

Sovereignty vs Justice

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When stakeholders in a decision are in different countries, sovereignty is incompatible with justice. Stakeholders should have a say in the rules and principles, which requires that the nation-state yield to decisions made, to some degree, by authorities constituted at least in part outside of its borders.

In the 2016 presidential election, Democratic Presidential candidate Bernie Sanders declared: *“I think from a moral responsibility [standpoint], we've got to work with the rest of the industrialized world to address the problems of international poverty, but you don't do that by making people in this country even poorer.”*¹ As an application of this principle on April 6, 2017, Sanders introduced the “Outsourcing [sic] Prevention Act” in the Senate.² The purpose of this legislation was to prevent companies from “exporting jobs” (closing facilities in the United States and opening relevantly similar facilities in another country) by taxing them as if those facilities were in the United States. This, of course, would be decided without asking the

¹ Klein, Ezra, “Bernie Sanders: The Vox Conversation”, Vox, July 28, 2015,

<https://www.vox.com/2015/7/28/9014491/bernie-sanders-vox-conversation>, accessed November 11, 2018

² <https://www.congress.gov/bill/115th-congress/senate-bill/863>. The term “offshoring” is often confused with “outsourcing”. Technically “outsourcing” is when a company hires another company to provide goods and services that it would otherwise do itself. For example, many companies outsource janitorial services, hiring a cleaning company to come in and clean the office. Janitorial service provides a clear example of a service that can be outsourced, but cannot be offshored.

opinion and, for many people, without even considering the impact that this legislation would have on global poverty. It is in response to just this type of question that Sanders gave the quote cited above.

The general principle that I wish to discuss is David Held's principle of "inclusiveness and subsidiarity".³ This principle states that the people involved in making decisions about institutions, practices, or policies ought to be those people with a sufficiently large stake in the consequences of those institutions, practices, or policies.⁴ Often, this set of stakeholders is not confined to national borders. In these circumstances, letting those with a sufficiently large stake have a say comes into conflict with national sovereignty.⁵

The stakeholders, when it comes to offshoring, is not limited to the people in the United States. It includes the people of other countries where the operation could be located. For example, assume that Company C seeks to offshore an operation to State S1 rather than S2 because S1 has lax environmental laws, and those laws allow the company to force costs on others. The set of stakeholders includes not only the stock holders of Company C, but the citizens of S1, S2, any

³ Held, David. "Democratic Accountability and Political Effectiveness from a Cosmopolitan Perspective," in *Global Governance and Public Accountability*, (David Held and Mathias Koenig-Arcibugi, eds), Blackwell Publishing, 2005

⁴ "A sufficiently large stake" is admittedly vague. It is meant to exclude the practically impossible case of including everybody who may be effected regardless of how small that effect may be.

⁵ I wish to thank Christian Philippi for important comments on the specifics of this point.

other state that Company C could build in, and those people who would suffer the costs of pollution.

However, to say that America's laws regarding offshoring or similar practices is to be determined by stakeholders outside of its border is in conflict with the principle of national sovereignty. David Miller provides arguments defending the principle that people have obligations to their co-nationals that can be used to defend principles of national sovereignty, even in conditions such as these. I wish to examine those arguments and show that they are not sufficient to deny stakeholders a voice in determining the rules governing these types of practices.

Describing the Problem

In this section I want to construct an analogy that compares policies that involve individuals within national borders to policies that concern individuals across national boundaries. Specifically, the analogy concerns decisions to adopt programs that aid people in the bottom 75% at the expense of those in the top 25%. We treat these situations differently on the national as compared to the international level, and I want to ask if this can be justified.

The World Bank identifies extreme poverty as living on less than \$1.90 per day. Currently, it estimates that about 10% of the world's population lives in extreme poverty.⁶ In 1980, 42% of

⁶ World Bank, "Poverty: Overview", <http://www.worldbank.org/en/topic/poverty/overview>, accessed November 30, 2018.

the population lived in extreme poverty. In 1990, this was down to 36%. It was at 21% in 2005.

In short, though 10% extreme poverty is not a good number, it is a significantly better number than it had been. Even with the global population rising, the absolute numbers of those living in extreme poverty dropped from 1.9 billion in 1980 to 0.7 billion in 2015.

Currently, the median global income as of 2018 was about \$5.50 per day (\$2000 per year).⁷ At the same time, an American household consisting of 4 people living on 1 income from a full-time job at the federal minimum wage of \$7.25 per hour will bring in \$15,000 per year (or \$3,750 per person annually; \$10 per person per day). On the global scale, the members of this family sit near the 75% mark. Technically, this family would also qualify for an earned income tax credit of \$5,000 that will put it near the 80% mark. Public education for the children would push that up higher. At the same time they would be paying sales and other taxes. The specific details of considering these factors will not be relevant to the points that I want to make here. I believe that the sum of these factors would not move the income below the global 75% mark, which is all that I need for the purposes of my analogy.

