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Borderlands and the Claims of Justice

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1. Introduction

Citizenship and borders shape the ways we conceive of justice in the modern world of nation-states. They delineate the contours of membership and territory we perceive as our own, and provide the institutional framework within which we construct justice. However, the particular moral order they create, its protections and exclusions, is inadequately considered within contemporary theories of justice that fail to recognize how borders are bridged and membership is renegotiated over time.

The boundaries that enclose political communities, denoted by citizenship, immigration and naturalization law, and territorial border control, are negotiated closures subject to political choice. The institutions of the modern nation-state and the conditions of the interstate system structure and limit these choices. For these are the instruments by which political communities retain their coherence, and by which liberal democratic communities sustain their conception of themselves as self-governing. Border structures, by which the boundary institutions of the state may be understood, delimit from the inside out—that is, they are perceived as having only one relevant side, that which is our side.

This exclusive dimension dominates the ways in which we delimit justice claims, assign their reach and consider the relevant social vantage point from which to adjudicate them. Yet beyond the narrow realist frame¹ that often dominates these considerations exists a further negotiation. While the modern state binds political and territorial integrity, the cross border practices of transnational non-state actors significantly alter the context of state sovereignty. The cross border movement of people and their renegotiation of social and political membership

¹ Realist understandings of sovereignty posit hard, non-porous borders in accordance with “Westphalian” models of the state. However, this idea is at best a marker for specific interests served by the institutions that uphold it. Stephen Krasner has argued that contestation is an enduring part of the international system of states. This contestation also extends to “Westphalian” border structures in the wake of increasing cross border movement of people. In the case of migration, it is not states, but individuals who contest the ways in which specific political boundaries operate. See Stephen Krasner, “Compromising Westphalia,” *The Global Transformations Reader*, eds. David Held and Anthony McGrew (Malden: Blackwell Publishers; Cambridge: Polity Press, 2000) and Krasner, *Sovereignty: Organized Hypocrisy* (1999).

create specific “borderlands” that develop in the social overlap generated by the interaction of different peoples as their nationals relocate themselves in the “near abroad.”² Borderland contexts complicate justice frameworks by disrupting and refashioning relationships within and across national borders. In crossing borders, persons create “transnational social fields”³ that modify the dynamics of national political communities and the kinds of justice claims articulated within the public sphere. For borderland contexts denote a disjuncture between citizenship, membership, and rights theorized within liberal democratic justice frameworks and located in the modern nation-state.

Borderlands depict the changing conditions of social cooperation and membership within political communities as transnational contexts and relationships develop and interact with the national state. Long used in anthropological and critical literary studies to denote the merging of social spaces and the emergence of hybrid cultural forms, borderlands are concretely manifested in transnational practices and social spaces that intersect the national state at its borderlines, within border regions, and increasingly within the interior with the growing presence of migrant communities beyond the border zone of states.⁴ The nation-state structure and the politics of nations have yet to adequately acknowledge, organize, and govern these interactions.

Territorial borderlands, like those comprised of the fourteen sister cities along the U.S.-Mexico borderline, are characterized by continuous, daily transnational practices and relationships. Territorial proximity allows individuals to construct their lives within two national

²Richard Gillespie uses the term “near abroad” to describe the relationship between Spain and the Maghreb and Spain’s focus on a new “Mediterranean policy” upon entrance into the European Union. It reflects the conditions of territorial proximity, historical interconnection and socio-economic realities that drive the relationship between Spain and the Maghreb, most notably Morocco, which is territorially adjunct (Mellilla and Ceuta are on North African soil yet held by Spain); Spain and the Mediterranean (2000). This same connection generated by territorial proximity, historical interconnection, and socio-economic realities binds the United States and Mexico. These characteristics drive cross border relationships and borderland contexts.

³ Linda Basch, Nina Glick-Schiller, and Cristina Blanc-Szanton use this term to describe the social spaces occupied by migrants pulled into transnational relationships in Nations Unbound: Transnational Projects, Postcolonial Predicaments, and Deterritorialized Nation-States, 2nd ed. (Amsterdam: OPA-Gordon and Breach Science Publishers, 2000).

⁴ Border zones vary in accordance with geography, however, in the case of the United States, the border zone is considered as existing within 100 miles from the borderline.

spheres simultaneously by enhancing their ability to make use of cross border spaces and strategies in seeking the economic and social wellbeing of their families.⁵ The facility of crossing present within territorial borderlands allows persons to keep membership protections while seeking to improve their social position by obtaining access to goods, employment, schools, health care, and a wide variety of other resources across the borderline. These territorially defined borderlands, which stretch across approximately 2000 miles between the United States and Mexico, offer a unique view of life mediated by the border structure. For those able to cross without impediment, opportunities to build their lives transnationally complement their social and political membership.

