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## 38 Transnational environmental harm, inequity and the cosmopolitan response

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Issues about justice, ethics, and equity are fundamental to the ways in which we understand and seek to overcome global environmental change. These challenges require that we specify “the entitlements that people have ... as well as the duties or obligations ... that persons or other agents are bound by to respect these entitlements.”<sup>1</sup> Yet “ethical reflection on international environmental affairs is in its infancy”<sup>2</sup> and equity-based norms have not had a strong impact in global environmental governance.<sup>3</sup> One starting point for addressing these challenges is to understand environmental degradation as a particular form of transnational harm that results from environmental displacement. This harm, in turn, is characterized by forms of inequity in which the lives of “others-beyond-borders” are shaped without their participation and consent. These transactions of harm therefore extend the bounds of those with whom we are connected, to whom we owe obligations and against whom we might claim rights. They create, in effect, a cosmopolitan community of reciprocal rights and duties which, as Andrew Linklater<sup>4</sup> points out, transcend the “morally parochial world of the sovereign state.”

The question of how best to respond to this kind of inequity has both ethical and political dimensions. The purpose of this chapter is to examine whether and in what ways ideas drawn from cosmopolitan thought can provide a normative basis for a global regime of rights and duties which responds to the harm inequities associated with environmental degradation. Cosmopolitan principles are understood here as those that acknowledge a global community of humankind based on a structure of mutual recognition, solidarity and equal moral worth, and that recognize global justice among peoples as well as among states as a fundamental objective of international political practice. As an ethical project, cosmopolitan thought – in its stronger or thicker version – establishes at least three conditions for an equitable and just form of global environmental governance. Moral obligation across borders must be recognized, there must be some form of compensatory burden sharing (that is, redistributive rather than simply distributive justice), and governance must be based on a politics of consent. This is not simply an intellectual account of the good political community in which, as Hayward puts it, “moral aspirations are treated as separable from their ‘contingent’ material conditions of probability.”<sup>5</sup> Rather, as Anthony McGrew<sup>6</sup> points out, it identifies the political possibilities inherent in the present and, as Graeme Cheeseman<sup>7</sup> observes, “seeks to put in place the means to translate these into future actualities.” The concern here is primarily with the substance of the ethical debate rather than the institutional arrangements that follow from it. Nevertheless,

<sup>1</sup> Page 2006, 13.

<sup>2</sup> Wapner and Matthew 2009, 203.

<sup>3</sup> Okereke 2008, 27.

<sup>4</sup> Linklater 1998, 26.

<sup>5</sup> Hayward 2009, 289.

<sup>6</sup> McGrew 1997, 252.

<sup>7</sup> Cheeseman 2001.

there are a number of important demands of cosmopolitan institutions. They must take "individual human persons as the ultimate units of concern;" they must attach that status "to every human being equally;" and they must regard persons as the ultimate unit of concern for *everybody*.<sup>8</sup> While there is some evidence that a cosmopolitan sensibility has begun to inform the rhetoric of global environmental governance, there is little to suggest that the institutions and practices established are capable of achieving either cosmopolitan ends or means.

### Environmental Displacement and Transnational Harm

The structure of inequity and injustice in the global politics of the environment is perhaps best captured in two related ideas – displacement and transnational harm. These ideas enable us to understand environmental degradation as an ethical problem as well as an ecological or scientific-technical one. Drawing on John Dryzek's work, Paul Wapner<sup>9</sup> has characterized displacement as "shifting the experience of environmental harm." This "shifting" occurs across space – that is, the physical transportation or the unintended dispersal from one part of the world to another of the byproducts and environmental consequences of economic activity. It also occurs across time, by which future generations will come to suffer the environmental effects of today's lifestyles. As Wapner and Matthew<sup>10</sup> point out, it can also sometimes involve the displacement of people themselves. Displacement encompasses the outputs and inputs of economic activity. The outputs are perhaps the most obvious, involving the various forms of waste, pollution, and environmental damage that are the result of production and consumption and which are frequently experienced somewhere other than the location in which the source activity occurs. The input dimension of displacement refers to the exploitation of the renewable and non-renewable (or non-replenishable) resources and environmental services upon which production and consumption is based. There can be little argument with the proposition that present-day economic activity – which includes everyday subsistence and lifestyle activities as well as corporate practices – exploits resources unsustainably across space and across time.

