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# Global Egalitarianism as a Practice-Independent Ideal

by

Merten Reglitz

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*To my Parents*



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**Declaration:**

*I hereby declare that the dissertation 'Global Egalitarianism as a Practice-Independent Ideal', submitted in partial fulfilment of the requirements for the degree of Doctorate of Philosophy, represents my own work and has not been previously submitted to this or any other institution for any degree, diploma or other qualification.*



## Abstract

In this thesis I defend the principle of global egalitarianism. According to this idea most of the existing detrimental inequalities in this world are morally objectionable. As detrimental inequalities I understand those that are not to the benefit of the worst off people and that can be non-wastefully removed.

To begin with, I consider various justifications of the idea that only those detrimental inequalities that occur within one and the same state are morally objectionable. I identify Thomas Nagel's approach as the most promising defence of this traditional position. However, I also show that Nagel's argument does not even justify the elimination of detrimental inequalities (that is to say: egalitarian duties of justice) within states. A discussion of the concept of political legitimacy rather shows that egalitarian justice is not a necessary condition of the justifiability of the exercise of coercive political power.

I, then, consider other, more Rawlsian approaches to the question of detrimental inequalities. These views appear more plausible than Nagel's position and argue that egalitarian duties also arise in certain international contexts. But also these more global theories of distributive justice suffer from shortcomings. Since they make the application of duties of justice dependent on the existence of social practices they cannot adequately account for the justified interests of non-participants that are affected by these practices.

The counter-intuitive implications of practice-dependent theories lead me to investigate the plausibility of a theory that does not limit justice to existing practices and that argues for the inherent value of equality. This theory is global egalitarianism. I defend global egalitarianism by debilitating three objections that opponents of this idea frequently (but often not clearly) present in the relevant literature.

Finally I also address two particular objections to the idea that global egalitarian duties are institutionalizable with the help of coercive global authorities.



## Introduction

This thesis is an essay on the issue of the blatant socio-economic and political inequality that exists in our world and is to the detriment of innumerable people. Gopal Sreenivasan points out that,

In Malawi, for example, life expectancy at birth is a mere 41 years for men and 42 years for women. Twenty-seven countries, all but one in sub-Saharan Africa, have both male and female life expectancies at birth (at or) below 50 years. By contrast, global life expectancy at birth, combining male and female rates, is 66.75 years. In the USA, life expectancy at birth is considerably higher still, nearly *double* that in Malawi, at 75 years for men and 80 years for women.<sup>1</sup>

Ultimately, the thesis is a defence of the idea of global egalitarianism, conceived as a moral answer to this problem. John Rawls counts some of the worst effects of the existing inequality, such as oppression, poverty, and starvation, among the “great evils of human history.”<sup>2</sup> And Thomas Pogge points out that due to this inequality “there are surely enough poverty deaths for a full-sized crime against humanity: as many every seven months as perished in the Nazi death camps.”<sup>3</sup> As these remarks make clear, it seems implausible to argue that the existing global inequality is not an urgent moral issue. Thus, in the face of this problem we need to think about and identify our moral responsibilities and stringent duties of justice.

The philosophical discussion of the moral problem of global inequality began comparatively recently. However, in particular within the last ten years there has been a real outburst of newly produced literature on this topic. The

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<sup>1</sup> Gopal Sreenivasan, “Health and Justice in our Non-Ideal World”, *Politics, Philosophy & Economics* 6(2) (2007): pp. 218-236, pp. 218, 219.

<sup>2</sup> John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), pp. 6, 7.

<sup>3</sup> Thomas Pogge, *World Poverty and Human Rights. Cosmopolitan Responsibilities and Reforms* (Cambridge: Polity Press, 2002), p. 25.

authors of these texts approach the issue from various moral points of view. It is the aim of this thesis to (1) clarify the philosophical treatment of the subject of global inequality and to (2) provide positive arguments for a particular response to it. The argument developed here also endeavours to be ecumenical. Thus, in addressing all those who think that inequality matters morally at least sometimes, the discussion takes into account ideas from the currently dominant moral perspectives (for example, deontology and consequentialism). Furthermore, it takes into consideration the work of some opponents of global egalitarianism such as John Rawls, Thomas Nagel, Ronald Dworkin as well as proponents of globally ambitious views, including those of Derek Parfit, Thomas Christiano, and Aaron James. At the outset, then, it may be helpful to orientate the reader by locating my overall argument in the context of the (by now) quite extensive literature on global inequality and distributive justice.

In their introduction to the subject of global inequality and justice Christoph Broszies and Henning Hahn helpfully distinguish three stages of the development of philosophical thought on the topics of global inequality and justice.<sup>4</sup> In the first stage, philosophers like Charles Beitz argued for an extension of the central principles of Rawls's *A Theory of Justice* (the 'Liberty Principle' and the 'Difference Principle') to the global sphere.<sup>5</sup> During the second stage of the discussion, philosophers like Thomas Nagel<sup>6</sup> focused on Rawls's idea that "justice is the first virtue of social institutions."<sup>7</sup> In the wake of

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<sup>4</sup> See Christoph Broszies, Henning Hahn (eds.), *Globale Gerechtigkeit. Schlüsseltexte zur Debatte zwischen Partikularismus und Kosmopolitismus* (Frankfurt am Main: Suhrkamp, 2010), pp. 18-26.

<sup>5</sup> See Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979), also Thomas Pogge, *Realizing Rawls* (Ithaca: Cornell University Press, 1989).

<sup>6</sup> See Thomas Nagel, "The Problem of Global Justice", *Philosophy & Public Affairs* 33(2) (2005): pp. 113-147, also John Rawls, *The Law of Peoples*; Thomas Pogge, *World Poverty and Human Rights*.

<sup>7</sup> John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).

this ‘institutional turn’ the debate centred around the theoretical question of what exactly generates duties of justice to eliminate inequality and the empirical question whether the features that trigger such duties are also present outside of states. After this, the debate about global inequality developed into a third stage. Here philosophers like James, Darrel Moellendorf, and Allen Buchanan<sup>8</sup> discuss the issue in light of the insight that there are structures of economic and political power that are unlike nation states but that nonetheless have harmful effects on people around the globe. Their argument is that these transnational effects of power also require justification and can lead to duties of distributive justice – despite not fitting with Rawls’s understanding of his *Theory of Justice* as applicable only within self-contained societies.<sup>9</sup>

The argument advanced in this thesis starts out discussing a number of approaches of the second stage (Chapter One) that focus on the discontinuities between states and the international area. As the argument progresses it moves on to the third stage that Broszies and Hahn describe (Chapter Three). However, the second part of the thesis will also go beyond this third stage and not only debate existing economic and political power relations and their effects on people. Rather, on the basis of Thomas Christiano’s conception of egalitarianism,<sup>10</sup> the thesis will finally defend the idea of the global importance of the value of equality independently from any existing practices and

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<sup>8</sup> See Aaron James, “Distributive Justice without Sovereign Rule: The Case of Trade”, *Social Theory and Practice* 31(4) (2005): pp. 533-559; Darrel Moellendorf, *Global Inequality Matters* (Basingstoke: Palgrave MacMillan, 2009); Allen Buchanan, “Reciprocal Legitimation: Reframing the Problem of International Legitimacy”, *Politics, Philosophy & Economics* 10(1) (2011): pp. 5-19.

<sup>9</sup> See John Rawls, *A Theory of Justice*, p. 7.

<sup>10</sup> Thomas Christiano, *The Constitution of Equality. Democratic Authority and its Limits* (Oxford: Oxford University Press, 2008); Thomas Christiano, Will Braynen, “Inequality, Injustice, and Levelling Down”, *Ratio* 21(4) (2008): pp. 392-420.



institutional structures (Chapter Four). The thesis will therefore explore a fourth stage in the philosophical discussion of global inequality and justice.

### **Outlines of the Chapters**

The discussion in the first chapter identifies what is generally morally problematic or objectionable about the globally existing inequality. It will then turn toward the question why until recently political philosophers traditionally have thought that only harmful inequalities that occur within states trigger duties of justice to eliminate them. As an answer to this question a first view about distributive justice emerges. This (a) ‘actual practice view of justice’ is advocated by a number of philosophers that consider egalitarian concern as inseparably bound up with certain authoritative institutions that only exist within states. The work of Nagel is widely considered to be one of the main instances of this perspective, and is therefore analysed in detail.

In the second chapter the core element of Nagel’s view, the assumed necessary connection between the legitimate exercise of coercive authority and equal concern, will be tested and finally rejected. In this way the argument of this thesis undermines the plausibility of the first position on distributive justice and global inequality that Nagel champions.

In the third chapter the discussion will focus on a second understanding of distributive justice that grounds the idea of the value of distributive equality not on the justification of authority but on Rawls’s notion of the need to justify the effects of human practices. As a result, this (b) ‘reformed practice view of distributive justice’ extends the circumstances in which existing inequality should be considered unjust, or morally objectionable, beyond the borders of nation states. My discussion will show that also this second interpretation of

egalitarian distributive justice is flawed since it has counterintuitive implications. At this point, the analysis of the first two views about distribution will suggest that a coherent notion of distributive justice needs to assume a third perspective, namely a (c) 'practice-independent view of justice'.

The argument advanced in the fourth chapter, then, constitutes an endorsement of a particular version of the practice-independent perspective, (d) the idea of global egalitarianism. To partially defend the idea I attempt to undermine three crucial objections to global egalitarianism. The thought here is that, since it can be shown that none of these counter-arguments is valid, the supporters of perspectives (a) and (b) have failed to establish any reasons for thinking that global egalitarianism is implausible. What we are instead left with is the positive argument of the moral equality of people, an ideal that proponents of all interpretations of distributive justice accept. This ideal justifies the idea that harmful inequalities among people on this planet are generally morally objectionable.

In the fifth chapter the discussion will finally turn to some objections about the feasibility of institutionalizing global egalitarianism. Here I will consider and dismiss two arguments that claim that global institutions are not desirable or feasible and that therefore global justice is not institutionalizable. One of these objections is based on a particular understanding of democracy, the other one derives from the Kantian theory of political authority and law. What the debate will demonstrate is that, contrary to what these two objections assert, global egalitarianism can demand of us to create more global authoritative institutions that have the purpose of promoting global equality and justice.



# Chapter I. Global Inequalities and Authority-based Egalitarian Duties

“We do not live in a just world,”<sup>11</sup> Thomas Nagel candidly asserts. One of the most dramatic features of this world is the fact that human beings have severely unequal shares of the things that make their lives go well. But are these inequalities on a global scale unjust? In this chapter we will explore Nagel’s own position on this matter according to which only domestic socio-economic inequalities are objectionable from the perspective of justice. His argument has been very influential on recent philosophical debates about global distributive justice. It is therefore a natural starting point for our investigation of the question of how we can make our world more just.

## 1. Identifying the Subject Matter

Political philosophers argue about what types of inequalities are of relevance from the perspective of justice – whether they are best understood in terms of, for instance, primary social goods, resources, capabilities, or opportunities for welfare.<sup>12</sup> John Rawls describes those inequalities in terms of “things which it is supposed a rational man wants whatever else he wants.”<sup>13</sup> We all want the goods that give us the opportunity to lead worthwhile lives and maybe even to find

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<sup>11</sup> Thomas Nagel, “The Problem of Global Justice”, *Philosophy & Public Affairs* 33(2) (2005): pp. 113-147, p. 113.

<sup>12</sup> Discussions of these metrics can be found in respectively John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), Ronald Dworkin, *Sovereign Virtue. The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press, 2000), Martha C. Nussbaum, *Women and Human Development. The Capabilities Approach* (New York: Cambridge University Press, 2000), Gerald A. Cohen, “On the Currency of Egalitarian Justice”, *Ethics* 99(4) (1989): pp. 906-944, and Harry Brighouse, Ingrid Robeyns (eds.), *Measuring Justice: Primary Goods and Capabilities* (New York: Cambridge University Press, 2010).

<sup>13</sup> John Rawls, *ibid.*, p. 79.

happiness. This is why no one can be completely indifferent to how these goods are distributed among us. According to the First Article of the United Nations' Universal Declaration of Human Rights "all human beings are born free and equal in dignity and rights."<sup>14</sup> The idea of *universal equal moral status* of all persons stated in this Article expresses the basic premise of various discourses in contemporary political and moral philosophy. And it is this idea that renders the question of what share of goods each of us has access to a matter of justice. As moral beings that possess equal worth we all are owed a certain treatment and respect by others. The way available beneficial resources are divided among us is a central part of this treatment for the following reasons.

Of the many goods that are conducive to our lives a special importance inheres in economic resources like wealth and income. As Nagel explains, such resources normally impact on other things we have reasons to want.<sup>15</sup> This is hardly surprising given the very purpose of money as a medium that enables us to compare, exchange, and influence all kinds of material and immaterial goods. We can understand the powerful force material resources have on human lives when we consider how they affect the distribution of two exemplary fundamental goods. Political influence, for example, is something we all have reasons to deeply care about since it allows us to determine the rules of the communities we live in (and therefore the ways we can live our lives) and the aims we collectively strive for. But even in democratic political association, in which everyone has nominally one vote in the collective decision-making processes, unequal economic possessions can lead to differences in effective political sway. In this regard, Ronald Dworkin points out that, without

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<sup>14</sup> <http://www.un.org/en/documents/udhr/index.shtml> (Retrieved from the World Wide Web on May, 2nd, 2011).

<sup>15</sup> See Thomas Nagel, "Equality" in Matthew Clayton, Andrew Williams (eds.), *The Ideal of Equality* (Basingstoke: Palgrave MacMillan, 2002): pp. 60-80, p. 60.

countervailing measures, in a liberal society “any group’s political success is so directly related to the sheer magnitude of its expenditures, particularly on television and radio, that this factor dwarfs others in accounting for political success.”<sup>16</sup> This means that, if we have reasons to care about having political influence, we also should be concerned with the distribution of economic resources or the attenuation of their impact on the political process.

A second exemplary good that is affected by how many material resources we can utilize is health. Health is of fundamental importance to us since it is the condition for most other opportunities in our lives. Our health, though, does not alone depend on how much medical care we can afford. According to Norman Daniels, what is even more important for our physical well-being is the social environment we live in. However, it is a well-established fact that the quality of these social determinants is to a large extent dependent on the material resources we can invest in them. For this reason, Daniels is convinced that “inequality is strongly associated with population mortality and life expectancy.”<sup>17</sup> Therefore, if we care about our health we ought to also take a strong interest in how the resources that shape our social environment are distributed among us.

With a view to the two goods of political influence and health we might thus say that, while it is true that material resources cannot guarantee happiness, they certainly can be enormously beneficial to our efforts to achieve well-being. This explains the importance of the moral idea of *distributive justice* that is concerned with the question how institutions ought to allocate resources among

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<sup>16</sup> Ronald Dworkin, *Sovereign Virtue*, pp. 366, 367.

<sup>17</sup> Norman Daniels, “Justice, Health, and Healthcare”, *The American Journal of Bioethics* 1(2) (2001): pp. 2-16, p. 7.

people.<sup>18</sup> According to John Rawls, duties of justice are particularly stringent and forceful moral requirements that apply to social institutions.<sup>19</sup> They differ from other moral requirements applicable to institutions (such as, for instance, charity and humanitarian assistance) in two ways.

Firstly, we have duties of justice because there are persons who have regarding enforceable entitlements that trigger these duties. Secondly, failure to respect these entitlements by not fulfilling duties of justice can have severe consequences for an institution. For our discussion this difference is crucial in the following way: if helping foreigners who suffer from the effects of inequality is a moral duty and not a duty of justice of a political institution, then these foreigners lack enforceable entitlements. In this case, an institution that fails to deliver such aid simply does not act as virtuously as it might. However, if helping suffering foreigners were to be a duty of justice, an institution that does not provide such aid is disrespecting enforceable entitlements. It thus may jeopardize its own moral justification for exercising political power. The institution is, then, subject to a much stronger and deeper sort of criticism than would be appropriate were it merely not to be as virtuous as possible.

Any common-sense meaning of justice contains at least two basic ideas which, following Thomas Christiano, we can call the principle of propriety and the generic principle of justice.<sup>20</sup> The principle of propriety tells us to ensure “that each person has what is due to him or what it is fitting that that person have. What is due a person is grounded in some quality of the person that gives

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<sup>18</sup> See John Rawls, *Justice as Fairness. A Restatement* (Cambridge, MA: Harvard University Press, 2001), pp. 50-52.

<sup>19</sup> See John Rawls, *A Theory of Justice*, p. 3.

<sup>20</sup> See Thomas Christiano, *The Constitution of Equality. Democratic Authority and its Limits* (Oxford: Oxford University Press, 2008), p. 20

the person a certain status or merit.”<sup>21</sup> The generic principle in addition demands that we “treat relevantly like cases alike and relevantly unlike cases unlike.”<sup>22</sup> However, it would be hasty to infer from these two principles that everyone who accepts the thought that all human beings have equal moral standing also holds that all people must be treated the same when it comes to the distribution of those goods that are conducive to our lives. By itself, the notion of the universal moral equality of people does not explain which inequalities among persons are morally objectionable from the standpoint of justice.

The kind of inequalities among people that are thought by many philosophers to be problematic from the standpoint of justice are inequalities that are *detrimental* to the less advantaged. According to Rawls, inequalities are detrimental when they are not mutually advantageous for all relevant people.<sup>23</sup> Rawls’s famous Difference Principle tell us that, to be just, “social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and office open to all.”<sup>24</sup> The idea behind this notion of ‘detrimental’ is that everyone should benefit from the goods our institutions have to distribute but that we should not pursue an equal distribution of these goods at all costs. Furthermore, though, for Rawls, Nagel, and many other egalitarian philosophers our social institutions must treat their subjects equally. This centrally includes that our state must see to it that (as far as possible) as free and morally equal persons all of the citizens benefit equally from the fruits of their social cooperation.

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<sup>21</sup> Thomas Christiano, *The Constitution of Equality*, p. 20. The idea of justice as giving people what is due to them is associated with Aristotle, see his *Nicomachean Ethics* (Cambridge: Cambridge University Press, 2000), ch. 5.

<sup>22</sup> Thomas Christiano, *ibid.*, p. 20.

<sup>23</sup> See John Rawls, *A Theory of Justice*, p. 65-73.

<sup>24</sup> John Rawls, *ibid.*, p. 53.



Importantly, the disparities Rawls has in mind are of a *relative* kind since their effects occur not only when we absolutely lack certain goods. Rather their negative ramifications already take effect when we have less of the things that benefit human life relative to others.<sup>25</sup> However, as a matter of fact, many of these detrimental inequalities could be beneficially removed – if people were inclined to do so. As *beneficial* we have to understand efforts that do not simply level interpersonal inequalities in the distribution of goods. Rather, beneficially removing disparities means that such removal actually benefits (at least) the ones who were previously disadvantaged by the inequalities. This is the reason why modern democracies have established social security systems whose function it is to redistribute resources among their members so that they benefit everyone more equally. The social state is based on the ideas that (a) all human beings possess equal moral worth and (b) that as individuals we are not self-sufficient human beings.<sup>26</sup> As citizens we are therefore members of an interdependent community and have to contribute to every other member's opportunities and well-being. However, the question is to what extent such beneficial redistribution is a matter of justice.

## **2. The Traditional View: Distributive Justice as an Agent-Relative Obligation**

Interpersonal detrimental inequalities with respect to social goods (like, for instance, political influence and social status) and economic resources are found within all societies. However, in our world the disparities in the distribution of socio-economic goods that exist across societies are often larger than the ones

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<sup>25</sup> Thus, subsequently the term 'detrimental inequalities' will be used in this thesis to denote relative inequalities among persons.

<sup>26</sup> See John Rawls, *A Theory of Justice*, p. 13.

that occur within one country. These inter-societal inequalities can be expressed in staggering figures. Daniels, for instance, tells us that

Life expectancy in Swaziland is half that in Japan. A child unfortunate enough to be born in Angola has seventy-three times as great a chance of dying before age five as a child born in Norway. A mother giving birth in southern sub-Saharan Africa has 100 times as great a chance of dying in labor as one birthing in an industrialized country.<sup>27</sup>

Remarkably, though, until quite recently most philosophers have thought that only those inequalities that occur within the same society are a problem from the moral perspective. For them an equal distribution of goods only matters among those who are members in the same political community, which in our world primarily regards states. According to this position, as co-citizens we might owe it to non-members to have our state ensure that non-members do not suffer from absolute inequality, that is to say: that they do have enough to survive or even live a decent life.

However, since these duties are thought to be moral duties (and not duties of justice) and do not have to aim at achieving an equal distribution of benefits among co-citizens and non-citizens, they are morally less demanding and controversial.<sup>28</sup> The general idea motivating this traditional view is that, as members of a democratic community, we determine the policies according to which socio-economic goods are distributed among us. We are thus responsible for this allocation in a way that we are not for the distribution of valuable things outside our society. Consequently, if I happen to be born in Germany it is *not unjust* that my life has (in general) the potential to go a lot better than the life of

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<sup>27</sup> Normal Daniels, *Just Health. Meeting Health Needs Fairly* (New York: Cambridge University Press, 2008), p. 333.

<sup>28</sup> Instances of a defence of this position include John Rawls's *A Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), David Miller's *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), Michael Blake's "Distributive Justice, State Coercion, and Autonomy", *Philosophy & Public Affairs* 30(3) (2002): pp. 257-296, and arguably Thomas Nagel's "The Problem of Global Justice."

someone born in Swaziland due to the different levels of affluence that prevail in these two societies. Our world (for the most part) still functions according to this rationale.

However, there is an obvious problem with this perspective. It is a further crucial and widely shared idea among philosophers that morally arbitrary factors (such as a person's gender, skin colour, talents or social origin) are not supposed to determine what opportunities we have within our political community. By '*morally arbitrary*' we should understand those facts that are not reasons for something else. With respect to the distribution of goods that are beneficial to the lives of persons, all aspects are morally arbitrary which can influence this distribution but that no one can be thought to be entitled to. Rawls for this reason states that "there is no more reason to permit the distribution of income and wealth to be settled by the distribution of natural assets than by historical and social fortune."<sup>29</sup> These aspects constitute what Dworkin calls "brute luck"<sup>30</sup> since we cannot choose them or how they affect our chances in life.

However, our citizenship certainly is also a morally arbitrary fact about us and part of the brute luck we face. So, if we believe with Dworkin that we should bear the costs of our choices, but not be the victim of the circumstances we find ourselves in, the current status quo in the distribution of goods on the planet is puzzling. Given that states differ so greatly in wealth and that we (normally) do not choose our nationality it is surprising that philosophers traditionally have thought that detrimental inequalities occurring outside of political communities do not generate duties of justice for the members of these communities. In this

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<sup>29</sup> John Rawls, *A Theory of Justice*, p. 64.

<sup>30</sup> Ronald Dworkin, *Sovereign Virtue*, p. 73.

sense, the inequalities among two societies that detrimentally affect people can give only rise to moral, humanitarian duties, but not do duties of justice to achieve a more equal distribution of goods. Thus, given the arbitrariness of the natural distribution of natural resources and our citizenship, we need to look for a justification of the traditionally assumed moral difference between intra-societal and extra-societal inequalities. This first chapter is dedicated to scrutinising justifications various philosophers have suggested for this presumed moral difference.

It seems that, if we cannot find a justification for why distributive justice should end at the borders of our country, this distinction would be as repugnant as other forms of unsubstantiated discrimination (like racism, sexism, or nepotism). We have to ask why our citizenship should be allowed to have such huge effects on our life chances while other arbitrary factors are not supposed to matter. Nagel, as a prominent supporter of the traditional view, offers the following justification for the distinction between domestic and international or global distributive inequalities:

My relation of co-membership in the system of international trade with the Brazilian who grows my coffee or the Philippine worker who assembles my computer is *weaker* than my relation of co-membership in U.S. society with the Californian who picks my lettuce or the New Yorker who irons my shirts.<sup>31</sup>

But in what morally relevant sense are our ties of co-membership in states stronger than the relations we entertain to outsiders? In order to explain this morally relevant difference philosophers have highlighted certain features of modern states. These characteristics, they argue, are absent in the international sphere. They then go on to take these dissimilarities to justify a normative

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<sup>31</sup> Thomas Nagel, "The Problem of Global Justice", p. 141 (emphasis added).

distinction between our co-citizens and foreigners. On this view, the supposed morally relevant features of states are therefore necessary and sufficient conditions of the application of distributive justice.

It is not a novel or modern philosophical idea to differentiate between the domestic sphere of political community and what lies beyond its borders with respect to justice. However, what has to be a modern strategy (given the relatively recent appearance of the nation state in human history) is to base this difference on certain features that are particular to states. This becomes clear when we compare the argument from state characteristics to Aristotle's justification of the distinction between domestic and extra-communal obligations of justice. As Fred Miller explains, for Aristotle it is "the widely different circumstances, different populations with different aptitudes and different resources and geographical settings"<sup>32</sup> that made necessary a discontinuity in our thinking about what justice requires. While contemporary philosophers attempt different justifications they agree with Aristotle on the scope of justice: obligations of justice do not generalise from our own political community to people who are not our fellow members.

It is helpful to think about the emphasized characteristics of states as to provide people with *agent-relative reasons* for action. Agent-relative reasons are reasons that are characterized "in terms of a sort of back-reference to the person for whom the consideration is a reason."<sup>33</sup> This is to say that these reasons do not apply to just everyone but only to specific persons in particular positions. As an example, we can think of the responsibilities a parent has

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<sup>32</sup> Fred D. Miller, *Nature, Justice, and Rights in Aristotle's Politics* (Oxford: Clarendon Press, 1995), p. 77.

<sup>33</sup> Ridge, Michael, "Reasons for Action: Agent-Neutral vs. Agent-Relative", *The Stanford Encyclopedia of Philosophy (Fall 2008 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2008/entries/reasons-agent>.

toward her child. She has these special responsibilities by virtue of the relation she stands in with her child. And it is the lack of a similar relation to her neighbour's child that explains why she does not have the same obligations toward the latter's child.<sup>34</sup> Different relationships (for instance family, friends, neighbour, co-citizen) in this way generate different responsibilities for the participants and these obligations normally are the stronger the closer the relationship among them is. Agent-relative reasons can become what Thomas Scanlon calls *generic reasons* when we abstract from particular people. Generic reasons are those that we can think of as applying to all persons, irrespective of their other morally relevant individual characteristics. While generic reasons are still relational reasons they derive from an abstraction of particular relationships. As such they are "reasons that we can see that people have in virtue of their situation, characterized in general terms."<sup>35</sup>

*Agent-neutral reasons*, in contrast, are independent from relations among people and derive their normative force rather from values and considerations that are not tied to particular persons. An instance of an agent-neutral reason is the ban on unjustifiable injuries to others. Such obligations of non-interference are duties that virtually everyone agrees we owe to all persons regardless of their personal ties. But according to the traditional perspective we do not owe it to all people to contribute to their quality of life with our resources. On this view, such redistributive obligations are taken to be agent-relative obligations we only have toward people we stand in a certain relationship with. Thus, on the traditional view membership in certain political associations (like states) is seen as a

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<sup>34</sup> Of course she might adopt her neighbour's child, for instance in the case of the latter's death, and this would change her relation and accordingly her obligations toward this child.

<sup>35</sup> Thomas Scanlon, *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1998), p. 204.

necessary, agent-relative reason for distributive duties of justice. Traditional theories are thus properly classified as *associational conceptions of justice*.

### **3. Blake's and Sangiovanni's Failed Accounts of Associative Justice**

The features highlighted by philosophers that are supposed to establish membership in states as a necessary, agent-relative condition of egalitarian distributive justice generally consist of two components. These writers, firstly, aim to single out an empirical aspect that is particular to the domestic sphere of states. This empirical aspect is then, secondly, taken to justify the thesis that duties of distributive justice can only occur within states. Obviously such justification attempts are unsuccessful if either the premise or the conclusion fails.

Michael Blake has suggested that the characteristic that is exclusive to states, and thus limits the scope of distributive justice, is the fact that the state coerces its citizens.<sup>36</sup> To defend this conclusion, Blake argues that autonomy cannot be curtailed without good reasons. For Blake, being an autonomous agent means that we are “part authors of [our own] lives; the autonomous person is able to develop and pursue self-chosen goals and relationships.”<sup>37</sup> Otherwise, he explains, a state would merely coerce and dominate its citizens by sheer threats of punishment as is the case in despotic regimes.<sup>38</sup> On the other hand, though, Blake is aware that we all require a coercive system enforced by the state in order to realize this very autonomy.<sup>39</sup> Thus, in this situation a conflict arises

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<sup>36</sup> See Michael Blake, “Distributive Justice, State Coercion, and Autonomy”, *Philosophy & Public Affairs* 30(3) (2001): pp. 257-296.

<sup>37</sup> Michael Blake, *ibid.*, p. 267.

<sup>38</sup> See Michael Blake, *ibid.*, p. 272.

<sup>39</sup> See Michael Blake, *ibid.*, p. 281.

from our need for the coercive force of the state and the simultaneous limitation of our autonomy by this coercion. For Blake there is but one solution of this conflict: since “the legal system coercively defines what resources flow to which activity [we need to justify this system to all it coerces through their] hypothetical consent.”<sup>40</sup> However, the only justification that seems acceptable to all coerced by the state is that the system aims to establish “material equality”<sup>41</sup> among its subjects. This is Blake’s key normative claim. In addition, however, he is convinced that “only the sorts of coercion practiced by the state are likely to be justified through an appeal to distributive shares.”<sup>42</sup> What he has in mind here is a state’s legal system that “defines how we may hold, transfer, and enjoy our property and our entitlements.”<sup>43</sup> We can, thus, identify the existence of a coercive legal order and property regime as Blake’s necessary and sufficient condition for the applicability of principles of distributive justice.<sup>44</sup> To him the redistribution of goods is of instrumental importance for the justification of the coercively enforced rules governing our society. Since Blake thinks that neither suchlike rules nor a similar form of enforcement exists at the international level he believes he has shown that distributive obligations of justice only arise within states.

However, both Blake’s empirical and normative claims have received scathing criticism. Christiano, for instance, argues that Blake has not provided a solid argument “for the idea that hypothetical consent will not be forthcoming

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<sup>40</sup> Michael Blake, “Distributive Justice, State Coercion, and Autonomy”, p. 282.

<sup>41</sup> Michael Blake, *ibid.*, p. 284.

<sup>42</sup> Michael Blake, *ibid.*, p. 280.

<sup>43</sup> Michael Blake, *ibid.*, p. 281.

<sup>44</sup> Blake’s account has the additional component that he regards cases of absolute deprivation as generating stringent claims of justice to help as well. He advocates a global sufficiency standard with respect to these absolute forms of inequality - which is more than some advocates of the traditional view are willing to concede (see Michael Blake, *ibid.*, p. 259). However, detrimental inequalities, for the reasons explained, in his opinion can only become matters of distributive justice within states.



unless a set of highly ambitious distributive principles are put into place.”<sup>45</sup> As citizens, we could instead be willing to accept other offers than distributive equality in return for accepting our government’s claim to our obedience.<sup>46</sup> We might, for example, be risk-loving people who prefer societal arrangements that guarantee only minimal means of subsistence but also facilitate numerous opportunities for lottery-like distributions of wealth. Blake’s appeal to hypothetical consent does not substantiate his contention that people would demand a redistribution of goods as a justification for being coerced by the state.

What is worse, though, is that, as Arash Abizadeh points out, “Blake’s empirical premise [...] that no on-going state coercion exists at the international level”<sup>47</sup> is clearly untenable. When we look at what is going on in the world it is plain to see that states coercively limit the options and entitlements of outsiders. They do this by keeping outsiders from entering their territory and enjoying the benefits of associational membership. The immigration restrictions of states thereby not only deny non-members a share of the goods they dispose of but also often practically condemn these outsiders to live in circumstances in which they can hardly realize their agency. Thus, Blake’s claim, that the lack of an international private property law limits distributive concern to the domestic level, seems to put the cart before the horse. The dire straits many people live in at present might lead to thinking that private law should instead be reformed to

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<sup>45</sup> Thomas Christiano, “Immigration, Political Community, and Cosmopolitanism”, *San Diego Law Review* 45(4) (2008): pp. 933-961, p. 939.

<sup>46</sup> In Chapter Two of this thesis we will actually see that, due to importance of the services our state provides for us, as citizens we should be willing to accept its authority if it does not guarantee us equal distributive shares.

<sup>47</sup> Arash Abizadeh, “Cooperation, Pervasive Impact, and Coercion: On the Scope (not Site) of Distributive Justice”, *Philosophy & Public Affairs* 35(4) (2007): pp. 318-358, p. 348.

alleviate their situation. However, Blake's empirical premise is undone by yet another observation.

The international sphere is not exactly a coercion-free zone itself. International institutions like the United Nations, World Trade Organization, International Monetary Fund, and the World Bank are known for coercively interfering with the political self-determination and important interests of states and their members. However, we do not normally think that, for example, since the UN bars some countries from constructing atomic bombs it therefore owes distributive concern to the citizens of the countries so coerced. The criterion of state coercion consequently appears to be *over-inclusive* in that it cannot be used to distinguish domestic coercion from coercion in other domains in the way Blake intends. In light of these criticisms, the empirical and normative components of Blake's view both appear to be implausible. His argument therefore does not successfully explain why there is a moral difference between detrimental inequalities inside and outside states.

Andrea Sangiovanni takes a different approach to explaining the moral asymmetry of domestic and trans-national detrimental inequalities.<sup>48</sup> For Sangiovanni, what makes distributive obligations necessary is the fact that we depend on each other for the generation of the basic collective goods we all need.<sup>49</sup> However, to him the relevant reciprocal cooperation that requires that we share a part of our resources with others exists only within states. Sangiovanni's fundamental thesis about distributive justice does not derive from a concern that everyone can lead a good life. Rather, "the basis [of equal concern] is fair, rather than narrowly self-interested, reciprocity: others are

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<sup>48</sup> See Andrea Sangiovanni, "Global Justice, Reciprocity, and the State", *Philosophy & Public Affairs* 35(1) (2007): pp. 3-39.

<sup>49</sup> Andrea Sangiovanni, *ibid.*, p. 22.

owed a fair return for what they have given you, just as you are owed a fair return for what you have given others.”<sup>50</sup> Thus, for Sangiovanni the idea that we owe it to each other to care about how well we are doing in life is a “relational ideal.”<sup>51</sup> As such it applies only “among those who support and maintain the state’s capacity to provide the basic collective goods necessary to protect us from physical attack and to maintain and reproduce a stable system of rights and entitlements.”<sup>52</sup> Internationally, Sangiovanni admits, people also cooperate with each other to produce things that are beneficial to them. Nonetheless, he thinks that global forms of cooperation are unlike domestic reciprocal schemes for the following reason: only the latter, but not the former, has as its aim this “reproduction of a legal-political authority that is ultimately responsible for protecting us from physical attack and sustaining a stable system of property rights and entitlements.”<sup>53</sup>

However, the thought that a common politically-organized reciprocal scheme of cooperation is a necessary condition of distributive justice has its own problems. For one thing, we can question Sangiovanni’s normative conclusion that the need to reciprocate implies that cooperating citizens have to accept that they are under obligations of distributive justice at all. Richard Arneson warns that reciprocity, taken by itself, is merely a strategic idea.<sup>54</sup> If I treat you fairly because you have been treating me fairly this can be as much a calculation about how to best assure future benefits for me as it can be a moral notion. Arneson therefore thinks that we first have to determine what reciprocity properly has to

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<sup>50</sup> Andrea Sangiovanni, “Global Justice, Reciprocity, and the State”, 26.