However, not all persons have the same facility of crossing and subsequent access to United States⁶, and will go to great lengths to cross. The undocumented often risk their lives crossing under unbearable desert and mountain conditions, having been pushed away from crossing stations by increased surveillance and border fortifications such as those created in Operation Gatekeeper along the San Diego-Tijuana border and Operation Hold the Line at El Paso-Juarez. The co-existence of and distinction between these two groups of people defines the borderlands, their ambivalence, and the incongruities between nation, state, and belonging they encompass.

International migration extends borderland relationships beyond territorial border zones and further complicates the ways in which persons negotiate belonging and membership within national states. Migration positions persons in between national citizenship frameworks, without necessarily providing persons so situated the ability to access protections and benefits citizenship is thought to provide. This is particularly true of undocumented migrants, who

⁵ These practices go beyond tourist orientations, whereby persons cross in search of entertainment, leisure, and goods. Rather, they constitute the use of multiple national social spaces to orient lives and seek better economic and social opportunities. Individuals and families may live, work, and educate their children on either side of the borderline without regard to their national citizenship.

⁶ Crossing into Mexico is not generally barred and there is very little control over population movements from the United States into Mexico. It is in crossing back, northbound from Mexico, that the passage is most often barred or constrained.

participate in specific localities within host national communities without formal recognition of their social membership. Unlike the multiple, simultaneous sites of social mobility and belonging available to territorial borderland residents, undocumented migrants whom are increasingly located within the interior of the nation-state lack effective protections provided by formal, recognized citizenship status. These kinds of extended borderland contexts reveal an added dimension of political community and what it is meant to achieve (security, welfare, identity); they expose a particular vulnerability constructed by the kinds of boundaries we enforce, as well as the contested nature of claims to space, rights, and justice apparent in the crossing of borders.

Migrants and other border crossers extend the level of social cooperation within which states are involved by extending both their individual reach, in crossing borders, and that of the state in its jurisdiction over them. In doing so, they make visible the social depth of border structures with which they interact, elucidating their significance for the construction and realization of justice. On the one hand the securities built into citizenship, the nation-state, and membership in a permanent homeland are the achievements of a long process of political incorporation that carry with it the promise of protection and prosperity. On the other, a growing number of people are unable to access the benefits of citizenship within their native homeland, and instead, must look abroad for the social supports their families and communities require. In claiming spaces for themselves across borders, migrants and border crossers convey a different view of the social realities structured by nation-states, which demands a reevaluation of the kinds of claims recognized within them.

International asymmetries in wealth, development, and freedom complicate the context within which people must choose to build their lives. Borderland contexts and migrant lives provide a particularly sharp relief against which to rethink the Janus face of justice, which divides the social world into internal justice spheres for citizen-members and external sovereignty spheres driven by the interests of states. Liberal democratic conceptions of political

community within which individuals create and sustain a common sphere of social cooperation reify this duality. This conception elevates an exclusive citizenship above personhood as the source of political authority and membership. It articulates the institutionalization of protections for a particular group of persons distinguished from the rest; who are understood as taking responsibility for their association, assigned duties, responsibilities, and benefits, as well as sharing a distinct overarching or “public” culture that makes conceptions of right and justice intelligible and legitimate to members of the group. This idea sets up a moral order and justice framework that does not directly engage the questions that emerge from the interaction of multiple societies and the people of those societies. It does not consider the role of individuals across borders and the justice claims that emerge from the repositioning of membership across multiple states.

Hence, the problem of justice across borders is more than a problem of statecraft, which focuses on the relationship between states and peoples incorporated within states. It is a problem that increasingly positions individuals as the main transnational actors, and international migration and the border structures that seek to regulate it as a main subject of justice. Borderlands stretch the connection between nation and state, membership and citizenship. The crossing of borders, and the conditions under which migrants do so, highlights a decoupling of securities supposedly in-built within the nation-state system and its justice framework. In particular, it shows the failure of this system in protecting a particular segment of the world’s population,⁷ many of whom are pushed back onto a “narrow edge of barbed wire”⁸ as national communities harden their borders against them. The creation of “illegal” subjects establishes the legal impossibility of inclusion within the nation even in the face of existing social membership. It constitutes the creation of a “new legal and political subject,” whom is “barred

⁷ About 3% of the world’s population migrates. UN Report on International Migration (2002) cited in Wayne Cornelius et al., Controlling Immigration: A Global Perspective, 2nd edition, 2004.