Another way of understanding this problem of displacement is through the idea of ecological footprints and shadow ecologies. The footprint is a conservative measure of "how much productive land and water an individual, city, country or humanity requires to produce all resources it consumes and to absorb all the wastes it generates."<sup>11</sup> Globally, humanity is outstripping biospheric capacity. There is, however, an equity dimension to this as well, in that some countries are running at an ecological deficit – that is, their ecological footprint is both greater than the biological capacity of the country itself *and* greater than the per capita global average, based on present economic activity and the level of economic activity that is required to ensure that natural capital is replenished. Sachs<sup>12</sup> argues that the OECD countries "surpass (in terms of ecology and equity) the admissible average size of [their ecological] footprint by a magnitude of about 75 to 85 percent." Thus their economies cast an ecological shadow over

<sup>8</sup> Kuper 2000, 654. The focus here is on harm, inequity, and justice between and among peoples. This is not to deny the crucial importance of an ethic that helps to define the relationship between people and the non-human world. I acknowledge that is a strong theme in the literature that deploys liberal and cosmopolitan values which reduces the human/non-human relationship to a second order or consequentialist form of cosmopolitan ideas. See, for example, Wapner 1997; and Brulle 2002.

<sup>9</sup> Wapner 1997, 217.

<sup>10</sup> Wapner and Matthew 2009, 209.

<sup>11</sup> Wackernagel et al. 2002, 12.

<sup>12</sup> Sachs 2002, 14.

poorer countries from which the centers of production and consumption derive their raw materials.<sup>13</sup>

The ethical challenge arises because these various forms of displacement and their consequences are implicated in transnational harm. Linklater<sup>14</sup> defines transnational harm in a broad sense as “distress, suffering, apprehension, anxiety or fear” and the “damaging [of] vital interests.” The agency of harm – that is, those who cause it – is not confined to states but can include nonstate actors including those in the corporate and business sectors. Linklater makes it clear that not all harm is intentional and deliberate. Rather, and he suggests that this applies especially in the case of environmental displacement, it includes harm through unintended consequences and negligence or “the failure to take reasonable precautions to prevent the risk of harm to others.”<sup>15</sup> The extent to which harm is unintended or the result of negligence rather than deliberate intent sometimes involves a fine interpretive line. The claims by Lawrence Summers, for example (at the time Chief Economist for the World Bank and later US Treasury Secretary) that “the economic logic behind dumping a load of toxic waste in the lowest wage country is impeccable [because] underpopulated countries in Africa are vastly under-polluted”<sup>16</sup> suggest that economic models of rational efficiency were not so much blind to harm and those who would be most harmed as they were deliberately careless of those harms.

#### *Harm and Inequity*

Three specific forms of environmental inequity arise through these processes of displacement and harm. The first involves the disproportionate consumption of resources and production of waste. This, Hayward<sup>17</sup> argues, is about depriving the “planet’s poorer people of their ‘fair share’ of the earth’s ecological space.” The rich consume more resources and produce more waste than the poor and this disproportionate consumption of resources has an historical as well as a contemporary dimension. The visible consequences of environmental degradation – such as deforestation, desertification, pollution, and loss of habitat – are concentrated more in developing countries. The invisible causes, however, are embedded in the ecological shadow cast by the industrialized economies. Affluence rather than poverty remains the primary and disproportionate cause of global environmental degradation. In the middle of the first decade of this century, the richest 20 percent of the world’s population (mainly in industrialized countries) still accounted for about 80 percent of total private and public consumption in monetary terms as well as consuming substantially above the global average in a range of key resource sectors.<sup>18</sup> Energy-related per capita carbon dioxide emissions in the OECD countries averaged 11.6 tonnes in 2007; in the non-OECD countries the average was 2.9 tonnes and in the lowest-income countries of Africa the average was only 1.0 tonne per capita.<sup>19</sup>

The second measure of inequity, which is related to the first, involves the disproportionate impact of environmental change that reproduces the pattern of winners and losers associated with globalization. Vandana Shiva<sup>20</sup> puts it bluntly: “the natural resources of the poor are systematically taken over by the rich and the pollution of the rich is systematically dumped on

<sup>13</sup> See MacNeill et al. 1991.

<sup>14</sup> Linklater 2002, 327.

<sup>15</sup> Linklater 2002, 330.

<sup>16</sup> Cited in Puckett 1994, 53.

<sup>17</sup> Hayward 2009, 283.

<sup>18</sup> See World Resources Institute 2007.

<sup>19</sup> US Energy Information Administration 2010.

<sup>20</sup> Shiva 2000, 136.

the poor." Those who are most immediately affected by global environmental decline are those who have contributed least to the problem. These are the "subaltern groups"<sup>21</sup> – the poor, women, indigenous peoples – who are now ecologically as well as economically and politically marginalized. The poor and disadvantaged are the least able to buy their way out of the consequences of pollution, environmental degradation, and resource scarcity. They are less able to control the causes or mitigate the impacts of environmental change without assistance. Material inequities reinforce practices, such as overuse of water resources or arable land, which contribute further to local environmental degradation and unsustainable development. Yet environmental and resource inequities are more than statements about geography. Countries that are already ecologically and economically vulnerable face such challenges in part because of the past extractive practices of colonialism. These are often compounded by a legacy of repressive and corrupt regimes and by problems of permissive regulatory structures and weak implementation.