<sup>51</sup> Andrea Sangiovanni, *ibid.*, p. 19.

<sup>52</sup> Andrea Sangiovanni, *ibid.*, pp. 19, 20.

<sup>53</sup> Andrea Sangiovanni, *ibid.*, p. 34.

<sup>54</sup> See Richard Arneson, “Do Patriotic Ties Limit Global Justice Duties?” in Gillian Brock, Darrel Moellendorf, *Current Debates in Global Justice* (Dordrecht: Springer, 2005): pp. 127 -150, pp. 135, 136.

consist in. This is to say that we first need to know what morality demands of us to know in what form we have to reciprocate. In this regard the mere fact that we cooperate with our co-citizens for mutual benefit provides insufficient evidence what the demands of morality are. We could view this cooperation as a mere self-interested coordination game. We might, then, think that it is enough to not deceive each other when cooperating. We do not therefore also have to think that we owe it to each other as a matter of justice to share our resources to make sure everyone has the goods to lead a worthwhile life. If you are starving or do not have enough to contribute to our joint project but I am on my own less productive I might be willing to help you out so as to increase simply my own benefits by keeping you in business.<sup>55</sup>

What is worse, though, is that, secondly, Sangiovanni's normative conclusion seems problematically *under-inclusive*: we normally think that people who lack the capacity to contribute to collective efforts are still owed equal respect and protection from various forms of inequality they might suffer from. Children, disabled people, sick people, and old people are often unable to add significantly to the production of collective goods. However, it is precisely their unequal position and handicaps – and not their contributions – that give us reasons to think they have a claim-right to our help. Concerning these cases Sangiovanni remarks that non-contributing persons have claims of justice to distributive shares that “derive from their equal worth and dignity as human beings.”<sup>56</sup> It seems, though, that Sangiovanni is not entitled to make this argument on the basis of the general justification of distributive equality that he gives. His explanation of this notion, we saw, rests on the idea that people contribute to

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<sup>55</sup> For a similar critique see Robert Nozick's objection to Rawls's principle of fair play in Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 93-95.

<sup>56</sup> Andrea Sangiovanni, “Global Justice, Reciprocity, and the State”, p. 31.

the generation of public goods. Rather, the fact that unproductive persons, too, need certain goods to live points at some more universal grounds of the importance of distributive justice that Sangiovanni's account is unable to draw on.

But even if we would agree with Sangiovanni that necessary reciprocal cooperation requires an equal return as a matter of justice, his empirical premise is highly questionable. As various philosophers have pointed out there already exist international institutions (including, for instance, the Bretton-Woods institutions) that fulfil important services for the citizens of states. From the perspective of their creators, the modern nation states, the services these institutions perform do not seem to be merely optional but rather indispensable.<sup>57</sup> Although Sangiovanni denies that the existing supra-national institutions create "the kind of interdependence that I have argued triggers obligations of justice as reciprocity"<sup>58</sup>, the fact that these institutions also have coercive power and enforce rules and property regimes (through, for instance, the much criticized TRIPS agreement) is a serious problem for his view. The coercive quality of certain global institution makes it questionable whether Sangiovanni's criterion of reciprocity can determine which inequalities are morally objectionable and which are not. It either restricts the sphere in which detrimental inequalities matter too much. In this case, we saw that the result of applying the criterion of reciprocity as the sole reason for distributive justice is an exclusion of non-contributing persons. If more loosely interpreted the criterion of reciprocity is incapable of rendering the domestic sphere of states as morally special.

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<sup>57</sup> See Joshua Cohen, Charles Sabel, "Extra Rempublicam, Nulla Justitia?", *Philosophy & Public Affairs* 34(2) (2006): pp. 147-175, pp. 164-166.

<sup>58</sup> Andrea Sangiovanni, "Global Justice, Reciprocity, and the State", p. 34.

#### 4. Thomas Nagel's Three Conditions of Egalitarian Justice

In his article "The Problem of Global Justice"<sup>59</sup> Thomas Nagel suggests a more complex and promising explanation of why detrimental inequalities are only concerns of egalitarian justice within states. Here Nagel argues that the necessary and sufficient condition providing the agent-relative reason for distributive equality is the existence of a common coercive authority of a certain kind. He names three major requirements for the application of egalitarian justice:

(1) Nagel's first claim is an instrumental one. He argues that for egalitarian justice to be possible there needs to be a coercive authority to enforce it in the first place. Although this is an instrumental condition and not an inherent justification of distributive justice, Nagel attaches great importance to this constraint that is historically associated in particular with Thomas Hobbes's arguments in his *Leviathan*.<sup>60</sup> This is because Nagel thinks that:

Without the enabling condition of sovereignty to confer stability on just institutions, individuals however morally motivated can only fall back on pure aspiration for justice that has no practical expression, apart from the willingness to support such institutions should they become possible.<sup>61</sup>

However, it is important to understand that in making this observation Nagel – unlike Hobbes – is concerned with the special issue of distributive justice. He does not mean to say that due to the lack of a common international authority no issues of justice can arise beyond the state at all. To him "standards governing the justification and conduct of war and standards that define the

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<sup>59</sup> Thomas Nagel, "The Problem of Global Justice".

<sup>60</sup> Thomas Hobbes, *Leviathan (Oxford World's Classics)* (Oxford: Oxford University Press, 2008).

<sup>61</sup> Thomas Nagel, *ibid.*, p. 116.

most basic of human rights”<sup>62</sup> are integral parts of what justice requires internationally.

With respect to the more particular question of the distribution of goods, though, Nagel is convinced that the lack of a common global authority renders the administration of such a distribution impossible. To support this idea Nagel emphasizes the special capacities of the state to determine and realize justice, to which Immanuel Kant, for example, calls attention. Kant argues that the crucial function of sovereign government (which confers on it its special moral role and status) does not only consist in its administration of justice. For Kant we also need the government to determine what people’s just entitlements requiring protection are in the first place.<sup>63</sup> Understood in this way the enabling role of the governing authority seems indeed crucial to the realization of any form of distributive justice.

(2) However, Nagel’s explanation why a common coercive authority in the form of the state is the necessary and sufficient condition of egalitarian justice is not exhausted by his claim about enabling conditions. After all, if this would be all there is to the application of distributive justice it seems that any form of a common coercive authority (including hierarchically organized sport clubs, and membership in regulated markets) would generate obligations for people to redistribute resources among each other.<sup>64</sup>

According to Nagel, though, we can have an obligation to care about the inequalities that others suffer from only if we all are *non-voluntarily* members in the same association that affects our highest-order interests. And in Nagel’s

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<sup>62</sup> Thomas Nagel, “The Problem of Global Justice”, p. 114.

<sup>63</sup> See Immanuel Kant, *The Metaphysics of Morals* (trans. Mary Gregor) (Cambridge: Cambridge University Press, 1996), p. 87. This idea will concern us in greater detail in Chapter Five.

<sup>64</sup> In his article Sangiovanni mistakenly attributes a version of this position to Nagel, see Andrea Sangiovanni, “Global Justice, Reciprocity, and the State”, p. 16.

view the only sort of association that fulfils this condition is the state. This is his crucial empirical claim. Unlike clubs or other associations in which membership is optional we cannot merely opt out of our society as “the system in which we arbitrarily find ourselves.”<sup>65</sup> But non-voluntary associations like the state, we saw in Nagel’s first argument about government as an enabling condition, require coercive structures to work. Given that the services provided by the state regard our fundamental interests and that membership in such communities is non-optional we can see why the question how our association is run is of the utmost importance to us. The essential nature of the basic structure a state secures also constitutes Rawls’s motivation for formulating his principles of justice.<sup>66</sup> In his explanation of what justice requires of the authority that governs a non-voluntary association Nagel appeals to Dworkin who thinks that:

A political community that exercises dominion over its own citizens, and demands from them allegiance and obedience to its laws, must take up an impartial, objective attitude toward them all [...]. Equal concern [is hence] the special and indispensable virtue of sovereigns.<sup>67</sup>

In Nagel’s view, non-voluntary membership in common associations is therefore an important reason to think that distributive inequality is unjust. Nagel and Dworkin think that it is the role of the state, and not of individual members, to discharge the collective responsibilities of distributive concern. Consequently, a result of their accounts is that the government has to care about detrimental inequalities among its members in a way that it does not with respect to disparities that exist among others who are not its non-voluntary subjects.

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<sup>65</sup> Thomas Nagel, “The Problem of Global Justice”, p. 128.

<sup>66</sup> See John Rawls, *A Theory of Justice*, pp. 7-11.

<sup>67</sup> Ronald Dworkin, *Sovereign Virtue*, p. 6.



(3) However, in Nagel's view coercive authority and non-voluntary membership are as such not sufficient to generate obligations of egalitarian justice. As a third condition of the application of duties to reduce detrimental inequalities he points at "a special involvement of agency or the will that is inseparable from membership in a political society."<sup>68</sup> This is to say that for Nagel not just any kind of coercively ruled non-voluntary association qualifies as a trigger of egalitarian obligations.

We can consider the plausibility of this claim if we bear in mind what sorts of regimes would otherwise have to be thought to generate duties to redistribute goods. We do not think that, for instance, the rule of a tyrant is the reason why his subjects should have duties to support each other. Likewise, racist regimes normally deny exactly that such concern is due to all its subjects rather than embracing the thought that they owe egalitarian justice to all their subjects in return for their rule. This is to say that on Nagel's account only certain forms of collective authorities governing non-voluntary associations generate duties of distributive justice and concern for detrimental inequalities. To him the spectrum of such authorities, though, is not limited to democratic regimes. Instead, in Nagel's opinion "a broad interpretation of what it is for a society to be governed in the name of its members"<sup>69</sup> leads him to think that colonial rulers and regimes of military occupation as well can generate duties of egalitarian justice among its subjects. But such non-democratic regimes only do so if they fulfil strict requirements with respect to their governing of its subjects. A regime of this kind has to purport to not

Rule by force alone. It [must be] providing and enforcing a system of law that those subject to it are expected to uphold as participants,

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<sup>68</sup> Thomas Nagel, "The Problem of Global Justice", p. 128.

<sup>69</sup> Thomas Nagel, *ibid.*, p. 129.

and which is intended to serve their interests even if they are not its legislators. Since their normative engagement is required, there is a sense in which it is being imposed in their name.<sup>70</sup>

In summary, the formal structure of Nagel's argument for considering common coercive authority as the agent-relative reason that generates the necessary and sufficient condition for the application of egalitarian justice looks like this:

- (1) If people are by birth non-voluntarily members of a political association,  
and
- (2) If the only way for people to ensure the production of indispensable collective goods is to entrust a common governing authority with coercive power, and
- (3) If therefore these people owe obedience to this authority and are not merely liable to being coerced by the latter,
- (4) Only then do duties of egalitarian justice arise among the members of this association. It is, then, the job of their ruling authority to pursue a reduction of the detrimental inequalities that exist among the members. Egalitarian justice must apply in these circumstances since "what is objectionable is that we should be fellow participants in a collective enterprise of coercively imposed legal and political institutions that generates [...] arbitrary inequalities."<sup>71</sup>

At this point, we can summarize certain aspects of Nagel's argument for the state as the exclusive domain in which detrimental inequalities can become matters of justice. To Nagel equal distributive concern is not an independent or universal value. Like Blake and Sangiovanni, Nagel thinks that this obligation is

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<sup>70</sup> Thomas Nagel, "The Problem of Global Justice", p. 129.

<sup>71</sup> Thomas Nagel, *ibid.*, p. 128.

of an associative nature. However, Nagel's conception of egalitarian justice is more complex than both Blake's and Sangiovanni's in that it differs from theirs in crucial respects. *Pace* Blake, Nagel does not argue that just any form of coercion generates distributive duties. For Nagel only collective coercive authorities over non-voluntary associations that involve the will of their members possess this feature. *Pace* Sangiovanni, Nagel does not think that the reciprocal production of collective goods is sufficient to trigger obligations to reduce detrimental inequalities since "a sovereign state is not just a cooperative enterprise for mutual advantage. The societal rules determining its basic structure are coercively imposed: it is not a voluntary association."<sup>72</sup>

### **5. Rebutting Liberal Scepticism about Distributive Obligations**

There are liberal philosophers who are more cautious than Rawls, Nagel, and Dworkin about the possibility of deriving much more than formal egalitarian duties from associative accounts of egalitarian justice.

The minimalist idea of political liberalism these sceptics advocate could be thought to raise a problem for our discussion about Nagel's and other egalitarians' associative conceptions of justice. The worry here is that minimalist liberals could be right to claim that, while Nagel might be right to limit the scope of distributive obligations to particular political communities, he might be too optimistic about the case for substantive egalitarian duties within such communities. And this could affect our investigation of which globally occurring detrimental inequalities are morally objectionable. If it is true that (as the minimalists hold) very little that can be said in favour of egalitarian duties prior to public debates within political communities, this seems also to undermine

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<sup>72</sup> Thomas Nagel, "The Problem of Global Justice", p. 128.

many substantive egalitarian duties to remove globally existing detrimental disparities. It is therefore necessary to understand how egalitarian liberals react to minimalist liberal scepticism.

Gerald F. Gaus, who advocates the minimalist liberal position, places great emphasis on the core liberal idea that “no one [...] has a basic moral right to impose norms on another through legislation.”<sup>73</sup> It is indeed an indispensable element of any contemporary moral or political theory to start from the assumption that, from a moral perspective, we are all equally important and that no one has a natural right to rule others. It took mankind almost all of human history to arrive at this premise although it is still not universally endorsed. But among political philosophers it is now common sense that, *without further justification*, none of us is naturally entitled to an ascription of greater moral worth and powers to rule others than anyone else; thus, philosophers reject, for instance, the idea of a divine right of kings. Yet, Rawls and Gaus hold that what can function as a moral justification of an authoritative scheme of common rules is that the latter meet a “certain *publicity condition*,”<sup>74</sup> which means that rules must be publicly justifiable and recognized.<sup>75</sup>

However, people disagree about most things and, in particular, on the question what justice demands. As Rawls points out, “the fact of reasonable pluralism [is] the inevitable result of the powers of human reason at work within enduring free institutions.”<sup>76</sup> Gaus belongs to a group of liberals who think that, due to this unavoidable disagreement, it is not possible to specify

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<sup>73</sup> Gerald F. Gaus, *Justificatory Liberalism. An Essay on Epistemology and Political Theory* (Oxford: Oxford University Press, 1996), p. 250.

<sup>74</sup> Gerald F. Gaus, “On Justifying the Moral Rights of the Moderns: A Case of Old Wine in New Bottles”, *Social Philosophy & Policy* 24(1) (2007): pp. 84-119, p. 110.

<sup>75</sup> On Rawls’s notion of the publicity condition see John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), pp. 66-71.

<sup>76</sup> John Rawls, *ibid.*, p. 47.

more than a minimally demanding conception of distributive justice prior to a public debate about what our common rules should be. Gaus basically disagrees with Rawls and other egalitarians “about what [of the idea of justice] has been victoriously justified [that is: sufficiently well supported<sup>77</sup>] and what remains inconclusive.”<sup>78</sup> A comparison between Rawls’s and Gaus’s position on the social conditions relevant for realizing basic liberties can exemplify this disagreement.

In *A Theory of Justice* Rawls argues that any plausible conception of justice cannot rely exclusively on formal rights and duties (such as everyone’s equal standing with respect to the law or formal equality of opportunity). He rather thinks that if we are to ensure the “fair value of [basic] liberties”<sup>79</sup> we also have to take into account and mitigate certain factors that affect people’s exercise of basic liberal rights (factors, we saw at the outset of this chapter, such as health and wealth). Rawls’s solution to this problem is his idea of ‘democratic equality’ that combines the ‘principle of fair equality of opportunity’ and the ‘Difference Principle’.<sup>80</sup> Both principles demand the guarantee of the material conditions to make use of basic liberties and, for this purpose, a substantive redistribution of material resources.

However, Gaus is not convinced that such extensive egalitarian duties are justifiable. This is because, on the one hand, he is sceptical about normative conceptions of interpersonal equality that bypass public discussion and call for substantive socio-economic redistributive duties of justice.<sup>81</sup> To Gaus, Rawls’s

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<sup>77</sup> See Gerald F. Gaus, *Justificatory Liberalism*, pp. 150, 151.

<sup>78</sup> Gerald F. Gaus, *ibid.*, p. 162.

<sup>79</sup> John Rawls, *A Theory of Justice*, p. 197.

<sup>80</sup> See John Rawls, *ibid.*, pp. 65-78.

<sup>81</sup> Gaus argues that the “sort of conflict of principles – between victoriously justified liberal principles and the prima facie demands of political equality – is precisely the sort of dispute on which conclusive answers simply are not forthcoming: It is the type of dispute that is definitive of the political. Because the justification of political inequality arising from these diffuse background conditions invokes contentious claims about liberal principles, such

Difference Principle is one such principle that rests on a contentious conception of equality. This conception is in turn based on particular and contentious notions of moral arbitrariness and moral personhood. Rawls makes the case for his Difference Principle by arguing that

The higher expectations of those better situated are just if and only if they work as part of a scheme which improves the expectations of the least advantaged members of society. The intuitive idea is that the social order is not to establish and secure the more attractive prospects of those better off unless doing so is to the advantage of those less fortunate.<sup>82</sup>

For Gaus, what is of crucial importance for Rawls's principle are normative assumptions of debatable cogency. So, the first reason why minimalist liberals like Gaus are sceptical about the possibility of justifying egalitarian duties is that they have their own opinion about what normative philosophical reasoning can achieve. While Rawls holds that such normative argument can lead us to plausible interpretations of what equality, arbitrariness, and personhood can mean independently of public discussion, Gaus believes that this way of arguing cannot establish many details of what these terms have to encompass prior to a public debate about them.

On the other hand, though, Gaus thinks that there are justified liberal ideas (such as the right to private property and freedom of speech<sup>83</sup>) which constrain the pursuit of substantive egalitarian objectives. Gaus, for instance disagrees with Rawls about the status of private property. To Rawls, no definite notion or form of private property is part of the constitutional essentials or "the first principles of justice."<sup>84</sup> Gaus, on the other hand, is convinced that we can

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justification involves political issues, and must be resolved by political institutions" (Gerald F. Gaus, *Justificatory Liberalism*, p. 256).

<sup>82</sup> John Rawls, *A Theory of Justice*, p. 65.

<sup>83</sup> See Gerald F. Gaus, *ibid.*, pp. 166, 167, 256, 257.

<sup>84</sup> See John Rawls, *Political Liberalism*, p. 338.

philosophically justify a quite robust idea of private property that limits what distributive justice can demand.<sup>85</sup> Consequently, for Gaus,

The equality of moral persons is their equality qua free moral persons: it is not a substantive principle of moral equality but a presupposition of the practice of moral justification. [...] This is a modest conception of moral equality.<sup>86</sup>

Egalitarians reply to liberal minimalism about distributive duties by drawing the following distinction. They agree, on the one hand, that the fact of reasonable disagreement makes it necessary to follow certain equality-respecting decision procedures when it comes to selecting and implementing collective rules. Egalitarians like Thomas Christiano think that

When there are pervasive disagreements about justice, [...] there is a way in which decisions can be made that treats each citizen publicly as an equal that nevertheless respects these disagreements. Democratic decision-making is the unique way to publicly embody equality in collective decision-making under the circumstances of pervasive conscientious disagreement in which we find ourselves.<sup>87</sup>

On the other hand, though, egalitarians disagree with minimalist liberals about the relevance of disagreement if this scepticism has the point of denying that we can identify more and less plausible conceptions of distributive justice. For Rawls, there is a family of traditional “reasonable comprehensive doctrines”<sup>88</sup> of justice that people can hold and that are combinable with a freestanding conception of public rules of justice. A freestanding conception is one that people can affirm without any reference to their more comprehensive views of what is good in life.<sup>89</sup>

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<sup>85</sup> See Gerald F. Gaus, *Justificatory Liberalism*, pp. 161, 162, 256, 257.

<sup>86</sup> Gerald F. Gaus, “On Justifying the Moral Rights of the Moderns: A Case of Old Wine in New Bottles”, p. 90.

<sup>87</sup> Thomas Christiano, *The Constitution of Equality*, pp. 75, 76. See also Rawls’s ‘liberal principle of legitimacy’ (John Rawls, *Political Liberalism*, p. 137).

<sup>88</sup> John Rawls, *ibid.*, p. 59.

<sup>89</sup> See John Rawls, *ibid.*, pp. 148-154.

Thus, since they constitute intelligible positions these notions of justice are morally inoffensive to us even if we do not agree with all their particulars.

However, the fact that there is a whole family of justifiably enforceable views about justice does not preclude us from reasoning about them and accepting one of them as the best or most reasonable one. Rawls, for instance, thinks of his own conception of justice as fairness (that rests on a combination of the principle of fair equality of opportunity and the Difference Principle) as the most plausible conception of a theory of justice. But since we can distinguish between the most reasonable, reasonable, and unreasonable conceptions, we can also criticize the results of democratic elections as not delivering the outcome that seems most plausible to us. We can therefore find ourselves in a situation in which we hold conception A of distributive justice to be the best one we know of. At the same time, though, the majority of our fellow citizens votes for implementing conception B, that is also a member of the family of reasonable views about justice. We therefore have reasons to accept this decision but we can criticize it and lobby for an alternative notion of justice. There is furthermore some conception C (that involves calls for racial discrimination or slavery) that it would not be justifiable to enforce even if the majority of our group would vote for it.

The point of this egalitarian response to reasonable disagreement is that, as philosophers – while we cannot forestall a public debate and selection about conceptions of justice – we can reason about which one is the best or most reasonable formulation of this concept. We therefore have to understand Rawls's, Dworkin's, and Nagel's formulations of egalitarian theories as their attempts to describe the best possible account of what



egalitarian justice has to encompass. If sceptical liberals want to criticize such conceptions they have to enter into a normative debate about what implications the moral equality of persons has for our thinking about *justice*, and not merely *legitimacy*. Recurrence to existing disagreement among people cannot serve them as a way to deny the possibility or relevance of determining what our distributive obligations are in light of globally existing inequalities.

## **6. The Core of the Associative Perspective: the Actual Practice View of Distributive Justice**

The most famous formulation of the egalitarian perspective is certainly Rawls's Difference Principle. According to this principle, most inequalities are detrimental and morally objectionable and require correction via a redistribution of resources within a society.

In his essay "The Diversity of Objections to Inequality",<sup>90</sup> Thomas Scanlon summarizes five different reasons that explain why it is important for us to ensure substantive interpersonal equality with respect to socio-economic goods, as he identifies them in the arguments of egalitarians like Rawls and Nagel. For Scanlon,

The elimination of inequalities may be required in order to:

- (1) Relieve suffering or severe deprivation
- (2) Prevent stigmatizing differences in status
- (3) Avoid unacceptable forms of power or domination

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<sup>90</sup> Thomas Scanlon, "The Diversity of Objections to Inequality" in Matthew Clayton, Andrew Williams (eds.), *The Ideal of Equality* (Basingstoke: Palgrave MacMillan, 2002): pp. 41-59.

(4) Preserve the equality of starting places which is required by procedural fairness.

In addition,

(5) Procedural fairness sometimes supports a case for equality of outcomes.<sup>91</sup>

However, the crucial characteristic of Nagel's view is the importance he attributes to existing institutions. Nagel describes the constitutive relationship he holds exists between actual institutions and obligations of egalitarian justice when he asserts that

Sovereign states are not merely instrumental for realizing the preinstitutional value of justice among human beings. Instead, their existence is precisely what gives the value of justice its application, by putting the fellow citizens of a sovereign state into a relation that they do not have with the rest of humanity, an institutional relation which must then be evaluated by the special standards of fairness and equality that fill out the content of justice.<sup>92</sup>

Since in his defence of egalitarian justice as an associational idea Nagel refers to Dworkin's claim about equal concern as the price to pay for ruling, it is instructive for us to take a look at Dworkin's own view of egalitarian duties.

Dworkin understands the idea of distributive justice as an "interpretive concept".<sup>93</sup> He argues that the obligation to display equal concern for the material situation and political choices of persons is not separable from the political communities in which these obligations are accepted. However, in contrast to other institutions that provide agent-relative reasons (like family or friendship) Dworkin emphasizes that political communities are not based on

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<sup>91</sup> Thomas Scanlon, "The Diversity of Objections to Inequality", p. 46.

<sup>92</sup> Thomas Nagel, "The Problem of Global Justice", p. 120.

<sup>93</sup> Ronald Dworkin, *Law's Empire* (Cambridge, MA: Harvard University Press, 1986), p. 197.

“emotional bonds”<sup>94</sup> or “a psychological property of some fixed number of the actual members.”<sup>95</sup> Rather political associations like the modern state in his view generate special obligations due to “certain attitudes”<sup>96</sup> that their members mutually take toward each other. Dworkin clarifies these attitudes by naming four features associative obligations like distributive equality must be thought to have by its members:

- (1) Associative obligations have to be understood as special in the sense that they do not apply to just anyone, for example by virtue of everyone’s common humanity.<sup>97</sup>
- (2) These obligations also have to be seen as personal so that each individual is thought to have these obligations towards all other members.<sup>98</sup>
- (3) They must furthermore consist in a general “concern for the well-being of others in the group.”<sup>99</sup>
- (4) And, finally, obligations of the associative kind have to be seen as giving reasons to make sure that the association’s policies show “equal concern”<sup>100</sup> for all members.

This is why Dworkin and Nagel think that distributive obligations presuppose a “shared history”<sup>101</sup> among people. For them “the question of communal obligation [like distributive justice] does not arise except for groups *defined by practice* as carrying such obligations.”<sup>102</sup> In their understanding, goals like the

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<sup>94</sup> Ronald Dworkin, *Law’s Empire*, p. 196.

<sup>95</sup> Ronald Dworkin, *ibid.*, p. 201.

<sup>96</sup> Ronald Dworkin, *ibid.*, p. 199.

<sup>97</sup> Ronald Dworkin, *ibid.*, p. 199.

<sup>98</sup> Ronald Dworkin, *ibid.*, p. 199.

<sup>99</sup> Ronald Dworkin, *ibid.*, p. 200.

<sup>100</sup> Ronald Dworkin, *ibid.*, p. 200.

<sup>101</sup> Ronald Dworkin, *ibid.*, p. 197.

<sup>102</sup> Ronald Dworkin, *ibid.*, p. 203, emphasis added.

elimination of harmful inequalities are not practice-independent or pre-communally fixed concepts that merely require implementation in a particular society. By the term *practice*, we can understand with Rawls “any form of activity specified by a system of rules which defines offices, roles, moves, penalties, defenses, and so on, and which gives the activity its structure.”<sup>103</sup> This is the reason why for philosophers like Nagel, Dworkin, Blake, and Sangiovanni, membership in a political community is not a morally arbitrary factor.

We certainly do not choose or deserve to be the member of a particular society. In any event, the modern nation states as the political communities we are organized in merely present contingent historical developments. But as members of such existing political communities we have to organize our communal life with the help of coercively enforced rules. And such coercive enforcement must be justifiable to the ones who are coerced if their status as free and equal persons is to be respected. But the only way to justify such coercion, Dworkin and Nagel agree, is for the coercing institution to “show equal concern for the fate of every person over whom it claims dominion,”<sup>104</sup> and such equal concern includes an equal distribution of goods. This is why Nagel holds that “justice is something we owe through our shared institutions only to those with whom we stand in a strong political relation.”<sup>105</sup> What Nagel adds to Dworkin’s approach is the claim that citizens are twice involved in the egalitarian justice-requiring coercion: once as authors and once as subjects.

Given the connection philosophers like Nagel, Dworkin, Blake, and Sangiovanni think exists between existing political structures and the

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<sup>103</sup> John Rawls, “Justice as Fairness” in John Rawls, *Collected Papers* (ed. Samuel Freeman) (Cambridge, MA: Harvard University Press, 1999): pp. 47-72, p. 47.

<sup>104</sup> Ronald Dworkin, *Justice for Hedgehogs* (Cambridge, MA: Harvard University Press, 2011), p. 2.

<sup>105</sup> Thomas Nagel, “The Problem of Global Justice”, p. 121.

application of egalitarian justice, their approaches can be properly be thought of as instances of an *actual practice view of distributive justice*. According to the latter, what justice demands and how far it extends depends on actual, existing social practices.<sup>106</sup> This consideration lies at the heart of all the associative theories we have canvassed so far. It is this idea Dworkin alludes to when he asserts that “we treat community as prior to justice and fairness in the sense that questions of justice and fairness are regarded as questions of what would be fair or just within a particular political group.”<sup>107</sup> Also for Gaus, the need for common political structures therefore warrants “a bias toward the actual.”<sup>108</sup> This bias is ultimately the reason why the theories we discussed limit the scope of egalitarian justice to the domestic sphere of states.

## **7. Nagel’s Pessimistic Outlook on Global Distributive Justice**

The feature about the state that Nagel highlights (that it is a community in which common moral rules have to be justified and enforced by a common authority) is a condition of distributive justice that cannot as easily be dismissed as the criteria offered by Blake and Sangiovanni. This is important to our investigation about which detrimental inequalities are morally objectionable since Nagel’s approach constrains our understanding of what justice can demand. His actual practice view of distributive justice has, for instance, far-

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<sup>106</sup> The actual practice view of distributive justice, thus, conforms to what Sangiovanni calls the ‘practice-dependent thesis’. According to this thesis, “the content, scope, and justification of a conception of justice depends on the structure and form of the practice that the conception is intended to govern” (Andrea Sangiovanni, “Justice and the Priority of Politics to Morality”, *The Journal of Political Philosophy* 16(2) (2008): pp. 137-164, p. 138). However, as we will see in Chapter Three, Sangiovanni’s distinction between practice-dependent and practice-independent theories of distributive justice is not fine-tuned enough to cover all aspects that philosophers have presented in favour of, as well as against, a limited scope of this idea.

<sup>107</sup> Ronald Dworkin, *Law’s Empire*, p. 208. Another philosopher who defends the actual practice view of distributive justice is Jon Mandle, see his “Coercion, Legitimacy, and Equality”, *Social Theory and Practice* 32(4) (2006): pp. 617-625.

<sup>108</sup> Gerald F. Gaus, “On Justifying the Moral Rights of the Moderns: A Case of Old Wine in New Bottles”, p. 110.

reaching implications with respect to trans-nationally occurring detrimental inequalities.

As we saw, Nagel thinks that “the kind of all-encompassing collective practice or institution that is capable of being just in the primary sense can only exist under sovereign government. [And that] it is only the operation of such a system that one can judge to be just or unjust.”<sup>109</sup> Consequently to him the distributive obligations members of one community can be thought to owe to persons outside their association are limited to “humanitarian duties.”<sup>110</sup> But for Nagel, this crucially also implies that states cannot be forced or reasonably required to establish international authorities that would generate duties to reduce detrimental international inequalities. Nagel is unambiguous about this point, which becomes clear with his assertion that “there is no obligation to enter into [an egalitarian justice-triggering] relation with those to whom we do not yet have it, thereby acquiring those obligations toward them.”<sup>111</sup> As Darrel Moellendorf puts it, Nagel “is denying *both* that the moral duties that exist in virtue of global poverty require reforming current international institutions or building new global ones *and* that any moral duties exist at all in virtue of deep global inequality.”<sup>112</sup> Nagel’s position is therefore similar to the one that has been attributed (for instance by Leif Wenar) to Rawls and his rejection of global egalitarian duties that he pronounces in his *Law of Peoples*.

Since “global citizens” cannot be presumed to view themselves as free and equal individuals who should relate fairly to each other across national boundaries, we cannot legitimately build coercive social institutions that assume that they do. Indeed such coercive institutions would be illegitimate even in a world populated only by

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<sup>109</sup> Thomas Nagel, “The Problem of Global Justice”, p. 116.

<sup>110</sup> Thomas Nagel, *ibid.*, p. 119.

<sup>111</sup> Thomas Nagel, *ibid.*, p. 121.

<sup>112</sup> Darrel Moellendorf, *Global Inequality Matters* (Basingstoke: Palgrave MacMillan, 2009), p. 29.

liberal peoples all of whom accepted justice as fairness, so long as in that world (as in our world) the public political culture does not emphasize that the members of different peoples ought to relate fairly to one other.<sup>113</sup>

While there certainly exists much on-going cooperation and various treaties among states, for Nagel these agreements are voluntary acquired obligations of states. This means that states would have to consent to taking on obligations to care about an equal distribution of goods beyond their own borders. On the actual practice view “there is a big difference between agreements or consensus among separate states committed to the advancement of their own interests and a binding procedure, based on some kind of collective authority, charged with securing the common good.”<sup>114</sup> To Nagel this is even true when it comes to combating collective global problems like global warming and free trade. Although all states would “benefit from increased international authority”<sup>115</sup> whose job it was to overcome such issues, on the actual practice view the creation of global authorities cannot be thought to be mandatory for states. Otherwise states would acquire “increased responsibilities”<sup>116</sup> that in his view need to be voluntarily acquired by the citizens of states.

Unsurprisingly, Nagel’s outlook on the distribution of what is good for humans in our world is quite a pessimistic one. He holds that there is a natural path from an “increase and deployment of power in the interests of those who hold it, followed by a gradual growth of pressure to make its exercise more just, and to free its organization from the historical legacy of the balance of forces

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<sup>113</sup> Leif Wenar, “Why Rawls is Not a Cosmopolitan Egalitarian” in Rex Martin, David A. Reidy, *Rawls’s Law of Peoples. A Realistic Utopia?* (Oxford: Blackwell Publishing Ltd., 2006): pp. 95- 113, p. 103.

<sup>114</sup> Thomas Nagel, “The Problem of Global Justice”, p. 145.

<sup>115</sup> Thomas Nagel, *ibid.*, p. 144.

<sup>116</sup> Thomas Nagel, *ibid.*, p. 145.

that went into its creation.”<sup>117</sup> This is accordingly also the development that we should expect the fight against global poverty and climate change to take. At this point, however, it seems advisable to step back from Nagel’s argumentation to contemplate the consequences of his view. To him the fact that 50,000 people die each day due to poverty-related causes<sup>118</sup> is a “disaster from a more broadly humanitarian point of view.”<sup>119</sup> However, we might want to be sceptical of Nagel’s undemanding view of what distributive justice requires of us in the face of the staggering inequalities that exist worldwide. We might instead want to assess the lack of a common coercive authority in the global sphere in another way. Why should we not think that, given that existing inequalities among people in this world are so harmful to many, this lack of authority constitutes itself a gross injustice?

### **8. Why We have to take Nagel’s Three Premises Seriously**

Since Nagel highlights important aspects about distributive justice and its connection with political authority we have to evaluate his argument that distributive justice is an agent-relative obligation exclusive to co-citizens of states. But even when we are willing to accept Nagel’s three premises as points of departure we have to note that they are not uncontroversial. In what follows we will briefly consider some objections other philosophers might want to raise against Nagel’s three conditions of the application of distributive principles of justice.