⁸ Anzaldúa, Borderlands/La Frontera, p. 24.

from citizenship and without rights.”⁹ This new “(il)legal political subject” helps the state retain internal coherence by excluding those who threaten its perceived unity by transgressing territorial boundaries that map onto national identity, while meeting its economic and labor needs. Unlike stateless persons, whom are excluded from both membership in the nation and residence in *any* state, “illegal subjects” are thought to have a rightful place elsewhere and so are held responsible for their vulnerability.

National political communities perceive their borders as absolute extensions of right, reflected in the concept of sovereignty attached to the nation-state ideal. This understanding does not admit the social and economic realities that infuse political community and influence the way it is composed; as persons relocate across borders, they bring the transnational dimension of political community to the forefront. The interaction of members and foreigners within national states, and the interplay of membership rights that results, changes the nature of sovereignty. With regard to persons, the kinds of barriers we enforce invoke justice, and particularly the need for moral justification of such exclusions in the face of social and economic integration across borders that provide the context within which individuals and families relocate.

Prominent among reasons that persons choose to cross borders is that transnational organization extends opportunities to those whom are excluded from the nation-state ideal, trapped within a failing state or one unable to provide sufficient employment. Inability to garner full membership in a host society positions these individuals even more precariously. Circular movement between native and host societies becomes a means of maintaining status and belonging within native communities even as work is pursued outside them. Within proximate border regions, this way of life is facilitated by the ability to live on both sides of a borderline simultaneously. In this case, it is not necessarily a failing state that provides and impetus for crossing. Instead, territorial border communities provide a widened zone of social mobility,

⁹ See Mai M. Ngai, Impossible Subjects: Illegal Aliens and the Making of Modern America, 2004.

which is transnational in scope, even as the national state continues to be the site within which persons pursue their membership claims. For those able to cross at will, territorial borderlands offer transnational opportunities without necessarily creating migrant subjects.

However, the majority of economic migrants whom seek work and improved life prospects in the liberal democratic states of North America and Western Europe are indeed positioned in between national citizenship frameworks, without adequate protections from either. The growing number of undocumented persons within this category¹⁰ and their quest for recognition within the societies to which they migrate shows a growing exclusion and narrowing of social space for particular groups of people. Legalization and amnesty programs mitigate the larger problem of undocumented migration and its systemic occurrence by extending recognition to those who have incorporated themselves within communities irregardless of their lacking legal status; however, while necessary correctives, these measures do not transform the basic political structure by which illegal subjects are construed.

The distribution of membership is a political endeavor that liberal democracies are especially pressed to reconsider in light of the prevalence of borderland contexts that permeate national spaces, and the way in which these relationships reshape membership and the duties arising from it. The question of how we should govern these interactions and the persons involved in them turns on whether persons hold legitimate claims for crossing borders, and how far those claims ought to modify those of political communities. In particular, the relevant question to ask from a liberal democratic justice standpoint is, what constitutes fair terms of social cooperation within borderland settings?

2. The Problem of Governance from a Borderland Perspective

¹⁰ The Pew Hispanic Center released projected numbers of undocumented migrants in the United States using data from the March 2004 Current Population Survey, citing a total of 10.3 million in March 2004, of which approximately 5.3 million are Mexican, and projecting that as of March 2005 the population will have reached nearly 11 million, with more than 6 million Mexicans represented therein. Jeffrey S. Passel, "Estimates of the Size and Characteristics of the Undocumented Population." March 21, 2005.

Borderlands have historically been conceived as social spaces beyond the effective measure of the law. The distinction between international law that pertains to the relationship between states and domestic justice between citizens fails to capture the relationship created at both the individual and systemic levels within transnational spaces between states, that are nonetheless located on national territories. This is the domain of the border crosser: the migrant, cross border commuter, “illegal,” undocumented, or irregular person. While such transnational spaces and practices are perceived as lawless, and are indeed often characterized by a lack of effective government, persistent law breaking, and abuse of existing laws—they exist within the potential purview of law.

In a world of proximate territorial states that exhibit developed border regions and cross border cooperative practices between individuals, businesses, and governments, the character of social cooperation to be governed is not only national, but transnational, and is mediated in particular by the boundaries built around states. While not all transnational relationships, networks, and social spaces that exist alongside and overlap the national state are beneficial, as evidenced in the trafficking of human subjects and most particularly in the advanced reach of violence and terrorism, it is a mistake to conflate differentiated flows simply because they traverse similar geographic paths and points of entry. People who cross in search of a better life are not the same as those who cross to do harm, a point often missed in the sound-byte that accompanies the politics of border enforcement and immigration control within national polities. This kind of depiction denies responsibility for the governance of such interactions, relying on the legal category of “alien” to do the work which justice requires.

