"States are the most powerful actors in global trade". Discuss.

Introduction:

For the past few centuries, the nation state has been the most powerful actor in global trade. Globalisation, which allowed for the creation of transnational corporations (TNC), radically changed global trade. Even though states still wield a huge amount of power, this essay will argue that they are no longer the most powerful actors in global trade. Their power has been superseded by that of TNCs who have been allowed to accumulate an ungodly amount of political influence and economic power, comparable only to some of the biggest economies in the world. The British East Indian Company is widely regarded as the first TNC, created at the beginning of the 17th century in order to facilitate trading activities between Britain and her colonies from around the globe. The TNCs that we know today however, were only able to reach their current state of power once industrialisation had been completed. With industrialisation came the advent of factories, more mechanised manufacturing and better storage and transportation techniques, most notably, the shipping container, which facilitated the transportation of any and all products to an unprecedented extent (Levinson, 2016). These advancements in production and transportation allowed for TNCs to grow into the giant economic institutions they are today, with many TNCs having annual sales greater than that of whole countries. For example; the sales of Mitsui and General Motors are greater than the combined GDPs of Turkey, Portugal and Denmark, and $50 billion more than the GDPs of all sub-Saharan countries in Africa (Singh, 2000). Currently, around 300 of the largest TNCs own at least a quarter of the world's assets, with the largest TNC, Blackrock, having an estimated worth of $9.5 trillion (Carlos Waters, 2021). This essay will demonstrate my argument by looking at the four main contributors to the power of TNCs. First, I will examine the ever-increasing amount of influence and money that is being accumulated by the transnational capital class (TCC), who are at the head of TNCs, and the power that this gives them. Following this I will look at the involvement of TNCs in the urban planning of developing countries, creating dependencies within countries, giving them huge power over the state. I will also look at the ways the tobacco industry manages to supersede state power, in both developed and developing countries as an example of TNC power. Lastly, I will look at the international investment arbitration system, and look at how TNCs use the legal system to exert and expand their power.

The transnational capital class:

States remain the sole legitimate representatives of nations and their citizens, and dictate the military, economic and labour power of said nation, which is why many continue to claim that states are the most powerful actors in global trade. However, with the rise of the internet and the unprecedented rate of globalisation since the 1980s, the power of non-state actors has been growing (Falkner, 2011). This growth has resulted in the creation of a transnational capital class (TCC) (Nichols, 2019). The TCC are a group of dominant individuals, all of whom are in positions of great power with access to exuberant wealth, of which both were achieved through manipulation and exploitation, "*culminating in the transnationalization of production and finance*" (Nichols, 2019, p. 140). The TCC are composed of four main groups; the corporate fraction, who own and control TNCs, the state fraction including bureaucrats and politicians, the technical fraction comprised of professionals such as lawyers and arbitrators, and the consumerist fraction, encompassing members of the media and entertainment industries (Sklair, 2005, p. 145). Many of the TCC belong to more than one of these fractions, furthering the interconnectedness of the TCC and their interests, increasing their power and political reach.

This growing power disparity between states and non-state actors is largely due to technological changes that governments are unable to keep up with, as well as the growing imbalance of information held by states and non-state actors (Falkner, 2011). This imbalance of information is most obvious when discussing personal internet data, that is harvested, owned and utilised by TNCs and the TCC that own them, such as Facebook or Google. The power of this type of information was most infamously made visible during the 2016 Cambridge Analytica scandal. This scandal occurred due to Facebook, and the political consulting firm, Cambridge Analytica, secretly harvesting the data of up to 87 million Facebook profiles, and using it to provide analytical assistance to the Trump and Brexit campaigns, giving an unfair, and undemocratic, advantage to both campaigns (Rehman, 2019). Both Trump's presidency and Britain's exit of the European Union were favourable outcomes to the TCC as they both prioritise business and profit, the lessening of state intervention and environmental protection and more. This scandal demonstrates the lengths to which the TCC are willing to go in order to obtain the most beneficial regulatory conditions for themselves, no matter the immorality, or destructive effects of their actions. Additionally, unlike governments, the TCC and their corporations don't depend on the vote of citizens for the continuation of their power and are not confined by border to exert said power. This lack of regulation placed upon the TCC and their TNCs displays the inability, or unwillingness, of states to exert control over the TCCs, even for the protection of their citizens (Nichols, 2019).