Sangiovanni, for instance, argues against Nagel’s claim that (1) distributive justice requires sovereign government as an enabling condition. He thinks, to

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<sup>117</sup> Thomas Nagel, “The Problem of Global Justice”, p. 146.

<sup>118</sup> See Thomas Pogge, *World Poverty and Human Rights. Cosmopolitan Responsibilities and Reforms* (Cambridge: Polity Press, 2002), p. 2.

<sup>119</sup> Thomas Nagel, *ibid.*, p. 118.



the contrary, that “coercion is not a necessary condition for equality as a demand of justice to apply.”<sup>120</sup> In his hypothetical scenario, in which an attack has disabled all coercive mechanisms of a state, Sangiovanni claims that the law would be upheld by the citizens of that state since it would “still earn most people’s respect”<sup>121</sup> if it would continue to safeguard essential public goods. This, however, is to assume that the production of collective goods does not require “the coordinated conduct of large numbers of people, which cannot be achieved without law backed up by a monopoly of force”<sup>122</sup> in the first place, a claim for which it is hard to find empirical evidence.

In a similar vein, Darrel Moellendorf refers to Rawls’s account of institutions (among which he counts *et al.* parliaments and markets but also promises, games and rituals<sup>123</sup>) to argue that “a public system of rules need be neither written nor legislated by an official body.”<sup>124</sup> To Moellendorf legal coercion is but one sort of arrangement that can force people to behave in certain ways. Referring to Karl Marx’s critique of political economy<sup>125</sup> he wants to raise awareness of the fact that social relations that involve unequally distributed bargaining power can also limit our options as agents and therefore require justification. While this observation is certainly correct it does not show that coercive authority is not necessary for the realization of distributive justice. It seems difficult for us to imagine any larger group of people that could coordinate their common efforts without some entity that guarantees compliance with the rules of cooperation. Rawls hence points out that “by

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<sup>120</sup> Andrea Sangiovanni, “Global Justice, Reciprocity, and the State”, p. 10.

<sup>121</sup> Andrea Sangiovanni, *ibid.*, p. 10.

<sup>122</sup> Thomas Nagel, “The Problem of Global Justice”, p. 115.

<sup>123</sup> See John Rawls, *A Theory of Justice*, p. 55.

<sup>124</sup> Darrel Moellendorf, *Global Inequality Matters*, p. 27.

<sup>125</sup> See Karl Marx, *Capital (Volume One): A Critique of Political Economy* (London: Penguin Classics, 1992).

enforcing a public system of penalties government removes the grounds for thinking that others are not complying with the rules. For this reason alone, a coercive sovereign is presumably always necessary.”<sup>126</sup>

Voluntarist philosophers like A. John Simmons argue against Nagel’s thought (2) that special obligations arise from membership in non-voluntary associations. Simmons holds that even in circumstances in which we are dependent on cooperating with each other we cannot be thought to have other than stringent negative obligations of non-harming to one another. As a voluntarist, he is convinced that we have to consent to duties that go beyond obligations of non-interference. Any more demanding duties would only “injure my natural freedom and so be impermissible.”<sup>127</sup>

However, we can get a sense of the importance that Nagel ascribes to the non-voluntary nature of certain communities if we consider Serena Olsaretti’s discussion of the concept of voluntariness.<sup>128</sup> Much of Nagel’s argument for limiting distributive justice to coercively organized associations like states hinges upon his claim that “an institution that one has no choice about joining must offer terms of membership that meet a higher standard [than the terms of voluntary associations].”<sup>129</sup> In her paper Olsaretti argues that, contrary to the assumptions of many voluntarist and libertarian philosophers, freedom is neither necessarily related to, nor sufficient for, voluntariness.<sup>130</sup> Rather, what she thinks is really at stake with respect to the voluntariness of a choice or

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<sup>126</sup> John Rawls, *A Theory of Justice*, p. 211.

<sup>127</sup> A. John Simmons, “Justification and Legitimacy” in A. John Simmons, *Justification and Legitimacy. Essays on Rights and Obligations* (Cambridge: Cambridge University Press, 2001): pp. 122-157, p. 139.

<sup>128</sup> See Serena Olsaretti, “Freedom, Force and Choice: Against the Rights-Based Definition of Voluntariness”, *The Journal of Political Philosophy* 6(1) (1998): pp. 53-78.

<sup>129</sup> Thomas Nagel, “The Problem of Global Justice”, p. 133.

<sup>130</sup> A (justly imprisoned) prisoner is still involuntarily confined to his cell and we can embrace an action as correct irrespectively whether we have or have no alternative to it, see Serena Olsaretti, *ibid.*, pp. 59, 72.

membership in an association is whether there exists an “acceptable alternative to it.”<sup>131</sup> In this sense David Hume famously criticizes John Locke’s idea that membership in society rests on tacit consent by employing the following metaphor. A passenger has been involuntarily taken aboard a ship and now is expected to follow the orders of its commander. Formally, the involuntary passenger still enjoys the freedom to leave the ship in mid-Ocean by jumping overboard. But this option cannot be seen as a viable alternative for him.<sup>132</sup> Thus, with Olsaretti we can understand that it is the “absence of an acceptable alternative [to membership]”<sup>133</sup> that characterizes states as non-voluntary associations.

However, there are reasons to think that the absence of acceptable alternatives does not make a choice problematic by itself. This becomes obvious when we consider a counter-example: if a society is struck by disaster and another one comes to its rescue, the latter’s aid does not appear to be morally problematic merely because the disaster-stricken people have no alternative to accepting the help offered.<sup>134</sup> This would seem to be true even if the aiding society would ask a reasonable price for the help they deliver. In contrast, let us assume I offer someone a very low price for their product and no one is willing to offer more for it. At the same time, though, the lack of alternative offers is the result of my manipulation of the conditions of the exchange. Now this lack of an alternative seems negatively to affect the fairness of our exchange. It consequently seems plausible that a lack of reasonable alternatives is morally

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<sup>131</sup> Serena Olsaretti, “Freedom, Force and Choice: Against the Rights-Based Definition of Voluntariness”, p. 71.

<sup>132</sup> See David Hume, “Of the Original Contract” in *Political Essays* (ed. K. Haakonssen) (Cambridge: Cambridge University Press, 1994): pp. 186-201, p. 193.

<sup>133</sup> Serena Olsaretti, *ibid.*, p. 72.

<sup>134</sup> Thanks to David Schmitz for emphasizing this. See also Tom Christiano, “Authority”, *The Stanford Encyclopedia of Philosophy (Fall 2008 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2008/entries/authority>.

problematic when the party benefitting from this situation also is responsible for this lack of alternatives. Within a democratic state, citizens who benefit from uneven arrangements are (as Nagel says) with their will implicated in the creation of this inequality. In such an association, everyone plays a part in determining how the state is run. But the state provides its citizens with important goods (like the rule of law, protection from outside aggression, social security systems, health care and educational systems, different available ways of life) that are vital for the citizens. It is therefore plain that the question of how the association is run is of fundamental importance to every member.<sup>135</sup>

Finally, Nagel assumes (3) that it would be objectionable if our non-voluntary association is designed by us in a way that produces arbitrary inequalities with respect to our material circumstances and political influence. This last premise, which is based on the equal moral worth of all persons, is Nagel's positive argument for the application of distributive equality within states. Egalitarian thinkers like Rawls, Nagel, and Dworkin attribute great importance to the thought that "no one deserves his place in the distribution of natural assets any more than he deserves his initial starting place in society."<sup>136</sup> If we accept their call for non-arbitrariness it becomes clear why substantive, and not merely formal, distributive equality is a crucial claim of egalitarian theories. Egalitarian theories of distributive justice are designed to address both the consequences of detrimental inequality and the arbitrariness of certain factors that influence the life prospects of persons. Nagel's demand for distributive equality is one expression of these two ideas.

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<sup>135</sup> For a more detailed discussion of this point see Thomas Christiano, *The Constitution of Equality*, pp. 63-66.

<sup>136</sup> John Rawls, *A Theory of Justice*, p. 274.

## **9. Rebutting a Possible Reply: Why Global Authorities do not act in the Name of their Subjects**

Nagel's three premises constitute the normative element of his claim that distributive justice is limited to the domestic context of states. As we just saw, we have good reasons to take the features of the state (that in his opinion give us agent-relative reasons for the application of distributive justice) seriously. As an example demonstrates the multi-faceted structure of Nagel's argument gives him various ways to defend his view and to object to non-associative views of justice.

Various commentators have criticized Nagel's empirical premise that states are the only coercive authorities that govern non-voluntary associations in the name of their subjects. These critics, such as, for example, Joshua Cohen and Charles Sabel, argue that existing international institutions like the World Bank, the World Trade Organisation (WTO) or the International Monetary Fund (IMF) are instances of such coercive authorities.<sup>137</sup> Others, like Peter Singer (who points to the WTO), hold that membership in some of these institutions is only formally a voluntary matter. Singer holds that once a state joins one of these organizations, exit is no longer a reasonable option.<sup>138</sup> According to these philosophers, Nagel's principle of distributive equality should apply not only to political communities like states. They argue, contrary to Nagel, that in our world certain economic associations also constitute non-voluntary and coercively imposed authoritative institutions. If sound, objections of this kind would show that Nagel would have to accept that his account of distributive

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<sup>137</sup> See Joshua Cohen, Charles Sabel, "Extra Rempublicam, Nulla Justitia?", pp. 164-169.

<sup>138</sup> See Peter Singer, *One World* (New Haven: Yale University Press, 2004), p. 71.

equality also applies to the participants in these economic associations.<sup>139</sup> We might then think that Nagel's argument suffers from the same empirical flaw as Blake's account, namely, that his criterion of the scope of distributive justice is either over-inclusive and identifies contexts of application in the global sphere as well. However, this would be a premature conclusion.

We saw that unlike the approaches of Blake and Sangiovanni, Nagel's argument builds on a connection of separate features of the state. He is well aware of the on-going international cooperation in this world.<sup>140</sup> Nagel thinks, though, that these global interactions do not exhibit the same quality or magnitude of interdependence that characterizes the relations of co-citizens of a particular state.<sup>141</sup> But what looks like a dispute about mere empirical facts between Nagel and his critics turns out to be a disagreement that has important normative implications. According to Nagel, what is missing in the global arena is the involuntary engagement of the will of people in a sovereign trans-national authority. Consequently, the role of states cannot be equated to that of international institutions. International institutions, Nagel claims,

Lack something [...] crucial for the application and implementation of standards of justice: They are not collectively enacted and coercively imposed in the name of all the individuals whose lives they affect; and they do not ask for the kind of authorization by individuals that carries with it a responsibility to treat all those individuals in some sense equally. Instead, they are set up by bargaining among mutually self-interested sovereign parties. International institutions act not in the name of individuals, but in the name of the states or state instruments and agencies that have created them. Hence the responsibility of those institutions toward individuals is filtered through the states that represent and bear primary responsibility for those individuals.<sup>142</sup>

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<sup>139</sup> See Darrel Moellendorf, "Equality of Opportunity Globalized?", *Canadian Journal of Law and Jurisprudence* 19(2) (2006): pp. 301-318; Aaron James, "Distributive Justice without Sovereign Rule: The Case of Trade", *Social Theory & Practice* 31(4) (2005): pp. 533-559.

<sup>140</sup> See Thomas Nagel, "The Problem of Global Justice", p. 137-140.

<sup>141</sup> See Thomas Nagel, *ibid.*, p. 137.

<sup>142</sup> Thomas Nagel, *ibid.*, p. 138.

Therefore, in his view international institutions – unlike states, military occupational forces, and colonial regimes – do not purport to ask for the authorization of those they coerce. All we can therefore ask from such global organizations in Nagel’s view is to respect the negative rights of the people they affect. He thinks of these negative rights as valid independently of people’s membership in political communities. Positive obligations like distributive justice, though, do not generalize beyond the individual state to these joint ventures of mutual advantage. For Nagel we are not authors of the rules that organize international cooperation and are therefore also not owed equal concern by whoever engages in these global enterprises.

Nagel’s other claim, that international institutions do not involve the will of those they coerce and do not purport to act in their name, has been rejected by Cohen and Sabel.<sup>143</sup> Cohen and Sabel argue that we should interpret, for example, cases in which the IMF forces debtor countries to open up their markets as instances of this institution acting in the name and interest of the citizens of this country. In such cases “IMF officials insist emphatically, and are indeed wholly convinced, that both sets of measures will enhance the freedom and well-being of citizens in the borrower country.”<sup>144</sup>

We might ask, though, if this apparent attitude of IMF officials is really sufficient for us to count the measures taken by the IMF in these cases as signs that they are acting in the name of the citizens of these counties. In Nobel laureate Joseph Stiglitz’s *Globalization and its Discontents*,<sup>145</sup> we learn that this attitude often was, at best, a case of self-delusion. Stiglitz explains that the IMF indeed “never wanted to harm the poor and believed that the policies it

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<sup>143</sup> See Joshua Cohen, Charles Sabel, “Extra Rempublicam, Nulla Justitia?”, pp. 166-168.

<sup>144</sup> See Joshua Cohen, Charles Sabel, *ibid.*, p. 167.

<sup>145</sup> Joseph Stiglitz, *Globalization and its Discontents* (London: Penguin Books, 2002).

advocated would eventually benefit them.”<sup>146</sup> The entire policies of the IMF during the last decades, though, were based on a “narrow ideological perspective – privatization was to be pursued rapidly.”<sup>147</sup> The economies of many debtor countries that were forced to accept the policies recommended by the IMF in exchange for financial help were badly damaged by this abrupt opening of their markets to foreign investments. More than anything else, the IMF in this way served “the interests of global finance”<sup>148</sup> - instead of helping those countries that asked it for financial aid. Stiglitz therefore believes that we can only see “the IMF as an institution pursuing policies that are in the interests of creditors.”<sup>149</sup> However, if Stiglitz is correct it is difficult to interpret the attitudes of IMF officials as proof that they acted in the name or interest of the citizens of the borrower countries when enforcing the IMF’s policies in those states.<sup>150</sup>

But even if global institutions like the IMF do not act in the name of those they coerce we might want to ask another important question. We might ask whether there exists a duty on the part of the states dominating global institutions to make these organizations fairer to all the individuals they

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<sup>146</sup> Joseph Stiglitz, *Globalization and its Discontents*, p. 208.

<sup>147</sup> Joseph Stiglitz, *ibid.*, p. 54.

<sup>148</sup> Joseph Stiglitz, *ibid.*, p. 207.

<sup>149</sup> Joseph Stiglitz, *ibid.*, p. 210.

<sup>150</sup> Nagel’s claim that colonial regimes acted in the name of their colonized subject certainly seems difficult to accept in light of the history of oppression and neglect that characterized the colonial history of Western countries. The rule of the post Second World War military regime in Germany, though, clearly seems to have been of a different quality than the imposition of policies in debtor states by the IMF or the rule of colonial regimes. Post World War German society was left without a government after the Nazi leadership had died in the war or was imprisoned for having ordered crimes against humanity. While some of the goals of the victorious allies aimed to keep Germany from arising as a future threat to other countries yet another time, they saved the occupied population from starvation and reinstalled the rule of (non-Nazi) law. Already for years after the catastrophe of the Second World War that was started by Germany the allies returned sovereign power to a German government. Nagel can therefore plausibly hold that after the end of the Second World War the allies ruled the occupied German population in its name and interest.



profoundly affect.<sup>151</sup> Nagel, though, thinks that global institutions like the IMF, WTO, and the UN are “voluntary associations [despite the] natural incentives”<sup>152</sup> to join and participate in them. While Nagel certainly would not want to allow for global institutions to enact policies that are harmful to people he clearly states that to him the distribution of the benefits these institutions generate is entirely subject to the bargaining process among their members. A demand for a harmonization of the bargaining powers of members, such as called for by for instance Kok-Chor Tan,<sup>153</sup> does not advance matters here either since it presupposes what Nagel denies: that egalitarian justice applies outside the state. To him international institutions are voluntary associations that definitely do not act in the name of all their members.

### **10. A Possible Instability in Nagel’s View: Egalitarian Global Justice via Sufficientarian International Obligations**

So Nagel limits duties of egalitarian justice to the boundaries of states because he thinks these obligations only arise in the course of justifying the state’s coercive imposition of a duty of obedience on its citizens. Nagel is not alone in seeing the issue that way since Dworkin agrees that

No government is legitimate that does not show equal concern for the fate of all those citizens over whom it claims dominion and from whom it claims allegiance. Equal concern is the sovereign virtue of political community – without it government is only tyranny.<sup>154</sup>

However, if immediate international egalitarian duties are out of the question, there might be yet another way for us to show that Nagel’s own

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<sup>151</sup> For an affirmative argument to this question see, for instance, Peter Singer’s *One World*.

<sup>152</sup> Thomas Nagel, “The Problem of Global Justice”, p. 140.

<sup>153</sup> See Kok-Chor Tan, *Justice without Borders* (Cambridge: Cambridge University Press, 2004), p. 176.

<sup>154</sup> Ronald Dworkin, *Sovereign Virtue*, p. 1.

view is unstable. This instability might ultimately commit him to accept such transnational egalitarian justice. What might put Nagel under pressure is reference to a presently quite widely accepted idea: that we have duties of justice to ensure that people have enough to secure some minimally decent standard of living.

While Nagel is explicitly rejecting the idea of international egalitarian duties he is markedly taciturn about the other sort of obligations he thinks we do have toward people outside our political community. Nagel states that he assumes “there is some minimal concern we owe to fellow human beings threatened with starvation or severe malnutrition and early death from easily preventable diseases, as all these people in dire poverty are.”<sup>155</sup> He thinks that the regarding obligations, that he calls “humanitarian duties [,] hold in virtue of the absolute rather than the relative level of need of the people we are in a position to help.”<sup>156</sup> However, what is unclear is whether Nagel thinks these humanitarian duties are duties of justice or some other type of less stringent, non-enforceable moral duties. Given Nagel’s rejection of duties to establish international institutions, which would arguably be needed to ensure global sufficiency of goods for everyone, it is natural for us to assume he thinks of humanitarian duties *not* as enforceable distributive obligations. In any case, though, there are good reasons to think a rejection of global sufficientarian duties of justice is an implausibly permissive and undemanding position to hold.

This becomes clear when we look at the recent literature on the issue of global distributive justice. Here we find that even philosophers who

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<sup>155</sup> Thomas Nagel, “The Problem of Global Justice”, p. 118.

<sup>156</sup> Thomas Nagel, *ibid.*, p. 119.

accept a view as restrictive as Nagel's and reject global egalitarian duties accept such global sufficientarian obligations as a matter of distributive justice. David Miller, for instance, holds that "human beings are social as well as biological creatures, and they can be harmed by being denied the conditions of social existence. [...] A person is harmed when she is unable to live a minimally decent life in the society to which she belongs."<sup>157</sup> And Jon Mandle asserts that "if we accept that there is a human right to a share of resources necessary for a decent level of human functioning, this obviously implies that we all have a duty not to deprive people of those resources. But it also implies that there is a duty to assist them in securing such necessities."<sup>158</sup> Also Blake is convinced that "liberal principles can condemn some forms of poverty regardless of institutional relationship; some forms of poverty deny the very possibility of autonomous agency, and so can be condemned by an impartial liberalism committed to the autonomous agency of all."<sup>159</sup> Thus, regardless whether we put them in terms of positive or negative duties, there is a popular consensus among political philosophers that it would be unreasonable to deny global sufficientarian duties of justice.<sup>160</sup>

If we assume that Nagel has to accept global sufficientarian duties of distributive justice his rejection of a duty to establish global institutions becomes questionable. Since Nagel's claim that (a) "justice [...] requires

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<sup>157</sup> David Miller, *National Responsibility and Global Justice*, p. 181.

<sup>158</sup> Jon Mandle, "Distributive Justice at Home and Abroad" in Thomas Christiano, John Christman (eds.), *Contemporary Debates in Political Philosophy* (Oxford: Wiley-Blackwell, 2009): pp. 408-422, p. 409.

<sup>159</sup> Michael Blake, "Distributive Justice, State Coercion, and Autonomy", p. 259.

<sup>160</sup> Global sufficiency duties of distributive justice are also popular among researchers who address the complex problem of intergenerational justice. See, for example, Lukas H. Meyer, Dominic Roser, "Enough for the Future" in Axel Gosseries, Lukas H. Meyer (eds.), *Intergenerational Justice* (Oxford: Oxford University Press, 2009): pp. 219-248 and Edward A. Page, "Justice between Generations. Investigating a Sufficientarian Approach", *Journal of Global Ethics* 3(1) (2007): pp. 3-20.

government as an enabling condition”<sup>161</sup> is hard to deny and, (b) we have global duties of (sufficientarian) justice, we therefore also have (c) duties to create institutions that can help us fulfil our obligations. Since Nagel’s position on global justice crucially depends on his denial of duties to establish common international institutions,<sup>162</sup> his view becomes unstable as soon as we can justify trans-national distributive duties that entail duties to create such institutions. But if it is the case that

- (a) Institutions are necessary for the administration of justice,
- (b) We have distributive duties of justice to ensure global sufficiency,
- (c) And therefore must establish common coercive global institutions,

It obviously follows from Nagel’s own premises that

- (d) Once these common international authorities exist its subjects owe each other egalitarian concern.<sup>163</sup>

So, does Nagel after all have to accept that (even on the basis of his own position) existing global inequalities ultimately call for global egalitarian duties of justice? In the next chapter we will see that the above argument is not sustainable. However, the reasons the argument does not succeed are not ones that can provide solace for Nagel. Instead, what we shall see is that there are sound reasons to question the validity of Nagel’s and Dworkin’s fundamental claim that justified political authorities must display equal concern for their subjects. This observation, thus, threatens Nagel’s and Dworkin’s justification of egalitarian justice even within states.

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<sup>161</sup> Thomas Nagel, “The Problem of Global Justice”, p. 114.

<sup>162</sup> See Section Seven of this chapter.

<sup>163</sup> This conclusion is also accepted by Jon Mandle (see Jon Mandle, “Distributive Justice at Home and Abroad”, p. 419). However, like Nagel, Mandle denies we have duties to create global institutions.



## **Chapter II: Against the Right to Rule View of Legitimate Authority**

Is Thomas Nagel correct to limit egalitarian principles of distributive justice to states? Do we have to accept that the pursuit of international distributive justice can be obligatory only when voluntarily accepted as such by states? Or could the idea of enforceable global sufficientarian obligations include a demand for regarding administrative institutions that, ultimately, have to treat their subjects according to egalitarian principles?

In this Second Chapter we will discover that the core claim of Nagel's argument against egalitarian global justice is flawed. The substantive connection, which Nagel thinks exists between equal concern and the justified exercise of political legitimacy, is less plausible than he thinks. Once we contrast the idea of equal concern as a necessary condition of political legitimacy (which is expressed in the phrase of the 'right to rule') with another notion of justified authority (the service conception or the 'power to command view' of authority), we will find that there are important reasons to accept the latter interpretation as fundamental.

However, this insight has drastic consequences for Nagel's actual practice view of distributive justice. On the one hand, the service conception of authority undermines the argument that global egalitarian principles follow from the acknowledgement of enforceable sufficientarian duties. On the other hand, the service conception shatters Nagel's and Ronald Dworkin's entire explanation and justification of egalitarian justice: as we will see, equal concern is not a necessary condition of the justification of political authority. Consequently,

Nagel and Dworkin cannot even ground egalitarian duties within states and we need to find another explanation for why distributive equality should in general be a duty of justice.

### **1. What Nagel Owes Us: A Conception of Legitimate Political Authority**

If Nagel is right that global institutions authorized to show equal concern and enforce egalitarian justice can only come about voluntarily, a look at the present world and its recent history shows that there are reasons for pessimism.

Existing international institutions are dominated by the interests of their powerful members; international agreements like the Kyoto Protocol, that are designed to constrain leading economies, have been opposed by these states; rich countries only spend a negligible part of their resources on development aid; the IMF recently declared that the UN Millennium Goals will almost certainly not be reached.<sup>164</sup> The European Union (that is thought to be based on a consensus regarding certain core values) presents one of the few cases where some trans-national distributive responsibilities have been accepted – and these are much debated compromises. Is Nagel therefore correct to think that unjust and illegitimate institutions serving the interests of the powerful are “the necessary precursors [of realizing some version of global justice] because they create the centralized power that can then be contested, and perhaps turned into other directions without being destroyed?”<sup>165</sup>

When we take into account how international institutions are dominated by the interests of powerful states and how much harm they have brought upon

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<sup>164</sup> See <http://www.imf.org/external/pubs/ft/survey/so/2010/RES042910A.htm> (retrieved from the World Wide Web on August 15<sup>th</sup>, 2011).

<sup>165</sup> Thomas Nagel, “The Problem of Global Justice”, *Philosophy & Public Affairs* 33(2) (2005): pp. 113-147, p. 146.

poor societies,<sup>166</sup> this seems a tragic conclusion. It would mean we could not directly aim at creating a more just world. Instead, we would have to accept that many people have to die or suffer for the self-interested motives of the powerful before we can hope to have the means to make the poor better off as a matter of justice. Since for Nagel egalitarian distributive justice is not an inherent moral value but the price to pay for the exercise of common coercive authority, to him most detrimental global inequality in this world is of moral (humanitarian) concern but not a matter of enforceable distributive (egalitarian) justice.<sup>167</sup> This means that, if we or the governments of our rich societies fail to help the poor, we are not as virtuous as we should be. However, we would not act unjustly and our governments would not lose in legitimacy for their refusal to send gifts of charity to those who are badly off.

As we discussed, it is possible for us to interpret Nagel's argument against global justice in more charitable way. Nagel uses the term justice in an idiosyncratic way to refer only to egalitarian justice. Thus, on a more charitable view of Nagel, his restriction of duties of distributive justice to associations that are ruled by one authority can be read as merely limiting the concern for *equality* to these associative contexts. This would leave open the possibility that Nagel endorses a *sufficiency* principle of global distributive justice and only rejects the idea of global egalitarian justice. It would then be the case that

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<sup>166</sup> For a description of such harm see Allen Buchanan, O. Robert Keohane, "The Legitimacy of Global Governance Institutions" in Allen Buchanan, *Human Rights, Legitimacy, and the Use of Force* (Oxford: Oxford University Press, 2010): pp. 105-133, pp. 119, 120.

<sup>167</sup> Nagel believes that "whatever view one takes of the applicability or inapplicability of standards of justice to such a situation [of global inequality], it is clearly a disaster from a more broadly humanitarian point of view. [...] Some form of humane assistance from the well-off to those in extremis is clearly called for quite apart from any demands of justice, if we are not simply ethical egoists" (Thomas Nagel, "The Problem of Global Justice", p. 118).



Nagel's argument requires us to ensure that everyone, in Harry Frankfurt's words, "have enough,"<sup>168</sup> whatever that means *in concreto*.<sup>169</sup>

However, the charitable view would merely make Nagel's rejection of global justice somewhat less tragic. The demand of guaranteeing a distribution of resources sufficient for living a decent life still leaves much normative space for allowing huge inequalities among people that are far from being mutually advantageous. These disparities can have momentous consequences for people's well-being and life-chances without keeping people from living decent, but not very rich, lives. If the charitable interpretation of Nagel's argument is sound,<sup>170</sup> the question about the possibility of a plausible conception of global justice might lose some of its normative urgency. But, given the enormous differences in levels of affluence and life-chances in our world this question would not lose its moral importance. Nagel admits that "it may be impossible to fulfill even our minimal moral duties to others without the help of institutions of some kind short of sovereignty."<sup>171</sup> Still he is clear that, even if creating such emergency-relief institutions would be a stringent duty (a thought he does not explicitly endorse), "there remains a clear line, [on the actual practice view], between a call for such institutions and a call for the institutions of global socioeconomic justice."<sup>172</sup> Detrimental inequalities, this is Nagel's conclusion, are not and cannot (except voluntarily) become subject to considerations of global distributive (egalitarian) justice.

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<sup>168</sup> Harry Frankfurt, "Equality as a Moral Ideal", *Ethics* 98(1) (1987): pp. 21-43, p. 21.

<sup>169</sup> For a discussion of the shortcomings Frankfurt's sufficientarian approach suffers from see Casal, Paula, "Why Sufficiency is Not Enough", *Ethics* 117(2) (2007): pp. 296-326 and Chapter 5, Section 2 of this thesis.

<sup>170</sup> We might also think the charitable interpretation of his view is quite likely not the one Nagel has in mind. After all, Nagel holds that "the gruesome facts of inequality in the world economy [are] a disaster from a more broadly humanitarian point of view," (Thomas Nagel, "The Problem of Global Justice", p. 118) and do not establish enforceable sufficientarian distributive obligations.

<sup>171</sup> Thomas Nagel, *ibid.*, p. 131.

<sup>172</sup> Thomas Nagel, *ibid.*, p. 132.

However, even if we accept Nagel's three normative premises (as well as his empirical claim that states currently are the only entities that exhibit the features necessary for the application of egalitarian distributive justice), it would be premature for us to end the argument about global distributive justice at this point. This is because, as we will see shortly, Nagel's argument contains an important gap. This weak spot becomes apparent when we look closely at Nagel's discussion of the state as a political authority that is crucial for the application of distributive equality.

Nagel's central argument against the idea of global egalitarian justice is that there is a fundamental link between the justifiability of political authorities (that is to say: their legitimacy) and equal concern or egalitarian justice and democracy. For him, this connection runs both ways. On the one hand, equal treatment and concern (that ideally includes giving the subjects an equal say in the collective decision-making process) is the price authorities have to pay to be morally entitled to create duties and wield power to enforce them.<sup>173</sup> On the other hand, though, the implication of this condition is that, where a coercive political authority does not or cannot display equal concern for its subjects, it cannot count as morally justified.

However, what Nagel is virtually silent about is the explanation for why we vest a political entity with authority in the first place, and under what circumstances such authority is not only morally justified but required. We can recall that Nagel attributes three primary functions to the state. The latter

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<sup>173</sup> To substantiate this claim Nagel quotes Ronald Dworkin who asserts that "a political community that exercises dominion over its own citizens, and demands from them allegiance and obedience to its laws, must take up an impartial, objective attitude toward them all, and each of its citizens must vote, and its officials must enact laws and form governmental policies, with that responsibility in mind. Equal concern [...] is the special and indispensable virtue of sovereigns," (Ronald Dworkin, *Sovereign Virtue. The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press, 2000), p. 6) see Thomas Nagel, "The Problem of Global Justice", pp. 120, 121.

functions as: (a) the administrator of justice in a non-voluntary context, (b) the executor of the will of its subjects acting in their name, and (c) as the provider of collective goods that the subjects cannot easily forgo. At one point Nagel does describe the benefits he has in mind more concretely.<sup>174</sup> However, none of these functions that authorities like states perform explain *per se* why a state needs to treat all its citizens with equal concern to be morally acceptable.<sup>175</sup>

Thus, what we require to evaluate Nagel's argument about the particular role of coercive authority that acts in the name of its subjects is an understanding of the concepts of political legitimacy, authority, and obligation. These three concepts are interrelated. However, the philosophical debate about *how* they are related is as old as the awareness of philosophers *that* these ideas are interconnected. In fact, the explanation of how political authorities can legitimately obligate their subjects is arguably as central as any question in political philosophy. The validity of Nagel's rejection of the idea of global distributive justice therefore depends crucially on his view about what renders political authorities legitimate. If it can be shown that equal concern is not a necessary condition of legitimate political authority then this would give us some normative 'leeway' to theorize about global justice in the following ways.

On the one hand, equal concern and egalitarian justice would become normatively less important. Since authorities can be legitimate for reasons other than displaying equal concern, we could begin to think whether coercive (but non-egalitarian) authoritative institutions are morally possible (or even

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<sup>174</sup> See Thomas Nagel, "The Problem of Global Justice", p. 127. Here Nagel names "a right to democracy, equal citizenship, nondiscrimination, equality of opportunity, and the amelioration through public policy of unfairness in the distribution of social and economic goods."

<sup>175</sup> See, for instance, Dworkin's résumé of Nozick's critique of the argument from fair play in Ronald Dworkin, *Law's Empire* (Cambridge, MA: Harvard University Press, 1986), pp. 193-195.

necessary) in the global sphere. Maybe considerations of justice demand of us to create them in order to promote justice globally. On the other hand, though, egalitarian justice might become normatively more significant. After all, equal concern would no longer be inseparable for existing coercive authority (as part of the latter's justifiability). However, if equal concern would not be a necessary condition of morally justifiable political authority, we would first of all have to find another explanation of the moral relevance of egalitarian justice. However, on the basis of a new justification the significance of equal treatment might not necessarily be confined to the domestic rather international political arena.

## **2. The Idea of Political Legitimacy**

When asking whether some political institution is legitimate we want to know two interrelated things. On the one hand, we are interested in whether this political authority is justified in coercively enforcing laws, authoritative directives, and rules in general. This "agent-justification question"<sup>176</sup> therefore asks why anyone should in general be allowed to command others. Furthermore, we need to know whether the authority's subjects thereby have a weighty moral obligation to comply with these authoritative instructions. This second problem, the "reasons-for-compliance question,"<sup>177</sup> is important since general reasons for an authority's legitimacy might not justify its use of coercive power against any particular person. As A. John Simmons points out, "if the [general] virtues/justifiability of institutions made by others gave those [particular] institutions power over me, they would "injure" my natural freedom

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<sup>176</sup> Allen Buchanan, *Justice, Legitimacy, and Self-Determination. Moral Foundations for International Law* (Oxford: Oxford University Press, 2004), p. 238.

<sup>177</sup> Allen Buchanan, *ibid.*, p. 238.

and so be impermissible.”<sup>178</sup> The answer to one of these questions helps to answer the other one and *vice versa*.

In the contemporary philosophical literature on this topic political legitimacy is often identified with a “right to rule, where this is understood as correlated with an obligation to obey on the part of those subject to the authority.”<sup>179</sup> As will become clear shortly, Nagel’s conception of legitimate authority (that is based on the authority displaying equal concern for its subjects) is one instance of political legitimacy understood as a right to rule. However, in the course of this chapter we will see that there is a rarely noticed price to pay for accepting the right to rule as the basic or primary notion of political legitimacy. This price is that the right to rule conception of legitimacy tends to bias our thinking about legitimacy. It focuses on the interests of the holders of this right to rule (in particular on their interest to be treated equally by the authority they authorize) and thus favours democratic forms of authority. This notion therefore considerably constrains the range of possibly legitimate institutions, thereby unnecessarily limiting our discourse about the morally acceptable exercise of political power.

We can see the problem most clearly in formal terms. The shortcoming of the Right to Rule Approach to Legitimate Authority is that it makes it

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<sup>178</sup> A. John Simmons, “Justification and Legitimacy” in A. John Simmons, *Justification and Legitimacy. Essays on Rights and Obligations* (Cambridge: Cambridge University Press, 2001): pp. 122-157, p. 139.