Liberal democratic governance entails recognition of persons as sources of political authority, capable and worthy of being counted as socially relevant, and therefore able to participate within a self-governing community. Liberal democratic theories contextualize this relationship as citizenship. To be a citizen is to understand oneself as a member of a decision-making community and particularly, to adopt a certain stance toward that community. It is as a

citizen that one recognizes the equal claim of others similarly situated. However, claiming exclusivity for the context of juridical citizenship, exercised within national states in the modern world, excludes recognition of borderland contexts and the ways in which they extend and constrict the meaning of citizenship and its position as the main locus of membership and moral recognition.

Yasemin Soysal has argued that the distinction between citizen and non-citizen is collapsing as migrants incorporate themselves into national societies without necessarily attaining the privileges of citizenship, understood mainly as voting rights. Her theory of “postnational membership” depicts a social universe in which “universal personhood replaces nationhood; and universal human rights replace national rights.”¹¹ This perspective values the individual as opposed to the citizen. Yet this view also fails to consider the role of border structures (border control, citizenship and immigration laws) in restricting this shift from citizen to person as a source of legitimacy. It is specifically in the distinction between legal and illegal status that this theory finds its limit. For though illegal migrants also participate in their communities of residence, this is an endeavor limited by their lack of status, which bars them from fully participating in their social communities of residence as a legal non-citizen might.

Soysal recognizes the limits of postnational membership theory briefly, acknowledging the institutional duality within the system of states that organizes individual rights as civic rights exercised within national states. This limitation, rather than rendering the possibility of wider recognition of universal human rights, speaks to a possible rethinking of justice that takes border structures into account rather than for granted as the precursors to a viable state and system of states. As Stephen Castles comments, Soysal’s conception of political membership moves away from the state and toward “a shared public social space,” which presents a different conception of political agency by which to rethink the location of democratic political

¹¹ Yasemin Soysal, Limits of Citizenship: Migrants and Postnational Membership in Europe, p. 142.

action.¹² Developing this facet requires placing the border structure, its governance, and the justice claims that emerge from transnational social spaces and relationships it orders (borderlands) in proper perspective.

The potential governance of borderlands raises a question about responsibility for the structures we build and the political actor who is to be valued within our modern conceptions of justice. Cross border relocation, most often driven by economic necessities, delinks social and political membership for already vulnerable people. This dissonance creates a “citizen gap” that manifests itself in the borderland contexts created by people “whose lives are subject to global markets and mobility without secure membership in a national community.”¹³ This gap in state-based membership frameworks, made visible by the extension of transnational borderland spaces beyond the territorial border zone, lays bare some of the assumptions that go into theories of citizenship and membership within national states.

Understanding the boundaries of the nation-state system as implicit to and therefore outside the claims of justice ignores the scope of transnational society and the social realities that sustain it. Crossing borders becomes an alternate integrative mode for particular populations. They cross borders in response to opportunity structures built upon transnational markets. While global in reach, opportunities have particular regional and local manifestations that result from specific push and pull factors within sending and receiving communities. These migration systems cross particular border structures, creating systemic forms of transnational integration that challenge the nation-state and its structures to evolve to meet the specific needs that develop from borderland contexts.

Undocumented laborers form an invisible working class within the communities they help build and sustain. Yet they are more than simply another exploited group; they are legally

¹² Stephen Castles, “Globalization and the Ambiguities of National Citizenship,” in Blurred Boundaries: Migration, Ethnicity, Citizenship, edited by Rainer Baubock and John Rundell, p. 241.

¹³ Brysk and Shafir, pp. 3-9.

¹⁵ Cornelius, p. 9.

construed as permanent outsiders who have no valid membership or justice claims within the communities in which they reside. Human rights norms have helped censure states that exploit their own populations as well as bring to light the abuse and exploitation of persons who are trafficked across state lines. Yet, they have had little effect in adjudicating the plight of those determined to be “illegal” and “undesirable.” The construction of illegal subjects is consonant with the exclusion of particular kinds of disposable subjects. In the United States, this has been linked to the racialization of particular populations, first among them immigrant populations and their descendants. The dynamic present in modern borderlands is a narrowing of spaces for social mobility for this particular set of people, and these developments require justification not simply from the perspective of national communities but also from the perspective of those residing in the borderlands created by their intersection.

For while the nation-state instantiates the modern “homeland” and privileges the claims of its citizens, liberal democratic norms and membership claims invoked on behalf of border crossers challenge the legitimate means of liberal states in defending it. This contestation reveals a level of political choice effaced from liberal democratic justice theories for which borders and citizenship are implicit constructs. It displays a specific kind of justice claim which emerges not from states within an international system of states, nor from individuals against their own states, but from individuals situated between states, within largely ungoverned transnational social spaces. Taking responsibility for borderland contexts and governing them in accordance with justice entails recognizing the ways in which cross border movement of people is sustained, and loosening the assumption of entitlement within national citizenship categories and the justice frameworks that uphold them. This paves the path for a consideration of what justice entails from a borderland perspective—from the vantage point of those who cross and are situated between nations and states.

