who,” and the “how.” Combining features of normal and abnormal discourse, the result would be a grammar of justice that incorporates an orientation to closure, needed for political argument, but that treats every closure as

*provisional*—subject to question, possible suspension, and thus to re-opening. Cultivating responsiveness to emergent exclusions, such a model would feature concepts, such as *misframing*, that invite reflexive self-problematization, with the aim of disclosing injustices that were previously occluded. On this reading, the point of the overall exercise would be neither to wallow in abnormality nor to rush to instate a new normal. The point, rather, would be to develop a third genre of discourse that we might call *reflexive justice*.

The idea of reflexive justice is well suited to the present context of abnormal discourse. In this context, disputes about the “what,” the “who,” and the “how” are unlikely to be settled soon. Thus, it makes sense to regard these three nodes of abnormality as persistent features of justice discourse for the foreseeable future. On the other hand, given the magnitude of first-order injustice in today’s world, the worst conceivable response would be to treat ongoing meta-disputes as a license for paralysis. Thus, it is imperative not to allow discursive abnormalities to defer or dissipate efforts to remedy injustice. The expression “reflexive justice” expresses that dual commitment, signaling a genre of theorizing that works at two levels at once: entertaining urgent claims on behalf of the disadvantaged, while also parsing the meta-disagreements that are interlaced with them. Because these two levels are inextricably entangled in abnormal times, reflexive justice theorizing cannot ignore either one of them. Working at their intersection, and tacking back and forth between them, such theorizing mobilizes the corrective capacities of each to mitigate the defects of the other. In this way, it scrambles the distinction between normal and abnormal discourse.<sup>xxxviii</sup>

For these reasons, I prefer to understand the *telos* of my overall argument, not as a new normal, but as reflexive justice.<sup>xxxix</sup> That reading has two additional implications that

are worth considering. The first concerns the well-known opposition in political philosophy between discourse-ethical approaches, on the one hand, and agonistic approaches, on the other. Rightly or wrongly, the first are sometimes portrayed as objectionably normalizing, while the second are often seen as irresponsibly glorying in abnormality.<sup>x1</sup> Without pretending to assess the merits of these charges and counter-charges, I propose that the idea of reflexive justice scrambles this opposition as well. Like agonistic models, reflexive justice valorizes the moment of opening, which breaches the exclusions of normal justice, embracing claimants the latter has silenced, and disclosing injustices the latter has occluded—all of which it holds essential for contesting injustice. Like discourse ethics, however, reflexive justice also valorizes the moment of closure, which enables political argument, collective decision-making, and public action—all of which it deems indispensable for remedying injustice. Seeking to accommodate both moments, the moment of opening and the moment of closure, reflexive justice views the standard opposition between agonism and discourse ethics as a false antithesis. Refusing to absolutize either model and thus to exclude the insights of the other, it draws on elements of each to fashion a new genre of theorizing for abnormal times.

The second implication concerns the relation between the problematic of abnormal justice and that of hegemony. As is well known, hegemony theory conceptualizes a second, discursive, face of power, alongside that of brute repression. This second face includes the capacity to construct a “common sense” for a diverse array of constituencies, whom the hegemon thereby inducts into a shared political universe. Within that universe, each constituency can recognize itself as a political subject and formulate its interests and goals in a way that is intelligible to others.<sup>xii</sup> Seen this way, hegemony includes the

capacity to define the legitimate universe of political disagreement, while simultaneously constituting the latter's exterior as a region of unintelligibility.<sup>xliii</sup> The point can also be put like this: by instituting a structuring set of background assumptions, which itself largely goes without saying, hegemony predetermines what will count as a plausible claim for claim for justice—and what will not.