<sup>179</sup> Joseph Raz, “Authority and Justification”, *Philosophy & Public Affairs*, 14(1) (1985): pp. 3-29, p. 3. See also Allen Buchanan and Robert Keohane: “To say that an institution is legitimate in the normative sense is to assert that it has the right to rule—where ruling includes promulgating rules and attempting to secure compliance with them by attaching costs to noncompliance and/or benefits to compliance” (Allen Buchanan, O. Robert Keohane, “The Legitimacy of Global Governance Institutions”, p. 105) and John Tasioulas: “Legitimate authority [...] is the ‘right to rule’, the exercise of which ‘binds’ its subjects by imposing duties of obedience” (John Tasioulas, “The Legitimacy of International Law” in Samantha Besson, John Tasioulas (eds.), *The Philosophy of International Law* (Oxford: Oxford University Press, 2010): pp. 97-118, pp. 97, 98).

impossible for us to hold jointly three claims, all of which seem *prima facie* plausible. Thus, roughly stated, if we accept that

(a) The legitimate exercise of political authority rests on a right to rule

As well as the widely held view that

(b) All rights are grounded in some interest of the right-holder,

Then we preclude the possibility that

(c) There can be non-democratic (that is to say: not equal concern showing) political authorities that are nonetheless fully legitimate in that they are able to obligate their subjects.

We will find that there is instead a different understanding of the idea of political legitimacy. This alternative view sees the exercise of political authority as defensible primarily via appeal to a power to command. We will see that we can justify such a power to command when we focus on the interests of the *subjects* of an authority instead of the *holders* of a right to rule. What we should ultimately accept is that the '*Power to Command View*' of political legitimacy gives us a more plausible explanation of this idea than the currently dominant '*Right to Rule View*'.

For Nagel's actual practice view of justice this conclusion means that egalitarian distributive justice is not a necessary condition of legitimate authorities even within states. Therefore, the '*Power to Command View*' forces us to look for an alternative justification of the importance of distributive equality. If we could come up with such a different explanation of the significance of egalitarian justice, the latter (in contrast to Nagel's opinion) might not be limited to the domains of existing states.

### 3. The Right to Rule as the Standard View of Political Legitimacy

Before we scrutinize claims (b) and (c), we need to understand why the Right to Rule View is such a popular characterization of the idea of political legitimacy.

Philosophers normally think about the justification of political authority in terms of the effects it has on people. In this respect, it is one of Joseph Raz's central insights into political authority that the exercise of political authority in some way changes the normative situation of those subject to the authority.<sup>180</sup> We can see why the right to rule is such an attractive way to understand political legitimacy when we consider Wesley Hohfeld's<sup>181</sup> well-known explanation of the nature and functions of rights. According to Hohfeld, every right includes at least one of four legal or moral advantages. Furthermore, each of these advantages correlates with a disadvantage of another person who is bound by that right. On Hohfeld's view, then, we arrive at the following four 'incidents':

- (1) If you possess a *claim-right* this gives me a regarding *duty* to respect or fulfil that claim.
- (2) If you have a *privilege* or *permission* then this means that I have *no right* to hinder your exercise of this privilege.
- (3) If you possess a *power*, then I am *liable* to having to follow your instructions.
- (4) Finally, if you possess an *immunity* I have a correlative *disability* in this respect.

These four possible correlations seem to show that the advantage of having a claim-right causes the most severe disadvantage on the part of those bound by

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<sup>180</sup> See Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), p. 99.

<sup>181</sup> Wesley N. Hohfeld, *Fundamental Legal Conceptions as Applied in Juridical Reasoning* (Clark: The Lawbook Exchange Ltd., 2010).

this right. If your right gives me a duty then I am not merely liable to be affected by the exercise of your right. I also am under the obligation to do or not do what the related duty demands of me. It is this appearance of being binding on others that explains why the right to rule has become popular as a defence of coercive political authority. When it is justified by a right to rule we can defend the exercise of political power against familiar charges of philosophical anarchism: if it is possible for an authority to oblige us to follow its instructions, we cannot think that it is not justified in enforcing rules on us. The stronger the obligation that thus arises for us the more powerful this justification of political authority becomes. The frequent distinction between ‘the right to rule’ and what it means ‘to rule rightly’, on the other hand, is intended to reflect the thought that legitimate authority does not always have to be perfectly just to be justified. As John Rawls holds, “legitimacy is a weaker idea than justice and imposes weaker constraints on what can be done [...]. [It] allows an indeterminate range of injustice that justice might not permit.”<sup>182</sup>

For present purposes, it is of paramount importance that we are aware of and clarify a possible ambiguity of the term ‘right to rule’. According to Hohfeld, every advantage that has as its aim a regarding correlative disadvantage constitutes a right. Thus, we can speak not only of claim-rights but also of privileges, powers, and immunities in terms of Hohfeldian right-incidents. However, the Right to Rule View we are about to criticize rests on (1) the notion of the right to rule as a Hohfeldian claim-right that generates stringent duties of compliance, coupled with (2) a Hohfeldian permission-right to enforce rules. This Right to Rule View does not advocate a “weaker sense of the right to

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<sup>182</sup> John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 428.



rule”<sup>183</sup> which identifies this right with a privilege, power, or immunity advantage of the authority. So whenever we consider the Right to Rule View in this essay we are dealing with that interpretation which sees political authority as legitimate if it possesses a claim-right to the obedience its subjects that renders effective its permission to enforce rules on them. Furthermore, as will be explained later, the fact that Hohfeld thinks of all four correlative incidents as rights does not contradict the validity of claim (b) that all rights are grounded in some interest of the right-holders.

#### **4. The Problem with the Right to Rule View**

The problem with the Right to Rule View is that it biases our understanding of what kinds of political institutions can possess legitimacy. This becomes apparent as soon as we combine the right to rule, which is exemplified by claim (a) with the widely-held position (b) that all claim-rights are grounded in some interest of those holding that right. Of course, the interest theory of rights is not universally believed to be correct.<sup>184</sup> However, it is not too bold a claim to point out that the interest theory, which asserts that “rights ground requirements for action in the interest of other beings,”<sup>185</sup> presents the contemporary dominant interpretation of what is involved in the possession of rights. When we think of right-holders as the intended and entitled beneficiary of the duties of another person<sup>186</sup> the interest theory of rights withstands many familiar criticisms.<sup>187</sup>

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<sup>183</sup> Allen Buchanan, “The Legitimacy of International Law” in Samantha Besson, John Tasioulas (eds.), *The Philosophy of International Law* (Oxford: Oxford University Press, 2010): pp. 79-96, p. 81.

<sup>184</sup> See Hillel Steiner’s “Working Rights” in M. H. Kramer, N. E. Simmonds, H. Steiner, *A Debate over Rights. Philosophical Enquiries* (Oxford: Oxford University Press, 1998): pp. 233-301, pp. 283-301.

<sup>185</sup> Raz, *The Morality of Freedom*, p. 180.

<sup>186</sup> See David Lyons, “Rights, Claimants, and Beneficiaries”, *American Philosophical Quarterly*, 6(3) (1969): pp. 173-185, p. 182.

Despite the existence of critics, then, it is not unreasonable to believe claim (b) to be correct.

However, if we hold claim (b) alongside the idea (a) that justified political power depends on having a right to rule then we also have to accept that legitimate authority is democratic authority, a claim that leads to a denial of claim (c) that there can be fully legitimate non-democratic authorities. This becomes plausible once we consider who those people are that can be thought to (a) have a right to rule and (b) have a rights-grounding interest in the exercise of political authority.

One group of people who do not qualify in these respects are the persons holding public offices of government. Gone are the days when people thought that certain qualities of individual persons, such as their noble birth, naturally gave them a claim-right to exercise power. It is no more acceptable to think that our elected democratic representatives have personal interests in holding their offices in any normatively relevant sense that could justify a claim-right of theirs to rule and be obeyed. It is certainly the case that our legislators personally benefit from the salaries and pensions attached to their offices. They also might enjoy being able to give orders to others. But these advantages that are conferred on people that hold public positions are not the reasons why we maintain such offices in the first place. Instead, as democratic theorists like Thomas Christiano point out, in a democracy it is the citizens who have an interest in (and thus claim-right to) their equal moral standing being publicly expressed, and their political opinions respected. For this reason, the citizens

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<sup>187</sup> Such as, for example, H. L. A. Hart's objection that the interest theory cannot account for cases in which a benefit is bestowed on a third party by the right of another. One example of this would be a situation, in which I promise to take care for you of your sick child during a weekend that you have to be out of town (See H. L. A. Hart, "Are There Any Natural Rights?", *Philosophical Review*, 64(2) (1955): pp. 175-191, p. 180).

vest their democratic assembly with the authority to enforce laws in their name so that they consequently owe it to each other to obey these rules.<sup>188</sup> Thus, Christiano explains, it is “because all citizens have rights to an equal say and because the democratic assembly is the institutional method by which these equal political rights are exercised, [that] the democratic assembly has a right to rule.”<sup>189</sup> Our interest in having our equal moral status publicly expressed cannot be satisfied by just any political institutional arrangement. Rather, “democracy constitutes a unique public realization of equality in collective decision-making.”<sup>190</sup>

This particular function of democratic authority tells us why holding claims (a) that political legitimacy depends on having a right to rule and (b) that all rights are grounded in some interest of the right-holders lead to a rejection of claim (c) that there can be fully legitimate non-democratic authorities. If our justification of the exercise of political power centres on the interests of the holders of the right to rule then only democratic citizens are plausibly thought to possess such a right. By casting their vote in public elections they empower an assembly of people who officially represent them to rule in their name and stead. No king, class of people, or party could, morally speaking, have a similarly justified interest in exercising political power. As a result, on the standard interpretation of political legitimacy “the idea of a right to rule [...] seems to be the primary notion of legitimacy while [other accounts] are dim reflections of this primary notion. To inquire about the legitimacy of an authority is in the first instance to inquire into its right to make decisions for others.”<sup>191</sup>

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<sup>188</sup> See Thomas Christiano, *The Constitution of Equality. Democratic Authority and its Limits* (Oxford: Oxford University Press, 2008), p. 252.

<sup>189</sup> Thomas Christiano, *ibid.*, p. 248.

<sup>190</sup> Thomas Christiano, *ibid.*, p. 252.

<sup>191</sup> Thomas Christiano, *ibid.*, p. 241.

What is crucial for us to understand with respect to Nagel's account of political legitimacy is that, according to the latter democratic participation is part of what it takes for authorities to treat their subjects equally and to display equal concern for them.<sup>192</sup> This becomes clear when we consider that Nagel mentions as one of the benefits members in legitimate political associations can demand from their rulers, a right to democracy.<sup>193</sup> What this means is that the *plausibility of Nagel's view* of political legitimacy (as well as of egalitarian distributive justice and possibly his rejection of global justice) is tied up with the *invalidity of claim (c)* that there can be fully legitimate non-democratic authorities. If claim (c) would be correct (that is to say: if non-democratic institutions could be fully legitimate) then equal concern is not a necessary condition of the legitimate exercise of coercive authority.

But is democratic authority really the only justified way to exercise political power on the Right to Rule View? Democratic theorists like Christiano normally do not accept this strong claim. To them there also can be other forms of justified coercive authorities like the bureaucracy of democratic states or even hostile but justified occupational forces.<sup>194</sup> However, on the Right to Rule View the justification of these other forms of authority can only be understood against the background of the full legitimacy of a democratic authority. The latter is based on the interests of the citizens as the real holders of the right to rule.

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<sup>192</sup> As was already mentioned in Chapter One (Chapter One, Section Nine), Nagel's claim, that also colonial regimes can be considered to have shown equal concern for their colonial subjects, is highly problematic. Nagel's other examples of non-democratic but legitimate exercises of coercive power regard the rule of post-war occupational forces. However, it seems questionable whether the victorious allies that occupied Germany or Japan after the Second World War intended to display such equal concern, whether they actually did show such concern, and whether they even should have done so. The victorious powers certainly had moral duties toward their subdued enemies (such as not to haphazardly kill them or let them starve), who waged war and brought suffering to so many corners of the world. This, though, is not the same as to say that the occupational powers had the same obligations to the defeated populations as to their own ones.

<sup>193</sup> See Thomas Nagel, "The Problem of Global Justice", p. 127.

<sup>194</sup> See Thomas Christiano, *The Constitution of Equality*, p. 241.

Other forms of justified political power, in contrast, can only be considered partially legitimate or justified in enforcing rules within limited respects. They do not possess a right to rule and must therefore be justified by reference to other aspects. The bureaucracy of democratic states in this sense is justified because it helps to realize the decisions of the actual authority – the democratic assembly, which is justified because it possesses the right to rule.

### **5. Why the Notion of Derivative Rights cannot save the Right to Rule View**

At this point some readers are likely to object that there is another sort of right that could explain why political authorities might possess a genuine claim-right to rule after all. They might argue that as those acting in the name of their subjects officials possess a derivative claim-right to rule. This seems implied by Raz point that “some rights are held by persons as the agents, or organs of others.”<sup>195</sup> We can think, for example, of cases in which a guardian acts on behalf of her ward.

If such derivative rights could be shown to be authentic claim-rights that are not merely the transferred rights of original right-holders we might think that also non-democratic authorities can possess a right to rule. They could vicariously hold such a claim-right right to rule for their subjects even if the latter are not organized as a democratic people. In this way, the notion of derivative rights could be used to loosen the connection between democratic citizens as interested right-holders and coercive political authorities as justified in enforcing rules. Just as a ward is often not able to choose her guardian the subjects of non-democratic authorities as well could be thought to be obligated

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<sup>195</sup> Joseph Raz, *The Morality of Freedom*, p. 180.

by the claim-right to be obeyed of an authority they did not democratically authorize but that acts in their interest. We could then consistently hold claims (a), (b), and (c) at the same time and would not face the problem this chapter tries to solve. But how germane is the talk of derivative but genuine claim-rights in the context of the exercise of political power? Can we really think of the authority that political institutions claim to have in terms of a genuine claim-right to rule?

When we take a closer look at this question we find that the option of invoking a derivative right to rule is not a tenable one. As Raz points out, derivative rights are not morally fundamental rights. Instead, the latter require justification “on the ground that it serves the right-holder’s interest in having that right inasmuch as that interest is considered to be of ultimate value, i.e. inasmuch as the value of that interest does not derive from some other interest of the right-holder or of other persons.”<sup>196</sup> Thus, the reason why we cannot conceive of derivative rights as genuine claim-rights is that we cannot think of them independently of the interests of others.

We can better appreciate this point by drawing on Leif Wenar’s critique of the interest theory of rights. In his article “The Nature of Rights”<sup>197</sup> Wenar argues that what speaks against claim (b) that all rights are grounded on some interest of the right-holder is that this theory cannot account for the rights of “occupational roles”<sup>198</sup> like those of a judge. After all, Wenar claims, judges possess rights, such as the right to sentence criminals that cannot be grasped by the interest theory of rights. However, Wenar adds to this that the supposed

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<sup>196</sup> Joseph Raz, *The Morality of Freedom*, p. 192.

<sup>197</sup> Leif Wenar, “The Nature of Rights”, *Philosophy & Public Affairs*, 33(3) (2005): pp. 223-252.

<sup>198</sup> Leif Wenar, *ibid.*, p. 241.

right of a judge is really a “power-right”<sup>199</sup> that comes with this office. Hereby Wenar already indicates that what we deal with here is not a genuine claim-right of the judge. This is to say that the notion of a right is *not primary* to our understanding of the mandate of the judge. We can draw the following comparison: I certainly can be said to have the right to a fair trial since this entitlement is supposed to directly benefit me. I might be convicted at the end of the trial but I benefit from the fairness of the trial in contrast to being subjected to a show trial.

On the other hand, when we ask why (to use Wenar’s terms) the judge has the right to sentence a criminal it is not enough to refer to a regarding power vested in him. Instead, we furthermore need to know why the judge has this power in the first place to understand the characteristics and authority of this office. In case of the judge, the answer to this question seems connected to the fact that it benefits society and its members to entertain a legal system that features authoritative office like that of a judge. In light of this comparison, we can see that talking about the authority of offices like guardians or judges does not add much to the discussion. At best, speaking of rights might highlight the fact that someone acts in the interest of another person. This, however, does not contradict but confirms the interest theory of rights. So, while public offices do not function on the basis of their own claim-rights they arguably work by means of the exercise of certain powers to change the normative situation of people.

This is not to say, though, that agents who act in the name of others cannot possess their own genuine claim-rights.<sup>200</sup> When I, for instance, hire a real estate agent he then exercises my right to buy property on my behalf.

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<sup>199</sup> Leif Wenar, “The Nature of Rights”, p. 242.

<sup>200</sup> Thanks to Jerry Gaus for making me aware of this complication.

Furthermore, the real estate agent possesses certain rights, such as the right to not be deceived by me or not to have his records manipulated by one of his competitors. And these rights, we can plainly see, are genuine claim-rights of the real estate agent who exercises a right of mine on my behalf. However, the justification of the agent's claim-rights is based on his own interest *qua* real estate agent and not on my interest to acquire property. And when we ask further why the position of real estate agent should come with these kinds of rights we will have to refer to the interest of all of us as members of our society to have the services of such a position available to us. This is why the fact that agents that exercise the rights of others can have genuine claim-rights of their own does not contradict the interest theory of rights, that is to say: claim (b) that all rights are based on some interest of the right-holder.

All rights incidents that come with offices are grounded in a *second-order justification*: the real estate agent possesses certain claim-rights because this office cannot properly function without certain protections. But the reason why we should think it to be valuable that offices like those of a real estate agent, a judge, or even the President are protected in this way can only be found in the interest of all of us in benefiting from the services these offices provide for us. No one ever holds or exercises the rights of another and benefits directly from this exercise. If my money is lost by the real estate agent in a property fraud that the agent was unable to foresee, then it is I, not him, who is in a position to sue the fraudsters. If, on the other hand, the records of my real estate agent are manipulated he, and not I, is entitled to take the one who harmed him to court. The rights we hold *qua* property buyer and *qua* real estate agent are thus separate and do not benefit the other person. They only protect their holders because they are based on our interests as right-holders.



At this point, we can see why the fact that Hohfeld considers all four correlative incidents as instances of rights does not contradict claim (b) and the interest theory of rights. We cannot refer to the authority of judges or guardians in the same way we can to our rights as customers, citizens, or human beings. Instead, Hohfeldian power-advantages require reference to the interests of someone else other than the judge, the guardian, or in general the one possessing the power. It seems that we therefore have reasons *not* to think of the powers of public officeholders as genuine rights in the standard sense of this idea. We should instead conceive of these powers as the exercise of moral or legal powers. To talk about the non-fundamental, derivative rights of officeholders, on the other hand, leads to the following two problems. First, this kind of talk *obscures what is really at work with respect to these forms of authority*: the guardian's or the judge's authority has to be explained in terms of a moral power and not a claim-right. Second, we *risk missing what ultimately justifies the exercise of authority*: it is not the interest of the right-holder but some other consideration. To avoid confusion between claim-rights and powers, and between the interests of right-holders and other justificatory reasons we should therefore not refer to this authority as a *right* to rule and to be obeyed.

This means, though, that we cannot appeal to the notion of derivative rights to solve the problem that holding claims (a) and (b) must lead to a rejection of claim (c) that non-democratic authorities can still be fully legitimate. Since it is not correct to think that public officials derivatively hold genuine claim-rights to be obeyed that render effective their permission to instruct people, non-democratic authorities cannot possess a right to rule. The right to rule instead presupposes the existence of a democratic people whose members have an interest in having their moral equality publicly realized that gives them reasons

to empower some persons to rule them. The relation between democratic citizens and their representatives is not that of a ward to her guardian. Rather democratic officials possess the right to rule insofar as their citizens by vote vest them with this right. Thus, “the democratic assembly pools the equal political [claim-] rights of all the citizens into one decision-making body.”<sup>201</sup>

Once we realize that there is this strong link between the right to rule as the justification of political authority and democratic authorization procedures we understand why this standard view biases our discourse about political legitimacy in a particular way. According to the Right to Rule View non-democratic authorities cannot constitute primary instances of justified political power. They can never be as fully and inherently legitimate as democratic authorities that operate on the basis of a right to rule that is grounded in the interest of the citizens as the actual right-holders. But this shaping of the discussion about political legitimacy is problematic, as Nagel’s use of the Right to Rule View shows. If democratic legitimacy and equal concern is necessary for political institutions to be justified then there currently is indeed very little we can do about the lack of coercive international institutions. But where they are missing, Nagel holds, detrimental inequalities cannot be concerns of egalitarian justice. This is why the Right to Rule View’s narrowing of our discourse about legitimate authority is particularly worrying.

## **6. The First Problem: the Denial of Legitimate Pre-Democratic Authority**

We just saw that an acceptance of claims that (a) political legitimacy rests on a right to rule and (b) all rights are grounded in some interest of the right-holder

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<sup>201</sup> Thomas Christiano, *The Constitution of Equality*, p. 247.

bias our thinking about legitimate authority. This is because holding these two claims leads to a rejection of claim (c) that there can be fully legitimate non-democratic authorities. The Right to Rule View presupposes a democratic people whose members actually possess such a claim-right. Non-democratic institutions, on the other hand, cannot vicariously hold a claim-right to rule because they do not embody the claim-rights of their subjects. Such institutions can therefore not be justified by reference to any normatively relevant interests – which alone can justify a right to rule. They do not realize the interest of people to have their moral equality publicly expressed.

But why does the resulting rejection of claim (c) constitute a problem for the Right to Rule View? Could we not accept that the only fully legitimate authorities are democratic ones that show equal concern for their subjects and possess the right to rule?

There are at least two considerations that count against thinking of democratic authority as the primary and uniquely inherent form of political legitimacy. The first problem is that a view that identifies the justified exercise of political authority with a right to rule rejects the very idea of fully legitimate non-democratic authorities. The problem with this position is that it commits us to saying that before the founding of the first real democracy there had never been any political authority that was legitimate in an unqualified sense. But if that was the case then previous authorities must have ruled on the basis of some less comprehensive and piecemeal notion of political legitimacy. As their subjects, we would therefore not have been under a comprehensive and general obligation to obey their instructions. As David Hume notices, this is quite an

odd thought. In his essay “Of the Original Contract”<sup>202</sup> Hume aims to criticize the philosophical idea that makes obedience dependent on the subjects’ consent. He points out that throughout human history, even without consent and democratic authorization procedures, people have been obedient to the ruling authorities. Hume then goes on to say that it seems unlikely that all of these people were wrong to think that they ever were under a general duty to comply with the orders of their rulers. With respect to the supposed necessity of consent for the legitimate exercise of power, he notes that

It is strange, that an act of mind, which every individual is supposed to have formed, and after he came to the use of reason too, otherwise it could have no authority; that this act, I say, should be so unknown to all of them, that, over the face of the whole earth, there scarcely remain any traces or memory of it.<sup>203</sup>

Of course, from a moral perspective pre-democratic authorities were always liable to at least one criticism: they failed to express publicly the moral equality of their subjects and respect their opinions. This, though, is not the same as the claim that such non-democratic authorities were unable generally to obligate their subjects.

If we reject claim (c) that also non-democratic authorities can be fully justified in instructing the ones they coerce, we would have to accept the following: prior to the existence of democracy it was always morally permissible for people both to refuse to surrender their judgement to their non-democratic rulers and to treat their rulers’ commands as authoritative. Such subjects could still have acted wrongly. However, the wrongness of their actions would have been due to errors in their judgment. They would not have been wrong merely

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<sup>202</sup> David Hume, “Of the Original Contract” in *Political Essays* (ed. K. Haakonssen) (Cambridge: Cambridge University Press, 1994), pp. 186-201.

<sup>203</sup> David Hume, *ibid.*, p. 189.

by disobeying the instructions of their non-democratic rulers. Thus, only threats of punishment, and not a moral duty to obey authoritative commands, gave the subjects in this pre-democratic age reasons to comply with prohibitions on murder, theft, and fraud.

Of course, the citizens of non-democratic states can also be thought to have authority-independent moral obligations to refrain from such acts. Still, the point here is that on the Right to Rule View, authoritative directives of non-democratic authorities that disallow such offenses cannot be morally binding – which seems quite a counter-intuitive thought. So the first problem of the right to rule notion of political legitimacy is that a rejection of claim (c) commits us to the thought that fully legitimate and binding authority did not exist prior to the establishment of the first real democracy that showed equal concern for its citizens.

## **7. The Second Problem: Ruling out Service Conceptions of Authority**

The second issue is that the right to rule tends to exclude from the start other highly plausible and relevant accounts of what grounds political authority by framing the issue in a way biased in favour of democratic theories of authority. These alternative characterizations of authority ground the justification of the exercise of political power not in the *interests of the right-holders* but in the *interests of those subject to an authority*. What views like those of Joseph Raz establish is a “service conception”<sup>204</sup> of political authority that is not based on a right to rule or democratic authorization procedures. It seems hard to deny that their explanations of authority offer important insights. Thus, we cannot simply

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<sup>204</sup> Joseph Raz, *The Morality of Freedom*, p. 56.

dismiss their importance merely because they do not square nicely with the Right to Rule View.

Raz's theory of legitimate authority has been influential and – despite the above quotation (in which Raz talks about political legitimacy in terms of a right to rule) – can be interpreted as not depending on construing legitimacy by appeal to the right to rule. According to his *normal justification thesis*:

The normal way to establish that a person has authority over another person involves showing that the alleged subject is likely better to comply with reasons which apply to him (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly.<sup>205</sup>

Raz's crucial thought here is his description of the way authorities change the normative situation of their subjects. The *normal justification thesis*, of course, does not sit well with the Right to Rule View since it makes no reference to the interests of right-holders that justify the authority. Raz's thesis works by focusing on the needs of people as subjects to an authority. These interests may, but do not necessarily include, the subjects' interest in having their moral equality publicly respected and being treated equally.<sup>206</sup> This is reflected in Raz's account of how authority functions.

According to Raz, authority works by giving us “content-independent reasons”<sup>207</sup> for action. This means that the fact that the authority is the source of an instruction is a reason to comply with it irrespectively of the content of that

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<sup>205</sup> Joseph Raz, *The Morality of Freedom*, p. 53.

<sup>206</sup> Christiano acknowledges that the *normal justification thesis* can be understood to be at work in a non-instrumental way with respect to democratic authorization procedures: “It is worth noting here that Raz's normal justification thesis could conceivably accommodate [the] conception of democratic authority [as a unique public realization of equality in collective decision-making]. For one might say that one acts better in accordance with the principle of equality by deferring to the decision of the democratic assembly than by trying to advance equality on one's own” (Thomas Christiano, *The Constitution of Equality*, p. 252, citing Joseph Raz and Matthew Clayton).

<sup>207</sup> Joseph Raz, *ibid.*, p. 35.

order. We might, for instance, think that we have reasons to hide some of our money from the tax office to save it for the education of our children. However, since it is a legitimate government that instructs us to pay taxes, we ought to take the state's instruction as giving us a sound reason to pay, and refrain from acting on the countervailing consideration. Raz summarizes this effect of the exercise of authority in his *pre-emptive thesis*. This holds that "the fact that an authority requires performance of an action is a reason for its performance which is not to be added to all other relevant reasons when assessing what to do, but should exclude and take the place of some of them."<sup>208</sup> Raz thinks that in this way authoritative instructions ought to replace our own reasoning about an issue.

A simultaneous, secondary feature of content-independent reasons is that they act as "exclusionary reason[s],"<sup>209</sup> which is to say that they tell us to not act on other reasons we might have. As the *normal justification thesis* explains, the exclusionary and content-independent force of authoritative directives is ultimately justified by the fact that conformity with these instructions enables us to do better what we have reasons to do anyway.

Content-independent reasons, though, can take the form of exercising moral powers as they can play a role in invoking claim-rights. In general, we can note that Raz's account tells us that an authority is usually justified in coercing its subjects because these instructions benefit them in some way. So on the characterization of authority that grounds its justification in the exercise of a moral power to command what counts is not that citizens exercise their rights to have their moral equality respected. Rather, on this alternative view, the

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<sup>208</sup> Joseph Raz, *The Morality of Freedom*, p. 46.

<sup>209</sup> Joseph Raz, *Practical Reason and Norms* (Oxford: Oxford University Press, 1999), p. 39.

exercise of such power is legitimate because it helps realize more basic interests of those subject to the authority. The Power to Command View can thus accept claim (c) and explains why also subjects of non-democratic authorities are obliged to obey those rules that help to satisfy their fundamental needs.

## **8. Why the Legitimacy of Service Authorities is not Based on Epistemic Superiority**

However, Raz's account of authority (that motivates the Power to Command View) is not unchallenged. According to one familiar objection, which is presented by Christiano, the *normal justification thesis* is implausible because it relies on the assumption of a superior epistemic position that the authority occupies. The thought here is that, while "the theorists, whose standards are used to evaluate the political institutions, are also ordinary persons,"<sup>210</sup> they must somehow better know the reasons that independently apply to people in order to make these people conform better to those reasons. For Christiano, Raz has to think that it is only because the authority claims to know better what reasons apply to us as subjects that it can claim to permissibly enforce rules on us. If appropriate this would certainly constitute a major problem for Raz's account since such a superior standpoint would have to lie "outside the normal constraints and problems of human cognitive activity."<sup>211</sup> But given that we all occupy a subjective standpoint and that our point of view never rests completely on objective reasons it is difficult to imagine a person capable of impartially knowing all the reasons that apply to other persons.

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<sup>210</sup> Thomas Christiano, *The Constitution of Equality*, p. 235.

<sup>211</sup> Thomas Christiano, *ibid.*, p. 236.



Jerry Gaus's notion of public authorities as umpires<sup>212</sup> can help us disarm this charge that the service conception of legitimacy has to operate on the assumption of authorities' superior epistemological capacities. Gaus's umpire model of authority shows that appeal to epistemic reasons (reasons for or against believing that something is the case) plays a secondary role (if at all) in the justification of political authority. What will become clear instead by considering Gaus's account is that, what primarily justifies the exercise of authority on both the service conception and the umpire model, is that authorities provide coordination we cannot do without. In order to understand this point it is helpful for us to think in terms of (a) the situation of the people in an authority-free state, and (b) the services that the exercise of authority provides for the people once they are subjects to an authority.

With respect to collective decision-making and law enforcement in politics, Gaus distinguished between two general situations we find ourselves in: indeterminacy and inconclusiveness of reasons.<sup>213</sup> In both circumstances we require the impartial coordinating functions of political authorities acting in our name, although our epistemic situation as subjects is slightly different in each situation.

The need for authoritative coordination that is not based on an assumption of epistemological superiority is particularly obvious in cases of indeterminacy. As Gaus explains, these situations are characterized by a "lack of information."<sup>214</sup> Unfortunately, though, the phrase 'lack of information' is ambiguous. It might either mean that the subjects lack reasons for forming *beliefs about reasons for actions*, but that such reasons might nonetheless exist.

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<sup>212</sup> See Gerald F. Gaus, *Justificatory Liberalism. An Essay on Epistemology and Political Theory* (Oxford: Oxford University Press, 1996).

<sup>213</sup> See Gerald F. Gaus, *ibid.*, pp. 151-154.

<sup>214</sup> Gerald F. Gaus, *ibid.*, p. 154.

These are cases of *epistemic indeterminacy*. Alternatively, the subjects might not have *reasons for action* because no such reasons actually exist. We can call this phenomenon *ontic* or *real indeterminacy* (because there really are not any applicable reasons). We have to analyse these cases separately to understand in what ways the exercise of authority changes the subjects' situation.

When we face epistemic indeterminacy we are uncertain about what to do because we do not know what we should believe is the right thing to do. As Dworkin points out,<sup>215</sup> here we can believe that either option A or B is the right one to choose. What we lack, however, is the information required for being justified in decisively accepting or rejecting either option. We therefore can be worried that we might regret making either choice. Assuming that not choosing is not an option, a common authority can solve this deadlock by simply making either A or B a duty for us. In this way, the authority gives us content-independent reasons to perform the option it enforces and thus coordinates our actions as a group.

Cases of ontic or real indeterminacy show that such coordination can be required even if we know all the information relevant to a situation requiring a collective decision. In situations of real indeterminacy we know, for instance, that option A is the right goal for us to bring about. However, despite this knowledge we have two possible paths,  $\phi$  or  $\psi$ , by which we can pursue A. We do not have any reasons to prefer doing  $\phi$  over  $\psi$  or *vice versa* because there really are no reasons (despite our knowledge of the relevant information about the case) to prefer one over the other. Either way will do and the same costs are attached to both. In this situation, reasons, so to speak, run out. Here, as

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<sup>215</sup> See Ronald Dworkin, *Justice for Hedgehogs* (Cambridge, MA: Harvard University Press, 2011), p. 91.

Dworkin holds, neither option can be true or false.<sup>216</sup> If we assume, though, that almost full compliance with either  $\phi$  or  $\psi$  is needed to achieve A, then – despite all our knowledge – we need the decision of an authority to have reasons for action. By selecting and enforcing either  $\phi$  or  $\psi$  an authority also in cases of real indeterminacy gives us indispensable content-independent reasons that coordinate our actions as a group. This coordination, like in the case of epistemic indeterminacy, does not work on the basis of epistemic reasons for belief about reasons for actions. It is the coordinating function itself that justifies the exercise of authority.

However, as Gaus points out, there are indeed few, if any, cases of pure coordination games and indeterminacy.<sup>217</sup> Instead, “our standard epistemological situation is an overabundance, not a paucity, of reasons.”<sup>218</sup> This is to say that, we normally try to decide what is best or the right choice with respect to a collectively important issue while being unable to take into account all the relevant information. It is difficult for us to arrive at a position at which all other alternative options have been conclusively rejected. So, normally we are in a situation of *epistemic inconclusiveness*. As individuals we are in addition likely to be biased by our subjective interest in our efforts to decide what is the best or the right choice.<sup>219</sup> This does not preclude us from weighing applicable reasons and to determine one option to be the most reasonable or the right one for us. What the situation of epistemological inconclusiveness denotes, though, is the fact that normally there are a multitude of reasons available to us. It is therefore not unreasonable for us to arrive at different (yet defeasible)

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<sup>216</sup> See Ronald Dworkin, *Justice for Hedgehogs*, p. 91

<sup>217</sup> See Gerald F. Gaus, *Justificatory Liberalism*, p. 225.

<sup>218</sup> Gerald F. Gaus, *ibid.*, p. 155.

<sup>219</sup> “Citizens have opinions about justice that they take seriously, though they are prone to interpret them in ways that coincide with their personal interests” (Gerald F. Gaus, *ibid.*, p. 223).

conclusions (that might be overturned by other considerations we learn about) about the same issue.

In such circumstances, people will argue for their selected choice because they think it actually to be the right or best one. But since they disagree about what option is the one to enforce and most of the time cannot decisively prove others' opinions to be wrong, they need a kind of authority that does two things. It must (1) provide coordination among them by making and enforcing a decision on everyone, and it has to (2) justify this decision to them with reference to the reasons relevant to the issue.<sup>220</sup>

Gaus thinks of such authorities as umpires<sup>221</sup> that try optimally to apply rules applicable to a case. This might appear to be a primarily epistemological justification of authority: to apply best the rules presupposes knowledge of the rules and the ways in which they can be applied as well as of the probable consequences of applying each eligible rule. However, once we understand that, what we need also from umpire authorities is primarily (1) coordination, we see that (2) the justification requirement umpires must fulfil does not claim anything else than Raz's 'dependence thesis'. The authority is supposed to make decisions on the basis of "reasons which apply to the case."<sup>222</sup> *We can expect the reasons that apply most definitely to the case to be the ones that are also the best ones relevant to the issue at hand.* Thus, if the referee has to decide whether to award a penalty for a foul (that is to say: to decide whether and in what way the penalty rule applies in the situation), she is not supposed to instead award the team, whose member was fouled, a goal or simply to end the game. These options are not part of the rule that applies in this particular case.