From a borderland perspective, the claims of justice extend beyond the narrow memberships envisioned in theories of domestic justice, and include a fluid framework that

recognizes the ways in which persons use cross border social spaces to build their lives. A theory of justice from the perspective of the borderlands takes account of the dual process involved in the movement of people across borders, as well as the way in which human mobility changes the characteristics of membership in political communities. The simple distinction presented between authorized and unauthorized entry of persons into national space and across state boundaries projects the idea that unauthorized border crossing is an individual act independent of the systemic social mis-management of border structures. This is glaringly apparent between the First and Third World, where hardened borders and increased reaction against migrants have taken various forms, from border fortifications, to legislative proposals for more restrictive entry requirements and denial of benefits to already situated migrants, to armed citizen groups patrolling borderlines and border zones outside the framework provided by border patrol and other law enforcement agencies.

These tactics meet a domestic political need to appear a controlled and seemingly secure border, yet fail to address the existence of borderland contexts within national political communities. Part of this failure lies in an unrealistic and misguided attempt to ignore the reality of labor needs and their historical role in building migrant networks. Migrant flows, specifically low and mid skilled labor flows, influence and generate further “illegal” or unauthorized ones. This is due in part to the niches occupied by low skilled migrants, who often fill jobs that have become “structurally embedded”¹⁵ within the economy such that the demand for foreign labor increases beyond allotted visas. Upward mobility of already situated migrants, as is seen in the group of migrants legalized after 1986 in the United States¹⁶, also contributes to the increasing demand for foreign laborers. The U.S.-Mexico borderlands are representative of the

¹⁶ Legalized Population Survey (1989) and follow-up survey (1992) shows about 45 percent of men and 38 percent of women experienced a gain in occupational status from their first job, often low-skilled, and the job held in 1992, about five years after legalization. Reported in “IRCA: Lessons of the Last US Legalization Program,” by Mary G. Powers, Ellen Percy Kraly, and William Seltzer in *Migration Information Source* of the Migration Policy Institute (July 1, 2004).
<www.migrationinformation.org/USfocus/>

transformation of relationships between individuals and political community, authority, and membership due to transnational movement and organization. Mexican nationals make up roughly sixty percent of undocumented persons within the United States, and more than eighty percent of migration from Mexico to the United States is undocumented.¹⁷ This means that most Mexican nationals enter the United States undocumented. In all, about ninety-eight percent of Mexicans living outside their native state, roughly calculated as one in ten, live in the United States.¹⁸ This social state demonstrates a particular borderland across the United States and Mexico that uniquely elucidates the changing claims of justice from a borderland perspective.

The Mexican migrant and the networks built between these two countries epitomize the problem of the borderlands in the United States, which are built upon the economic realities facing both individuals and states. The special advantage of Mexican migratory labor was reported in Congress in 1911 by the Dillingham Commission, who argued that the Mexican alien was living just a short distance from his homeland and therefore could provide a temporary labor supply that would not disturb the political community with problems of assimilation and the extension of membership and citizenship rights; whom could be easily deported once he became undesirable, unlike the European immigrant who had to re-cross an ocean. Immigration restrictions were thus not applied to migrants from Mexico for fear of crippling Southwestern growers who depended upon an abundant Mexican labor supply.¹⁹ Continually inbuilt in subsequent policies passed by Congress was a recognized vulnerability of this group of persons who were considered “less desirable as a citizen than as a laborer.”²⁰ In addition, the back door policy of allowing undocumented entry across a largely unfortified border created

¹⁷ Pew Hispanic Center Report by Jeffrey S. Passel. “Estimates of the Size and Characteristics of the Undocumented Population.” March 21, 2005.

¹⁸ Reported in the San Diego *Union-Tribune* by S. Lynne Walker of the Copley News Service, “Expatriates in U.S. seek a voice in Mexico vote” June 19, 2005.

¹⁹ Calavita, Kitty, “The Immigration Policy Debate: Critical Analysis and Future Options,” in ed. Wayne Cornelius and Jorge Bustamante, *Mexican Migration to the United States* (1989).

²⁰ Calavita, p. 156.

a sustained migration pattern from Mexico to the United States that has had far reaching consequences for both countries.

Instead of merely providing a temporary labor supply, as politicians in the United States had hoped, the migrant system built between the United States and Mexico, which was temporarily institutionalized as the guest worker “Bracero” Program from 1949 to 1964, became a sustained form of social integration across national state boundaries bolstered by continuous demand in the North and specific push factors in the South. This particular borderland changed the way in which people in Mexico, for whom the North represents opportunities for bettering their lives and access to social mobility, perceived their social memberships. Migration to the North became a rite of passage for young adults, as well as an ingrained possibility in a country with few options for social mobility for the lower classes.