How the TCC and their TNCs undermine states in developing countries:

The power of TNCs over states is blatantly obvious in developing countries, especially in Africa. Throughout the continent, TNCs increasingly play a larger and larger role in controlling many aspects of national development usually reserved for the state, such as the building and maintenance of roads, controlling utilities, the planning of urban spaces as well as the appropriation of public resources (Obeng-Odoom, 2018, p. 447). As many African states are politically fragmented and have little economic power, they can easily become dependent on these TNCs for much of their development. They also have very little bargaining power when TNCs present them with their demands. Since TNCs always prioritise their profits, have no obligation to citizens, and do not care about the well-being of people or nature, this dependency on TNCs is often detrimental to states and allows for the easy exploitation of their citizens and the natural resources of their county. An example of this occurring would be the way in which TNCs have prevented the development of public transport throughout African cities as to guarantee the continued use of cars and other motor vehicles. TNCs have a monopoly over the distribution of motor vehicles throughout the continent and therefore the introduction of public transport would diminish their profits. This is only one way in which TNCs infringe upon the sovereignty of African states, prioritising the maximisation of their profits over the lives of the African people as well as the environment (Obeng-Odoom, 2018, p. 450). The exploitative actions of TNCs in Africa are usually defended with the "resource curse" theory (Obeng-Odoom, 2018, p. 476). This theory claims that African governments are incapable of managing their own natural resources because their managerial capacities are inefficient, especially in the face of the abundance of their natural resources, and that this burden would *"immobilize the self-governing capacities of Africans"* (Obeng-Odoom, 2018, p. 447). According to Franklin Obeng-Odoom, this is an inadequate defence of TNC activities since this theory has been proven lacking in more recent studies (Obeng-Odoom, 2018). Additionally, in my opinion, the "resources curse" is an excuse used by countries and companies from the Global Gorth to continue partaking in manipulative neo-colonial practices throughout the continent.

<u>The power of TNCs demonstrated through the tobacco industry:</u>

The continued existence, and success of the tobacco industry is another demonstration of TNCs power over states in global trade as well as an example of the vulnerability of developing countries to the exploitation of said TNCs (Sklair, 2002). During the 1999 World Economic Forum, the director general of the World Health Organisation at the time, Gro Harlem Brundtland, identified tobacco as a major threat to world health, yet, almost a quarter of a century later, the tobacco industry is still thriving (Derek Yach, 2000). The global tobacco industry is dominated by four firms. At the top we have the TNC Philip Morris, with revenues exceeding $61 billion, followed by Japan Tobacco and British American Tobacco, both with revenues of around $20 billion, and finally, RJ Reynolds Tobacco with revenues more than $11 billon (Sklair, 2002, p. 151). Throughout the decades, tobacco TNCs have continued to bring in huge profits thanks to their continuous rebranding and timely targeted marketing techniques. By looking at the history of cigarette sales, one can see this opportunistic targeted marketing at play. Up until the 1950s the main consumers of cigarettes were men in Western countries. In the 1960s, the tobacco industry used the women's liberation movement to market their cigarettes towards women, branding smoking as a form of feminist resistance against the patriarchy and other sexist social norms (B A Toll, 2005). Since the mid-1990s however, there was a real clampdown on smoking regulations throughout developed countries and cigarette sales began to decline in these areas. To compensate for their losses in the West, the tobacco industry began to target people in developing countries, more specifically Asian countries, as they account for such a huge portion of the population and are at a stage of economic development where the population isn't spending their whole income on basic necessities (Derek Yach, 2000, p. 207). This campaign by tobacco companies was extremely successful and in the year 2000, 71% of the world's tobacco consumption was in developing countries (Derek Yach, 2000, p. 206).