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<sup>220</sup> See Gerald F. Gaus, *Justificatory Liberalism*, p. 187.

<sup>221</sup> See Gerald F. Gaus, *ibid.*, p. 189.

<sup>222</sup> Joseph Raz, *The Morality of Freedom*, p. 41.

However, nothing in the requirement of (2) justifiability or the ‘dependence thesis’ demands that the referee’s decision is an epistemically optimal one or one that is superior to the opinion of the subjects. Raz is clear that we also have weighty reasons to comply with decisions of legitimate authorities we think to be mistaken since otherwise the authority could not coordinate our collective behaviour as a group.<sup>223</sup> Of course, if the authority keeps erring then it might become true that the *normal justification thesis* no longer applies to it, that is to say: that it does not make us comply better with reasons that independently apply to us. The authority then has lost its legitimacy. Still, also umpire authorities do not enforce rules on the basis that these are epistemically correct. As Gaus points out, even after an authoritative decision has been made, “the underlying epistemological controversy remains.”<sup>224</sup> If the umpire authority would demand obedience with its calls on grounds of the claim that these decisions are the epistemically best ones possible, all dissenting subjects would not have reasons to comply with these instructions.

Instead we have to understand also umpire authorities (that seek to adjudicate epistemic disputes) to be justified primarily because they provide coordinating services for their subjects. We should take this to mean that government can, for instance, order us to pay exactly fifteen percent income tax not because it necessarily knows that this is the right figure needed to finance our public social services. Instead we ought to pay fifteen and not fourteen or sixteen percent tax since in this way we can better coordinate our actions, thereby conforming with reasons we have independently of the authority’s decision (namely, to maintain public services). The overwhelming reason for

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<sup>223</sup> See Joseph Raz, *The Morality of Freedom*, p. 44.

<sup>224</sup> Gerald F. Gaus, *Justificatory Liberalism*, p. 189.

following an umpire's decision is that "unless players are prepared to do so, they could not proceed with the game."<sup>225</sup>

However, some subjects might want to risk not being able to 'play on' if they consider a decision made by an umpire authority to be morally appalling enough. It could be preferable for them to live in a state of anarchy than to abide by rules that they consider morally insufferable. On the other hand, it is conceivable that some people will obey political authorities for purely prudential reasons. They might not consider their political rulers legitimate but choose to obey them to avoid living in an anarchic state. But these people, we should think, do not follow the instructions for the right reasons. If we are to understand the real meaning of the service conception of legitimacy, we therefore have to be clear that this conception is a deeply moral notion giving us weighty moral reasons to go along with authoritative decision – even if we disagree with them on epistemic grounds. In this respect it is instructive for us to take a look at Rawls's 'principle of liberal legitimacy' as he outlines it in *Political Liberalism*.<sup>226</sup>

For Rawls, people are justified in enforcing common rules on each other if they abide by the duty of civility that holds that we must "be able to explain to one another on those fundamental questions how the principles and policies [we] advocate and vote for can be supported by the political values of public reason."<sup>227</sup> This is to say that, on the one hand, we have to be able to justify publicly the rules we enforce on others – and to refrain from simply imposing the rules on them. The flipside of this duty, though, is that – as long as a proposed principle, rule, or policy has been reasonably justified – we cannot

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<sup>225</sup> Gerald F. Gaus, *Justificatory Liberalism*, p. 189.

<sup>226</sup> See John Rawls, *Political Liberalism*, p. 216.

<sup>227</sup> John Rawls, *ibid.*, p. 217.

reject to comply with it on the basis that we do not agree with it. If a public proposal can count as reasonably justified then for Rawls we have a strong moral duty to go along with it even if we correctly think there is a superior alternative. Similarly, it seems plausible for us to think that – as long as authoritative service institutions choose from an evidently relevant set of best option – their subjects have weighty moral reasons to accept their decisions. And this duty applies to them even if the subjects think that there is a better decision to be had or that they could go on with their agenda without complying with the authority's instructions.

The important point to be taken from Gaus's theory is that a service conception of authority, like Raz's, does not need to rely on claims of epistemic superiority. What is central to the Power to Command View of political legitimacy is instead that authorities are justified *if and because* they solve important problems for us and thereby enable our collective social practices. Hume agrees with this explanation by asserting “if the reason be asked of that obedience, which we are bound to pay to government, I readily answer, *because society could not otherwise subsist.*”<sup>228</sup>

Since maintaining many social practices is a fundamental interest we all share political authorities that help us in performing these tasks are not merely instrumentally valuable. They are rather of constitutive value for our social lives since without their coordinating services complex social enterprises like human societies would not be possible. This ‘enabling function’ of political authority also for Raz constitutes its primary justification. To him “a major, if not the main, factor in establishing the legitimacy of political authorities is their ability

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<sup>228</sup> David Hume, “Of the Original Contract”, p. 197.

to secure coordination.”<sup>229</sup> It seems therefore that the Power to Command View is less restrictive in its justification of authority than the standard Right to Rule View: we all have basic interests in sustaining our social practices regardless of whether the authority that enables them also treats us as equals and is democratically elected. So, the second problem the Right to Rule Account faces by rejecting claim (c) is that it ignores these important and basic considerations that can plausibly justify the exercise of political power.

### **9. The Need for a New Standard Characterization of Political Legitimacy**

So what do the two shortcomings the right to rule view suffers from due to its rejection of claim (c) mean for our understanding of political legitimacy and for Nagel’s argument against the idea of global justice?

As we saw, the denial of the thought that there can be fully legitimate but non-democratic authorities leads to serious problems. On the one hand, the Right to Rule View commits us to denying that before the creation of the first democracy anyone was comprehensively duty-bound to obey the instructions of their rulers. Furthermore, the Right to Rule View rules out important considerations that can justify political authorities that fall short of publicly embodying the moral equality of their subjects or treating them with equal concern. These problematic implications of the currently dominant interpretation of political legitimacy are reasons to change our understanding of what the concept must involve. As we saw, the Power to Command View allows us to take into account various important justifications of political authority that

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<sup>229</sup> Joseph Raz, “The Problem of Authority: Revisiting the Service Conception”, *Minnesota Law Review*, 90(4) (2006): pp. 1003-1044, p. 1031.



the current standard view ignores. The Power to Command Account, on the other hand, does not commit us to a problematic rejection of claim (c). It thus constitutes a more plausible and superior interpretation of the idea of political legitimacy than the Right to Rule View.

As a result, Raz's service conception of authority, (and the Power to Command View to which it gives rise) renders implausible the connection that Nagel assumes exists between legitimate authority and treatment of its subjects with equal concern. As a consequence we are left to look for an explanation for why egalitarian concern matters morally even within one and the same society.

However, it is important for us to note that the Power to Command Approach does not deny the validity of the claim that (a) there are democratic authorities that possess the right to rule. Instead it allows us to hold all three claims (a), (b), and (c) at a time. When they take up the Power to Command View, democratic theorists do not have to give up on their claim that democratic authorities have particular value. The only thing this view denies is that democratic authority is the primary notion of political legitimacy against which all other forms of justified authority must be measured. This latter role is the one that the power to command view assumes itself. It tells us that in many cases we can and even ought to end up with democratically authorized political institutions. The approach, though, does not start out with this particular way of justifying the exercise of political power by appealing to *power-holders' interests*. Instead, the approach that justifies political authority by focusing on the *interests of the subjects* claims that, in order for us to make the right to rule a necessary condition of legitimate authority, we need to refer to further normatively relevant factors. These further aspects will often depend on the context we are considering.

In this sense Allen Buchanan, for instance, argues that only “where democratic authorization is possible (and can be pursued without excessive risk to basic rights) it is necessary for political legitimacy.”<sup>230</sup> However, where such democratic procedures are not possible, but morally important tasks have to be performed, non-democratic authorities, too, can permissibly enforce rules to these ends. In summary, we should note that this argument provides some weighty considerations in favour of replacing the Right to Rule Notion with the Power to Command View as the standard picture of what constitutes political legitimacy.

## **10. Conclusion**

With a view to Nagel’s actual practice view we can assert that equal concern and democratic authorization are not necessarily required for a common coercive institution (that acts in the name of its subjects) to be justified. This insight forces us to rethink entirely our position with respect to what detrimental inequalities are morally objectionable. Nagel’s account cannot even tell us why we should care about these disparities within our own societies that are ruled by common political authorities.

However, this also means that the argument (proposed at the end of the First Chapter) for global egalitarian duties via the establishment of global institutions that ensure performance of global sufficientarian duties does not work. Even if we could show that, on his own account, Nagel should embrace such duties to guarantee all people resources needed to live decent lives such obligations would not ultimately force Nagel to accept global equal concern. The Power to Command View of authority explains that the required global

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<sup>230</sup> Allen Buchanan, *Justice, Legitimacy, and Self-Determination*, p. 259.

sufficientarian institutions could operate without owing their subjects equal concern because they enable us to fulfil important moral duties. Thus, Nagel's view is not unstable – it does not collapse into a demand for global egalitarian duties. Matters are worse for Nagel: his justification of egalitarian concern as a necessary condition of legitimate authority is implausible.

Still, this should not lead us to thinking that the only hope to justify stringent duties to reduce detrimental inequalities must derive from some sort of limited sufficientarian concern. As we will see in the next chapter, there are philosophers who criticize Nagel's interpretation of egalitarian justice and the limitation of its scope on the basis of another explanation of the importance of distributive equality.

## Chapter III: Three Views of Distributive Justice

In the last chapter, we saw that Thomas Nagel's interpretation of egalitarian justice as an aspect of the justification of common coercive institutions is implausible. Equal concern is not a necessary condition of legitimate authority. However, this does not mean that there are no other reasons to think that egalitarian duties should apply among persons.

In this third chapter, we will take a look at the arguments of a group of political philosophers<sup>231</sup> who think of egalitarian justice as an obligation arising for reasons other than the need to justify coercive authority. These critics propose a *reformed practice view of justice*. This view, though, stays within the same practice-dependent framework as Nagel's position. Thus, their view also rests on the idea that the existence of some form of social practices is a necessary condition for the applicability of sound principles of distributive justice. However, as will be shown at the end of this chapter, the reformed practice view produces shortcomings that discredit the entire notion of a practice-dependence framework. We will come to understand that, for our conception of distributive justice to be coherent, we need to adopt a third perspective. According to the latter, people's distributive entitlements must be thought of as being independent from existing interactions or practices. The aim of this chapter is thus to demonstrate that a critical examination of Nagel's

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<sup>231</sup> See Arash Abizadeh, "Cooperation, Pervasive Impact, and Coercion: On the Scope (not Site) of Distributive Justice", *Philosophy & Public Affairs* 35(4) (2007): pp. 318-358; Joshua Cohen, Charles Sabel, "Extra Rempublicam, Nulla Justita?", *Philosophy & Public Affairs* 34(2) (2006): pp. 147-175; Aaron James, "Distributive Justice without Sovereign Rule: The Case of Trade", *Social Theory and Practice* 31(4) (2005): pp. 533-559; Darrel Moellendorf, *Global Inequality Matters* (Basingstoke: Palgrave MacMillan, 2009); Miriam Ronzoni, "The Global Order: A Case of Background Injustice? A Practice-Dependent Account", *Philosophy & Public Affairs* 37(3) (2009): pp. 229-256.

restrictive view of global justice ultimately has to lead to embracing a much wider practice-independent view of distributive justice.

### **1. Nagel's Actual Practice View and Denial of Global Justice**

The service conception of political legitimacy we discovered in the last chapter makes it necessary for us to look for another justification of egalitarian duties of justice. Since equal concern is not a necessary condition of legitimizing the exercise of power we are at this point left with no concrete reason why equality in the distribution of goods should even matter within states. This does not mean that it can rule out in general that egalitarian justice is of importance globally. However, we first have to find a reason why it can be thought to matter at all.

To recall, Nagel's rejection of the idea of global egalitarian justice is based on the three necessary conditions of the application of distributive equality that make up his *actual practice view of justice*. The first requirement states that egalitarian justice requires a sovereign authority for its enforcement. The second one asserts that such obligations of justice can only arise among members of a non-voluntary association. Finally, the last condition tells us that the common authority of such an association has to enforce rules in the name of all its members. With a look to our real world, Nagel's position regarding international distributive justice can then be stated as follows:

1. Egalitarian justice presupposes an association that members cannot leave at a reasonable cost and that is ruled by a common coercive authority that acts on behalf of its subjects.<sup>232</sup>
2. Only existing nation states present such social contexts. Beyond the borders of these states all interactions constitute optional exchanges. This is to say that we cannot be forced to enter into international practices with others.<sup>233</sup> Our transnational interactions therefore do not generate duties of egalitarian justice. We have of course also involuntarily acquired stringent duties to not harm, and moral duties to deliver aid in emergency situations toward people outside our political community.<sup>234</sup> At present there also do not exist any common coercive transnational institutions that act in the name of those they coerce. Nor does an international consensus on what distributive justice requires exist.<sup>235</sup> Nagel thinks that, consequently, we have to arrive at the following conclusions that amount to a negation of the idea of international egalitarian justice.
3. There are no international authorities that could determine and administer transnational egalitarian justice. States do not require the help of any international institutions to fulfil their obligations towards their citizens. Furthermore, states cannot be forced to establish international institutions of socio-economic justice.<sup>236</sup> Thus, greater

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<sup>232</sup> See Thomas Nagel, "The Problem of Global Justice", *Philosophy & Public Affairs* 33(2) (2005): pp. 113-147, p. 128.

<sup>233</sup> See Thomas Nagel, *ibid.*, pp. 121, 140.

<sup>234</sup> See Thomas Nagel, *ibid.*, p. 118.

<sup>235</sup> See Thomas Nagel, *ibid.*, pp. 114, 115, 138.

<sup>236</sup> See Thomas Nagel, *ibid.*, p. 131.

international equality has to come about voluntarily, and not through conformity to duties of egalitarian justice.

However, as we saw, Nagel's interpretation of egalitarian justice rests on a particular understanding of what triggers these obligations. The connection Nagel establishes between coercive authority and distributive equality is not only flawed (as the service-conception of authority shows). It also significantly differs from John Rawls's understanding of what justifies egalitarian duties.

For Rawls, egalitarian considerations are important since "they provide a way of assigning rights and duties in the basic institutions of society and they define the appropriate distribution of the benefits and burdens of social cooperation."<sup>237</sup> On this Rawlsian view, there is no necessary limitation of the sort of social cooperation that is morally relevant to existing states.<sup>238</sup> It is Rawls's justification of equal concern that some egalitarian philosophers employ that, on the one hand, want to stay within the practice-dependent framework of justice but who, on the other hand, reject Nagel's view of equality. We now need to examine their arguments to see whether these philosophers offer us a better explanation for why egalitarian justice matters and what detrimental inequalities it prohibits.

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<sup>237</sup> John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 4.

<sup>238</sup> Rawls's own position on the question whether or not there are global egalitarian duties is not entirely clear. He does reject a global Difference principle since such a principle would not be sensitive to the ambitions of the beneficiaries of global redistributive obligations (Rawls takes local political cultures to be crucial for how well off societies are). Global distributive duties, in Rawls's view, would have to be implausible because they lack a "cutoff point" (John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), p. 119). But Rawls's view of global justice has also been taken to imply not only a rejection of a global outcome standard but of global egalitarian duties as a whole. As such, Rawls's position has been criticized by a number of philosophers, see (for instance) Allen Buchanan, "Rawls's Law of Peoples: Rules for a Vanished Westphalian World", *Ethics* 110(4) (2000): pp. 697-721; Kok-Chor Tan, *Justice without Borders* (Cambridge: Cambridge University Press, 2004). The arguments of advocates of the reformed practice view of justice we will discuss here present an attempt to expand Rawls's justification of egalitarian duties to the global sphere.

## 2. The Reformed Practice View of Distributive Justice

We can understand one group of writers that raise this sort of criticism as advocating a *reformed practice view of distributive justice*. According to the latter, what distributive justice requires depends on what suitably reconstructed actual practices would look like. This line is taken by writers such as Arash Abizadeh, Joshua Cohen and Charles Sabel, Aaron James, Darrel Moellendorf, and Miriam Ronzoni.

Proponents of the actual and the reformed practice view all agree on some of the basic essentials of the subject matter. They agree, for instance, with the claim that “duties of social and political justice do not exist between persons in virtue of their mere personhood. In absence of significant interaction, although other moral duties might exist, duties of justice do not.”<sup>239</sup> Thus, the fundamental attitude of supporters of both views toward the particular ideal of equality in distribution is that the latter is an associative or practice-dependent ideal that presupposes existing practices among people. James expresses this point when he claims that

Any principle of social (and therefore distributive) justice has as a necessary (but not sufficient) condition of its application to the world some appropriate form of organizational control. Where states of affairs are beyond anyone’s control, individually or collectively principles of justice do not apply.<sup>240</sup>

The flipside of this understanding of distributive justice is that in general distributive obligations of justice cannot arise where people do not currently “act in specific, coordinated ways in order to realize goods that would not

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<sup>239</sup> Darrel Moellendorf, *Global Inequality Matters*, p. 45. See also Aaron James, “Constructing Justice for Existing Practice: Rawls and the Status Quo”, *Philosophy & Public Affairs* 33(3) (2005): pp. 281-316, p. 295, and Miriam Ronzoni, “The Global Order: A Case of Background Injustice? A Practice-Dependent Account”, p. 233.

<sup>240</sup> Aaron James, “Distributive Justice without Sovereign Rule: The Case of Trade”, p. 535.



otherwise exist.”<sup>241</sup> This emphasis on existing social practices is based on a particular reading of John Rawls’s distinction between natural duties (like the duty not to harm others or to support just institutions) and the associational duties of institutions (that include obligations of distributive justice) that he specifies in his *A Theory of Justice*.<sup>242</sup> The former contrast with the latter, Rawls holds, in that they “have no necessary connection with institutions or social practices; their content is not, in general, defined by the rules of these arrangements.”<sup>243</sup> According to the strict reading that practice-dependent theorists favour, all duties of distributive justice (and egalitarian justice in particular) presuppose existing social practices.

However, proponents of the actual and the reformed practice views crucially disagree about what has to count as significant and relevant practices from the standpoint of distributive justice. For reasons we will encounter shortly, reformist writers argue that not only nation states present social contexts that generate distributive problems and require regulation by principles of (ultimately) egalitarian justice. In order to show that there are such transnational interactions that must conform to higher standards than benevolence, reformists like James and Moellendorf employ Ronald Dworkin’s method for interpreting social practices.<sup>244</sup>

According to the first step of Dworkin’s approach they aim to find “a common object of interpretation, by tentatively identifying a practice”<sup>245</sup> in the global sphere (such as, for instance, international rule-governed bodies and

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<sup>241</sup> Aaron James, “Constructing Justice for Existing Practice: Rawls and the Status Quo”, p. 311.

<sup>242</sup> See John Rawls, *A Theory of Justice*, p. 94.

<sup>243</sup> John Rawls, *ibid.*, p. 98.

<sup>244</sup> See Aaron James, “Constructing Justice for Existing Practice: Rawls and the Status Quo”, p. 301 and Darrel Moellendorf, *Global Inequality Matters*, p. 57. Dworkin’s own statement of his method of constructive interpretation can be found in Ronald Dworkin, *Law’s Empire* (Cambridge, MA: Harvard University Press, 1986), pp. 65-68.

<sup>245</sup> Aaron James, *ibid.*, p. 301.

cooperation). The second step of the interpretive method, then, tells us to determine a “purpose or aim in the practice [...] that bears some rational relation to the structure identified.”<sup>246</sup> Dworkinians think that in this way we can finally devise a way to improve the existing practice corresponding to those standards that “show the practice in the best light.”<sup>247</sup>

For reformists, the main conclusion of applying Dworkin’s method to the world of global cooperative practices is that these create problems of distributive justice just like domestic social practices do. Again, it is James who states what (according to the reformed practice view) triggers duties of distributive justice. He refers to Rawls’s idea

That an established social practice can be unjustly organized, because it distributes its benefits and burdens inequitably. The objection here, [...], is not to inequality as such but rather that a practice is not justifiable to those it affects when it creates inequalities among them while lacking the appropriate grounds for the difference in treatment.<sup>248</sup>

The proponents of the reformed practice view therefore do not simply accuse Nagel of having picked the wrong social practices when explaining what our distributive obligations generally are. Rather (and more particularly), reformist writers think Nagel and other supporters of the actual practice view (like Dworkin) are wrong to deviate from Rawls’s justification of the very point of equality in distribution.

For Rawls, equality in the distribution of the benefits and burdens of cooperation (where this does not waste benefits) is valuable since it is the only way to justly arrange the terms and condition of any cooperative efforts.<sup>249</sup> This

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<sup>246</sup> Aaron James, “Constructing Justice for Existing Practice: Rawls and the Status Quo”, p. 301.

<sup>247</sup> Ronald Dworkin, *Law’s Empire*, p. 67.

<sup>248</sup> Aaron James, “Distributive Justice without Sovereign Rule: The Case of Trade”, p. 537.

<sup>249</sup> “Unless there is a distribution that makes both persons better off, an equal distribution is to be preferred” (See John Rawls, *A Theory of Justice*, pp. 65, 66).

is because “we do not deserve our place in the distribution of native endowments, any more than we deserve our initial starting place in society,”<sup>250</sup> and such arbitrary factors tend to influence our chances in life. What egalitarian justice is not primarily needed for in the Rawlsian theory, though, is the legitimization of the exercise of state coercion. So Rawls’s explanation provides an alternative to Nagel’s justification of egalitarian justice.

But arbitrary factors that influence our chances in life are not present only within societies. In our globalized age our life chances are more than ever affected by what is going on outside our society and how relatively well off our own community happens to be. Reformist writers therefore contradict Nagel and condemn the existing international “institutional vacuum”<sup>251</sup> as morally objectionable. In their view, the absence of coercive international authority causes a lack of background justice in the global sphere where our transnational interactions take place. Factors such as the economic power, technological know-how, availability of natural resources, and the geography of states determine the life chances of their members and allow for unequal opportunities to influence the terms of international practices. One simple way for us to understand this argument is to think of the familiar worry that the rich countries in our world use their might to impose their interests on the poorer nations. What makes this possible, reformist writers hold, is precisely the fact that there is no one to stop them from doing so.

Ensuring background justice, in Rawls’s theory, is the task of a basic structure.<sup>252</sup> Thus, the general idea behind the reformist critique of Nagel’s actual practice view is this: reformists want to demonstrate that some of our

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<sup>250</sup> See John Rawls, *A Theory of Justice*, p. 89

<sup>251</sup> Miriam Ronzoni, “The Global Order: A Case of Background Injustice? A Practice-Dependent Account”, p. 243.

<sup>252</sup> See John Rawls, *ibid.*, pp. 6-10.

transnational practices have effects on our lives as profound as domestic factors. However, much of this global cooperation is unregulated and therefore dominated by morally arbitrary factors (like the wealth or military power of states). They should, therefore, be regulated by international institutions that ensure global background justice by establishing something like a global basic structure. The current lack of global institutions and background justice, then, presents a serious moral problem and is not (as Nagel thinks) a hindrance to the application of egalitarian justice.<sup>253</sup>

### **3. The Two Demands of the Reformist Critique**

The upshot of the reformed practice view consists in two crucial demands its advocates place on actual practice views like Nagel's.

The first claim of the reformists is that we have to extend the scope of distributive justice to all those on-going interactions that are of the same quality as the systematic domestic practices that require regulation by a basic structure. As Abizadeh puts it, "if a system of social interaction does exist, and if a basic structure could exist, then there ought to be a basic structure to which the principles of justice can be applied."<sup>254</sup>

Secondly, reformists consequently call for the creation of new (or the reform of existing) global governance institutions where these are needed to implement transnational distributive obligations of justice. After all, supporters of the reformed practice view accept Nagel's claim that "justice [...] requires

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<sup>253</sup> "The absence of a basic structure does not necessarily mean that no demands of socioeconomic justice apply, for they may indeed arise under the form of problems of background justice" (Miriam Ronzoni, "The Global Order: A Case of Background Injustice? A Practice-Dependent Account", p. 242).

<sup>254</sup> Arash Abizadeh, "Cooperation, Pervasive Impact, and Coercion: On the Scope (not Site) of Distributive Justice", p. 334.

government as an enabling condition.”<sup>255</sup> They merely deny that the form of government required has to be that of a sovereign state. James, for example, tells us that “we ought in some cases to create new practices as a matter of justice, on the grounds that existing practices require organizational supplementation in order to be just.”<sup>256</sup>

This second crucial demand of the reformed practice view has potentially dramatic implications. James, for instance, states that “justice could well require global revolution.”<sup>257</sup> And Moellendorf argues that “if distributive justice is addressing global inequality, redistribution within states alone is inadequate. [...] Just global governance will require global institutions at least to insure that duties of distributive justice are fulfilled.”<sup>258</sup> While all supporters of the reformed practice view generally disagree with Nagel on what justifies egalitarian duties and the need for international political authority, we find that this perspective comes in a weaker and a stronger version.

#### **4. The Stronger Version of the Reformist Critique**

Abizadeh, James, and Moellendorf argue for the more demanding interpretation of the reformed practice view. Their stronger interpretation of the reformist critique of Nagel is characterized by the claim that the reconstruction of many of our transnational practices reveals that these interactions directly call for authoritative regulation by standards of *egalitarian* distributive justice.

Thus, on the strong version not only the scope of distributive concern but of egalitarian treatment is extended to certain international interactions.

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<sup>255</sup> Thomas Nagel, “The Problem of Global Justice”, p. 114.

<sup>256</sup> Aaron James, “Constructing Justice for Existing Practice: Rawls and the Status Quo”, p. 314.

<sup>257</sup> Aaron James, *ibid.*, p. 315.

<sup>258</sup> Darrel Moellendorf, “Persons’ Interests, States’ Duties, and Global Governance” in Harry Brighouse, Gillian Brock (eds.), *The Political Philosophy of Cosmopolitanism* (Cambridge: Cambridge University Press, 2005): pp. 148-163, p. 162.

Accordingly, it is not enough for us to ensure that internationally we interact with each other on justifiable terms and conditions. We furthermore have to equally share “the benefits of access, and the burdens of vulnerability”<sup>259</sup> that come with our transnational practices. Abizadeh, James, and Moellendorf support this claim by pointing out that Nagel is in particular wrong about his empirical assumption that only states constitute non-voluntary associative contexts. This is to say, for these reformists, non-voluntary membership as such generates egalitarian duties, and not merely involuntariness in the context of existing coercive authorities.

James, for instance, thinks that practices like maintaining a state and our global trading of raw materials, products, and capital are all undertaken for “common purposes, purposes that rationalize a form of regular coordination and its specific roles.”<sup>260</sup> In international trade our interactions are not based on “mere coincidence of interests, [but on] coordinated action.”<sup>261</sup> They therefore present “distinctive subject[s] of assessment”<sup>262</sup> rather than loosely related exchanges. For James, it is these features of various transnational practices that make them the sort of systematic interactions to which standards of distributive justice apply. We cannot simply assess them in light of a “morality of [separate] transactions.”<sup>263</sup> In James view, systematic interactions like trade (that are under our organizational control as participants) have to conform to the “morality of practices – the class of specifically collective responsibilities that a group organized as a practice has for the way it treats individuals.”<sup>264</sup>

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<sup>259</sup> Aaron James, “Distributive Justice without Sovereign Rule: The Case of Trade”, p. 546.

<sup>260</sup> Aaron James, *ibid.*, p. 540.

<sup>261</sup> Aaron James, *ibid.*, p. 540.

<sup>262</sup> Aaron James, *ibid.*, p. 541.

<sup>263</sup> Aaron James, *ibid.*, p. 537.

<sup>264</sup> Aaron James, *ibid.*, p. 537.

From Rawls's justification of the basic structure as the primary subject of justice we know why such associative duties include the obligations of reciprocity and equal concern: given the pervasive impact such social arrangements have on our lives and the fact that we have done nothing to deserve our talents or social starting position in life we ought to equally share the benefits and burdens of our joint ventures.<sup>265</sup> However, contrary to Nagel's assumptions, James also holds that we cannot consider many of our transnational interactions to be of a voluntary nature. James does not subscribe to the bold assumption that all national economies have already merged into one single global economy.<sup>266</sup> Yet he holds that we nonetheless have to acknowledge that many of our transnational practices generate a "mutual but asymmetric dependence" among the participants.<sup>267</sup>

Moellendorf, as well, thinks that we have to recognise normatively relevant affinities between our domestic and some of our transnational practices with others. To him these similarities mean that our systematic international interactions make us and our partners members of "common good associations."<sup>268</sup> In practices of this kind the rules of egalitarian justice must apply. Moellendorf carefully characterizes such associations as those "that coordinate and regulate the employment of the joint efforts of its members and that yield goods and powers useful to the members, goods and powers to which no person has a pre-associational moral entitlement."<sup>269</sup> For Moellendorf some of our interactions with foreigners resemble our relations as co-citizens in that

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<sup>265</sup> See John Rawls, *A Theory of Justice*, p. 7.

<sup>266</sup> See Aaron James, "Distributive Justice without Sovereign Rule: The Case of Trade", p. 548: "Even if trade is beginning to approach a condition of full integration in some areas (perhaps the European Union), this is not clearly a global rather than a regional phenomenon."<sup>266</sup>

<sup>267</sup> Aaron James, *ibid.*, p. 550.

<sup>268</sup> Darrel Moellendorf, *Global Inequality Matters*, p. 52.

<sup>269</sup> Darrel Moellendorf, *ibid.*, p. 52.

they are “(i) relatively strong [and not incidental or separate actions], (ii) largely non-voluntary, (iii) constitutive of a significant part of the background rules for the various relationships of [the participants’] public lives and (iv) [are] governed by norms that can be subject to human control.”<sup>270</sup> Given these common features of domestic and international common good associations, Moellendorf thinks that both need to guarantee their participants procedural as well as some substantive equality, that is to say: egalitarian justice.<sup>271</sup>

For the justification of his argument for transnational egalitarian obligations Moellendorf, too, relies heavily on the thought that (*pace* Nagel) often our international common good associations are non-voluntary joint ventures.<sup>272</sup> He aims to convince us of this claim by asking us to imagine what realistic options a country in our world could have to completely isolate its economy and society from outside influences.

For this purpose, Moellendorf canvasses and dismisses two potential isolationist strategies: de-linking and de-globalization. De-linking as an economic strategy “advises underdeveloped countries to de-link from international trade and investment relations (to whatever degree possible) as a means of erecting economies based upon the socialization of production.”<sup>273</sup> The strategy of de-globalization, on the other hand, propagates “a world of relative self-sufficient states in which production is geared toward the sustenance of populations and adapted to the ecological constraints of local geography.”<sup>274</sup> Moellendorf concludes that no economic development is possible on the basis of either strategy.

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<sup>270</sup> Darrel Moellendorf, *Global Inequality Matters*, p. 45.

<sup>271</sup> See Darrel Moellendorf, *ibid.*, p. 34.

<sup>272</sup> See Darrel Moellendorf, *ibid.*, p. 46.

<sup>273</sup> Darrel Moellendorf, *ibid.*, p. 137.

<sup>274</sup> Darrel Moellendorf, *ibid.*, p. 140.



However, we might think that there are important ecological reasons to not pursue unlimited economic growth: our planet offers a finite amount of resources and if we want to use them in a sustainable way there is certainly an upper limit to how many of its materials we can use for our economic development. But Moellendorf offers an additional point to show the necessity of a certain economic progress. To him it seems that even the richest and most potent economy will not be able to sustain its level of productivity and affluence if it chooses total isolation. It does not seem unreasonable to think that even having the largest single domestic market in the world would not prevent a society from losing a significant amount of its wealth if it is cut off from other markets.

But we do not have to rely on this potentially inconclusive argument to see the value of economic progress. Moellendorf also points out that in a world of deliberately isolated societies it would be quite impossible for poor societies to escape poverty.<sup>275</sup> So if we think that it is morally important to help people to live a life free from poverty and economic development is an effective way to achieve this goal we have moral reasons to value such progress. We can, then, agree with Moellendorf that not only from an economic but also from a moral perspective there is a certain unavoidability of many of our transnational practices.

Abizadeh for his part arrives at the conclusion that egalitarian principles of justice ought to apply among all participants in some of our international practices by way of inference from three premises. He holds that (1) egalitarian justice is the standard according to which the basic structure of a community has to operate. Abizadeh then goes on to argue that (2) “the fact that a basic

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<sup>275</sup> see Darrel Moellendorf, *Global Inequality Matters*, p. 143.

structure is indispensable to background justice means that, where social interaction exists, there ought to be a just basic structure to secure background justice.”<sup>276</sup> Finally he points out that (3) the only way for us to think that our own society alone is substantially affected by the effects of our practices is to rely on “dodgy empirical claims about the impact of foreign politics and nondomestic institutions on the life chances of human beings across the globe.”<sup>277</sup> Thus, he concludes that in order for us to stay realistic we have to establish an authoritative international basic structure. The latter’s task would be to regulate our momentous transnational interactions and administer egalitarian principles among all participants.

In summary, it is the pervasive effects that global practices have on the life of people nowadays plus the non-voluntariness of their participation in these practices that justifies global egalitarian duties for supporters of the strong version of the reformist view. The point of equal concern for them is (in Rawls’s spirit) to render actual practices justifiable to all people they affect. Its point is (*pace* Nagel) not merely the justification of existing coercive authority.

Now that we have considered all these arguments for transnational egalitarian justice within intensely intertwined international practices, can we think of some real world instantiation of an international common good association? It appears that, as James suggests, the most obvious existing candidate example would be the European Union. The latter presents an integrated political community with a common law-making body (the European Parliament), a common executive (the European Commission), a common judiciary (the European Court of Human Rights), and a highly integrated

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<sup>276</sup> Arash Abizadeh, “Cooperation, Pervasive Impact, and Coercion: On the Scope (not Site) of Distributive Justice”, p. 333.

<sup>277</sup> Arash Abizadeh, *ibid.*, p. 344.

economy. The union thus fulfils all requirements of a common good association as outlined by Abizadeh, James, and Moellendorf – and arguably by Nagel. What the European Union lacks, at least currently, are common fiscal policies and schemes, common social security systems, and an equal distributive treatment of all citizens of its member states. At the moment numerous economists and politicians argue that in the wake of the debt crisis that started in 2010 the individual Euro-zone member states have to more closely coordinate their fiscal and budgetary politics. We certainly should not be blind to the fact that if such harmonization will take place it will do so on the basis of primarily (maybe even purely) economic considerations (for instance, with the aim to stabilize the common currency and save individual members states from speculations as to their bankruptcy at the international currency markets). But such developments would constitute a step toward greater pan-European egalitarian distributive justice that is required within the EU from a moral perspective.