On its face, the Bracero Program was an institutionalized and legal means of supplying migrant labor. Yet it fueled a large undocumented labor force because it, in effect, legitimated illegal crossings by providing on-site certification of undocumented Mexican migrants. It created a formal policy of granting legal status to aliens of Mexican origin who crossed into U.S. territory without proper documents so as not to disrupt labor supplies.²¹ Hence, it legitimated largely unregulated illegal flows while leaving an open door for the United States to deport “illegals” at will. It also gave disproportionate power to employers over their work force. This strategy met U.S. needs in particular business sectors without lessening the political flexibility needed to keep the peace by sustaining a deportable class of aliens.

The idea that national state borders are closed to illegal flows of people while simultaneously open to legal ones²² simplifies the actual process by which this takes place and obfuscates a proper understanding of the border structure, its function, and its potential governance as well as the social realities that drive the continual manipulation of border

²¹ Calavita, p. 157.

²² See Peter Andreas, Border Games: Policing the U.S.-Mexico Divide (2000).

structures to meet specific domestic needs. Borderland relationships press the question of what it means to be a member of national communities in an age of increasing transnational organization. They ask us to revisit citizenship and the institutions of the state that sustain a national politics and community, as well as to consider claims of justice from a borderland perspective—from the perspective of those who cross borders and are caught between nations and states. In rethinking justice by asking what constitutes justice for persons situated within borderlands, we engage the implications of a commitment to liberal democratic citizenship within nation-states and what this means for justice in a world of increasing inequality and cross border movement of people. In particular, borderland perspectives ask us to rethink the notion of what it means to be a people, who belongs, and the scope of entitlement.

Rather than becoming increasingly irrelevant, border structures are increasingly central to the organization and articulation of justice claims. It is at the borders of states that their authority is at once asserted, often visibly and forcefully, yet contested within the borderlands the emanate from them. For the border structure itself has a dual function: to consolidate political communities and selectively control their reconfiguration. Hence, it both aids cross border traffic and bars that which is deemed undesirable. In the face of increasingly integrated markets, as evidenced across North America in NAFTA and across Europe in the EU, the movement of labor has complicated this dual function; though cross border movement of people is built largely upon the opportunity structures provided by transnational markets, unlike goods, people carry social aspirations that impact the communities within which they work and reside.

The border structure of the state, then, is not simply a domestic political institution under the direction and control of national majorities, but a mediating structure that both orders domestic communities and facilitates the means by which they are reconfigured through the intersection of transnational society. In trying to erase these borderlands from view through the rhetoric of national sovereignty, modern nation-states evade responsibility for the social spaces built between them. In further failing to recognize transnational social spaces as specific sites to

be governed in accordance with justice, nation-states perpetuate the abuse which liberal democratic justice and the political integration of the nation-state is meant to restrain; for this myopic vision elevates the unscrupulous use of power within the borderlands, and by extension, allows it to extend within the nation-states that sustain them.

The situation of the borderlands, both within their historical territorial sites and extended inward toward the interior in the paths of migrants suggests a new question that justice theories need acknowledge: how ought we to govern our borders from a transnational frame of reference? The process of constructing borders, delineating membership and the jurisdiction of different states, is continual and multifaceted. And while generally subsumed under the context of sovereign authority, border structures are indeed sites of negotiation that produce conditions within which persons may claim a space for themselves. Determining how justice applies to the borderlands entails recognition of the promise of national states and liberal democratic justice, and the institutions needed to balance the justice claims of individuals organized within states and those organized across them.

3. Borderlands as Basic Sites of Justice

Much more than the physical, territorial sites that house cross border practices and communities, borderlands denote a specific status in between national citizenship frameworks, which comprise an added tier of governance within liberal democratic states in their quest to achieve a well-ordered social structure. This tier of transition is the space of “cosmopolitan right,” or the right of all persons to recognition *vis á vis* a foreign state under whose jurisdiction they enter. It recognizes that persons possess equal dignity regardless of the communities to which they belong, and may rightly insist on justification of differences constructed between them.

One of the leading liberal responses to problems of justice across states was proposed by John Rawls in *The Law of Peoples*. He focuses on potential points of agreement between

peoples, meant to generate a binding law to govern how they interact. However, he excludes the border structures of states from consideration within this dialogue. Rawls maintains a hard distinction between peoples without theorizing how migration affects relations between them. He retains the implicit borders found in his liberal theory of domestic justice, which stipulated that all persons were born and died in the same society. It is from this social starting point that he argues societies should seek to maintain an equitable balance between freedom and equality, which respects the dignity of persons by allowing them to construct the terms of what they perceive to be their good. From the perspective of the borderlands however, the border structure is the main mediating social institution of transnational relations between peoples. It is also a fundamental social institution of domestic society. The interplay of these two functions positions borderlands as basic sites of justice.