This household that sits at the threshold of the top 25% globally is near the bottom 10% of Americans. With virtually all Americans above this number, this means that nearly all Americans are in the global top 25%. This means that the national programs that one finds on most

⁷ World Bank, "Poverty and Shared Policy: 2018", <http://www.worldbank.org/en/publication/poverty-and-shared-prosperity>, accessed December 11, 2018.

progressive platforms aid those in the global 75% to 95% range (American 0% to 80%), but make those in the global top 5% (American top 20%) poorer.

Transferred to the global context, the quote from Sanders implies the following: *“I think from a moral responsibility [standpoint], we've got to work with the rest of the industrialized world to address the problems of international poverty, but you don't do that by making the wealthiest 25% poorer.”* If we adopt this principle at the national level, we get something that Sanders and his supporters would emphatically say is a violation of basic justice: *“While we morally ought to be concerned with the nation's poor and middle class, it would be wrong to pay for programs to help them by taxes or requiring direct transfers that would make the wealthiest 25% poorer.”*

This gets us to the question: How can justice require on the national level that the state have programs that aid the bottom 75% though it makes the national top 25% poorer, but not require this on the global level? I argue that it cannot, but this is contrary to current practice.

For the purposes of this paper, I will be assuming the soundness of arguments generally offered in defense of these types of assistance programs when discussed nationally. There are those who would argue against these programs on both the national and international scales as, for example, violations of rights of liberty, but I must set those questions aside. This paper is addressed to those who, like Sanders and his followers, think that justice requires programs aiding the bottom 75% but making the top 25% poorer on the national level, but not on the global level.

The practice of punishing companies that engage in offshoring shows the practical implications of a policy to keep wealth in the hands of the top 25%. One cannot have programs that aid those in the global 75% to 95% range unless one prevents the global bottom 75% from claiming benefits. One also needs barriers to prevent the flow of money from the top 25% to the bottom 75%. The reduction in global poverty we have seen has been substantially funded by offshoring. This is not to say that offshoring solves all of our problems. Companies used their economic and political power to force countries to alter laws in its favor, allowing exploitation, environmental degradation, tax avoidance, and increased concentration of wealth. When the top 25% entertain a policy of punishing members who fund projects that benefit the bottom 75%, the bottom 75% become stakeholders in these decisions.

One could respond that the barriers, in this case, are justified because, without those barriers, there would be no such program and it is better to have such a program than not have it.

However, this response assumes that there are only two options – the program that aids people in the 75% to 95% range or no program. In fact, there are other options, including a program that (for example) aides the global bottom 25%. This would not require barriers.

Miller's Nationalism

The first response one is likely to hear in defense of this difference would be grounded in the fact that the people in the national case belong to the same country. The state government is charged with taking care of its citizens, and the global poor are the responsibility of the countries in which they reside. "Taking care of our own" justifies putting up these barriers that

keep those who are not “our own” out, while preventing companies from offshoring in ways that take care of people who are not our own (unless those companies can prove that we will benefit from the practice).

David Miller provides a sophisticated defense of this position. Specifically, Miller asserts, “In acknowledging a national identity, I am acknowledging that I owe special obligations to fellow members of my nation which I do not owe to other human beings.” (Miller: *Kindle Locations* 601-602) His argument is that the relationships among compatriots (co-nationals) are like the relationships among members of the same family. These types of relationships create their own obligations, and these include obligations to care and protection.

The best example of these types of obligations are the obligations individuals have towards their family members – particularly the obligations between parents and children. It seems absurd to demand that parents give equal consideration to their own children versus those of a stranger. Parents are perfectly justified in helping their own children over strangers. Couples are permitted to prioritize each other’s interests over those of less well-off strangers, and a friend may offer his apartment to a friend who had been kicked out his home before offering it to a stranger – or denying it to a stranger.

A nation, on Miller’s account, is another relationship that binds people together and creates special duties and obligations. One can think of a state as an extended family. In the types of cases described above, this extended family has gotten together to make sure that its members’ medical needs are cared for, that each has a basic income, that their children are

educated, and the like. This is one of the reasons he gives for having the boundaries of a state (a political unit that makes and enforces laws) correspond to the boundaries of a nation (a group of people bound by custom and mutual obligations of support). As mentioned above, a nation-state could not set up such practices if it could not exclude others from receiving benefits. In his 1995 work, Miller concludes that, “In the present picture there is no general obligation to help poorer states.” (Miller: Kindle Location 1302)

However, if we look more carefully at these analogies, we note that allowing people to discharge duties to friends and family is fully compatible with having them also contribute to the well-being of others outside of their group. The sovereignty that a family exercises within their home is fully compatible with a tax that pays for a homeless shelter. Devotion to a community sits alongside a state-wide tax to pay for the public education of children on the other side of the state (e.g., Colorado). Citizens of a state are still obligated to pay federal taxes into a social security system that provides retirement income to somebody in another state. Similarly, the national responsibilities and duties that Miller talks about do not necessitate the absolute sovereignty of nations.