### **5. The Less-Demanding Interpretation of the Reformist Critique**

However, in order to acknowledge the force of the reformist critique of Nagel's actual practice view of justice, we are not dependent upon accepting Abizadeh's, James's, and Moellendorf's strong interpretation of this approach. There is also a less-demanding take on the reformed practice view that is defended by Cohen and Sabel as well as by Ronzoni.

This weaker version features the core claim that our transnational common good practices ought to be regulated by common authoritative institutions but

not necessarily according to egalitarian standards of justice.<sup>278</sup> It thus presents a sort of minimal interpretation of the reformed practice approach. Cohen, Sabel, and Ronzoni argue that the degree and kind of regulation should rather depend on the quality of the interactions in question. Their suggestion therefore corresponds with what Nagel rejects as the continuous view of justice. Nagel thinks the latter proposes that

There is a sliding scale of degrees of co-membership in a nested or sometimes overlapping set of governing institutions. [To them] there is a corresponding spectrum of degrees of egalitarian justice that we owe to our fellow participants in these collective structures in proportion to our degrees of joint responsibility for and subjection to their authority.<sup>279</sup>

Consequently, in their argument the supporters of the less-demanding interpretation do not focus as much on the potential unavoidability of our transnational interactions as proponents of the stronger version (to recall, for Abizadeh, James, and Moellendorf this non-voluntariness is an essential reason for the application of international egalitarian standards). Cohen, Sabel, and Ronzoni are rather concerned with the fact that our international practices create general interdependencies and have great effects on our lives as participants regardless of whether we can easily opt out of them or not. In this way they want to stay cautious and sensitive to the differing qualities of our transnational interactions.

Ronzoni, for instance, tells us that “the mere fact of global international interaction does not necessarily give rise to unjust background conditions (this needs to be carefully assessed) and, even if it does, it does not ground the case that our principles of domestic social justice should automatically apply to

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<sup>278</sup> See Miriam Ronzoni, “The Global Order: A Case of Background Injustice? A Practice-Dependent Account”, p. 245; Joshua Cohen, Charles Sabel, “Extra Rempublicam, Nulla Justita?”, p. 174.

<sup>279</sup> Thomas Nagel, “The Problem of Global Justice”, pp. 140, 141.

global institutions.”<sup>280</sup> Cohen and Sabel for their part argue for an “idea of inclusion.”<sup>281</sup> According to the latter, people should be able gradually to partake procedurally and substantially in the benefits and burdens of associations depending on the degree to which they are affected by, and involved in, these practices.<sup>282</sup>

Just as the stronger one, the less-demanding version of the reformed practice view denies that the current lack of regulative international authorities is an obstacle to the validity of transnational distributive duties. Instead it focuses on the idea that justice requires us to ensure justifiable terms and conditions for our momentous global practices and on the moral inadmissibility of the existing global authority vacuum that allows for unjust terms and conditions. As Ronzoni remarks, “the absence of a basic structure [in form of international authorities] does not necessarily mean that no demands of socioeconomic justice apply, for they may indeed arise under the form of problems of background justice.”<sup>283</sup>

Like advocates of the stronger interpretation moderate reformists are also convinced that the lack of a global public consensus on distributive justice does not preclude us from creating new or reform existing global governance institutions. Quite to the contrary, there are weighty reasons to think that when we engage in international interactions we always make normative claims on each other with the expectation that our partners are going to accept and respect these claims.<sup>284</sup> While this attitude is ubiquitous in world politics, we also find it

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<sup>280</sup> Miriam Ronzoni, “The Global Order: A Case of Background Injustice? A Practice-Dependent Account”, p. 245.

<sup>281</sup> Joshua Cohen, Charles Sabel, “Extra Rempublicam, Nulla Justita?”, p. 174.

<sup>282</sup> A similar point is made by A. J. Julius, see A. J. Julius, “Nagel’s Atlas”, *Philosophy & Public Affairs* 34(2) (2006): pp. 176-192.

<sup>283</sup> Miriam Ronzoni, *ibid.*, p. 242.

<sup>284</sup> Thanks to Jerry Gaus for bringing this aspect to my attention.

dominating our international trade relations. One of the most strongly criticized normative claims in global trade (that has been given the form of a legal document) is the TRIPS Agreement that secures the technological advantage of the developed countries. And while we saw that we should resist Cohen's and Sabel's interpretation of the IMF as an agency that acts in the interest of those it coerced,<sup>285</sup> the rules this institution imposed on weak economies presents a prime example of transnational normative claim making.

The need to keep our normative claims and choices justifiable to each other provides us with further arguments in support of reformists' call for increased international authority. A look in the history books and at the current global situation tells us that it is doubtful whether a voluntary self-monitoring of rich countries could guarantee that their claims on others are morally defensible and fair. This kind of task is best left to an authoritative authority that acts on behalf of those it commands. The service conception of authority shows that political authority is particularly necessary where people limit each other's options but cannot ensure themselves that their actions are justifiable to others. It seems quite obvious that we should think similarly about the claims of states that should represent the collective choices of their citizens.

But the service conception of political legitimacy makes us aware of another shortcoming of the current global state of affairs. Reformist writers do not hesitate to point out that under current conditions nation states often are not in a good position to perform the tasks from which their authority may once have derived. So, when we apply Raz's *normal justification thesis* to states themselves we find that, contrary to Nagel's claim, the creation of new authorities is not merely an option for states.

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<sup>285</sup> See Chapter One, Section Nine.

Allen Buchanan has coined the term “reciprocal legitimation”<sup>286</sup> for the idea that (given the international independencies we find ourselves in) nation states depend for their legitimacy (at least partly) on cooperating with certain international authorities that better enable them to fulfil their functions. Buchanan argues, for instance, that in cases in which yielding some authority to transnational authorities can improve a state’s performance this “state’s participation in international institutions can contribute to its legitimacy.”<sup>287</sup> However, this also means that in cases in which a state can no longer fulfil important services or duties without the help of international authorities its legitimacy as a whole “could depend upon whether it participates in particular international institutions.”<sup>288</sup> Here the idea is not that global governance institutions would take over and away authority from nation states. Rather, the way we should think about this idea is that in areas where states ought to follow the instructions of international institutions they did not possess any effective authority in the first place.

Buchanan presents some plausible instances of situations in which the subsidiary (that is to say: gap-filling, not replacing) authority of international authorities might be relevant to the legitimacy of states. One of these instances regards our human rights as citizens. Buchanan holds that for many states it might be true that they would better respect human rights if they subject themselves to the authority of a supra-state Human Rights Court. We can appreciate this example when we keep in mind that “even the most democratic, rights-respecting states sometimes fail to protect the rights that their own

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<sup>286</sup> See Allen Buchanan, “Reciprocal Legitimation: Reframing the Problem of International Legitimacy”, *Politics, Philosophy & Economics* 10(1) (2011): pp. 5-19.

<sup>287</sup> Allen Buchanan, *ibid.*, p. 5.

<sup>288</sup> Allen Buchanan, *ibid.*, p. 15.

constitutions accord to their citizens.”<sup>289</sup> Here we can think of the European Court of Human Rights as a rather influential and successful regional example of such a supra-national judiciary authority. An even more powerful example Buchanan offers concerns states’ external legitimacy. The term regards the justifiability of effects of the exercise of political authority on people outside the authority’s jurisdiction. Buchanan’s example indicates that without proper checks also the most legitimate states might make choices that are unjustifiable to outsiders. As he points out, there is a general structural deficiency of democratic states in that

The democratic commitment to the accountability of government to citizens tends to produce not just accountability, but near *exclusive* accountability: democratic processes and the constitutional structure of checks and balances create formidable obstacles to government taking into account the legitimate interests of anyone else. In other words, there is an inherent structural bias in democracy toward *excessive* partiality.<sup>290</sup>

To accept this thesis we do not need to assume pure self-interestedness on the part of democratic citizens. The current global sphere is such a confusing arena that almost all individual citizens of any state will simply be in an inconclusive epistemic position (that is to say: they have too many relevant reasons to take into account for a decision) to comprehend what ramifications their actions and decisions as voters have on people outside their political community.

In this fact (that democratic governments are largely hostage to the opinions of their voters who often do not appropriately factor in and respect the interests of outsiders when making their decisions) Buchanan sees a possible justification of certain coercive international institutions. He holds that particularly designed

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<sup>289</sup> Allen Buchanan, “Reciprocal Legitimation: Reframing the Problem of International Legitimacy”, p. 11.

<sup>290</sup> Allen Buchanan, *ibid.*, p. 13.



international institutions could increase or even be constitutive of the legitimacy of states to the extent that they mitigate democratic partiality by ensuring fair international general conditions.<sup>291</sup> This concern about the justifiability of political authority to people who are not subject to its rule confirms *in concreto* what the service conception model of political legitimacy already indicated in a more abstract way. It shows that we require impartial arbitration for the determination and enforcement of everyone's justifiable interests and distributive entitlements - also beyond states.

Ronzoni, as well, tries to raise awareness of certain global collective action problems that endanger the proper functioning (and therefore the legitimacy) of nation states and that call for a closing of the existing international authority vacuum. As she puts it, our states only possess the effective sovereignty to perform their tasks if they hold "both effective control over internal socioeconomic dynamics and reasonable freedom from external interference."<sup>292</sup> However, according to Ronzoni we can detect multiple indications that in our present world many states have difficulties to assert their sovereignty within our interconnected and often interdependent global economy. This is because (at least in some cases) states have become almost incapable of solving the global collective action problems that endanger their performance of tasks that make it permissible for them to enforce rules and coerce people.

Rich countries, on the one hand, suffer from the on-going uninhibited tax competition that occurs when they try to underbid each other's domestic taxation of companies.<sup>293</sup> Poor states, on the other hand, are hampered in their efforts to

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<sup>291</sup> See Allen Buchanan, "Reciprocal Legitimation: Reframing the Problem of International Legitimacy", p. 12.

<sup>292</sup> Miriam Ronzoni, "The Global Order: A Case of Background Injustice? A Practice-Dependent Account", p. 248.

<sup>293</sup> See Miriam Ronzoni, *ibid.*, p. 249.

establish stable and diversified economies by the phenomenon of escalating tariffs.<sup>294</sup> Since resource-rich but under-developed countries often do not possess the technology to process their raw materials nor the power to competitively develop and sell processed products in markets of affluent societies they are forced to specialize in selling unprocessed resources. Globally, tariffs levied on technology-intensive products are higher than those charged for raw materials since developed countries thus can defend their know-how and technological advantage. This keeps the economies of poor countries undiversified and vulnerable to economic shocks. As these examples show, the lack of authoritative regulation of the global economy generates dangers for the effective sovereignty and consequently the legitimacy of rich as well as of poor nation states.

But even beyond these cases we find that there is no shortage of examples of the need to create international authorities that can ensure our justified interests and conditions of background justice for our transnational practices. We simply have to think back to the creation of the International Monetary Fund and the World Bank after the Second World War. At the time it was the most powerful states themselves that decided they require the help of supra-national authorities to stabilize their currencies and economies. Until today these institutions serve, among other things, these limited but vital purposes. A further instance of the need for increased international authoritative regulation is the organized international tax evasion schemes available in countries like Switzerland, Monaco, the Bahamas, and Liechtenstein, an issue that was left unaddressed for a long time. Rich people use the banker's discretion in these counties to hide away their wealth from the tax authorities in their own countries by parking it in

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<sup>294</sup> See Miriam Ronzoni, "The Global Order: A Case of Background Injustice? A Practice-Dependent Account", p. 251.

bank accounts of these so-called tax havens. Although international pressure has been exerted on tax haven countries it remains to be seen if trans-national tax evasion can be effectively stopped without the control of some agency responsible for monitoring and policing international private capital movements. Furthermore, the global financial crisis of 2008 revealed the problems of unregulated global capital flow and the uninhibited creation of ever more complex internationally mobile investment products. The danger that unchecked global financial speculations present for states became apparent again in the national debt crisis that started in 2010 (in the course of which financial investors bet against the solvency of whole countries, thus making it more expensive for them to finance loans at the international money markets) and that is currently threatening the existence of the Euro-zone as a whole.

While we can consider all the aforementioned examples as supporting both the weaker and the stronger version of the reformed practice view we saw that the two differ in at least one important respect. Only the stronger interpretation argues for an extension of domestic egalitarian principles of justice to all our collectively organized and momentous transnational common good practices. Proponents of the weaker version, on the other hand, limit their demands to the establishment of conditions of background justice for our international interactions that do not necessarily require egalitarian concern. However, the weaker version also operates on the basis of the Rawlsian justification of distributive justice (that is about the terms and conditions of cooperation) rather than on Nagel's (according to which distributions are part of what justifies the authority of the state).

So, can we think of a context in which we can make sense of Cohen's, Sabel's, and Ronzoni's demand for non-egalitarian international background justice? As

one such instance we could interpret the original idea behind the founding of the World Trade Organization (WTO). Much well-founded criticism has been levied against this institution, targeting its lack of transparency and its exclusive focus on the economic aspects of trade.<sup>295</sup> These problems may even let the WTO appear as a failed enterprise from the moral point of view. However, the original idea behind this organization was that all states should be able to trade on formally equal terms without thereby assuming egalitarian commitments toward each other.<sup>296</sup>

This original idea clearly appears more attractive from the standpoint of justice than a world in which trade is limited by bi-lateral trade agreements. The latter situation seems to resemble recent developments in world politics that see the WTO losing in importance. If the WTO would operate in accordance with its originally intended purpose it would indeed seem to contribute to an increase in fair background conditions for our transnational practices. The way it would achieve this is by institutionally enforcing what Rawls calls non-associational obligations such as fairness, non-harming, and mutual respect.<sup>297</sup> We can therefore also make sense of Cohen's, Sabel's, and Ronzoni's less-demanding interpretation of the reformed practice view of distributive justice as a critique of Nagel's rejection of the idea of global justice.

## **6. Why the Weaker Version approximates the Stronger Version**

However, once we take the weaker version of the reformed practice view to its conclusions it seems that it will ultimately have similar results as its more

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<sup>295</sup> See, for instance, Peter Singer, *One World* (New Haven: Yale University Press, 2004), ch. 3.

<sup>296</sup> Singer, for example, quotes the WTO's Article XX that speaks out against arbitrary and unjustified discrimination between countries concerning tariffs (see Peter Singer, *ibid.*, p. 66).

<sup>297</sup> See John Rawls, *A Theory of Justice*, p. 94.

demanding twin. That is to say that also Cohen, Sabel, and Ronzoni will have to acknowledge that a consistent application of their own view must in many cases lead to an endorsement of the demand for transnational egalitarian duties of justice.

To recall, unlike Nagel, supporters of the reformed practice view of justice do not argue for the application of international egalitarian duties by appeal to the need to justify any coercive authority. Thus, even though Ronzoni argues that cases of background injustice “cannot be stopped by any rules of conduct that states can adopt; only supranational institutions can fulfil this task, by setting up appropriate incentives, sanctions, and counterbalances,”<sup>298</sup> this does not mean that the creation of such global authorities would also generate egalitarian duties among their subjects. The service conception of authority explains that and why equal treatment is not a necessary condition of legitimate authority. So, just like the need coercively to enforce (possibly justified) international sufficientarian duties would not ultimately lead to global egalitarian obligation, neither do (as such) efforts to authoritatively ensure global background justice.

Instead, at the outset of our discussion of the reformed practice view of justice it became clear that its proponents ground their calls for international distributive justice on Rawls’s explanation of this idea. We also saw that we should establish supra-national authorities so that they can perform morally vital purposes on behalf of and in the interests of those they coerce. If, as Buchanan and others suggest, even democratic societies have problems fulfilling such duties and if international authorities could help states to conform to them, we have weighty moral reasons to recognise that these authorities act in

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<sup>298</sup> Miriam Ronzoni, “The Global Order: A Case of Background Injustice? A Practice-Dependent Account”, p. 251.

our name.<sup>299</sup> However, in a footnote Ronzoni rejects Abizadeh's direct path from the need for a basic international structure to the transnational application of egalitarian concern.<sup>300</sup> This is, as we saw, because she thinks that our present international practices are too diverse and of a differing quality so that they cannot all be thought to require egalitarian justice.

Ronzoni might well be correct in thinking that (contrary to the view taken by Abizadeh, James, and Moellendorf) currently there exist few international practices that are integrated and momentous enough to warrant the application of this ambitious ideal. But the need to establish and ensure just terms and conditions for the participants in international cooperative interactions can only increase the degree of global interconnectedness among people from different countries. Many of our international practices might therefore soon actually require equal concern among their participants. As James asserts,

Even if the globe is not fully integrated, [...], independent or pre-existing factors that were once relevant or non-arbitrary will inevitably become irrelevant or arbitrary over time. The value of local factors will become inseparable from the influences of global markets. As markets are increasingly opened, the moral trajectory is toward ever greater positive claims to fair gains. As integration increases, such claims will only increase – and perhaps increase quickly – over time.<sup>301</sup>

If James is right about the development of global interactions, it is to be expected that in the not too distant future the demands of the stronger and the weaker version of the reformed practice view will all but align.

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<sup>299</sup> Buchanan actually envisages such a two-level model of global and domestic authority with respect to the details of ideas like a human right to health care, see Allen Buchanan, Kristen Hessler, "Specifying the Content of the Human Right to Health Care" in Allen Buchanan, *Justice and Health Care. Selected Essays* (Oxford: Oxford University Press, 2009): pp. 203-218, pp. 216, 217.

<sup>300</sup> See Miriam Ronzoni, "The Global Order: A Case of Background Injustice? A Practice-Dependent Account", p. 245.

<sup>301</sup> Aaron James, "Distributive Justice without Sovereign Rule: The Case of Trade", p. 549.

At this point it is worth pausing to spell out the important consequences of the critique that reformist writers levy against Nagel's actual practice view of distributive justice. Here it is crucial for us to keep in mind that both camps subscribe to the idea that distributive justice is an exclusively associational or practice-dependent ideal that presupposes certain interactions among people. Supporters of both the actual and the reformed practice view therefore agree with Ronzoni's claim that

Conceptions of justice depend on the nature of the practices that they regulate, and therefore no state of affairs can be judged just or unjust unless we refer to a specific practice within it. People come to hold obligations of justice in virtue of the relationships they stand with respect to one another in specific social practices with particular *aims* and regulated by *rules*; and the very content of these obligations depends on the aims and rules of said practices.<sup>302</sup>

Background justice is a very general idea but to everyone who holds an associative view of justice it is thus an empty concept in absence of on-going interactions among people. If our actions have no effects on other people, the practice-dependent perspective tells us, we have no reasons to believe that we owe each other anything as a matter of distributive justice. Nonetheless, reformist writers disagree with Nagel about the purpose and justification of distributive obligations and egalitarian duties in particular. As we have seen, this lets the reformed practice view at least avoid the shortcomings that Nagel's view on global justice suffers from.

But, as was pointed out, even if we do not agree with Abizadeh's, James's, and Moellendorf's direct route to international egalitarian justice it is plausible to think that also a weaker take on the reformist critique eventually will have to endorse the demand for transnational distributive equality. What that means is

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<sup>302</sup> Miriam Ronzoni, "The Global Order: A Case of Background Injustice? A Practice-Dependent Account", p. 233.

nothing less than the falsification of Nagel's claim that "the idea of global justice without a world government is a chimera."<sup>303</sup> Morality does not demand of us to create a world state.<sup>304</sup> What it *does* make mandatory for us, though, is the creation of new international political authorities that, in accordance with the service conception of legitimate authority, help states better to perform vital functions and to ensure background justice. This is because only coercive supra-state authorities seem to be able to guarantee conditions of background justice for our sometimes unavoidable transnational practices. If we fill the existing global authority vacuum in this fashion, then (according to the reformed practice view) we can expect egalitarian duties of justice to arise within commonly organized and regulated social contexts.

## **7. The Practice-Independent View of Justice as a Critique of the Reformist Position**

The revisions that proponents of the reformed practice view of distributive justice require of Nagel and his actual practice view are fundamental and far-reaching. James, Moellendorf, and Ronzoni criticize the actual practice view for restricting any duties of distributive justice (background justice and egalitarian treatment) to the purpose of legitimizing coercive authority within states. On the basis of their own Rawlsian view of the purpose of distributive justice they are therefore able to establish an argument for egalitarian justice that is not

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<sup>303</sup> Thomas Nagel, "The Problem of Global Justice", p. 115.

<sup>304</sup> The reformist critique is thus also a reply to Amartya Sen's recent explanation of the idea of justice in which he holds that „perfect global justice [...] would certainly demand a sovereign global state, and in the absence of such a state, questions of global justice appear [...] unaddressable.” (Amartya Sen, *The Idea of Justice* (Cambridge: Harvard University Press, 2009), p. 25). With their demand for egalitarian justice beyond the state without the creation of a world state reformist writers deliver a serious blow to Sen's argument that conceptions of justice that operate with perfect standards are unable to deal with the problem of detrimental transnational inequalities.



affected by the service conception of authority. However, we now have to ask whether the reformed practice view does itself capture everything that is important about distributive justice.

So far both the approaches toward distributive justice we have canvassed (the actual and the reformed practice view of justice) are based on the fundamental assumption that distributive equality in all its shapes is an exclusively associational, practice-dependent value. This is to say that these views rest on the notion that conditions of background justice, and egalitarian duties in particular, are owed only among persons that entertain strongly interdependent social practices (that are unavoidable or at least have the aim to produce benefits while creating burdens for all involved) with each other. On this view, equality in the distribution of goods is not valuable as such. Rather, we have to aim for reducing detrimental inequalities since this is the only way to justify our common practices to each other. For practice-dependent theorists, the importance of egalitarian duties is derivative from something else, namely the need to justify the distribution of benefits and burdens among those affected by a practice who are all equally morally valuable human beings. As James asserts with respect to demanding egalitarian duties, “the idea is not that equal distribution has value as such, but rather that each participant, as a moral equal, has a presumptively equal claim to the fruit of the joint effort, in light of his or her contribution to that venture.”<sup>305</sup>

However, the focus on existing practices creates problems of its own kind for the reformed practice view of distributive justice. This is because our organized interactions can (and often do) have detrimental consequences for people who do not take part in them. As *non-participants* we have to understand all those

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<sup>305</sup> Aaron James, “Distributive Justice without Sovereign Rule: The Case of Trade”, p. 543.

people who are not members of organized social practice and are not subject to the purposeful rules of such cooperation. Thus, the question that needs to be asked is: what does the reformed practice view say about such negative externalities that affect non-participants in on-going practices? Do the ones involved in practices have obligations to those outside of their scheme?

The following case, that we can term ‘the pollution example’, can illustrate the urgency of this question for us. We imagine a world that consists of only two islands each of which is inhabited by a distinct society, A and B respectively. While both societies are aware of each other’s existence they choose to not engage in any interaction with each other. Unfortunately, the waste of the industrial production of society A (of which is disposed in the sea) is carried by ocean currents to the waters and shores of the island inhabited by society B where it kills the local fish and pollutes the beaches. Can the reformed practice view find something morally objectionable about this damage that occurs outside the practice that produces it?

James is the proponent of the reformed practice view who addresses the issue of detrimental effects that practices can have on non-participants most extensively. For James, non-participants can be thought to have one of four possible standings. “They may have:

- (i) no moral claim;
- (ii) some moral claim, but not a claim of social justice;
- (iii) claims of justice, but no special claim to equal (or otherwise fair) shares in comparison to participants; or

- (iv) claims of justice, and the same claims as participants to equal shares.”<sup>306</sup>

James thinks that from within the reformed practice perspective only the third option is plausible. To him “nonparticipants also have claims of social justice against mistreatment, [such as] for instance, domination, negligence, or exclusion.”<sup>307</sup>

The core idea by means of which James aims to account for the protection of the legitimate interests of non-participants is his *principle of Due Care*. The latter states that no one – regardless of whether they are participants in a practice – should “be made worse off than they would have been had the harmful activity not been undertaken.”<sup>308</sup> The principle, though, comes with an important qualification: “compensation when harm is done requires only restoration to this level of well-being.”<sup>309</sup> The Due Care rule is construed as a principle of distributive justice and not as a ban on assault and harming others. This is to say that in the above pollution example the waste-spill causes conflicting distributive claims among the societies A and B as to the justified use of the waters and beaches around the island society B inhabits. So, for James it is clear that on the reformed practice perspective the pollution is morally

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<sup>306</sup> Aaron James, “Constructing Justice for Existing Practices: Rawls and the Status Quo”, *Philosophy & Public Affairs* 33(3) (2005): pp. 281-316, p. 309.

<sup>307</sup> Aaron James, *ibid.*, p. 310.

<sup>308</sup> Aaron James, “Distributive Justice without Sovereign Rule: The Case of Trade”, p. 543. The principle of Due Care is not explicitly accepted (or even mentioned) by other reformist writers. However, James’s exposition of the reformed practice view (of which the principle of Due Care is a crucial part) presents the most elaborate version of this perspective. His principle of Due Care is the most detailed attempt of any supporter of the reformed practice view to outline the implications their position has for non-participants. Therefore, the principle is important for our evaluation of the reformed practice view as a whole (the closest James’s fellow reformist colleague Moellendorf comes to formulating something like the principle of Due Care is Moellendorf’s remark that “given the demands of justice, it is [...] plausible to limit the persons to whom it extends. The limit I believe to be most sensible is the border of associations”, see Darrel Moellendorf, “Persons’ Interests, States’ Duties, and Global Governance”, p. 149).

<sup>309</sup> Aaron James, *ibid.*, p. 543.

problematic because it makes outsiders worse off than they currently are. But is this way of evaluating the pollution case the most plausible one? Does the reformed practice view sufficiently take into account the interests of non-participants?

Philosophers that do not attach the same kind of fundamental importance to existing practices think that the reformed practice view does not and is therefore implausible. They argue that, in order for us to adequately consider what interests of non-participants have to be respected by the members of interactional schemes we have to adopt a less restricted perspective on distributive justice, namely a *practice-independent view of distributive justice*. According to the latter, what justice requires and how far it extends does not depend on existing practices but on what is feasible and required by relevant moral considerations.

The central idea underlying the practice-independent view is not merely that of a fair distribution of benefits and burdens and just background conditions of existing practices. As we will see shortly, this perspective also requires us not to restrict non-participating others' equal chances to advantages by the effects of our practices that do not directly harm them but relatively lessen their opportunities. Therefore, this view is more demanding than James's principle of Due Care since the practice-independent view requires more than not to make others worse off than they presently are.

## 8. Steiner's Left-Libertarianism as an Alternative to the Reformed Practice View

Left-libertarian Hillel Steiner argues for a theory that is an instance of a practice-independent view.<sup>310</sup> At the basis of his account lies the idea that all people have equal initial claims to the use of the Earth's resources.

Steiner argues that justice requires a kind of global distributive equality on the basis of negative duties of non-interference alone. Following John Locke, he holds that people have initial rights to their bodies and raw natural resources that are required to realize their natural freedom. Justice on the Lockean view entitles everyone to "acquire no more than an equal portion of such"<sup>311</sup> necessary external resources. Consequently, if some of us use more than our fair share of the Earth's resources and thereby do not leave "enough, and as good"<sup>312</sup> of them for others (as is arguably the case in our world in which fifteen percent of the world's population own about eighty percent of all existing wealth<sup>313</sup>) on Steiner's view they have violated their negative "duties of initial forbearance."<sup>314</sup> This over-acquisition of resources generates duties to redistribute resources globally so as to retribute the improper appropriation. The basic assumption Steiner relies on for his argument is that no one is entitled to the resources she has access to as a matter of having been born into a particular community.

So Steiner holds that the fact that the initial distribution of access to natural resources is morally arbitrary has to mean that no one has a natural entitlement

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<sup>310</sup> See Hillel Steiner, "Just Taxation and International Redistribution" in Ian Shapiro, Lea Brilmayer (eds.), *Nomos XLI: Global Justice* (New York: New York University Press, 1999): pp. 171-191. There is of course a wide range of different normative theories that qualify as practice-independent. Among the latter are, for instance, utilitarianism and global egalitarianism (to which the focus of our discussion will turn in the next chapter).

<sup>311</sup> Hillel Steiner, *ibid.*, p. 175.

<sup>312</sup> John Locke, *Second Treatise of Government* (Indianapolis: Hackett Publishing Company, Inc., 1980), p. 21.

<sup>313</sup> See Thomas Pogge, *World Poverty and Human Rights. Cosmopolitan Responsibilities and Reforms* (Cambridge: Polity Press, 2002), p. 99.

<sup>314</sup> Hillel Steiner, *ibid.*, p. 175.

to more than an equal share of the value of unimproved natural resources. However, reformist writers draw a very different conclusion from the same idea. Moellendorf, for instance, thinks that “the natural distribution [of resources and, among other things, talents] is neither just nor unjust; nor is it unjust that people are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts”<sup>315</sup>. James, though, clarifies what practice-dependent theorists understand by Rawls’s well-known claim that natural inequalities *per se* are neither just nor unjust: “in the absence of trade (and any further interaction), inequality across societies in total economic output, [...] is not unfair to members of a worse-off society, since no one can claim to have had a hand in creating the social advantages realized in a foreign society.”<sup>316</sup> Therefore, on the reformed practice view, detrimental inequalities are only of concern from the standpoint of justice when: (a) they are the product of human interactions and (b) they occur among the persons cooperating for mutual benefit.

The differing implications of the reformed practice view of distributive justice and its practice-independent, left-libertarian rival become clear when we take up again our example of the industrial waste pollution washed ashore society B’s coast. Here philosophers like Steiner would not simply agree with reformists like James that this pollution is unjust as a negative externality of existing practices that makes non-participants worse off. Advocates of practice-independent theories like Steiner would ask the antecedent question whether one or both societies currently make use of a fair share of their planet’s resources. However, such worries cannot arise from within the reformed

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<sup>315</sup> Darrel Moellendorf, *Global Inequality Matters*, p. 60.

<sup>316</sup> Aaron James, “Distributive Justice without Sovereign Rule: The Case of Trade”, pp. 547, 548.

practice view according to which a distribution of resources or goods can only be just or unjust within the context of existing practices. Thus, for practice-independent theories the scope of distributive justice is a lot more expansive than for any practice-dependent perspective.

The problem with this way of contrasting various views about the nature and scope of justice is that it seems to lead us to a kind of standoff of intuitions: some of us think that justice simply is a practice-dependent ideal while others believe that by virtue of our humanity everyone is entitled to some equal distributive share of the world's resources. But such external criticism of the reformed practice view does not seem to get us to a conclusion.

### **9. The Quintessential Issue: The Need for Practice-Independent Entitlements**

However, this apparent standoff situation changes as soon as we realize that the reformed practice view of distributive justice is not fully consistent, and so can be criticized from within. As we will see, there are a number of such internal problems we can identify. For the sake of simplicity we can group these issues into two categories: (1) the question of the moral relevance of the status quo and (2) the problem of diminished opportunities of non-participants in practices.

Since the principle of Due Care is supposed to explain what participants in practices owe to non-participants according to the reformed practice view, the latter's validity to a large extent depends on the cogency of this principle. If practices objectionably affect outsiders and the reformed practice view could not account for these problems then this would certainly impair its plausibility. To recall, according to James the principle of Due Care demands that practices make non-participants no worse off than they would be if that practice would

not exist. Thus, much hinges on what James can be thought to mean by the phrase 'worse off'. When we ask about the best possible reading of this condition, though, we encounter the two aforementioned shortcomings:

(1) The Question of the Moral Relevance of the Status Quo

Since the principle of Due Care tells us not to make anyone worse off by our practices than they are without the effects of these practices this implies that, on the reformed practice view, there is something morally special about the current state of affairs or the status quo.

But we have to ask, what makes the status quo relevant from the perspective of distributive justice? To return to our pollution example, what if society A has to produce industrially and dump its industrial waste in the sea since this is the only way for them to survive on the resources their island offers them? This question gets more complicated if we further assume that through the pollution of a part of its waters and shores society B would be made somewhat worse off but not significantly so. The island of society B might be that large and resource-rich that to them the washed-on waste is merely a nuisance. Should we not think that in such a situation society A has a stronger distributive claim to make use of the shores although society B currently benefits from them?

Furthermore, the importance that the principle of Due Care attributes to the status quo allows for non-participants to suffer from forces beyond their control in ways that reformist writers consider problematic within existing practices. This is shown by the following 'plague example'. We can imagine that in our two island world no one pollutes each other's shores but instead society B is hit by a terrible natural disease. This plague decimates B's population so that the survivors retreat from the island's shores to re-group inland to form a new smaller but stable community. Now the fishing grounds at the island's shores



(that allowed B to grow in numbers and become better off in the past) are no longer used by society B. At this point the principle of Due Care would allow for society A to avail itself of and even deplete this fish resource that before was morally inaccessible for them since it was utilized by society B. If society A chooses to make use of these fishing grounds society B will be kept from growing and becoming more affluent again in the future.

The problem the plague example makes us aware of is that the reformed practice view's focus on the status quo permits various kinds of indirect or delayed detrimental effects of practices that harm non-participants. Thus, the strictly practice-dependent nature that all our distributive entitlements have on the reformed practice view does not only accord a dubious moral importance to the status quo. This practice-dependence also allows for detrimental effects of practices that would seem problematic within existing interactions on the reformed practice view itself: within such practices the long-term effects of particular distributions of benefits and burdens certainly are factors that matter morally for the assessment of these cooperative schemes. However, the plague example also points at a second internal shortcoming of this perspective.

## (2) The Problem of Diminished Opportunities of Non-Participants

We begin to see this second problem when we consider two of James's assertions about the reformed practice view. On the one hand, James argues that equality in distribution is a practice-dependent value. On the other hand, though, he holds that the reformed practice view includes "principles of Collective Exclusion, which prohibit the turning away of refugees, boat people, those seeking political asylum, and so on."<sup>317</sup>

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<sup>317</sup> Aaron James, "Constructing Justice for Existing Practices: Rawls and the Status Quo", p. 310.

But what about poor non-participants who would like to join a practice so as to benefit from the fruits of cooperation? Here we might, of course, want to argue that keeping people from establishing contact (for instance, by building border fences) already constitutes a form of interaction that makes considerations of distributive justice necessary. However, it seems that we can devise other cases in which efforts to thwart contact are so indirect and remote that the only aspect that remains of these efforts are the intentions of the non-participants. In our two island world society B might want to establish contact with society A. However, the island that society B inhabits does not supply its inhabitants with sufficiently stable wood for building the seafaring ships necessary to establish contact. Thus, society B has to hope for driftwood to be washed ashore its beaches as it has very seldom happened in the past. Now it seems that in this situation the reformed practice view and the principle of Due Care permit society A to try to make sure no driftwood reaches the shores of the island inhabited by society B. Since in this way A does not make B worse off than the latter society currently is it appears reformist writers have no way to criticize the behaviour of A.

However, as the plague example demonstrates there are also numerous conceivable cases in which practices can diminish the opportunities of non-participants without there being any malevolent motivation involved. We saw that with respect to the plague example the shortcoming of the reformed practice view is that it cannot account for the fact that society A's exploiting the fishing grounds right off society B's shores will prevent the latter from developing in the future. The problem is that to James and other reformists equality of opportunity to gain from natural resources is a value limited to existing practices. The reformed practice view is generally unable to find fault

with practices that diminish the future opportunities of people who do not take part in certain practices. There are plenty of examples by which we can illustrate this shortcoming.