The third form of inequity arises in the politics of inclusion and exclusion from the practices and structures of environmental governance. As David Held<sup>22</sup> describes it, "the quality of the lives of others is shaped and determined in near or far-off lands without their participation, agreement or consent." Those who are most affected by the displacement of environmental harm are more likely to have limited access to decision-making about environmental protection, sustainable development, and the use of resources within countries and internationally. The reasons lie in both deliberate policies of marginalization and the structural asymmetries of power and access to knowledge and influence. The environmental politics of gender and indigeneity demonstrate this double inequity.<sup>23</sup> For women and indigenous peoples, the disproportionate impact of the causes and consequences of environmental degradation on their daily lives and, in the case of indigenous peoples, their cultural as well as physical survival are symptomatic of the biases of a more extensive structural inequality. Unequal and inequitable allocation of resources, including access to commons or traditional lands, to decision-making authority over the resources and environmental services of daily life, compound the problem. Environmental harm and inequity are also implicated in and connected with a range of other harms such as material deprivation, increased suffering, humiliation and denial of agency, and procedural unfairness.<sup>24</sup> Environmental harm is not only about a politics of difference: it is also about a politics of injustice. In other words, it is both unfair and inequitable that some are harmed by activities not of their own making and over which they have little or no control and that those who contribute less to the problem end up suffering more, and those who contribute more, suffer less.

#### **A Cosmopolitan Ethic**

As described above, in a globalized world transnational harm deterritorializes both risk and vulnerability. It therefore demands a deterritorialized understanding of the content of rights to environmental justice on the one hand and the nature of obligations to minimize risk and respond to vulnerability on the other. As Mason<sup>25</sup> observes, this requires that the distinctions between the national and the international, and between the state and the private are "purposely

<sup>21</sup> Stevis 2000, 63.

<sup>22</sup> Held 1997, 244.

<sup>23</sup> For more, see Elliott 2004.

<sup>24</sup> See Beitz 2001.

<sup>25</sup> Mason 2008, 9.

dissolved." In one sense, those who are most affected by transnational environmental harm in both its physical and ethical manifestations remain "the other." Displacement and harm therefore invoke and demand a cosmopolitan morality of distance. This establishes a principle of responsibility for anonymous distant others, something distinct from Bauman's morality of proximity that "occurs in the presence of a particular Other in a particular situation."<sup>26</sup> Yet transnational environmental harm affects not just distant others, even if it affects them disproportionately.<sup>27</sup> Because the biophysical complexities of the planetary ecosystem define it as a global commons and a public good, humanity comes to constitute an ecological community of fate. "Damage done to the environment," Amedeo Postiglione points out, "is damage done to humanity."<sup>28</sup> A world risk society<sup>29</sup> therefore comes to be defined by "sameness" as well as by "otherness."<sup>30</sup> Indeed, Beck<sup>31</sup> goes so far as to suggest that with ecological threat, which "eliminates all the protective zones and social differentiations within and between nation-states," comes "the 'end of the Other', the end of all our carefully cultivated opportunities for distancing ourselves."

The cosmopolitan ethic rests on the proposition that humanity is ultimately bound together as a single moral community with shared rights and obligations. The consequence of such a world is that, as Immanuel Kant avowed, a right violated anywhere is felt everywhere. We therefore have a moral obligation to those who are not our co-nationals, a position Richard Falk<sup>32</sup> describes as an "ethos of responsibility and solidarity." Justice, as Onora O'Neill<sup>33</sup> argues, is "owed [equally] to all, regardless of location or origin, race or gender, class or citizenship." This stands in contrast to a communitarian position which, while not necessarily rejecting the proposition that people within a state can or should have duties or obligations for justice to those beyond their borders, attaches moral *priority* to the community bounded by the state. But, as Linklater<sup>34</sup> argues, this "moral claim that insiders come first is ethically insecure in the context of increasing transnational harm."

Two possible categories of obligation therefore apply to environmental issues. The first involves the obligation to avoid or to cease doing (transnational) harm. The "no-harm" principle is a standard convention of liberal natural law theory. In an international sense, it can be understood in both Grotian and Kantian terms. The Grotian tradition in International Relations requires *states* to avoid doing harm to one another.<sup>35</sup> The Kantian approach, on the other hand, relies on a "community of all human beings [which] entails a common participation in law and ... in a virtual polity, a cosmopolis that has an implied structure of claims and obligations."<sup>36</sup>

<sup>26</sup> Crone 2008, 64.

<sup>27</sup> The idea of distant others invokes not simply a geographic interpretation. Rather, the distant others may be geographically proximate but "socially" distanced. This has been the basis of the environmental justice movement within industrialized countries and, particularly, the United States.