Furthermore, family sovereignty – the right of a family to determine the rules that it will live by – does not preclude being subject to city ordinances. Nor is city governance incompatible with state governance. Similarly, Miller’s thesis does not rule out individuals also being placed under international organizations that allow all important stakeholders in international decisions to have a voice in determining those rules and procedures.

However, claiming that the nation-state is compatible with international institutions does not imply that justice *requires* that the nation-state be subject to those international institutions. That takes more argument.

Basic Rights and Needs

Miller acknowledges in a later article that justice may require nation-states to provide for the basic needs and wants of people in other countries. He does not endorse this position, saying instead that, “it is controversial whether general obligations of global justice can be derived from basic human rights, but he does entertain the proposal.⁸ Yet, even where Miller talks about having these duties, he does not discuss enforcement, leaving open the option that states may decide for themselves whether to fulfill those duties without consequences. Rather than wade into that controversy, I would like to ask a practical question: How do we (or who gets to) decide whether and how we are going to implement these principles?

Here are the options:

Option 1 (which describes the current situation): People in the top 25% decide for themselves, unilaterally, the basic rights and needs of the bottom 75% and what discharges duties towards those people. Where the relevant members of the top 25% all belong to the same nation, this is

⁸ David Miller (2008) “National responsibility and global justice”, *Critical Review of International Social and Political Philosophy*, 11:4, 383-399, DOI: 10.1080/13698230802415862

a matter of national sovereignty. The nation-state decided if it has fulfilled its obligations to the bottom 75%.

Option 2: Everybody – the bottom 75% as well as the top 25% - get to participate in deciding what principles and practices to adopt – participating in a way that has some form of democratic force. That is to say, the bottom 75% get to do something with more force than uttering an opinion. Insofar as a state’s policies and practices are determined by non-citizens, this is incompatible with sovereignty.

An optimist might imagine that the people in the top 25% under option 1 are going to try to be fair and just. Perhaps they will try to reach a decision regarding the rights and needs of the remaining 75% by imagining themselves in an “original position” where they are trying to determine the rules and policies they would adopt behind a “veil of ignorance,” as has been proposed by John Rawls⁹ and Gillian Brock¹⁰ Both authors imagined people determining the rules of justice through the decisions that they would make under assumptions that they did not know what country they would belong to once the rules were agreed upon. Original position techniques assume ignorance about certain facts in order to try to acquire impartiality.

This raises two issues. The first issue is whether original position arguments actually yield correct principles of justice. This topic is worthy of its own discussion, but is not one that we

⁹ Rawls, John (1999). *The Law of Peoples*. Harvard University Press.

¹⁰ Brock, Gillian (2009). *Global Justice: A Cosmopolitan Account*. Oxford University Press.

need to resolve here. Even if they do help to discover such principles, it seems reasonable to believe that one of those principles would be that the stakeholders in a decision should have a voice in the establishing the rules and procedures for making those decisions. It is fundamentally unjust for American voters alone – the very people that Sanders promised not to make poorer for the sake of helping those suffering from international global poverty – to be the ones deciding whether to adopt those policies. Imagine in the United States having a national referendum on whether to toughen environmental regulations, and only polluters were allowed to vote in the election. Indeed, imagine living in a nation where its president and legislators were all chosen by people who could prove that they meet a household income threshold putting them in the top 25%. This is unlikely to be among the principles that people would decide to accept in an original position. Indeed, one of Rawls' eight principles in the Law of Peoples was, "Peoples are equal and parties to their own agreements," while Brock explicitly defended Held's position on global governance.

The second issue is that it is unreasonable to expect that this will produce justice in any situation where one group of people have unilateral authority to determine the basic rights and basic needs of others who have no voice in the final decision. History is filled with examples in which one group of people have claimed the right and authority to determine, unilaterally, the rights and needs of others, and it typically has produced a great deal of injustice. In this category, we have examples such as feudalism and other forms of government where rulers have unrestricted authority to determine the rights and needs of the ruled. We have the relationship between men and women through much of human history where men decided the

social customs, laws, and rules regarding the wants and needs of women. In practice, the people left out of these decisions seldom find justice. In our current situation, future generations are not allowed to vote (because it is so far impossible for them to do so) on current laws. On the issues of climate change and national debt, we see how poorly their interests are considered as a result.