Decisions made in one country in our world often influence at least the opportunity costs or entire options of other societies: technology or information trading among two countries might affect the options of other countries; a country's repository for nuclear waste might contaminate the soil and ground water of a neighbouring state; claims to new or unowned territories or resources (such as those in Antarctica, below the Arctic, or seabed manganese nodules) affect what other societies can claim; the limited absorption capacities of the atmosphere of our planet makes it necessary to limit global greenhouse gas emissions while poor countries will need to produce such emissions to escape poverty.

The climate change problem is a case that is particularly well suited to illustrate the shortcomings of the reformed practice view. Moellendorf addresses it in an attempt to defend the reformed practice view.<sup>318</sup> He describes the distributive problem with respect to climate change as follows. In order for us to prevent an increase of 2°C in the atmospheric temperature humanity has to cut back on its industrial emissions. The thought is that a rise in temperature of more than these 2°C would have dramatic effects: the ice at the poles could melt and cause the sea level to rise, that could lead to the flooding of large areas of the world (for the sake of the argument we can ignore the alternative assumption that the continuation of high levels of greenhouse gases could enable us to produce better technologies that could help us protect ourselves from the effects of climate change).

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<sup>318</sup> See Darrel Moellendorf, *Global Inequality Matters*, ch. 6.

However, so far it has mostly been the developed and rich, industrialized societies that have used up the absorption capacity of our atmosphere. There are therefore reasons to think that it is now the turn of these rich countries to cut back on their emissions so that poor countries that haven't yet contributed much to the pollution of the atmosphere get a chance to develop and escape their low level of affluence. But on the reformed practice view his idea is only available if the current level of atmospheric pollution can be understood as the outcome of joint global human activity. Otherwise the absorption capacity of the atmosphere and its existing pollution could not be interpreted as benefits and burdens that have to be equally distributed among people (which is a necessary condition for the application of principles of distributive justice according to the reformed practice view). Moellendorf aims to frame the problem in exactly this way when he argues that all persons are participants in one global atmospheric community.<sup>319</sup> Here he presumably thinks that the former colonies of the first developing countries were implied (albeit indirectly) in the first industrial revolution by, for example, providing resources that were extracted by the colonial rulers.

However, we might not so readily accept the view that the current atmospheric pollution was caused by one single global association or practice. To approve of this interpretation it seems that we would have to stretch the meaning of certain notions Moellendorf uses in his argument beyond what is plausible. For one thing, his characterization of non-voluntariness would have to substantially differ from, for instance, Nagel's use of the term: the colonized countries certainly mostly were involuntarily ruled by their colonial masters. But this seems hardly comparable with the non-voluntariness of being a

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<sup>319</sup> See Darrel Moellendorf, *Global Inequality Matters*, pp. 110, 111.

member of a state: the latter is a matter of happenstance whereas the former was a matter of pure coercion and technological superiority. For another thing, the destruction of their cultures meant that for decades many colonized societies were unable to utilize technological means of development and contribute to atmospheric pollution themselves.

Thus, it seems more plausible for us to explain the differential burdens required for saving the global climate as deriving primarily from historical responsibilities. The practice-independent view of justice accordingly takes the developed countries not only to have used the advantages they gained from polluting the atmosphere to secure their own development and dominance in the world. In this way they furthermore unduly limited the underdeveloped societies' opportunities to advance as well and thereby violated their duties of non-interference. On the practice-independent view, rectificatory duties of distributive justice to restore people's distributive entitlements can therefore arise as a matter of either preventing, or making amends for already caused violations of negative obligations. However, issues of the latter kind do not seem addressable on the basis of the reformed practice view. Instead they require us to assume certain practice-independent distributive entitlements of all people.

In cases like that of atmospheric pollution or the appropriation of unowned natural resources the decisions of one political community will negatively affect the opportunities of other people without there being any existing practices among the two sides. In general, practice-dependent views lead to counter-intuitive results when it comes to people's entitlements to use natural and yet

unclaimed resources.<sup>320</sup> It seems that, due to the fact that reformist philosophers think of equal distributive entitlements exclusively in terms of a practice-dependent value, they have to allow for the acquisition of such natural resources to take place on a ‘first come – first serve’ basis.

We should note that this second shortcoming also casts doubt upon James’s attempts to claim Rawls’s theory of justice as an ally of the practice-dependent perspective of distributive justice. James holds, for instance, that “Rawls has indeed reasoned from existing practices all along”<sup>321</sup> and that “Rawls does assume [...] that all reasoning about what social justice requires of us begins from existing practices.”<sup>322</sup> This leads James to conclude that “Rawls assumes what we might call *the existence condition*: any (fundamental, ideal theory) principle of social justice has as a condition of its application the existence of some social practice.”<sup>323</sup>

If James could show that Rawls’s theory is an instance of the reformed practice view of distributive justice this would at least advance his case amongst the many political philosophers who consider the Rawlsian project as fundamentally important. However, we have good reasons to believe that, in contrast to James, Rawls generally thinks of the diminished opportunities of non-participants as a serious problem for any conception of distributive justice. This becomes obvious when we consider Rawls’s Just Savings Principle that he outlines in *A Theory of Justice*.<sup>324</sup> Here Rawls introduces the principle to address issues of intergenerational justice. The question that concerns him is to

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<sup>320</sup> In this respect see also Philippe van Parijs, “Reciprocity and the Justification of an Unconditional Basic Income. Reply to Stuart White”, *Political Studies* 45(2) (1997): pp. 327 - 330.

<sup>321</sup> Aaron James, “Constructing Justice for Existing Practices: Rawls and the Status Quo”, p. 284.

<sup>322</sup> Aaron James, *ibid.*, p. 285.

<sup>323</sup> Aaron James, *ibid.*, p. 295.

<sup>324</sup> See John Rawls, *A Theory of Justice*, pp. 251-258.

what extent we owe it to our successors to leave some of the resources and bounty our planet offers for them to use. As Rawls sees it “it is a natural fact that generations are spread out in time and actual economic benefits flow only in one direction. This situation is unalterable, and so the question of justice does not arise. What is just or unjust is how institutions deal with natural limitations and the way they are set up to take advantage of historical possibilities.”<sup>325</sup>

Rawls therefore thinks it is mandatory for us to save up some of our wealth and natural resources for the generations to come so they have the opportunity to live in a just liberal society. The important aspect for us to note about the Just Savings Principle is that with this idea Rawls wants to establish an intergenerational practice among persons that cannot cooperate and of which most cannot contribute to this practice since they do not yet exist. Thus, what Rawls has to assume is that it matters what opportunities people have irrespectively whether they participate in practices or not. This does, of course, not amount to saying that the Just Savings Principle is an egalitarian one demanding equal opportunities for all persons that ever exist. But we should be aware that the idea of the Just Savings Principle is an indication that Rawls’s theory of distributive justice is not a purely practice-dependent one, as James likes to claim.

However, the problem of the diminished opportunities of non-participants also strikes the other way. When we act, we normally cannot help but diminish the opportunities of others: the space I occupy cannot be occupied by others, the air that I breathe cannot be breathed by someone else, and so on. However, as John Stuart Mill points out, we think that many of such instances of closing off

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<sup>325</sup> John Rawls, *A Theory of Justice*, p. 254.

opportunities for others are justifiable. In his *On Liberty*,<sup>326</sup> Mill offers a range of examples to sustain this thought, such as competition in a fair market and “success in an overcrowded profession.”<sup>327</sup> But if we assume that distributive entitlements are fully practice-dependent, yet also hold that closing off opportunities of others makes them worse off, practice-dependent thinkers face a dilemma. If they want to maintain that it is not permissible for us to disadvantage others via the externalities produced by our actions, they only have two options.

First, they can think that we must never disadvantage other people whatsoever in the pursuit of our goals. We might read James’s principle of Due Care to argue for this claim (to recall, the principle tells us that no one should “be made worse off [by a practice] than they would have been had the harmful activity not been undertaken”<sup>328</sup>). But if we agree with Mill that when acting we cannot always avoid negatively affecting others then we need to be able to draw a distinction between morally permissible and impermissible negative effects of our actions. There is only one alternative to this situation.

This second option, though, goes beyond what reformist writers are willing to admit. It tells us that we need to assume that people possess general, practice-independent distributive entitlements of some sort that we must not violate either intentionally or through the externalities we produce. Steiner’s approach is one possible example of such an idea. In Mill’s case the principle of utility provides the details of how to define what makes negative externalities justifiable.<sup>329</sup> But the principle of utility, of course, faces its own problems.<sup>330</sup>

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<sup>326</sup> John Stuart Mill, *On Liberty* (New Haven: Yale University Press, 2003).

<sup>327</sup> John Stuart Mill, *ibid.*, p. 156.

<sup>328</sup> Aaron James, “Distributive Justice without Sovereign Rule: The Case of Trade”, p. 543.

<sup>329</sup> “I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being. Those



For example, we might think it plausible that the equal moral status of persons should somehow also be reflected in the idea of such universal distributive entitlements. Thus, a certain level of equality is not to be sacrificed for the sake of a gain in overall utility.<sup>331</sup>

However, the point here is not that therefore egalitarian justice ought to apply globally. There might be room for Ronzoni's argument that presently we do not have the institutions in place that would trigger egalitarian obligations among all people. Maybe what distributive justice requires outside existing interactions is that everyone has enough to lead a decent life. The argument proposed here is more modest than an endorsement of global egalitarianism.<sup>332</sup> It rather contains an important reason against a purely practice-dependent notion of distributive justice. The argument shows that such conceptions of distributive justice are incapable of distinguishing in how far the externalities of our actions may influence others (and, in particular, those we do not interact with). It is much more plausible to think that, instead, we need to assume that everyone has a claim to some equal share of the resources of our planet. This point alone seems enough to invalidate a strict understanding of Rawls's distinction between associative and natural duties<sup>333</sup> and to discredit the central presuppositions of the reformed practice view of distributive justice.

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interests, I contend, authorize the subjection of individual spontaneity to external control, only in respect of those actions of each, which concern the interest of other people" (John Stuart Mill, *On Liberty*, p. 81).

<sup>330</sup> See Nils Holtug, "The Harm Principle", *Ethical Theory and Moral Practice* 5(4) (2002): pp. 357-389.

<sup>331</sup> See John Rawls's critique of classic utilitarianism in *A Theory of Justice*, pp. 19-24.

<sup>332</sup> We will encounter positive arguments for the idea of global egalitarianism in the next chapter.

<sup>333</sup> Among the natural duties Rawls counts a requirement of fairness (John Rawls, *ibid.*, p. 94). If we assume that this idea of fairness includes the enjoyment of some equal share of the world's resources, such a less strict understanding of this distinction might avoid this problem.

## 10. Conclusion

At this point we can summarize the conclusions of our exploration of those views that take distributive justice to be an associative or practice-dependent ideal that only applies among human beings affected by common practices. We found and scrutinized two such associative approaches: the actual practice view and the reformed practice view of distributive justice.

We found the actual practice view of justice and its rejection of the idea of global egalitarian justice to be implausible. The service conception of political legitimacy shows that the elimination of detrimental inequalities is not even mandatory as a way to justify the exercise of domestic coercive authority. We saw that, in addition, reformist philosophers (who also advocate another practice-dependent understanding of the idea of distributive justice) raise other serious doubts about the plausibility of Nagel's actual practice view.

Proponents of this reformed practice view argue that what distributive justice demands depends on what suitably reconstructed and reformed actual practice would look like. At the heart of their critique lies an understanding of the purpose of distributive equality and justice that is inspired by Rawls's *Theory of Justice*, rather than Nagel's and Dworkin's authority-focused conception of egalitarian justice. Reformists argue that, on the one hand, we have to accept that the scope of egalitarian concern extends to all our unavoidable interactions. On the other hand, they think we need to establish new or reform existing international political authorities charged with the task of establishing these just terms and conditions of interaction.

But we have to be clear about what the call for new and reformed coercive international institutions does *not* aim at. Since historically there exists great

aversion of the idea of a world state or government<sup>334</sup> it is important to emphasize that the new institutions demanded by reformist writers are not supposed to take on such a comprehensive role. Rather we have to imagine these new authorities as performing limited tasks and holding clearly delimited powers (in accordance with, for instance, Raz's *dependence thesis*).

The idea here is that of a supplementation of existing state authority rather than a replacing of it. As Ronzoni puts it, global governance institutions “would not substitute the role of states but only guarantee background justice *between* them.”<sup>335</sup> Decisions made by new or reformed international institutions (such as a restructured UN general assembly, a UN court of Human Rights with coercive powers, the WTO or new institutions regulating the global financial markets or efforts against climate change) could, of course, have far-reaching consequences for the competences of states. But no single global governance institution would have to claim authority over all areas of political decision-making or power over decisions that states are capable of making themselves.

However, in the end we found that also the reformist view faces serious objections. What every practice-dependent approach toward distributive justice is missing is the notion of practice-independent distributive entitlements of people. Without the latter we found we cannot address the problem that many of our actions unavoidably limit the options of other people who do not interact with us. Since such disadvantaging of others is practically inevitable we have to be able to distinguish between morally acceptable and objectionable interference with other people's interest. These are certain practical and

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<sup>334</sup> See for instance Immanuel Kant, “Perpetual Peace: A Philosophical Sketch” in *Political Writings* (ed. H. S. Reiss) (Cambridge: Cambridge University Press, 2007): pp. 93-130, p. 113.

<sup>335</sup> Ronzoni, “The Global Order: A Case of Background Injustice? A Practice-Dependent Account”, p. 252.

theoretical issues (such as climate change and access to unowned resources) that pose serious difficulties for every supporter of practice-dependent conception of distributive justice. Since the latter limit distributive entitlements (and in particular equal concern) to existing interactions they cannot tell us in how far our practices can justifiably limit the options of others who do not participate in these practices. Instead, making a distinction between permissible and impermissible influences presupposes a sense of persons' general distributive entitlements that are definable independently of any actual practice. As Steiner's theory shows, given the equal moral status of persons, such general distributive entitlements should bear the mark of equality in some way.

This also means that (if understood in a strict way) Rawls's distinction between associative and natural duties in *A Theory of Justice* (see section two of this chapter) is not sustainable: among the natural (practice-independent) duties there needs to be an obligation to respect persons' universal equal distributive entitlements. And the latter duty has to presuppose that, as a matter of justice, we must all be thought to possess rightful and in some sense equal claims to some share of the resources this world offers us. The scope of distributive justice is therefore not limited to existing practices.

In summary, the problem of disadvantaging nonparticipants points us toward a practice-independent view of distributive justice so as to enable us to account for cases of injustice that occur outside of existing practices as well. However, once we accept a practice-independent view, the scope of distributive justice extends even further than the advocates of the reformed practice view (or any practice-dependent approach) want to allow for. This is nonetheless the conclusion of our attempts to apply consistently the reformists' own standards.



## Chapter IV: Three Flawed Objections to Global Egalitarianism

In the last chapter we found that the actual as well as the reformed practice views of distributive justice face serious problems due to their practice-dependent natures. Advocates of the reformed practice view challenge Thomas Nagel's claim that duties of egalitarian justice arise only within social schemes that are regulated by an existing common coercive authority. Reformists like Aaron James and Darrel Moellendorf plausibly argue that the scope of egalitarian justice has to be thought to extend to all existing human practices and interactions of a certain (involuntary or interdependent) kind. However, the reformed practice view excludes from considerations of distributive justice all those detrimental inequalities that do not occur among participants in mutual practices.

What we also saw in the last chapter, though, is that the reformed practice view as well has counter-intuitive implications. These, we diagnosed, are caused by its practice-dependent character. Its two main problems we identified are that it (1) attributes special moral relevance to the distributive *status quo* in a seemingly unfounded fashion, and that it (2) is unable to account for morally objectionable negative externalities of existing practices that diminish the opportunities of non-participants in those schemes. These issues can be avoided (and our theory of distributive justice made coherent) only if we accept the idea that everyone possess certain practice-independent distributive entitlements. This is *not* to say that, therefore, these practice-independent entitlements have to be conceived of as equal. However, the generally accepted idea of human

beings' equal moral status, the idea of the Lockean proviso<sup>336</sup> (that, when initially acquiring resources, we have to leave as good and as much for others) which figures, for example, in Hillel Steiner's left-libertarian theory of distributive justice, indicate that equality has to have some more than formal place in a theory of global justice.

In order to get a better grip on what the idea of practice-independent entitlements has to encompass we have to find out what motivates Nagel, James, and all other practice-dependent theorists to limit egalitarian justice to existing practices. We thus have to ask, what (according to them) is morally special about social practices and interaction, so that the latter are thought to limit the scope of egalitarian justice. In this chapter we will address this question. For this purpose we will assume that justice in fact requires *global egalitarianism*. The latter denotes the view that (on an abstract, theoretical level) all detrimental inequalities among human beings are morally objectionable – regardless of their associational ties or membership in practices.

Starting from global egalitarianism is not simply a wild guess. Equality figures prominently in many moral theories. And since even practice-dependent theorists think that, (at least) within the domestic sphere of states, distributive equality is the point of departure from which all inequalities have to be justified, an extreme demand for equality is not as such unreasonable. Global egalitarianism makes it the duty of all of us to create and use institutional schemes to eliminate all detrimental interpersonal disparities on Earth.

We will describe and consider the three fundamental objections to global egalitarianism that practice-dependent thinkers present in their texts. By

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<sup>336</sup> This term was coined by Robert Nozick, see his *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 179.

showing that none of these criticisms is effective we will strengthen the case for global egalitarianism. As we shall see in the last chapter, this idea is not the final word on what global justice plausibly has to mean. Nonetheless, our debilitation of the central three objections to global egalitarianism will establish this idea as the fundamental principle from which all our reasoning about distributive justice has to begin.

### **1. Mapping the Territory**

So far the content of the notion of universal distributive shares is very much under-specified. Of all the theories we have scrutinized up to this point only Hillel Steiner's embraces the idea that persons are entitled to certain practice-independent shares of goods and opportunities.<sup>337</sup> This approach, though, is not without its own problems and therefore cannot provide us with an unobjectionable understanding of what people are due regardless of their associational ties.

Steiner's argument relies on the idea of "an egalitarian allocation of natural resource values."<sup>338</sup> But his argument, in turn, depends on accepting a Lockean theory of property. However, if we do reject the exclusive relevance of the Lockean notions of self-ownership and the initial distribution of property for justice, we will not be convinced of Steiner's approach either. Although his view includes rather substantive initial egalitarian entitlements, Steiner's is still an example of a libertarian theory. But the latter, as Rawls plausibly criticizes in *A Theory of Justice*, allow for systems of natural liberty in which "the existing distribution of income and wealth, say, is the cumulative effect of prior

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<sup>337</sup> See Hillel Steiner, "Just Taxation and International Redistribution" in Ian Shapiro, Lea Brilmayer (eds.), *Nomos XLI: Global Justice* (New York: New York University Press, 1999): pp. 171-191.

<sup>338</sup> Hillel Steiner, *ibid.*, p. 176.



distributions of natural assets.”<sup>339</sup> The fundamental flaw of such ‘starting gate theories’ according to Rawls is that they permit “distributive shares to be improperly influenced by [social and natural] factors so arbitrary from a moral point of view.”<sup>340</sup> If we (as many egalitarians do) object with Rawls to these consequences of libertarian theories we will not find Steiner’s answer to the question of which detrimental inequalities among people are morally objectionable to be a satisfying one.

At this point we can therefore summarise the state of our discussion as follows. None of the approaches toward distributive justice we have discussed so far *satisfactorily exemplifies and realizes our egalitarian notions* that derive from the premise of the moral equality of all human beings. These egalitarian beliefs at least call for an accommodation of the ideas that (a) all persons are entitled to certain distributive shares irrespectively of their membership in human associations. In addition they demand that (b) these entitlements must not be compromised by morally arbitrary factors. What we have seen instead is this: the seemingly uncontroversial assumption of equal moral worth does not imply a unique answer to the question which detrimental inequalities we have to eliminate as a matter of justice. It is in fact easy to become confused about what all the theories we have discussed require us to do in different possible situations. Still, in order for us to arrive at a conception of justice that is plausible because it can account for all our egalitarian convictions we have to be clear on what justice demands of us in various circumstances.

A good way for us to gain clarity about the different possible answers to the question what justice might require in various circumstances is to modify a

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<sup>339</sup> John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971) p. 62, 63.

<sup>340</sup> John Rawls, *ibid.*, p. 63.

thought experiment made prominent by Charles Beitz.<sup>341</sup> In this hypothetical situation we abstract from the complexities of our real world and imagine a planet that only contains two continents within one gigantic ocean. Both islands are inhabited by two separate societies that make use of the natural resources available to them. We can then change this basic state of affairs to create different scenarios so as to find out what features of the different circumstances influence our thinking about what distributive justice requires in each situation. With the help of this method, which is a common one in political philosophy, we can hope to ‘distil’ the requirements of justice in ideal circumstances so that we can afterwards apply them to the situation in our real world.

For our purposes, it seems most useful to distinguish between five scenarios. The first one starts out with a situation of strong interconnectedness between the two societies. We then relax the degree of interaction in the subsequent scenarios.

- In scenario A, which we can label ‘*common institutions*’, both societies have set up common regulative authorities that enforce the same laws on the inhabitants of both islands.
- In scenario B, which we will refer to as ‘*interdependency*’, the two island societies have not created a common government or law. However, over time they have established trade practices of such a quality that neither society can end the exchange without significantly setting back their development or even without endangering their survival. In the latter case both societies might either have (in an effort to increase productivity

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<sup>341</sup> See Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979).

by specialization and a division of labour) depleted some different vital resource on their continent or they never disposed of it in the first place.

- In another scenario C, '*optional cooperation*', both island societies have established trade practices with each other as well. However, their cooperation is voluntary in the sense that neither society requires the exchange for their survival or development. Trade might have come about either due to mutual curiosity or because it speeds up the process of development.
- In yet a different scenario D, which we can name '*harmful externalities*', there exist no interactions among our two communities. However, some practices within both separate groups impact negatively on the other community. This category covers the pollution and plague examples we encountered in Chapter Three: one society's factories might produce pollution that rains down with the precipitation on the other continent while the ocean current transports the industrial waste dumped by the other group washes up on the first society's shores. Alternatively, one society's fishing operations might slowly deplete the ocean's fish population while the other society is currently unable to fish.
- Finally, in a scenario E, '*natural inequality*', the two societies neither interact, nor do they impact directly on each other's opportunities whatsoever. The only feature noteworthy about this scenario is that – due to a naturally unequal distribution of resources on the two continents – the members of one society are significantly better off than the people in the other community while no one on either of the islands has to live in dire straits.

## 2. The Road to Global Egalitarianism

What does distributive justice require in each scenario?

For starters, proponents of all the three practice views of distributive justice we scrutinized accept a ban on unjustifiable harmful interferences with people outside our own associations as they occur in the ‘*harmful externalities*’ scenario D. As was explained before, the need to distinguish acceptable from objectionable disadvantages affecting those who do not participate in our practices highlights the need to specify some kind of global practice-independent distributive entitlements.

Besides these minimal requirements of justice to avoid objectionable harmful interference with non-participants philosophers who defend an actual practice view (like Thomas Nagel) only accept further duties in scenario A. This is because to Nagel distributive equality is a condition of the justification of the exercise of political authority – which is only possible in ‘*common institutions*’ situations. Philosophers like Aaron James, Darrel Moellendorf, Miriam Ronzoni, and Joshua Cohen who hold reformed practice views of justice, on the other hand, also argue for distributive obligations in the scenarios B, ‘*interdependency*’, and C, ‘*optional cooperation*’. They might even be willing to concede that the two societies have an obligation to start joint practices in scenario D, ‘*harmful externalities*’, if this is the only way that they can ensure that no one unjustly disadvantages the other side.

But supporters of neither the actual nor the reformed practices views can detect any injustice in the ‘*natural inequalities*’ scenario E. Here the differences between the opportunities and wealth of both societies can be entirely traced back to the naturally occurring unequal distribution of natural resources. If we want to be able to criticize this situation of naturally-caused inequality we have

to hold a conception of justice that takes people's entitlements to be independent of their membership in political communities and cooperative practices. Only on the basis of such a practice-independent view (as, for instance, Hillel Steiner's) can we argue for more than negative obligations that we have toward each other with respect to those goods that make our lives go well in Scenario E type situations.

However, we just saw that practice-independence is not a sufficient criterion to accommodate all our central egalitarian beliefs. Theories like Steiner's allow for inequalities that seem problematic. Thus, we really face a twofold task in finding a convincing egalitarian conception of justice. Besides the idea (a) that considerations of egalitarian justice cannot be limited to existing interactions the desired conception also has to do justice to the premise (b) that all people possess equal moral status which entitles them to protection from the detrimental effects of *morally arbitrary* factors. By 'morally arbitrary' we should understand those facts that are not reasons for something else. With respect to the distribution of goods that are beneficial to the lives of persons, all aspects are morally arbitrary which can influence this distribution but which no one can be thought to be entitled to. Rawls for this reason states that "there is no more reason to permit the distribution of income and wealth to be settled by the distribution of natural assets than by historical and social fortune."<sup>342</sup>

Thus, since a plausible theory of distributive justice should accommodate all our egalitarian notions, we have reasons to think that the scope of justice this theory defends must be *global in a dual sense*. It has to (a) hold that the same idea of justice applies to all people wherever they live. And it must (b) accept the

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<sup>342</sup> John Rawls, *A Theory of Justice*, p. 64.

claim that all things that are morally arbitrary and influence how well off persons are have to be subject to considerations of egalitarian justice.

So far we have not found arguments (besides the moral equality of persons) for anything that would in principle and always be relevant for the distribution of goods. We saw that there are no features of states that could limit egalitarian justice to their domain. Such features either occur also outside of states (like coercion and the reciprocal production of collective goods) or they are not sufficient to justify egalitarian duties even within states (like having a common coercive authority). We furthermore saw that claims to an equal share of goods (if this includes, as it should, future opportunities) are not confinable to existing practices. What has *not* been disproven, though, is that the equal moral status of persons matters for the interpersonal distribution of goods. At this point it is therefore reasonable for us to assume that nothing *principally* limits persons' entitlement to an equal share of goods. Thus, the scope of our theory of distributive justice should in this sense be thought of as universal.

A principle that accepts this claim is properly called *global egalitarianism* because it holds that “there is nothing to make it just that some are better (or worse) off than others.”<sup>343</sup> The implication of this principle is that we all have duties to eliminate detrimental inequalities that people everywhere suffer from. Global egalitarianism is an intuitively plausible principle that seems to account for all of our important egalitarian notions. But can the principle be defended against its many critics?

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<sup>343</sup> Ingmar Persson, “A Defence of Extreme Egalitarianism” in Nils Holtug, Kasper Lippert-Rasmussen (eds.), *Egalitarianism: New Essays on the Nature and Value of Equality* (Oxford: Oxford University Press, 2007): pp. 83-97, p. 83.

### 3. A Prominent but Unclear Distinction: Relational versus Non-Relational Views of Distributive Justice

It is, of course, precisely the notion of the universal scope of justice that those philosophers who defend practice-dependent views reject. As will become clear, what ultimately causes the disagreement between global egalitarians and practice-dependent approaches is not merely their differing opinion about the scope of egalitarian justice. Instead the source of this controversy goes much deeper and is based on opposing understandings of the very *nature* and *purpose of morality* itself.<sup>344</sup>

One re-occurring theme in the arguments of defenders of practice-dependent views of justice is that “the idea of morality is at bottom relational,”<sup>345</sup> that is to say: morality concerns the justifiability of our actions toward each other. Andrea Sangiovanni, for instance, argues that “those who hold that principles of distributive justice have a relational basis hold that the practice-mediated relations in which individuals stand condition the content, scope, and justification of those principles.”<sup>346</sup> Practice-dependent thinkers take the “relational nature of morality”<sup>347</sup> to show that actual relations among people are morally special.

However, the allusion to the relational nature of morality and distributive justice does little for our gaining a clearer understanding of which detrimental inequalities are morally objectionable. This is because, as Sangiovanni points

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<sup>344</sup> This thought is shared by practice-dependent philosophers like Andrea Sangiovanni, see Andrea Sangiovanni, “Justice and the Priority of Politics to Morality”, *The Journal of Political Philosophy* 16(2) (2008): pp. 137-164, p. 140.

<sup>345</sup> Aaron James, “The Significance of Distribution” in R. Jay Wallace, Rahul Kumar, Samuel Freeman (eds.), *Reasons and Recognition. Essays on the Philosophy of T.M. Scanlon* (New York: Oxford University Press, 2011): pp. 276-304, p. 283.

<sup>346</sup> Andrea Sangiovanni, “Global Justice, Reciprocity, and the State”, *Philosophy & Public Affairs* 35(1) (2007): pp. 3-39, p. 5.

<sup>347</sup> Aaron James, *ibid.*, p. 296.

out himself, “relational accounts vary regarding both which relations condition the content, scope, and justification of those principles as well as how they do.”<sup>348</sup> As a consequence, there is hardly any conception of morality that cannot be construed as dealing with the justification of the relations people stand in with each other. We have scrutinized several views of justice. All of them can be interpreted as being based on the relational nature of justice but they include variously strong or rich notions of actually existing relations among people.

We found that proponents of the actual practice view of justice employ a very rich notion of interaction as necessary for the application of egalitarian justice. Sangiovanni, for instance, argues that distributive equality is justified only “among those who support and maintain the state’s capacity to provide [...] basic collective goods.”<sup>349</sup> Michael Blake<sup>350</sup> and Mathias Risse<sup>351</sup> argue that it is the special kind of immediate coercion that exists between a state and its citizens that makes egalitarian justice necessary. Nagel’s condition of an involvement of the will of the citizens in the legislation of their political community refers to a similarly strong notion of interaction that is (supposedly) necessary for the application of egalitarian justice.<sup>352</sup>

Defenders of the reformed practice view such as Darrel Moellendorf, Miriam Ronzoni, or Arash Abizadeh also have a robust but less strong idea of what kind of interaction is morally relevant for distributive justice. They think it is not institutionalized coercion but common, organized, and purposive cooperation which impacts on the lives of people that triggers duties of (ultimately)

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<sup>348</sup> Andrea Sangiovanni, “Global Justice, Reciprocity, and the State”, p. 5.

<sup>349</sup> Andrea Sangiovanni, *ibid.*, p. 19.

<sup>350</sup> See Michael Blake, “Distributive Justice, State Coercion, and Autonomy”, *Philosophy & Public Affairs* 30(3) (2001): pp. 257-296.

<sup>351</sup> See Mathias Risse, “What To Say about the State”, *Social Theory and Practice* 32(4) (2006): pp. 671-698, p. 685.

<sup>352</sup> See Thomas Nagel, “The Problem of Global Justice”, *Philosophy & Public Affairs* 33(2) (2005): pp. 113-147, p. 128.



egalitarian justice. James on his part employs a contractualist understanding of morality. In his view the relations people have to stand in for considerations of distributive justice to apply have to be marked by what he calls “encounterability.”<sup>353</sup> What he seems to have in mind by this term is that, in order to require moral justification, the relations people stand in must in fact *directly* and *immediately* have effects on others. To James, if the consequences of our actions do not make others worse off than they are right now, the differences that might exist between us and them are not subject to considerations of distributive justice at all.

So what supporters of practice-dependent views really mean when they talk about the ‘relational nature of justice’ is that the scope of this idea is restrained to the people participating in actual interactions and cooperative practices. Since practice-dependent views employ very strong or at least rich notions of interaction, we can therefore refer to them as *interactionist accounts of morality*.

However, in our discussion we found that also practice-independent views of justice can be interpreted as dealing with the relations among people. In our evaluation of James’s principle of Due Care we saw that it is problematic if a theory of distributive justice cannot criticize long-term or indirect negative externalities of actual practice. Thus, we found that the term ‘interaction’ must be understood quite broadly if it is to capture these morally relevant effects. The most radical idea of how indirect interaction that is morally relevant can be presented by Immanuel Kant. For Kant, any appropriation of an object external to our bodies equals an exclusion of all others from this object and therefore

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<sup>353</sup> Aaron James, “The Significance of Distribution”, p. 285.

requires justification.<sup>354</sup> Any person's claim to something external to her body is contestable in a way possession of our bodies is not: external objects could always belong to any person.<sup>355</sup> But owning land and property must be also justifiable to all others according to Locke's view of initial acquisition that grounds Steiner's left-libertarianism.<sup>356</sup> The Lockean proviso tells us that we can only claim a certain, equal amount of property for ourselves without rendering our relations to others impermissible.<sup>357</sup>

None of these practice-independent views implies that existing relations can never be of special importance among persons, or, put another way: that there are no agent-relative reasons with respect to distributive justice. What views like Kant's and Steiner's do claim, though, is that the relational nature of morality does not imply that questions of distributive justice can only arise if there are actual relations among people.

But what, then, are the reasons why practice-dependent theorists hold that (a) existing interactions or practices are a necessary condition of egalitarian justice and that therefore (b) the scope of the latter is confined to such on-going interactions? Without such additional reasons it seems the idea of interaction is over-inclusive and does not rule out much from becoming subject to considerations of distributive justice at all.

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<sup>354</sup> "Possession is nothing other than a relation of a person to persons, all of whom are *bound*, with regard to the use of the thing, by the *will* of the first person, insofar as his will conforms with the axiom of outer freedom" (Immanuel Kant, *The Metaphysics of Morals*, (trans. Mary Gregor) (Cambridge: Cambridge University Press, 1996), p. 88). By the axiom of outer freedom Kant means his principle of Right (Immanuel Kant, *ibid.*, p. 63), which demands that all exercises of our freedom with respect to things external to our bodies must be universalisable, that is: they must not keep others from equally exercising their freedom.

<sup>355</sup> At least where this means not mere physical possession that we would lose as soon as we stop holding on to an object. Kant distinguished between such physical possession and the intelligible possession of a thing, which denotes a "possession of an object without holding it" (Immanuel Kant, *ibid.*, pp. 68, 71). For Kant, only the latter is relevant for the normative idea of having a right to or possessing something external to us.

<sup>356</sup> See John Locke, *Second Treatise of Government* (Indianapolis: Hackett Publishing Company, 1980), p. 22.

<sup>357</sup> Locke thinks that in initially taking possession of land we must leave "enough, and as good in common" (John Locke, *ibid.*, p. 21) to use for others.

Defenders of the actual and the reformed practice views actually do present arguments to this end. However, since they mostly do not clearly distinguish between (or even label) the different arguments it is often difficult to understand how they are supposed to work and what plausibility they possess. We therefore need to identify and evaluate these arguments to confirm or disconfirm practice-dependent philosophers' criticisms of the principle of global egalitarianism.

However, in doing so it is important for us to keep in mind that, while all these reasons aim to limit the scope of justice, their advocates claim to embrace the ideal of the moral equality of all people. Therefore, an analysis and evaluation of the arguments of defenders of practice-dependent views is also a judgment about which interpretation of morality best exemplifies and realizes our egalitarian beliefs. The idea of the moral equality of all people constitutes the point of departure of any respectable approach toward justice in contemporary moral and political philosophy. In order to sort and assess the arguments against the idea of the global scope of justice we can distinguish at least three main arguments of philosophers who hold interactionist views of morality.