The transnational positioning of the state embroils it in constructing justice within and between states simultaneously; for its borderlands are built upon the state structure as much as upon the decisions of individuals that engage it by crossing borders. Sustaining justice within such a system requires that justice pertain to the borderlands that permeate its relationships. From a borderland perspective, individuals within transnational social spaces also have justice claims against the states that structure the borderlands they inhabit. In this sense, the border structure is a mediating institution between communities and is a specific focus of justice. It comprises a system of institutions that balance competing claims inadequately represented within liberal democratic justice theories.

The question is, can fairness, articulated by Rawls as the concept embedded in liberal democratic justice and specifically suited for assessing the basic structure of society, regulate borderland contexts and relations? What would fairness entail within transnational social spaces? This question is complicated by the permeability of such spaces. Transnational social space and the specific borderlands that enclose it are dynamic environments without a stable membership. In Rawls's scheme, fairness is maintained by restraining abuses against a

particular set of persons—citizens of a given state. From the perspective of the borderlands, restraining abuse is characterized by the peculiar situation of specific borderlands and the conditions under which effective authorities are able to order them consistent with both human and citizen rights, which overlap in borderland spaces. In addition, what constitutes fairness depends upon shared understandings that may or may not exist across particular borderlands. The emergence of human rights norms at the international level, which inform and constrain certain national practices, are indicative of a larger framework within which to consider fairness. However, it is at the transnational level, within specific borderlands, that a concept of what is fair and to whom must be considered. For it is here, “on the ground” so to speak, that persons live and decide such matters on a daily basis.

Within this understanding, border structures are a fundamental part of the basic structure of society and the borderlands built between them constitute a particular political jurisdiction to be governed. Yet, liberal democratic theories of justice that focus exclusively on the rights and privileges of citizen members exclude this transnational reality from the scope of consideration, and in doing so narrow the kinds of concerns that will be adjudicated. The border structure of a given state mediates the kinds of cross border choices available to different populations of people. It is the transnational face of the state, and holds implications for the fulfillment of liberal democratic justice at home. Whether one chooses to view the crossing of borders as a form of risk management or as a response to perceived opportunity structures, the realities of migrants and the undocumented within national states is one that requires recognition. Human rights perspectives place the source of recognition in our common humanity and the rights of all persons to be treated with dignity and respect. However, human rights are recognized through the prism of membership, specifically citizenship within the modern nation-state, which creates distinctions among us.²³ Hence, while human rights form the foundation of any just liberal

²³ Hannah Arendt offered a singular commentary on this peculiarity, stating that to be human one must first belong.

democratic social order that prioritizes the claims of individuals,²⁴ they are not the main way in which justice claims resonate. Membership claims must be situated, and it is to this endeavor that a reevaluation of justice from a borderland perspective is directed.

From the view of the border as a socio-political structure and borderlands as a transnational social space built between borders, the question of justice regards the specific duties that arise from the very structures we build and our interaction with them. The only truly closed system of social cooperation is global in reach.²⁵ All other systems are theoretically only negotiated closures, within which borders are centerpieces. The question of who decides these closures and the form of these negotiations is left outside of liberal democratic theories that begin from an already constituted, bounded community, yet epitomizes the claims of justice which articulate whom belongs and why, and therefore to what they are entitled.

People who cross borders forge social spaces within communities irrespective of the narrow bounds of citizenship. They do so as agents in their own lives and seek, like those born and organized within effective national states, access to goods and social mobility. It is not sufficient to assume that justice pertains to the bounded state and particularly to the citizen members of that state. Rather, one must also ask what a commitment to citizenship, and the boundaries that go with it, means for justice in a world of ever deepening borders and transnational social organization. Borders structure the parameters of social cooperation both within states and across them, and as such they form one of the major social institutions that shape our lives. They are, like the family, the first social structure into which we are born.

²⁴ John Rawls makes this claim, arguing, "What have come to be called human rights are recognized as necessary conditions of any system of social cooperation. When they are regularly violated, we have command by force, a slave system, and no cooperation of any kind." The Law of Peoples, p. 68. In using the concept of slavery here, he is distinguishing between free liberal and decent (hierarchical) societies and those that fail to meet the criteria for abiding by a Law of Peoples that recognizes persons as sources of claims, unlike slaves, whom are "human beings who are not counted as sources of claims, not even claims based on social duties or obligations....Slaves are, so to speak, socially dead: they are not recognized as persons at all." Political Liberalism, p. 33.