<sup>28</sup> Postiglione 2001, 212.

<sup>29</sup> Beck 1999.

<sup>30</sup> Risk society defines the ecological crisis in part as a product of the institutional practices associated with the technological advances of industrial modernity. As Marshall (1999, 264) summarizes it, 'the risk society becomes gripped by the hazards and potential threats unleashed by the exponentially growing productive forces in the modernisation process'. In turn, the risks associated with modern society impel the transformation of that society.

<sup>31</sup> Beck 1999, 62.

<sup>32</sup> Falk 1996, 499.

<sup>33</sup> O'Neill 2000, 45.

<sup>34</sup> Linklater 1999, 480–81.

<sup>35</sup> Linklater 1999, 478.

<sup>36</sup> Nussbaum 1997, 37.

Indeed, Beck<sup>37</sup> argues that it is within this "perceived necessity of world risk society" that Kant's cosmopolitan society, as opposed to a Grotian society of states, can finally take shape.

A second category of obligation involves duties to address the actual (and potential) inequities that arise from transnational harm. That is, the transnational moral responsibility associated with the nature of global environmental change constitutes more than a negative duty not to harm others, to act "before harm has been received"<sup>38</sup> and not to hinder the efforts of others to provide a minimum for themselves. It also involves a positive requirement to assist those who are harmed to overcome the consequences of environmental degradation. The principles of justice and equity that apply in such cases are then bound up in a number of practical questions, addressed in turn below, about burden sharing and the allocation of costs and benefits, "justifiable entitlement,"<sup>39</sup> the nature of fault and complicity and how to account for historical practices in contemporary rights and obligations.<sup>40</sup>

### *Moral Obligation*

As argued above, a cosmopolitan ethic on transnational environmental harm first requires a clear acknowledgment of the moral obligations to which that harm gives rise. An environmental no-harm principle has both first- and second-order dimensions. The first-order approach emphasizes duty to others as individuals in the moral community. The liberal Enlightenment tradition has imbued cosmopolitan thinking with a legacy of concern with individual autonomy that is assumed to hold universally. It is from this value that other rights, duties, and institutions (including environmental ones) are assumed to derive. As Janna Thompson observes, "[t]raditional [liberal] cosmopolitanism is based upon the moral premise that all individuals deserve respect as autonomous agents."<sup>41</sup> Yet there are potential limits to a strictly liberal cosmopolitanism in the face of global environmental developments that "challenge certain fundamental, even constitutive, presuppositions of liberalism,"<sup>42</sup> a theme to which the discussion in the later parts of this chapter returns. A focus on individual rationality and autonomy sits uncomfortably with the demands of group rationality in the face of problems that require collective action (a tension sometimes captured in the concept of the tragedy of the commons). Nevertheless, it is possible to draw on liberal cosmopolitan principles as a starting point for constructing environmental harm conventions, that is, norms about what it is permissible to do, or not do, in relations between people. Henry Shue<sup>43</sup> makes it clear, for example, that no individual has the freedom to cause injury or endangerment to others. And "others" are denied their own autonomy if they are unable to defend against injury and endangerment.

The second-order dimension of a moral obligation to individuals can be explored from a consequentialist perspective. While it is difficult to cast "the environment" or the "global ecosystem" as a moral subject, the obligation to avoid transnational environmental harm to others is likely to have more force if it is accompanied by an ethic of stewardship towards the environment. In other words, a commitment to protect the environment should also contribute to protecting near and distant others from the consequences of environmental change. This

<sup>37</sup> Beck 1999, 20.

<sup>38</sup> Mason 2008, 12.

<sup>39</sup> Pan 2003, 1.

<sup>40</sup> See Rowlands 1997.

<sup>41</sup> Thompson 2001, 140.

<sup>42</sup> Hayward 2009, 276.

<sup>43</sup> Shue 1981, 588.

stewardship model is one that looks backwards as well as forwards. Existing persons, Page<sup>44</sup> explains, are “duty-bound to protect environmental and human resources for the sake of their successors in return for benefits inherited from their ancestors.” In this light, Richard Falk<sup>45</sup> suggests that there is a “general community duty to respect the integrity of the global commons” and that such an ethic enjoys “provisional status” as an obligatory feature of international law. Shue shares this expectation that statements of obligation will be more than declaratory. His argument is that it is not only “wrong to inflict avoidable harm upon other people” but that such harm “ought often to be prohibited by law.”<sup>46</sup> In other words, transnational environmental harm should be not only defined as immoral but also made illegal.