The continued prosperity of the tobacco industry can be attributed to three main factors. Firstly, the industry's widespread support from a "*corporate elite, drawn from a wide spectrum of prestigious institutions, interlinking the corporate and the noncorporate worlds*" (Sklair, 2002, p. 153). The tobacco industry's deep connections with the TCC protects them from much of the anti-smoking movements. From a political stance, the power of the tobacco industry over state governments is apparent in two main ways; firstly, since government officials depend on votes for the continuation of their power, they don't wish to oppose smoking out of fear of losing the votes of smokers, and secondly tobacco TNCs have a lot of money and huge lobbying power, deterring anyone with political ambition to be too outwardly against smoking if they are interested in any of their financial support in the future (Derek Yach, 2000). The second main contributor to the continued success of tobacco is its branding and discrete advertising. Despite widespread bans on advertising tobacco, the cigarette has become somewhat of a cultural icon thanks to its constant representation in films, photographs, plays and on social media (Sklair, 2002, p. 154). The mere brand name of many cigarettes, such as Marlboro, are internationally recognised, and smoking these internationally branded cigarettes has become a status symbol in developing countries (Derek Yach, 2000, p. 208). The continued representation and popularity of smoking in media demonstrates states lack of power when it comes to cultural capital. It also demonstrates the power of the entertainment industry, an industry that is deeply intertwined with TNCs and that states have very little influence over. The third way in which the tobacco industry has continued to profit is through their use of the Investor to State Dispute Settlement (ISDS), which will be discussed in the next paragraphs (George, 2015).

<u>The international investment arbitration system:</u>

The most overt way in which TNCs are more powerful than states in global trade is through the international investment arbitration system. The international investment arbitration system was originally created in order to introduce a neutral dispute settlement system for the protection of the investments of corporations *"from perceived bias and corruption within national courts"* (Olivet, 2012, p. 7). Today however, it has become apparent that the arbitration industry benefits from the perpetual protection of corporate interests at the expense of states and their citizens and is not neutral (Olivet, 2012, p. 7). In the past two decades, we have experienced a huge rise in international investment treaties that include Investor to State Dispute Settlement (ISDS) clauses (George, 2015, p. 60). International investment treaties are agreements made between states and corperations that lay out the rights of investors within the regions mentioned in the treaties. The inclusion of an ISDS clause, which is now an almost universal feature in most investment agreements, within these treaties allows for companies to sue governments if they make any policy or regulatory changes that might diminish said company's profits or future profits. This includes changes made for the protection of the publics' health or the environment (Nichols, 2018, p. 244). It is important to note that governments do not have the right to sue companies if their products or services harm or diminish the health or wellbeing of their citizens or their environment. Additionally, even in the uncommon event of a government winning an investment arbitration case, it is frequently required that tribunal and administrative costs are split between both parties and each must pay for their individual legal fees. These hefty legal bills are paid with taxpayers' money, usually increasing the tax burden on citizens as well as weaken the environmental and social regulation within the state while lawyers, no matter the outcome of the trial, walk away with a large check (Olivet, 2012, p. 15).

Unfortunately, like in most other court cases, it isn't necessarily the party who is morally right that wins the case, it is the party with the better lawyer. Lawyers are extremely expensive and the huge budgets of TNCs provide them with access to the best lawyers, buying themselves a huge advantage over governments. This surge in the use of the international investment arbitration system has created a close-knit, multimillion-dollar arbitration industry specialised in defending corporations in these private tribunals, dominated by an exclusive group of elite law firms and arbitrators in the Global North (Schill, 2009). Many of the financial interests of this elite group are deeply interconnected with that of TNCs, raising serious concern about their motivations in court (Olivet, 2012, p. 7). Due to these interconnected interests, these investment lawyers are motivated to encourage governments to sign investment treaties littered with legal loopholes, that are vaguely worded and using language that allows for the maximal opportunities for litigation (Olivet, 2012, p. 8). Additionally, since arbitrator and lawyers are usually paid by the hour and by case, they are encouraged to seek out and initiate as many opportunities to sue countries as possible, especially small and weak governments or governments in crisis (Olivet, 2012, p. 8). This further demonstrates the vulnerability of governments to the power of TNCs.

Considering the unjust and exploitative nature of investment agreements, one might question why a state would partake in such an agreement in the first place. International investment agreements play a key role in attracting foreign investments. They increase the cost effectiveness and efficiency of the use of the foreign investment in the host country thanks to increased economic integration (George, 2015, p. 59). Many countries are motivated to sign these agreements out of fear of exclusion from market access, or being surpassed economically by other countries who are willing to make such agreements (George, 2015, p. 59). Attracting foreign investments is especially important to the economic growth of developing countries. Out of financial necessity, developing countries are often coerced into signing unfavourable investment agreements, making them more vulnerable to arbitration (Zhan, 2009). Additionally, it is important to note that, especially in the case of developed countries but this is also true of developing countries, the individuals that sign these treaties are usually part of, or have deep connections to, the previously mentioned TCCs, and stand to personally gain from these agreements.