Understood this way, hegemony theory has clear affinities with the problematic elaborated here. In its terms, episodes of normal justice would correspond to periods of relatively secure, uncontested hegemony, in which extra-commonsensical claims remain dispersed, failing to coalesce into a counter-hegemonic bloc. In contrast, episodes of abnormality would correlate with periods of overt struggles for hegemony, in which counter-hegemonic formations achieve sufficient cohesion to problematize what had passed for common sense. Affinities aside, however, the hegemony problematic suggests a different historical account of today's abnormalities. Through its lens, the latter are traceable less to the subjectless process of "globalization" than to the decline of US hegemony since the collapse of the USSR in 1989. Insofar as US hegemony was based on the Cold War, the demise of that geopolitical order presented a challenge to the (Westphalian-distributivist) grammar of justice that defined "the Free World." Having failed to articulate a plausible post-Cold-War commonsense centered on the "war on terror," the US has so far proved unable to perpetuate its hegemony. The result is glaring divergence between the two faces of power: US military supremacy is not matched by any comparable capacity to constitute a shared commonsense that could normalize conflicts over justice. No wonder, then, that justice discourse is undergoing de-

normalization and that disputes about the “what,” the “who,” and the “how” are proliferating.

Compelling as this story is, it is not in fact a rival to the one I have developed here. On the contrary, the hegemony perspective complements the problematic of abnormal/normal discourse. Whereas the former views justice discourse historically and strategically, aiming to understand shifts in power, the latter interrogates it philosophically and normatively, aiming to disclose present possibilities for emancipatory change. Thus, far from being mutually incompatible, these two perspectives enrich one another. Like hegemony theory, the abnormal/normal framework acknowledges the historicity and power-laden character of justice discourse. What it adds, however, is an insistence that the grammar of justice be reconstituted so as to enable the subaltern to speak *in authoritative terms*. In this way, the perspective developed here supplies a crucial ingredient of critical theorizing, which hegemony theory taken alone does not provide: the elusive but inspiring vision of a discourse of justice that could reveal contemporary injustices for the moral outrages they surely are.

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<sup>i</sup> One aspect of my debt to Richard Rorty will be obvious here: my appropriation of his distinction between normal and abnormal discourse. What may be less evident is the larger inspiration he provided. By his example, Rorty emboldened an entire generation of American philosophers to refuse the intimidation of professional analytic philosophy, which had seemed so overwhelming, and crippling, in graduate school. It was from *Philosophy and the Mirror of Nature* that I gleaned the courage to chart my own path in philosophy, to write in my own voice about what I consider truly important. I cannot thank him enough for that. This essay was begun during my fellowship year at the Wissenschaftskolleg zu Berlin, whose support I gratefully acknowledge. Discussions there and at other venues where I presented this work greatly helped me refine the argument. For especially insightful responses, I am indebted to Horst Bredekamp, Vincent Descombes, Rainer Forst, Robert Goodin, Kimberly Hutchings, Will Kymlicka, Maria Pia Lara, Jane Mansbridge, Faviola Rivera, Gabriel Rockhill, Nancy Rosenblum, Philippe van Parijs, Ann Laura Stoler, Eli Zaretsky, W.J.T. Mitchell, and the *Critical Inquiry* editorial collective.

<sup>ii</sup> Thomas S. Kuhn, *The Structure of Scientific Revolutions*, 3<sup>rd</sup> edition (University of Chicago Press, 1996).

<sup>iii</sup> If one were to be strictly faithful to Kuhn, one would speak here 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 *Philosophy and the Mirror of Nature* (Princeton University

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Press, 1981) and in *Contingency, Irony, and Solidarity* (Cambridge University Press, 1989).

<sup>iv</sup> John G. Ruggie, “Territoriality and Beyond: Problematizing Modernity in International Relations,” *International Organization*, 47 (1993): 139-174.

<sup>v</sup> Hannah Arendt, *The Origins of Totalitarianism*, new edition (Harcourt Brace & Company, 1973).

<sup>vi</sup> Often, moreover, disagreements about social ontology translate into disagreement about the social cleavages that harbor injustice. Thus, where one side sees class injustice, another sees gender injustice, while still another sees injustice that tracks ethnic or religious fault-lines.

<sup>vii</sup> Often, moreover, disagreement about the scope of concern translates into disagreement about the scope of address, that is, about the public in and before which a claim for justice is rightfully debated. Thus, it is typical of abnormal contexts that one party addresses its claims to a territorially bounded public, while others address publics that are regional, transnational or global.