Within the *normative* structures of global environmental governance, there is an apparently strong declaratory commitment to environmental stewardship, harm minimization and attention to justice in a way that seems to encompass more than a liberal focus on individual autonomy. Ideas about the ecological community of fate are echoed in the concept of the common heritage of humankind (CHM). The CHM principle has evolved from its original concern with sharing the benefits of resource exploitation (although there was always some dimension there of a compensatory burden) to one that expresses, in theory at least, the imperatives of shared environmental stewardship. This applies increasingly to both *res nullius* and *res communis* environments, the former technically owned by no one but open to such ownership and the latter, in non-legal vernacular, encapsulating ecosystems and ecosystem services that cannot be appropriated by any state but includes areas as well as services that are “owned” collectively or shared by everyone together. The image that this projects of a vulnerability to and responsibility for global environmental insecurities that is ultimately shared (even if it is shared unequally) is reproduced in the metaphors of the “common future” in the title of the 1987 report of the World Commission on Environment and Development, the “global partnership” which accompanied the 1992 Rio Summit, and the “global neighbourhood,” the title of the 1995 report of the Commission on Global Governance.

Concerns about equity and autonomy in an environmental community of fate are reflected in the definition of sustainable development elaborated by the World Commission on Environment and Development (WCED) in its report *Our Common Future*. Sustainable development is development that “meets the needs of the present without compromising the ability of future generations to meet their own needs”<sup>47</sup> thus giving some force to the concept of intergenerational equity. The Commission argued that the failure to meet this common interest was intimately connected with the “neglect of economic and social justice within and amongst nations.”<sup>48</sup> In elaborating its view of a sustainable future, the WCED acknowledged that sustainable development demanded attention to equity and justice, and to the building of a future that was “prosperous, just and secure.”<sup>49</sup> The Commission also made clear that we have a “moral obligation to other living beings and future generations.”<sup>50</sup> Yet Hayward<sup>51</sup>

<sup>44</sup> Page 2006, 119.

<sup>45</sup> Falk 2001, 231.

<sup>46</sup> Shue 1981, 587.

<sup>47</sup> WCED 1987, 43.

<sup>48</sup> WCED 1987, 47. However, this emphasis on justice as a key feature of environmental governance and sustainable development has been overshadowed by the report's commitment to continued economic growth, the maintenance of a liberalized world economy, and the articulation of a key role for corporate actors.

<sup>49</sup> WCED 1987, 63.

<sup>50</sup> WCED 1987, 37.

<sup>51</sup> Hayward 2009, 282.

suggests that achieving, for every person, the rights that derive from the exercise of such obligations would "involve a more radical transformation of global relations than seems to be supposed in most discussions of sustainable development."

The obligation to minimize harm has been expressed primarily through a Grotian assumption that global relations rely on a society of states and that it is therefore states that have a responsibility not to harm each other. Principle 21 of the Stockholm Declaration, adopted in 1972, drew on earlier international legal decisions to affirm that states had a responsibility to limit environmental damage (harm) beyond their borders. This is reinforced in principle 2 of the 1992 Rio Declaration and in most multilateral environmental agreements. In theory, this principle of transboundary responsibility establishes an obligation with respect to displacement, requiring states to take action to ensure that the outputs of economic activity do not cause damage to the environment and by implication, the lives of peoples and places elsewhere. An obligation not to cause or to limit damage to the environment is also relevant to input problems. In other words, the exploitation of resources and environmental services for economic purposes should not result in a drawing-down of the ecological capital of other states or areas beyond national jurisdiction (that is, resources should not be overexploited). Nor should there be irreversible or even severe environmental consequences of such exploitation. It is open to question whether there is much more than fragmentary evidence that such principles have become customary international law. That would require evidence of general state practice and that is not yet the case. States have generally paid more attention to their rights and less to their obligations. Multilateral environmental agreements continue to affirm the physical rights of states to their resources and the authority rights of states over how those resources can be used and exploited.

Obligations regarding transnational environmental harm are likely to be stronger if they recognize corresponding individual or collective rights that can be claimed against moral agents. There is a substantial body of international law which provides some basis for claims regarding a human right to a clean environment or the importance of a clean environment to achieving other human rights are to be met.<sup>52</sup> Some of these move in the direction of a substantive right whereas others focus on procedural rights (particularly related to information and decision-making such as that found in the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters). In 2005, the United Nations Commission on Human Rights (UNCHR) resolved that "a democratic and equitable international order requires, inter alia ... the realisation of the right of every person and all peoples to a healthy environment."<sup>53</sup> However, there is as yet no codified treaty-based right to a clean environment (or to an environment of a certain quality) or even to sustainable development. For that reason, rights to a clean environment tend to be aspirational and at times rather vague although they can provide what Michelle Schwartz<sup>54</sup> calls a "surrogate protection" against environmental harm. This surrogate approach is prominent in the suggestion that "most of the acts causing environmental degradation would also violate and interfere with universal human rights, such as the right to life and security of person, the right to health and the right to livelihood."<sup>55</sup> This theme was also evident in a UNCHR resolution on "human rights and the

<sup>52</sup> For a detailed listing of international legal instruments in this context, see Wagner et al. 2003. For a discussion of the key issues, see Elliott 2004.