Regulatory chills:

One of the most damaging effects of these investment agreements are the regulatory chills they create within states. Due to the large financial costs of being sued by a TNC, sometimes costing governments hundreds of millions, many of them are choosing not to make policy or regulatory changes in order to avoid potential future litigation. This phenomenon is referred to as a 'regulatory chill' (Brown, 2013). Regulatory chills are most damaging in regards to environmental and health regulations. The environmental and health sectors are dynamic sectors, with new information constantly being discovered. Investment agreements prevent policy and law from adapting to these new discoveries (Brown, 2013). The tobacco industry has taken advantage of this phenomena on repeated occasion, and suing, or threatening to sue governments for trying to introduce updated anti-smoking laws, preventing states from protecting their citizens (Thomson, 2018). This prevention is an outright violation of state sovereignty and threatens the autonomy of policy-makers, preventing them from governing for the good of the public and forced into prioritising corporations.

The Transatlantic Trade and Investment Partnership (TTIP):

A terrifying possibility of how state power and sovereignty might be further eroded and surpassed by the power of TNCs is through the TTIP. The TTIP, made public in 2013, is a joint free trade agreement between the EU and the USA with the supposed aim of harmonising and integrating business regulations and standards in order to facilitate trade between the two parties (George, 2015, p. 61). If approved and ratified according to the plan of TNCs, regulations "*covering safety and standards for food, pharmaceuticals, chemicals, GMOs, hydraulic fracturation ('fracking') and so on"* (George, 2015, p. 61) will be changed and controlled by corporations. All of these changes are being pushed by the corporate world in order to maximise TNC profits. Considering the profit-oriented goal of this partnership, it is conceivable that the TTIP would also implements restrictions on the proposals of financial taxation, preventing the improvement of labour or wage laws as well as blocking the government's ability to impose climate protection measures by, for example, preventing the passing of higher pollution standards (George, 2015, p. 61). If passed, the TTIP would control the two wealthiest areas of the world, directly affecting the lives of over 800 million people, while indirectly affecting the global population (George, 2015, p. 65). It would no longer be governments regulating business, business would be regulating governments. The TCC and their TNCs are not unbeatable however, and across Europe the adoption of the TTIP has generated widespread opposition. This opposition was highest in Germany, where, following the Fukushima disaster, the government decided to phase out nuclear power, leading energy company Vattenfall, to sue the German government for €4.7 billion, costing German taxpayers millions of euros (Nichols, 2019, p. 139). European opposition reached such a level that in 2014 the EU suspended TTIP negotiations with the US, promising a three-month public consultation (George, 2015). Governments have proven that they can no longer be depended upon to fulfil their duty and put the good of their citizens before all else. It is only through widespread and vocal opposition by the public that we can hope to be protected from corporate exploitation.

Conclusion:

In a capitalist society that is driven by the constant chase of infinite profit and economic growth, money equates to power, and the actors with the most money are usually those with the most power. Up until the turn into the 21st century, states had been the actors with the most control over, and access to, money.

Therefore, states had traditionally been the actors with the most power in global trade. This changed however due to globalisation and the internet. Globalisation and the internet lead to an explosion of consumerism due to the immense increase in exposure to new products and the facilitated global access they created. This increase in consumerism caused corporations to start making huge profits, eventually reaching the levels of today, with many TNCs wielding more economic power than most countries (Singh, 2000). This immense economic power, paired with the deeply interconnected interests of TNCs and the TCCs at the head of them, both financially and politically, has allowed for their power to surpass that of states. Additionally, a significant way in which TNCs are more powerful than states is that they are responsible for no one and they do not depend upon the democratic elections of citizens for the continuation of their power. This essay has explored some of the ways in which TNCs are more powerful than states, as well as ways in which they work with states and politicians to further their power and control. In developing countries TNC have used their wealth to positioned themselves as key actors in the economic development of states, creating economic dependence upon them. These dependencies allow for TNCs to control essential sectors of the economy and the government. In regards to developed and developing countries, TNCs have used the international legal system to achieve their goals, legally preventing attempt by states at making any changes in policy or law that might hinder their profits. Unless citizens begin to strongly pushback against the states allowance of their exploitation by TNCs, corporation will continue to accumulate more wealth and power while states are turned into their submissive puppets.

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