<sup>viii</sup> Often, moreover, procedural disagreements translate into disputes over representation or political voice. Where one party would restrict representation in dispute resolution bodies to states, others countenance representation for NGOs, and still others envision cosmopolitan-democratic schemes that directly represent individuals qua “world-citizens.”

<sup>ix</sup> This frame also tended to marginalize claims pertaining to social fault lines other than class, including claims concerning gender, sexuality, religion, and race or ethnicity.

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<sup>x</sup> 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>xi</sup> The Westphalian frame also partitioned public debates about justice along state lines. Channeling justice claims into the domestic public spheres of territorial states, it discouraged transnational public debate on matters of justice.

<sup>xii</sup> I will discuss *misframing* in greater detail in section 2.2. below.

<sup>xiii</sup> Two examples, from opposite ends of the philosophical spectrum, are Ronald Dworkin and Axel Honneth. Dworkin maintains that all injustices reduce in the end to resource maldistribution, while Honneth holds that all are bottom variants of misrecognition. For Dworkin's view, see his "What is Equality? Part 2: Equality of Resources," *Philosophy and Public Affairs* 10,4 (Fall 1981): 283 – 345. For a critique, see Elizabeth S. Anderson, "What is the Point of Equality" *Ethics* 109,2 (Jan 1999): 287-337. For Honneth's view, see his "Redistribution as Recognition: A Response to Nancy Fraser," 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 a

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critique, see Nancy Fraser, “Distorted Beyond All Recognition: A Rejoinder to Axel Honneth,” in *Ibid.*

<sup>xiv</sup> For a fuller elaboration and defense of this view, see Nancy Fraser, “Social Justice in the Age of Identity Politics,” in Fraser and Honneth, *Redistribution or Recognition? op. cit.*

<sup>xv</sup> For an account of second-wave feminism along these lines, see Richard Rorty, “Feminism and Pragmatism,” *Michigan Quarterly Review* 30,2 (1991): 231-258.

<sup>xvi</sup> The “test” I am proposing has two aspects, one moral-philosophical, the other social-theoretical. From the perspective of moral philosophy, the question is: does the proposed new interpretation of the “what” of justice identify a genuine injustice, which violates a morally valid norm? From the perspective of social theory, the question is: does the proposed new interpretation disclose a hitherto neglected type of institutionalized obstacle to parity of participation, one that is rooted in a hitherto neglected dimension of social ordering?

<sup>xvii</sup> As the previous note suggests, implicit in this discussion is another, social-theoretical rationale for a three-dimensional view of the “what.” Modern societies encompass three distinct dimensions of social ordering: economic structure, status order, and political constitution. None of these can be reduced to the others, and each can give rise to injustice. For a fuller discussion, see Nancy Fraser, “Social Justice in the Age of Identity Politics,” *op. cit.*

<sup>xviii</sup> I have elaborated and defended this principle in Nancy Fraser, “Social Justice in the Age of Identity Politics,” *op. cit.*

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<sup>xix</sup> This ‘status model’ of recognition represents an alternative to the standard ‘identity model.’ For a critique of the latter and a defense of the former, see Nancy Fraser, “Rethinking Recognition: Overcoming Displacement and Reification in Cultural Politics,” *New Left Review* 3 (May/June 2000): 107-120.

<sup>xx</sup> The incorporation of political representation as a third dimension of justice constitutes a major revision of my framework, which was originally two-dimensional. For an account of this dimension, and my reasons for adding it, see Nancy Fraser, “Reframing Justice in a Globalizing World,” *New Left Review* 36 (2005): 69-88. See also Nancy Fraser, “Identity, Exclusion, and Critique: A Response to Four Critics,” *European Journal of Political Theory* 6,3 (2007) and “The Politics of Framing: An Interview with Nancy Fraser,” by Kate Nash and Vikki Bell, *Theory, Culture & Society* 24,4 (2007).