<sup>53</sup> UNCHR 2005a, 6.

<sup>54</sup> Cited in Bosselmann 2001, 122.

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### *Burden Sharing*

Rights claims generate questions about the nature of equitable environmental entitlements, particularly whether autonomy and fairness require an equal share of material benefits, a minimum to ensure that basic needs can be met and harm limited, or some form of redistribution of entitlements to compensate for past inequities. What, in this case, would constitute a "rightful share" to environmental goods or resources and how would a proportionate (as opposed to a disproportionate) impact be defined? Lomasky<sup>57</sup> argues that inequality itself does not show that "the wealthy have any duty to acquiesce in a transfer of some share of their resources to the poor" (as opposed to what might be kind of them to do as a matter of "laudable charity"). Stone<sup>58</sup> goes further, claiming that "poverty does not excuse theft" or guarantee a right to pollute. Shue,<sup>59</sup> on the other hand, argues that for equity to be meaningful in the global politics of the environment it must involve compensatory burdens on the part of the rich developed countries whose past actions have created environmental inequity, especially because the "damaging behaviour has continued unabated long since it became impossible to plead ignorance." He also demands that the pursuit of equity must take account of differences in the ability to pay for mitigation of environmentally damaging behavior and adaptation to environmental change.

Linklater<sup>60</sup> proposes that "we have obligations to help the poor overcome the effects of inequalities, even if we have had no part in creating them." In effect, this is about burden sharing as a progressive rate of payment that requires that those who are already the worst off are not made worse off still, thus effecting a guaranteed minimum in ecological as well as material terms. This is more than a liberal cosmopolitan respect for liberty and autonomy. Rather, it involves social rights to resources and benefits<sup>61</sup> and suggests that the social dimensions of human rights and justice, expressed in solidarity (or fraternity) principles are equally as important as the individual ones of liberty and equality.<sup>62</sup>

In practice, this kind of solidarist environmental justice would involve, at minimum, enhancing the transfer of resources to developing countries. It would also involve international legislative programs that would effectively restrict or minimize the ecological footprint of those who have a disproportionate impact on the environment. Sustainable development contains the kernel of the idea that if needs are to be respected and met, burdens should be shared. The declaratory ethic of burden sharing is most notable, however, in the principle of common but differentiated responsibilities (CBDR). The concept is meant to convey both solidarity and a particular kind of burden sharing that takes account of inequities in global resource use and in contribution to environmental harm. Most multilateral environmental agreements contain what

<sup>56</sup> UNCHR 2005b.

<sup>57</sup> Lomasky 2007, 211.

<sup>58</sup> Stone 2004, 281.

<sup>59</sup> Shue 1999, 536.

<sup>60</sup> Linklater 1999, 476.

<sup>61</sup> Thompson 2001, 141.

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Christopher Stone<sup>63</sup> describes as some “veiled or encoded variant” of CBDR which requires that the special needs of developing countries be given priority and refers to the importance of special provision to meet developing country needs or requires developed countries to mobilize new and additional financial resources, or acknowledges that developed countries must take the lead in resolving particular environmental problems (such as climate change, for example).

In practice, burden sharing has been one-sided and driven as much by risk prevention for the North as it has by an “other-regarding” cosmopolitan concern for those who are most harmed.<sup>64</sup> Rich countries have been reluctant to adopt policies that would minimize transnational environmental harm. Nor have they been willing to commit the kinds of material resources required to help the most disadvantaged to recover from the consequences of environmental damage or to minimize their impact on the environment in the absence of “autonomous choice.” Global funding for sustainable development remains unacceptably low and the liberal expectation that financial assistance should be directed through foreign direct investment rather than official development aid has meant that the poorest countries with limited infrastructure and little attraction for investors are increasingly disadvantaged. Even mechanisms designed specifically to assist countries who are most in need of support – such as the Clean Development Mechanism adopted under the Kyoto Protocol on climate change – are skewed in favor of middle-income developing countries. Because burden sharing has focused primarily on managing the *political* relationship between rich and poor countries, much less attention has been paid to the issue of compensatory justice for poor peoples. This runs the risk of reducing burden sharing to a form of proxy cosmopolitanism – confining justice to the interstate level on the assumption that individuals’ “basic claims to justice have already been [or will be] taken into account” in just (domestic) societies.<sup>65</sup>