In fact, the very differences we see here between the national and the global perspective provides an example of the effectiveness of public participation. On the national level, the bottom 75% are allowed to have a vote in the policies and practices the nation adopts, and this includes programs that are helpful to the bottom 75%. At the global level, the top 25% get to decide unilaterally whether their actions fulfill the wants and needs of the bottom 75% and, at least in terms of real-world action – we see that they largely disregard the rights and needs of the bottom 75%.

In short, even if we can expect the top 25% to determine the principles of justice based on some type of original position argument, this does not imply that, in practice, we should rely on the top 25% to actually meet those requirements of justice without the meaningful participation of the bottom 75%, and the principles of justice discovered in this way would include such a right.

At this point, Miller would likely object that I am mistaking cause and effect. The reason we have these policies of mutual aid at the national level and not at a trans-national level is

precisely because of the sentiments that provide a culture of trust and that bind people together on the national level – sentiments that cannot be found at the global level.

The arguments here all appeal to the political consequences of solidarity and cultural homogeneity. They focus on the important role played by trust in a viable political community. Much state activity involves the furthering of goals which cannot be achieved without the voluntary co-operation of citizens. For this activity to be successful, the citizens must trust the state, and they must trust one another to comply with what the state demands of them. (Kindle Locations 1105-1108).

This trust, in turn, comes from national or community sentiments.

I take it as virtually self-evident that ties of community are an important source of such trust between individuals who are not personally known to one another and who are in no position directly to monitor one another's behaviour. (Kindle Locations 1118-1120).

In the absence of trust, this mutual aid will fail.

In states lacking a common national identity-states such as Nigeria, for instance, which are little more than umbrella organizations holding together two or three national or ethnic groups-politics at best takes the form of group bargaining and compromise and at worst degenerates into a struggle for

domination. Trust may exist within the groups, but not across them. (Kindle Locations 1128-1130).

This, then, explains why we see, and why we are going to continue to see, an absence of concern for the bottom 75% on the global level.

This argument states that we cannot set up effective global institutions because the trust and fellow-feeling necessary for such an institution to work do not exist at a global level. Such institutions require the types of trust and fellow-feeling that only nations can provide at a large enough scale. If we take this and throw in the principle that 'ought' implies 'can' (or, more precisely, 'cannot' implies 'it is not the case that we ought'), it followed that it is not the case that we ought to establish international institutions in which stakeholders in different nations all have a voice.

This attempt to explain the fact that there is sharing on the national level but not the global level in terms of human psychology is appropriately an object of empirical research. However, I would like to suggest some empirical evidence that having a voice is more important in one's wants and needs being recognized than community membership from. In the Middle Ages, lords and serfs were a part of the same community with a system of reciprocal duties and obligations, yet that system did a poor job of considering the rights and needs of the serfs. Slaves and masters lived in a single society on the plantation system, yet the rights and needs of the slaves were ignored to an even greater extent. This continued long past the end of slavery in the United States with white supremacists employing a number of tactics from poll taxes to

registration tests to violent intimidation to keep blacks from voting. In another example, obviously men and women have been parts of every community; yet women fared poorly where their rights and needs were those that men, unilaterally, had the authority to determine. In all three cases, the rights and needs and the subject group were better protected to the degree that they were given a say in the rules and procedures.

Another example where we see this is in considering the wants and needs of future generations. From national debt to climate change, the fact that future generations cannot vote on current laws even though they are in the same culture shows the importance of participation in decision-making. Unfortunately, in the case of future generations, we do not have an easy solution to the problem.

If justice demands that we act so that the basic rights and needs of the bottom 75% are met, then this can't be done by the top 25% exercising unilateral sovereignty in making the relevant decisions. History shows that the bottom 75% needs to participate in those decisions in an important way. However, their participation means that the top 25% do not have sovereignty when it comes to deciding those questions. The questions must be answered at an international level and the nation-state, like the family within a nation-state, is subordinate on those matters.

Conclusion

An extreme form of opposition to offshoring is found in the demand for reshoring – bringing jobs back into the United States. Reshoring necessarily involves closing those companies in impoverished countries – people losing their jobs and livelihood where they have very few

alternatives. Advocates of reshoring do not even ask the question, “What’s going to happen to those people in the impoverished parts of the world when this reshoring occurs?” When they do ask, the answer is often, “That’s not important.” But it probably is important to people in the impoverished parts of the world who would be losing those jobs. This dismissal of their basic rights and needs is exactly what we can expect when they do not have a voice in the policies governing such practices. The dismissal of basic rights and needs is something that too easily and too frequently happens unless those whose basic rights and needs are given a voice in making the rules. Respecting these rights and needs means that, in matters that significantly impact people outside of national borders, nations should be governed by rules made, in part, by people who are not citizens of that country.