<sup>xxi</sup> In the first case, the problem arises from the economic structure of society, which corresponds to the economic dimension of justice. In the second case, the problem is the status order, which corresponds to the cultural dimension. In the third case, the problem is the constitution of the political system, which corresponds to the political dimension of justice.

<sup>xxii</sup> One might well ask, why parity of participation, as opposed to rival principles of commensuration? Without pretending to present a full defense here, let me note only that this notion has an elective affinity with the problematic of abnormal justice. When the basic parameters of justice are contested, we lack authoritative standards for assessing the merits of justice claims. Effectively thrown back on procedural criteria, we have no alternative but to envision scenarios in which all the parties can engage one another on fair terms. In such cases, we must ask: do all concerned have equal chances to participate

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fully, *as peers*? Or are some excluded or marginalized as a consequence of unjust social arrangements? Do structural obstacles block some from participating as peers? Thus, the principle of participatory directs us to interrogate social arrangements, to uncover, and criticize, entrenched obstacles to fair engagement. As a commensurating principle, moreover, it serves as a standard for evaluating justice claims in all three dimensions. For each dimension, only those claims that promote parity of participation are morally justified. Whether the issue concerns distribution, recognition or representation, those who claim to suffer injustice should show first, that current arrangements prevent them from participating as peers in social life; and second, that the remedies they propose would diminish disparities. Moreover, the parity standard applies transcategorially, across the different dimensions of justice: one can use it, for example, to assess the impact of proposed economic reforms on social status, or vice-versa. Likewise, the parity standard applies recursively, across different axes of subordination: one can use it, for example, to assess the effects on gender relations of proposed forms of ethno-cultural recognition, or vice-versa. For a fuller account of such complexities, see Nancy Fraser, “Social Justice in the Age of Identity Politics,” *op. cit.*

<sup>xxiii</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

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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>xxiv</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>xxv</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>xxvi</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*

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*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>xxvii</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>xxviii</sup> For the citizenship variant of the membership principle, see John Rawls, *The Law of Peoples*, new edition (Harvard University Press, 2001); 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,

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2001), pp. 249-275; Thomas Nagel, "The Problem of Global Justice," *Philosophy & Public Affairs* 33 (2005): 113-147; and Seyla Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge University Press, 2004). For the nationality variant, see David Miller, *On Nationality* (Oxford University Press, 1995), especially chapter 3.

<sup>xxix</sup> Proponents of this approach include Martha Nussbaum, "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>xxx</sup> Proponents of this approach include Peter Singer, *One World: The Ethics of Globalization*, 2<sup>nd</sup> 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.*

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<sup>xxxii</sup> The expression “all-subjected principle” is my own, but the idea can be found in Joshua Cohen and Charles Sabel, “*Extra Republicanam Nulla Justitia?*” *Philosophy & Public Affairs* 34 (2006): 147-175; and in Rainer Forst, “Justice, Morality and Power in the Global Context,” *op. cit.*

<sup>xxxiii</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.

<sup>xxxiiii</sup> Nancy Fraser, “Democratic Justice in a Globalizing Age: Thematizing the Problem of the Frame,” *op. cit.*

<sup>xxxv</sup> A similar argument is found in Amartya Sen, *Development as Freedom* (Anchor Books, 1999).

<sup>xxxvi</sup> For one influential variant of populism, see Michael Hardt and Antonio Negri, *Empire* (Harvard University Press, 2000). For another, less romantic, variant, see recent work by James Bohman, who appears to hold that public-sphere contestation alone can resolve conflicts over the “who,” hence that no cosmopolitan political institutions are needed for that purpose. A similar view is endorsed by Seyla Benhabib, who is in other respects far from populism, but who also appears to put the full onus of resolving disputes about the “who” on “democratic iterations” conducted in civil society. For Bohman’s views, see his “From *Demos* to *Demoi*: Democracy across Borders,” *Ratio Juris* 18,3 (2005): 293-314 and “The Democratic Minimum: Is Democracy a Means to Global Justice?” *Ethics and International Affairs* 18 (2004). For Benhabib’s view, see her Tanner Lectures in *Another Cosmopolitanism: Hospitality, Sovereignty, and Democratic Iterations*, ed. Robert Post (Oxford University Press, 2006).