#### *Consent and the Cosmopolitan Public Sphere*

Two key liberal demands derive from the binding together of peoples as an ecological “community of fate.” First, “people should be free and equal in the determination of their own lives, so long as they do not deploy this framework to negate the rights of others.”<sup>66</sup> Second, such a community “rightly governs itself and determines its future.”<sup>67</sup> What this notion of “right governing” means, in environmental terms, is that decisions about the protection of the environment and allocation of resources must be subject to democratic control of both local and global practice. This reflects the principle *quod omnes tangit ab omnibus comprobetur* – what touches all should be agreed to by all.<sup>68</sup> As a political project, cosmopolitanism has therefore been tied to demands for a “rights based system of global governance”<sup>69</sup> that values accountability and transparency as well as participation. Democracy in the cosmopolitan sphere, Martin Köhler<sup>70</sup> argues, “provides the conditions for non-discriminatory discourse within and among societies.” In this context, cosmopolitan governance requires democracy within states, the extension of democratic practice to relations among states and the enhancement of democracy within global institutions and political practices. In this view, the so-called

<sup>63</sup> Cited in Okereke 2008, 32.

<sup>64</sup> See Shiva 1993.

<sup>65</sup> See Kuper 2000, 641.

<sup>66</sup> David Held cited in Achterberg 2001, 192.

<sup>67</sup> Held 1997, 239.

<sup>68</sup> See Low and Gleeson 1999, 189.

<sup>69</sup> Kaldor 2000, 7.

<sup>70</sup> Köhler 1997, 390.

"delegate" model, which recognizes states as the vehicle through which the rules and practices of global environmental governance account to *national* publics, is insufficient because the chains of accountability are often "remote and indirect."<sup>71</sup>

A cosmopolitan democratic imperative demands and defends a transnational or global public. This constitutes a new form of global political community based on the principles of dialogue and consent rather than power and force, and on the construction of universal frameworks of communication.<sup>72</sup> As Tully<sup>73</sup> points out, if "environmental justice is to be democratic, then the principles, values and goods that are brought to bear ... must be open to democratic discussion and debate." This is a "thicker form of public dialogue which goes beyond the thin 'proceduralism' of liberal democracy."<sup>74</sup> It seeks to ensure that those who are most vulnerable, powerless, and marginalized are empowered to refuse, renegotiate, and contest.<sup>75</sup> Dialogic or communicative processes do not require actual participation. They do, however, demand that "all who are possibly affected *could* assent as participants in rational discourses."<sup>76</sup>

Multilateral environmental agreements and associated declarations have made much of the importance of environmental information and education and access to decision-making.<sup>77</sup> The cosmopolitan emphasis on information and consent as necessary conditions to minimize transnational harm has perhaps been best captured in the concept of Prior Informed Consent (PIC). This is expressed in a number of environmental treaties, most notably the 1989 Basel Convention on the transboundary movement of hazardous waste and the 1998 Rotterdam Convention on prior informed consent (agreed in the context of managing hazardous chemicals and pesticides). This issue of "whose consent" is central to how the PIC principle is given effect in international law. In particular, it is important that wherever else it functions, consent must operate "at the level of the local community"<sup>78</sup> for two reasons. The first has to do with the input component of transnational harm – in many cases it is the resources and knowledge of local communities that are being accessed, exploited, or expropriated. The second reason arises from the output dimension of transnational harm. Local communities and peoples should have the right to determine, based on accurate knowledge of the environmental and other consequences, whether or not to accept waste of whatever kind which arises from economic activity elsewhere. PIC assumes that the appropriate authority in the importing state will act in the interests of local communities. Yet as Jim Puckett<sup>79</sup> has argued, PIC can "undermine local democracy and institute a system of decision-making that is wide open to abuse."

There has been growing unrest among grassroots organizations, civil society groups, and nongovernmental organizations (NGOs) that the much-lauded democratization of global environmental governance has done little to democratize or make equitable the outcomes. Participatory rights run the risk of becoming most meaningful for those NGOs which are "well-organised, well-financed and well-informed."<sup>80</sup> It is therefore important to distinguish between

<sup>71</sup> See Mason 2008, 11.

<sup>72</sup> See Linklater 1998.

<sup>73</sup> Tully 2001, 148.

<sup>74</sup> Barns 1996, 2.

<sup>75</sup> Onora O'Neill cited in Linklater 1998, 28.

<sup>76</sup> Jürgen Habermas in Brulle 2002, 4; emphasis added.

<sup>77</sup> On the other hand, the explosion of information Paul Virillo suggests, can have disenfranchising effects. Cited in Lacy 2002, 48.

<sup>78</sup> Anuradha 2001, 33.

<sup>79</sup> Puckett 1994, 54.