²⁵ I agree with Pogge on this as well as with his approach to questions of transnational justice. However, Pogge does not engage the same view from the borderlands that I do. See Thomas Pogge, Realizing Rawls (1989).

Hence, their structure and governance hold implications for the achievement of liberal democratic justice in a world of proximate territorial states, and particularly in a system of states transected by borderland systems that are patterned upon the political and economic decisions of dominant states.

By claiming the border structure of the state as a formal institution of justice and situating it as central to both the internal cohesion of national states and the construction of justice between them, a theory of borderland justice that incorporates the intersection between national, international, and transnational borderland settings emerges. Liberal democratic justice theories that hold border structures implicit to the foundation of justice cloak the political choices involved in the bordering process, and obscure the dual function borders serve in both consolidating communities and facilitating cross border practices. This understanding erases from view the real justice claims of those caught in intermediate, transnational social spaces. In crossing borders, migrants articulate a different vantage point than that constructed through the prism of juridical citizenship, elucidating its moral dimensions.

Recognizing the ways in which transnational social spaces modify justice does not collapse the distinction between political communities nor the differing ethics belonging to the domestic (between persons) and international realms (between states). Rather, it seeks to develop the space of “cosmopolitan right” first articulated by Kant. He theorized that along with international law and domestic justice, there exists the right of recognition between persons and foreign states. His theory stops short of articulating a claim to membership, insisting instead on the right of recognition and “sojourn.” However, borderlands extend this claim by reorienting liberal justice toward a wider moral community than that enclosed by the border structure of a particular nation-state to recognize that all persons have a moral right to be citizens of the communities in which they are members.²⁶

²⁶ Joseph Carens argues this line of thought in “Membership and Morality: Admission to Citizenship in Liberal Democratic States,” in Immigration and the Politics of Citizenship in Europe and North America,

Nor does this collapse the sense of political justice by which John Rawls, in particular, argues one can make sense of what justice entails and whom is responsible for constructing it. Rather, I focus on a different site from which to adjudicate the achievement of Rawlsian “justice as fairness.” In claiming that a political conception of justice exists primarily because there are boundaries, and excluding the specific boundary institutions which uphold them from the claims of justice, Rawls sets borders aside rather than engaging them as sites of justice. My project seeks to expand Rawlsian justice frameworks to deal with the problem of the borderlands, because they speak to the inherent dignity of persons as well as the realities of delimited states. To do so, fairness and the justice it signifies must extend to the borderlands.

4. Extending the Sphere

The kinds of borderlands that develop, their governance or lack of it, and conceptions of justice that belong to them change over time and in relation to the kinds of boundaries adopted. A historical account of border governance shows a different side of boundaries that the modern system of states obfuscates under the rhetoric of sovereign authority. The depth recognized within historical borders, and which modern borders are reclaiming through the practices of border crossers, force recognition of transnational social space. The additional step to the recognition of transnational social space as a potential public space, politically relevant and central to justice is the work of a borderland theory of justice that incorporates a perspective from the edge of the liberal state—that of the borderlands.

The foundational claim of a liberal democratic conception of justice is the freedom and equality of persons. This claim becomes confused within transnational settings that harbor no overarching common ground or conception of order and justice. However, this does not

edited by William Rogers Brubaker (1989). He states, “Membership is a social fact, not something that can simply be determined by political authorities.” The transition between these two facets of membership, social and political, is the primary focus of a theory of justice that takes account of borderland perspectives.

preclude the question of what realizing Rawlsian justice as fairness would entail within transnational social space. Rethinking Rawlsian fairness, without impinging on human diversity or the “reasonable pluralism” he believes is upheld within a system of states constrained by a modified sovereignty that recognizes the force of human rights, requires a focus on individuals across peoples. I seek to reevaluate Rawls in light of this blindness, reaffirming his goals by revising his position on peoples to a recognition that persons remake peoples, and do so under certain conditions which liberal democratic societies cannot ignore in their quest for security, welfare, and identity; these conditions result from the ordering of the basic structure of society, which I argue includes the border structure.

A focus on persons and their multiple positionings across states signifies a more relevant understanding of “reasonable” pluralism and the extent to which it emanates from persons and their conceptions of the good as much as from peoples incorporated within political communities. Liberal democracy brings an egalitarian valuing of persons such that nation-states, while maintaining inequalities across borders, are in a qualified position against which the claims of those who persist in borderland contexts and migrant subjectivities have emerged. A view from the borderlands offers an answer to the initial question of what constitutes fair terms of cooperation, outlining just societies, that moves us closer to the aims of justice by recognizing the moral content of citizenship—belonging, place, and relevance.

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