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<sup>xxxvi</sup> For a communications-theoretic account of the two-track model, see Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (MIT Press, 1996). For a critique of the tacit Westphalian framing of that account, see Nancy Fraser, “Transnationalizing the Public Sphere: On the Legitimacy and Efficacy of Public Opinion in a Postwestphalian World,” *Theory, Culture & Society*, 24:4 (2007).

<sup>xxxvii</sup> Thanks to the many interlocutors who raised this question, especially Nancy Rosenblum, whose characteristically forceful and crisp formulation made the issue impossible to evade.

<sup>xxxviii</sup> My current interest in scrambling the distinction between normal and abnormal discourse is prefigured in my earlier exchanges with Richard Rorty. In a 1988 essay [Nancy Fraser, "Solidarity or Singularity? Richard Rorty between Romanticism and Technocracy," *Praxis International* 8, 3 (1988): 257-272], I noted Rorty's tendency to align abnormal discourse with "private irony" and normal discourse with "public solidarity"; and I proposed that radical social criticism upset those dichotomies insofar as it was both abnormal and solidaristic. Later, in his 1991 Tanner Lecture ("Feminism and Pragmatism," op. cit.), Rorty provocatively transgressed his original alignment by reading radical second wave feminism as both abnormal and publicly relevant. In my response (Nancy Fraser, "From Irony to Prophecy to Politics: A Response to Richard Rorty," *Michigan Quarterly Review* 30,2 (1991): 259-266), I applauded that move, even as I faulted Rorty's account for individualizing and aestheticizing the process of linguistic innovation in feminism, hence for neglecting the latter's collective, democratic character.

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That argument now appears, in retrospect, to presage my present proposal to unsettle the distinction between normal and abnormal discourse.

<sup>xxxix</sup> Clearly, this preference for reflexive justice also distinguishes my position from proponents of abnormal discourse, paradigmatically Jean François Lyotard, *The Differend: Phrases in Dispute*, tr. Georges Van Den Abbeele (Minneapolis: University of Minnesota Press, 1988). Thanks to Vincent Descombes for the comparison to Lyotard.

<sup>xl</sup> Classic critiques of discourse ethics from the standpoint of agonism include Jean-François Lyotard, *The Postmodern Condition: A Report on Knowledge*, tr. Geoff Bennington and Brian Massumi (Minneapolis: University of Minnesota Press, 1984) and Chantal Mouffe, “Deliberative Democracy or Agonistic Pluralism?” *Social Research*, 66, 3 (1999): 745-758. Classic versions of the discourse-ethical critique of agonism include Jürgen Habermas, *The Philosophical Discourse of Modernity: Twelve Lectures*, tr. Frederick Lawrence (Cambridge MA: MIT Press, 1987) and Seyla Benhabib, “Epistemologies of Postmodernism: A Rejoinder to Jean-François Lyotard,” *New German Critique* No. 22 (1984): 103-126. For a recent round of the debate, see the exchange between Seyla Benhabib and Bonnie Homig in Benhabib, *Another Cosmopolitanism*, op. cit.

<sup>xli</sup> For classic accounts of hegemony, see Antonio Gramsci, *Prison Notebooks*, ed. Joseph A. Buttigieg, tr. Joseph A. Buttigieg and Antonio Callari (New York: Columbia University Press, 1991) and Ernesto Laclau and Chantal Mouffe, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics* (London: Verso, 1985).

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<sup>xlii</sup> For accounts that stress the exclusionary aspects of discursive formations, albeit without reference to the term “hegemony,” see Pierre Bourdieu, *Language and Symbolic Power*, ed. John B. Thompson, tr. Gino Raymond and Matthew Adamson (Cambridge MA: Harvard University Press, 1991); Judith Butler, *Excitable Speech: A Politics of the Performative* (New York: Routledge, 1997), and Michel Foucault, *Essential Works of Foucault, 1954-1988*, ed. Paul Rabinow (New York: New Press, 1997).