<sup>80</sup> Anon. 1991, 1589.

civil society as a cosmopolitan public sphere and civil society as professionalized nonstate activism. This draws attention, then, to a second important theme in the cosmopolitan politics of consent – that of a cosmopolitan public sphere. In response to transnational harm and political marginalization, local voices are demanding to be heard and are constituting alternative, albeit not always clearly articulated, forms of resistance to globalism. In such a “global” cosmopolis, the state is de-centered (but not dismissed) as political actor and as moral agent and subject or, as Daniele Archibugi<sup>81</sup> puts it, “deprived of [its] oligarchic power.” This equates with a “globalization from below” in which local voices do more than legitimize global democracy. They constitute an autonomous source of political and communicative power that serves also to sever the link between democracy and the state.<sup>82</sup>

In liberal terms, the creation of a political space in the global politics of the environment for actors other than states has been justified on the grounds of democratic pluralism, efficiency, and effectiveness rather than autonomy and justice. Decision-making by governments and the implementation of legislative and regulatory frameworks is argued to be more effective if all stakeholders are represented and if the legitimate interests of actors other than states are recognized. Greater inclusiveness can only be welcomed as a precondition for sustainable development and more effective environmental outcomes. But the whole issue of rights and freedom from oppression (in effect, justice and autonomy) is downplayed. This is not a process by which those who are affected are able to negotiate and contest. The emphasis on democratic efficiency and pluralist governance takes little account of the relations of power and powerlessness that mute local or marginal voices. Those at the margins, or those most harmed – such as the poor, women and indigenous peoples – have become defined as objects to be acted upon, to be educated, consulted, and informed, to be empowered from above or from outside, or as a source of knowledge to be appropriated and incorporated into the discourse of the global as and when needed. The themes of emancipation and equity, and new visions of development which so often animate the outcomes of collective global activism on environment and development are, for the most part, absent in official discourse.

#### Some Concluding Thoughts

An ecologically sensitive cosmopolitanism demands transnational environmental justice between peoples within a world society as well as, and possibly in preference to, international justice between states in an international society. What this does not tell us (and perhaps cannot tell us) is whether these are perfect duties, which must always be observed. If the cosmopolitan duty is an imperfect one that admits exceptions, then it signifies only a “general good” that leaves the choice of specific action to the moral agent. Faced with such an imperfect duty, it is not wrong *not* to discharge that duty on any *particular* occasion, as long as one has adopted, in Kantian terms, the right maxim.<sup>83</sup> There is, nevertheless, a meritorious duty to act when one can. However, if obligations to others in the moral community constitute a perfect duty – something more than an “optional act of charity”<sup>84</sup> – moral agents no longer have an option to decide how far to honor their obligations. The cosmopolitan commitment to minimize harm may well be seen as something approaching a perfect duty. That is, we should minimize harm as a general good, even if we do not specifically know who might (or might not) be harmed or

<sup>81</sup> Archibugi 2001, 204.

<sup>82</sup> On the latter, see Dryzek 1999, 277.

<sup>83</sup> See Kleingeld 2000, 335. Lacy (2002, 49) refers to this as a form of “green categorical imperative.”

<sup>84</sup> Onora O’Neill in Jones 1999, 92.

saved from harm by our actions. Compensatory burden sharing, on the other hand, is more contentious as a perfect duty. The obligation to come to the aid of those who have been harmed through environmental degradation not of their own making, in circumstances in which one can provide such assistance (the ability to pay), would nevertheless seem to constitute a meritorious duty to others.

The nature of environmental displacement, transnational harm, and environmental inequity forces us not only to confront the obligations that we have to each other but also to establish ways to meet those obligations. Precautionary norms, Mason<sup>85</sup> tells us, "create expectations for enlarging obligations of responsibility towards global publics and future generations." The question of agency is therefore critical. As moral actors, states are expected to act as "local agents of the world common good."<sup>86</sup> For many, the state – or at least the liberal state – can and should be strengthened because it has the resources to enforce implementation of environmental agreements including those which seek to minimize environmental harm and enable compensatory justice. The state thus becomes a vehicle, even if not the only one, by which the democratization of governance and the politics of consent at a global level can be achieved. Falk<sup>87</sup> expects that a "re-empowered state would act alongside other political actors."

Yet forms of liberal democratic pluralism reliant on the state have proved insufficient to overcome political structures of inclusion and exclusion and the state remains ambiguous as cosmopolitan moral agent. In practice, the mechanisms of environmental governance do not "institutionalize global responsibility" despite some claims to the contrary.<sup>88</sup> The normative interests of the state remain evident in the dominance of sovereignty claims and national interests that are pursued at the expense of cosmopolitan values and at the expense of the environment. Doubts remain about whether the value of liberal freedom can "promote the kind of collective restraint that global environmental justice would seem to require."<sup>89</sup> The very groups and voices whose participation is essential to sustainable development and responses to the challenges of global environmental change remain distanced from the domestic and global practices of environmental governance.

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<sup>85</sup> Mason 2008, 18.

<sup>86</sup> Hedley Bull cited in Linklater 1999, 478.

<sup>87</sup> Falk 2001, 223.

<sup>88</sup> See, for example, Wapner 1998, 283.

<sup>89</sup> Hayward 2009, 290.

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