#### **4. The First Objection: the Distinction between Doing and Allowing Harm**

The first argument that defenders of practice-dependent theories of justice present against the idea of the global scope of justice consists of two parts. Their proponents claim (a) that only detrimental interpersonal inequalities that are (at least in part) created by social institutions are morally objectionable.

However, they also hold (b) that these socially-caused inequalities are only a matter within the institutional schemes in which they were produced.

The thought that motivates claim (a) is that the exclusive objects of moral evaluation are those aspects of life that are (at least in part) attributable to human actions. This means that while I owe you, for instance, an explanation for why I did not keep a promise I made to you, no one owes anyone a justification for the occurrence of natural facts and their consequences like, for example, earthquakes, tsunamis, colour blindness, or differing levels of human intelligence. This idea is expressed in one of the central claims Rawls makes in *A Theory of Justice*. Here he says that “the natural distribution is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts.”<sup>358</sup>

For advocates of interactionist accounts like James and Elizabeth Anderson the claim that justice is concerned with “the conduct of agents”<sup>359</sup> means that justice regards “the terms of our interactions, rather than [...] comparisons of the amount of some good that different individuals enjoy.”<sup>360</sup> As we previously saw, though, restricting the scope of justice to existing interactions is conditional on accepting a strong notion of interaction. As of yet we have not discovered the reason why practice-dependent philosophers think they are right to assume a rich rather than a weak notion of interaction (that could allow for a

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<sup>358</sup> John Rawls, *A Theory of Justice*, p. 87. Supporters of practice-dependent theories of justice take this to mean that, for instance, the naturally occurring unequal distribution of resources (that causes the different levels of societal affluence in the ‘*natural inequality*’ scenario E) cannot trigger obligations of distributive justice in general.

<sup>359</sup> Elizabeth Anderson, “Cohen, Justice, and Interpersonal Justification”, *APSA 2010 Annual Meeting Paper*, p. 4 (retrieved from the World Wide Web on October, 18<sup>th</sup>, 2010 at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1642011](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1642011)).

<sup>360</sup> Elizabeth Anderson, “How Should Egalitarians Cope with Market Risks?”, *Theoretical Inquiries in Law* 9(1) (2008): pp. 61-92, p. 85.

practice-independent scope of justice). This is to say, we still need a justification of claim (b) that inequalities are only objectionable within the institutional schemes in which they were produced.

We can better understand the practice-dependent theorists' focus on actual interactions and their support for claim (b) when we look at James's and Nagel's justification of this claim. James wants further to illuminate Rawls's explanation of this moral dimension of our reactions to natural facts by connecting it with Thomas Scanlon's characterization of morality. According to Scanlon the latter essentially consists in justifying our behaviour toward each other in ways no one can reasonably reject.<sup>361</sup> What we thus owe to each other is first and foremost the "recognition"<sup>362</sup> of each other as persons. Making a moral judgment on the Scanlonian picture is synonymous with the evaluation of our behaviour and the effects it has on us and others. As a result, the subject or purpose of morality is not to judge the value of natural states of affairs in the world.

Thus, as James argues with reference to Scanlon's theory, the reasons we base our moral judgments on must be personal ones that "have to do with the claims and status of individuals in certain positions."<sup>363</sup> Alternatively, they can be general or generic reasons that "we know people have by generally available information."<sup>364</sup> However, what James thinks cannot count as relevant for our moral judgments are impersonal reasons such as the beauty of the Grand Canyon or the idea that it would be good if all persons were equally well off. This

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<sup>361</sup> See Thomas Scanlon, *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1998).

<sup>362</sup> Aaron James, "The Significance of Distribution", p. 277.

<sup>363</sup> Thomas Scanlon, *ibid.*, p. 219.

<sup>364</sup> Aaron James, *ibid.*, p. 287.

is because to James such impersonal reasons make “no contribution to [our] minimal recognition”<sup>365</sup> of each other as persons.

James interprets Scanlon’s idea of the personal nature of morality in a particular way. To him, personal reasons and what we owe to each other is inseparable from our being *causally responsible or involved* in something. This becomes clear when we consider what James calls the ‘Attributability Condition.’ According to this condition, “how people stand in the moral relation depends *only on events that are attributable to one or both of those people.*”<sup>366</sup> This conviction is central to the theories of practice-dependent philosophers, such as Nagel, who holds that “injustice and social responsibility are clearer when involuntary *social* differences cause inequality, than when involuntary natural differences do.”<sup>367</sup>

This assumed necessary connection between causal involvement and the moral relevance of inequality is what justifies accepting claim (b) for practice-dependent philosophers. The emphasis on causal responsibility can also explain the reluctance of interactionist theorists to admit that there is a problem in the ‘*natural inequality*’ scenario E. Here it is, of course, the case that both societies utilize the resources available to them. In this way natural resources are transformed by human actions and interaction into goods that are subject to considerations of egalitarian justice. However, the crucial point for practice-dependent thinkers employing a rich notion of interaction is that the separate societies are *not causally involved in each other’s transformation of the natural resources* that are available to them. Thus, James claims that

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<sup>365</sup> Aaron James, “The Significance of Distribution”, p. 288.

<sup>366</sup> Aaron James, *ibid.*, p. 285 (emphasis added).

<sup>367</sup> Thomas Nagel, “Justice and Nature”, *Oxford Journal of Legal Studies* 17(2)(1997): pp. 303-321, p. 310.

It is only when, given a fair amount of luck and time, meaningful patterns of interaction become established between [the] two societies or their members that we can begin to consider the extent to which the *global* distribution of goods and opportunities is genuinely within their power, and so reflective of or attributable to their social relations as opposed to the mere workings of fate.<sup>368</sup>

What therefore lies at the heart of practice-dependent interpretations of justice is firstly, as Derek Parfit points out, an “analytic link between injustice and wrong-doing.”<sup>369</sup> This is signified by claim (a) that only detrimental interpersonal inequalities that are (at least in part) created by social institutions are morally objectionable.

Secondly, though, the restriction of justice to existing interactions, which is characteristic of practice-dependent views, is caused by interactionists’ particular interpretation of interaction as requiring direct causal involvement. The latter leads them to accept claim (b) that these socially-caused inequalities are only a matter within the institutional schemes in which they were produced. Since on this view the realm of distributive justice only includes those aspects of the world that are the *practice-internal effects of human interference with nature*, we have an answer to the problem what factors (according to interactionist theories) are relevant to the evaluation of our conduct as agents.

On the interactionist view of morality, distributive justice does not make every feasible improvement of the world a duty. Nagel thinks that the reason this limitation of the scope of justice is important is that otherwise justice would become implausibly demanding on us. If we always would have to aim at making better all the things we can change we would have left hardly any

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<sup>368</sup> Aaron James, “The Significance of Distribution”, p. 294.

<sup>369</sup> Derek Parfit, “Equality or Priority?” in Matthew Clayton, Andrew Williams (eds.), *The Ideal of Equality* (Basingstoke: Palgrave Macmillan, 2002): pp. 81-125, p. 91. Anderson, as well, defends this connection according to which natural facts and states of affairs only become concerns of justice if they are reflected in our actions. “Justice”, she says, “as an evaluation applied to states of affairs, is entirely derivative of justice, as an appraisal of the conduct of agents.” (Elizabeth Anderson, “Cohen, Justice, and Interpersonal Justification”, p. 4).

resources and time to invest in other things that seem valuable to us.<sup>370</sup> Such a demanding conception of justice would leave implausibly little room for private prerogatives as well as for values other than justice that also are important to us. Nagel presents the following example to demonstrate the force of this consideration. He asks us to imagine a society in which a minority of the members will come to suffer from “an incurable degenerative condition appearing between the ages of thirty and forty, that kill[s] the victim within five years.”<sup>371</sup> He then argues that it would be implausible to think that justice can demand of us fully to compensate the ones suffering from the disease for their shortened life span or to spend large amounts of resources on delaying the advancement of the illness if that is possible. While these efforts might improve the lot of the affected people such duties, Nagel thinks, would eat up most of a society’s resources in exchange for very little gains for very few people.

This thought resembles the criticism levied against utilitarian positions such as, for example, Peter Singer’s famous argument that morality requires us to do our utmost to eradicate poverty – even if this means to give up on our personal projects.<sup>372</sup> If we consider practice-dependent accounts of justice from this angle they appear less restrictive and conservative. Given their presumption of a rich notion of interaction that is based on causal responsibility, the plausibility of practice-dependent views as a whole is crucially tied up with that of the ‘*doing versus allowing distinction*’. According to this differentiation “people have a greater responsibility, in general, for what they do than for what they merely allow or fail to prevent.”<sup>373</sup> Thus, it is this distinction (which builds on the

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<sup>370</sup> See Thomas Nagel, “Justice and Nature”, pp. 303, 320.

<sup>371</sup> Thomas Nagel, *ibid.*, p. 314.

<sup>372</sup> See Peter Singer, “Famine, Affluence, and Morality”, *Philosophy & Public Affairs* 1(1) (1972): pp. 229-243.

<sup>373</sup> Samuel Scheffler, “Doing and Allowing”, *Ethics* 114(2) (2004): pp. 215-239, p. 215.



difference between natural state of affairs and human involvement in the latter) that forms the normative foundation of this first objection to the idea of the global scope of justice.

Of course, if the ‘doing versus allowing distinction’ is morally relevant it would also apply within existing practices. However, this would be entirely advantageous for supporters of interactionist accounts of justice. We saw that these philosophers base their views on a rich notion of interaction or doing. Especially the works of James and Moellendorf feature the idea that we are morally responsible for the terms and conditions that regulate our purposeful practices with others.<sup>374</sup> Practice-dependent philosophers think of these terms and conditions as (at least indirectly) imposed in our name. To them, we are therefore actively involved in, and can control, the design of the rules that distribute the benefits and burdens of our social practices. Accordingly, practice-dependent philosophers hold that this sort of activities differs from the effects that an earthquake has on the population of a far-away society with which we do not causally interfere. In this way, interactionists hope to employ the ‘doing versus allowing distinction’ to deny that there is injustice in states of affairs like those occurring in the ‘*natural inequality*’ scenario E.

### **5. The Second Objection: “Ought implies Can”**

According to the second objection against the idea of justice as having a global scope, while not everything that is feasible must be realized as a matter of justice, all that justice can demand must be feasible. ‘Ought’, this well-known argument asserts, ‘implies can’ since we cannot be thought to have an obligation

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<sup>374</sup> See Aaron James, “Distributive Justice without Sovereign Rule: the Case of Trade”, *Social Theory and Practice* 31(4) (2005): pp. 539-559, p. 538 and Darrel Moellendorf, *Global Inequality Matters* (Basingstoke: Palgrave MacMillan, 2009), p. 47.

to aim for the impossible. As James puts it, “because general conditions of life limit what agents can do in practice, they limit what justice could require in principle.”<sup>375</sup>

Those who believe that morality regards the terms of our actual interactions think that this automatically leads to a limitation of the scope of justice. This is because some natural inequalities have causes or effects that we cannot compensate for. We cannot make the blind see or everyone happy in proportion to their moral merits – even though these would seem desirable goals to many of us. James accordingly thinks that the demands of morality must be sensitive to our capacities as human beings: “one is only owed something when an agent is capable of regulating this or her conduct as regarding that something, given what he or she can understand, plan for, and act on.”<sup>376</sup> In this respect, it becomes irrelevant if the pursuit of unattainable goals would also be expensive. The focus of this second objection lies on the futility of the efforts that aim at what is impossible. As Anderson argues, “principles of justice must be feasible, in the sense that agents are able to follow them.”<sup>377</sup>

So if we assume that in the ‘*natural inequality*’ scenario E it would also be impossible for the two societies to interact, on the interactionist view of morality this fact alone would suffice to prevent the natural differences in resources from becoming subject to considerations of justice. This seems consistent with Rawls’s claim that if a “situation is unalterable, [then] the question of justice does not arise.”<sup>378</sup> The idea behind this second argument against the global scope of justice is that we should not be held responsible for what we cannot

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<sup>375</sup> Aaron James, “Equality in a Realistic Utopia”, *Social Theory and Practice* 32(4) (2006): pp. 699-724, p. 704.

<sup>376</sup> Aaron James, “The Significance of Distribution”, p. 281.

<sup>377</sup> Elizabeth Anderson, “Cohen, Justice, and Interpersonal Justification”, p. 10.

<sup>378</sup> John Rawls, *A Theory of Justice*, p. 254.

change: “if nothing can be done, there can be no injustice.”<sup>379</sup> I do not owe you an explanation or compensation for the fact that you are less talented than I am because I cannot compensate you for this inequality in talents. What I do owe you instead is compensation for your non-voluntary membership in a common institutional system that converts these natural differences into differences in affluence.

For practice-dependent views that accept the argument from the ‘ought-implies-can’ requirement, the scope of distributive justice becomes even more limited than it already is due to the ‘doing versus allowing distinction’. This is because the ‘ought-implies-can’ rule excludes from considerations of justice situations in which we deal with indivisible, man-made goods. The production of such goods might be morally demanded but we cannot appropriately reward everyone in proportion to the contribution they make it. This is usually the case with public goods like the traffic infrastructure or social services. All who can contribute to the generation of these goods should do so but not everyone gets out of these goods what they put into their creation. However, that is not a worry for interactionist views of morality as according to them we cannot be thought to have a duty to fairly divide such goods or to feel bad about disproportionately benefitting from them: since in these cases a fair division is not possible it cannot be mandatory for us. The ‘ought-implies-can’ rule has an important consequence for our thinking about what justice can maximally demand. It leads to a kind of realism about what is mandatory and restricts ideal justice to what is currently possible for us.

If practice-dependent writers are correct then the ‘ought-implies-can’ rule also applies within practices. This would cause the following difference between

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<sup>379</sup> Derek Parfit, “Equality and Priority”, *Ratio* 10(3) (1997): pp. 202-221, p. 208.

interactionist and practice-independent theories of justice. If something is currently unchangeable we now have no reasons for action to change the situation. However, only on the interactionist view, we also lack much reason for indignation or hope about presently unchangeable detrimental inequalities. Thus, if we can expect that (when we, for instance, keep on conducting research the way we do) we will sometime in the future be able to dispose of the means to eliminate such inequalities, then, on practice-dependent views, we have no reasons of justice to pursue such a development. Of course, also interactionists can regret harmful inequalities like natural blindness or accidentally-caused paraplegia. However, if they want to argue that we have weighty reasons to develop the means that would enable us to treat people suffering from these disabilities, they can do so only if they accept a more practice-independent notion of justice. After all, such inequalities are natural and furthermore currently impossible to remedy.

## **6. The Third Objection: the Implausibility of Wasteful Demands of Justice**

The first two objections voiced by defenders of practice-dependent views of morality primarily target the idea that the scope of justice is spatially unlimited. However, there is an important third argument that aims to prove that our equal moral status cannot establish duties to remove all relative differences among us in the first place. Justice, that is, cannot be global in the sense that it requires the levelling of *all* interpersonal inequalities. What this means in turn is (as we shall see) that equality cannot be an inherent value because we could often only achieve it if we waste things that are beneficial to people.

The problematic implications of wasting goods and benefits for the sake of equality are forcefully pointed out by Parfit. He has coined the term ‘levelling down objection’ to describe the problems that strict egalitarian theories (which hold that equality is inherently valuable) run into. According to the ‘levelling down objection’ “it would be in one way better if we removed the eyes of the sighted, not give them to the blind, but simply make the sighted blind.”<sup>380</sup> This is because only thus could we increase interpersonal equality among the blind and the sighted. What is problematic and even absurd about this solution is that no one would actually benefit from such an increase in interpersonal equality: “if we achieve equality by levelling down, there is *nothing* good about what we have done.”<sup>381</sup> But given that we set out to inquire which inequalities should be removed *because* they are detrimental to people, it seems implausible for justice to require us to eliminate goodness in the world for the purpose of promoting equality. Egalitarians such as Thomas Christiano therefore acknowledge that the ‘levelling down objection’ poses the most serious challenge to approaches that argue for the intrinsic value of equality.<sup>382</sup>

This third objection against the global scope of justice, which in particular denies the idea that equality is valuable *per se*, is invoked not only by philosophers who hold the interactionist view of justice. Also Parfit, who *does* think that justice is spatially global,<sup>383</sup> questions the notion that justice demands the elimination of all relative disparities.<sup>384</sup> But even though the objection against wasteful demands of justice is not a thought exclusive to interactionist

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<sup>380</sup> Derek Parfit, “Equality or Priority?”, p. 98.

<sup>381</sup> Derek Parfit, *ibid.*, p. 99.

<sup>382</sup> See Thomas Christiano, Will Braynen, “Inequality, Injustice, and Levelling Down”, *Ratio* 21(4) (2008): pp. 392-420, p. 392.

<sup>383</sup> See Derek Parfit, “Equality or Priority?”, pp. 104, 105.

<sup>384</sup> See Derek Parfit, *ibid.*, p. 100 and also Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), ch. 9.

theories it is an argument that practice-dependent theorists *must* hold. This is because:

- (1) If interpersonal equality is inherently valuable then
- (2) Existing detrimental inequality is always bad or morally objectionable or unjust.
- (3) Consequently, existing interactions and causal responsibility for inequality would be (if at all) merely of secondary relevance for considerations of justice.
- (4) All inequalities, also of the sort as appears in scenario E, would be objectionable for the standpoint of justice.
- (5) The practice-dependent view would be implausible since whether interaction exists is negligible for our assessment which inequalities are unjust.

The rejection of the idea of equality as inherently valuable is therefore necessary for the cogency of the practice-dependent framework as a whole. Since the levelling down objection is the most powerful criticism of the claim that equality is intrinsically valuable it is a naturally attractive argument for interactionist philosophers to hold. Only if equality is not valuable in itself can appeals to the ‘doing versus allowing distinction’ and to causal responsibility serve to distinguish between morally relevant and irrelevant forms of inequality.

Thus, it is unsurprising that Moellendorf denies that “equality is intrinsically valuable.”<sup>385</sup> And Scanlon, to recall, tell us that “the idea that equality is itself a

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<sup>385</sup> Darrel Moellendorf, *Global Inequality Matters*, p. 5.

fundamental value turns out to play a surprisingly limited role”<sup>386</sup> and that “it remains unclear exactly what that idea [of inherently valuable equality] would be.”<sup>387</sup> Instead, for all practice-dependent philosophers detrimental inequality is a goal if and only if it is required to secure something else (from which it derives its value). For interactionists, one such primarily important objective is that we can justify the direct effects our interactions have on each other.

Where does the rejection of strict egalitarianism leave us? To Parfit the levelling down objection shows that justice is not concerned with the comparison of relative interpersonal levels of good at all but instead with ensuring that people are well off in absolute terms. Parfit arrives at this conclusion by pointing out that it is the absolute levels of goods that people can have or lack that we worry about when thinking in terms of justice.<sup>388</sup> He gives the example of a mountaineer who has climbed up to an altitude where the air is so thin that it becomes increasingly hard to breath. What is important with regard to such vital goods as air, Parfit argues, is not how much air we can breathe in comparison to other people. What we care about in the distribution of these goods is that each of us has enough of it. The amount of air each of us needs can be completely met.

We can restate the connection between the argument against the intrinsic value of equality and the idea of a practice-dependent scope of justice in a slightly different way. To interactionist thinkers, the costs of increasing equality among people are part of (and thus dependent on) what we need to justify to each other. If curing congenital illnesses or other detrimental inequalities would

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<sup>386</sup> Thomas Scanlon, “The Diversity of Objections to Inequality” in Matthew Clayton, Andrew Williams (eds.), *The Ideal of Equality* (Basingstoke: Palgrave Macmillan, 2002): pp. 41-59, p. 41. See also Aaron James, “Distributive Justice without Sovereign Rule: the Case of Trade”, p. 537.

<sup>387</sup> Thomas Scanlon, *ibid.*, p. 57.

<sup>388</sup> See Derek Parfit, “Equality or Priority?”, p. 104.

become more affordable, Nagel and like-minded thinkers would hold that this changes our duties too. In this case those who are worse off now have a weightier claim on the better-off to have such burdens removed. In this case the better-off could help them at a much lower cost or might not even have to forgo any benefits themselves at all. For defenders of practice-dependent views of morality there is thus a definite correlation between the demands of justice on the one side and the costliness of increases in interpersonal equality on the other side. In their understanding, it is not the badness of states of affairs in the world that primarily matters morally. Rather, as Scanlon emphasizes, it is the badness of actions that we must worry about.<sup>389</sup>

### **7. The Idea of an Ethics of Distribution and Why it is not Sufficiently Egalitarian**

Despite their distinct natures all three objections against the global scope of justice point toward one central fundamental distinction that seems capable of capturing all crucial differences between interactionist and practice-independent views of morality. This distinction is drawn by Parfit who differentiates between *telic* and *deontic egalitarian views*.<sup>390</sup>

Telic egalitarian theories claim that an equal distribution is of non-instrumental or intrinsic value, and that this value provides at least defeasible reasons to promote certain types of outcomes.<sup>391</sup> Thus, they are centrally concerned with the promotion of valuable (that is to say: equal) states of affairs. Human actions and institutions can also be part of these states but only insofar

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<sup>389</sup> See Thomas Scanlon, *What We Owe to Each Other*, p. 84, 85.

<sup>390</sup> Derek Parfit, "Equality or Priority?", p. 84.

<sup>391</sup> According to Rawls, teleological theories determine what justice demands by primarily relying on judgments about what is good or of value in states of affairs rather than on what is right, see John Rawls, *A Theory of Justice*, pp. 21, 22.



as they are relevant for the realization of desirable outcomes.<sup>392</sup> Deontic egalitarian theories, on the other hand, claim that inequality is bad or unfair only insofar as it comes about or persists in certain ways.<sup>393</sup> They hold that “when we ought to aim for equality, it is always for some other moral reason [than achieving equality as such].”<sup>394</sup> Objectionable ways of causing or preserving inequality are, for instance, those that interactionist views of morality focus on, like the detrimental effects of practices on participants. Thus, for deontic egalitarians, detrimental natural states of affairs are not unjust *per se*: although they may be regrettable they do not trigger duties of justice.

However, if we accept Parfit’s distinction between telic and deontic egalitarian theories, practice-dependent accounts of morality face a difficult question. As we saw, advocates of interactionist conceptions of justice insist on a strong and limited notion of what counts as morally relevant interaction and wrongdoing. They think they are thereby entitled to reserve the terms justice and injustice for situations that involve cooperative human interferences with nature. Conversely, these philosophers deny that it makes sense for us to speak of detrimental but purely natural states of affairs as unjust.

We might think, though, that there are good reasons to be sceptical about such an exclusion of many effects that nature has on persons from the realm of morality for one simple but weighty reason. The detrimental effects of certain natural phenomena (like blindness, a lack of resources, draughts, or flash floods) can be just as harmful or even more devastating to human beings as the effects of certain actions and institutions. Parfit surely has such practice-

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<sup>392</sup> See Derek Parfit, “Equality or Priority?”, p. 97.

<sup>393</sup> Parfit says that “on the deontic view [...] when we claim that inequality is unjust, our objection is not really to the inequality itself. What is unjust, and therefore bad, is not strictly the state of affairs, but the way in which it was produced”, see Derek Parfit, “*ibid.*”, p. 90.

<sup>394</sup> Derek Parfit, “Equality and Priority”, p. 207.

independent negative consequences of naturally occurring phenomena in mind when he questions the adequacy of a purely deontic egalitarian position.<sup>395</sup>

To become clear on what matters with respect to distributive justice Parfit thinks that the right way to think about this issue is for us to adopt the perspective of an

Ethics of distribution. [According to this idea we] consider different possible states of affairs, or outcomes, each involving the same set of people. We imagine that we know how well off, in these outcomes, these people would be. We then ask whether either outcome would be better, or would be the outcome that we ought to bring about.<sup>396</sup>

Engaging in an ethics of distribution would require that we also consider promoting valuable states of affairs (or outcomes) to be a duty of justice and not just as bearing on the justifiability of direct or practice-internal effects of our actions. According to the telic egalitarian, unequal natural states of affairs (like in scenario E) may generate obligations for us irrespectively of how they came about. Such a position would make sense given two things are true:

1. Advocates of interactionist accounts of justice cannot present convincing reasons for why justice should regard only the practice- (or-institution-) internal effects of human interferences with nature. *Interactionists then would unfoundedly deny that we have telic (practice-independent, non-deontic) reasons to improve naturally-occurring states of affairs if it is feasible for us to do so.*

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<sup>395</sup> Parfit states that he disagrees with people who deny that purely naturally-caused inequality is unjust or unfair (see Derek Parfit, "Equality and Priority", p. 208). This view, though, is taken by strictly deontic egalitarians.

<sup>396</sup> Derek Parfit, "Equality or Priority?", p. 82.

2. As Nagel and Scanlon explain,<sup>397</sup> deontic egalitarians object to intra-institutional forms of inequality *precisely because* these are harmful to people. Still, they do not want to base their (deontic) objections to such practice-internal inequalities on a (telic) requirement to improve the value of states of affairs. However, it seems that deontic egalitarians can only do without the (telic) duty to improve the value of states of affairs if their rich notion of interaction is correct. But if doing is in principle not worse than allowing, if ‘ought’ does not ‘imply can’, or if equality is inherently valuable (and thus important irrespective of whether interaction exists), then *it is not clear what justifies the deontic judgements of interactionists*. This is because we would not have reasons for thinking that inequality is bad only if and because something else is the case – because: what should this additional factor be? If the three objections (that purport to provide such additional reasons) against global egalitarianism fail there is *nothing morally special about the practice-internal effects of humanly-caused inequality*.

Intuitively, a global egalitarian conception of justice seems to be most apt to accommodate all our egalitarian notions. Global egalitarianism surely is a version of an ethics of distribution, that is to say: it is concerned (primarily but not exclusively) with outcomes. Unlike other theories, though, global egalitarianism does not restrict the scope of justice to existing interactions (as practice-dependent views do) or inequalities of a certain kind (as Parfit does). As such, global egalitarianism will have to argue successfully against two claims: firstly, such a view has to demonstrate that natural states of affairs do

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<sup>397</sup> See Thomas Nagel, “Justice and Nature”, p. 318 and Thomas Scanlon, “The Diversity of Objections to Inequality”, p. 53.

generally matter for justice. Secondly, it must show that – if natural phenomena matter for justice – equality is of intrinsic moral importance in both natural and social states of affairs. The first task requires a refutation of the first two objections of defenders of practice-dependent views of justice against the idea that the scope of justice is global, while the second task involves the proof that their third objection is wrong.

Many advocates of interactionist views of justice offer more than one of the three objections we just canvassed in support of their rejection of the idea that the scope of justice is global. But while it is the aim of all three arguments to curtail the scope of justice, philosophers that make use of these reasons do often not clearly distinguish between them. In these cases it is therefore difficult to evaluate the cogency of the interactionist views that invoke them. In his essay “Justice and Nature”<sup>398</sup> Nagel, for instance, avails himself of the ‘doing versus allowing distinction’ and the argument against wasteful obligations of justice. But when reading this text it sometimes appears Nagel mixes these two reasons for limiting the scope of justice in the following way: it looks like the reason why some of the inequalities, that are not man-made, are excluded from demands of compensation is that it would be too costly to achieve such offsetting effects.<sup>399</sup>

Anderson and James on their part employ the ‘doing versus allowing distinction’ as well as the ‘ought-implies-can’ rule in their efforts to defend their interactionist approaches. However, it is quite unclear what role they want the

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<sup>398</sup> Thomas Nagel, “Justice and Nature”, *Oxford Journal of Legal Studies* 17(2) (1997): pp. 303-321.

<sup>399</sup> Nagel say, for instance, that when we hold a strict egalitarian view “the requirements of justice quickly expand to fill all of social space. What I want to do is to describe a credible alternative deontological position that restricts injustice to certain specifically social causes of inequality, whose avoidance takes precedence over the general welfare and other goals, but which still leave a good deal of space free” (Thomas Nagel, *ibid.*, p. 313).

‘ought-implies-can’ rule to play since they largely base their case for a practice-dependent scope of justice on the ‘doing versus allowing distinction’.

The problem with conflating any of these three arguments is that each requires a separate evaluation and different possible counter-arguments. Thus, we need to be clear about what specific objections are invoked by proponents of practice-dependent conceptions of morality. The plausibility of the global egalitarian view of morality depends on whether we can debilitate the three objections against the global scope of justice (global, to recall, means both that (a) all persons are entitled to certain distributive shares irrespectively of their membership in associations or practices, and that (b) not only absolute, but also all relative inequalities matter from the perspective of justice). This is because, if the three objections would be inapplicable it would be the case that

- (a) interactionist theorists could not explain what grounds their deontic judgements that limit duties of justice to existing practices,
- (b) We would thereby show that telic considerations are fundamentally important for any plausible theory of distributive justice, and that
- (c) Equality is inherently valuable, that is to say: inequalities are morally relevant as such.

### **8. Why Doing is not generally Worse than Allowing**

Is the ‘doing versus allowing distinction’ a valid one and does it therefore create problems for a global egalitarian understanding of morality and justice? That is to say: is a situation in which natural inequality of some sort (like in talents, health, or natural resources) negatively affects persons morally less unjust than circumstances in which our actions and social institutions generate detrimental disparities within practices?

As it turns out, in the literature we find convincing arguments that deny that the ‘doing versus allowing distinction’ establishes a normative one-way polarity to the effect that actions are always worse than omissions. There is no doubt that there are some situations in which doing harm is worse than allowing harm. If I walk down the street and see a house on fire with people inside it screaming for help it is certainly morally reproachable if I become paralyzed by fear and as a result the people trapped in the house perish in the fire. However, it is clearly morally worse if I would not be a mere passer-by but the one who lit the fire in the first place. Nonetheless, as Shelly Kagan points out, there are many situations that indicate that “doing harm [...] has no *intrinsic* moral significance, in and of itself.”<sup>400</sup> He takes up an example by James Rachels in which an evil-minded person lets his cousin drown in the bath tub so he can inherit his fortune.<sup>401</sup> Here the distinction clearly does not do the normative work it does in the case of the house on fire.

What Kagan’s example does not show, though, is that the ‘doing versus allowing distinction’ is never of relevance. Certain more or less direct but purposeful and special relationships (such as family ties, friendships, or even citizenship) can well be thought to trigger special obligations. But this does not mean that obligations deriving from such ‘active’ relationships always trump moral duties that we can be thought to have in general and irrespectively of our causal involvements in events or relations. Our special obligations can be morally justifiable only if they arise within the context or framework of general moral duties (as they are outlined by, for instance, the principle of global

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<sup>400</sup> Shelly Kagan, *Normative Ethics* (Boulder: Westview Press, 1998), p. 95.

<sup>401</sup> See Shelly Kagan, *ibid.*, pp. 98, 99.

egalitarianism) that are not limited to those aspects we are causally responsible for.<sup>402</sup>

As Frances Howard-Snyder explains, when we examine the ‘doing versus allowing distinction’ and the objections to it, we find that

The claim that doing harm is no worse than allowing harm flies in the face of powerful intuitions to the contrary. I believe that these intuitions can be partially explained away by pointing to other morally significant distinctions (distinctions concerning intentions, difficulty or ease of avoiding the harm, etc.) that often coincide with the distinction between doing and allowing harm.<sup>403</sup>

Thus, Howard-Snyder thinks that the distinction “does not refer uniquely.”<sup>404</sup> This, though, is bad news for practice-dependent theories of justice. After all, defenders of such views rely on a strong notion of interaction. According to the latter, we are *actively* involved in establishing, maintaining, and participating in our own institutional practices in a way that we are not in the institutional schemes of others. This is why James believes that “in the absence of trade (and any further interaction), inequality across societies in total economic output [...] is not unfair [/unjust] to members of the worse-off society, since no one can claim to have had a hand in creating the social advantages realized in a foreign society.”<sup>405</sup> This is furthermore the reason James completely excludes non-participants unaffected by a practice from the scope of justice: “those unaffected

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<sup>402</sup> For this point see also See Kok-Chor Tan, *Justice without Borders* (Cambridge: Cambridge University Press, 2004), ch. 9, and Arash Abizadeh, Pablo Gilabert, “Is there a Genuine Tension between Cosmopolitan Egalitarianism and Special Responsibilities?”, *Philosophical Studies* 138(3) (2008): pp. 349-365. Here Abizadeh and Gilabert argue that “special responsibilities arise within the framework of (and are not in tension with) the ideal of moral equality of persons. [...] General duties sometimes condition, but at other times weigh against special responsibilities” (Arash Abizadeh, Pablo Gilabert, *ibid.*, p. 361). For an application to this thought to democratic theory see furthermore Arash Abizadeh, “Democratic Theory and Border Coercion”, *Political Theory* 36(1) (2008): pp. 37-65.

<sup>403</sup> Howard-Snyder, Frances, “Doing vs. Allowing Harm”, *The Stanford Encyclopedia of Philosophy (Fall 2008 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2008/entries/doing-allowing>.

<sup>404</sup> Howard-Snyder, Frances, *ibid.*

<sup>405</sup> Aaron James, “Distributive Justice without Sovereign Rule: the Case of Trade”, pp. 547, 548.

by a practice have no claim under either [the egalitarian as well as the Due Care] principle.”<sup>406</sup>

Of course there can be circumstances in which counteracting socially-caused harm is morally more important than fighting naturally-caused harm. A government might, for instance, be faced with the choice of either preventing civil war among two groups of its citizens or to help another group to avoid starvation caused by a local draught. Here it might be of greater importance that a civil war will not break out. Such a conflict not only affects the groups involved but also undermines the solidarity within the whole society. Thus, in this situation we might have reasons to think the government ought to prioritize preventing the socially-caused harm over counteracting the naturally-caused threat.<sup>407</sup>

However, what is crucial to note about this example is that it does not establish a principled prioritisation for eliminating socially-caused harm. There are many other circumstances in which the balance of reasons might tell us first to address a naturally-caused harm due to its extremely damaging effects on human beings. Examples like the civil war case therefore do not show that doing is *per se* worse than allowing harm. In fact, we can think of a multitude of cases in which natural events as such create strong duties for us. If I see you getting hit on the head by a roof tile and am the only one around to assist you then I am under a binding obligation to help you or call others who can help. Furthermore, this obligation is not an optional one, which is indicated by the fact that if I run

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<sup>406</sup> Aaron James, “Distributive Justice without Sovereign Rule: the Case of Trade”, pp. 543, 544.

<sup>407</sup> I thank Marcel Verweij for this example.



away and my omission can be proven I can get legally convicted of not assisting a person in danger.<sup>408</sup>

James, as we saw, motivates the moral primacy of being causally responsible for harm by appealing to Scanlon's contractualist account of morality. To Scanlon, only personal and generic, but no impersonal reasons are of direct relevance to our thinking about what we owe to one another. James wants to use Scanlon's claim to motivate the thought that only personal and generic reasons play a role in our interactions. Impersonal reasons, which James understands to be those one cannot invoke as part of a personal (self-referential, agent-relative) objection and among which he counts a commitment to equality as such,<sup>409</sup> would then not be part of what morality covers. However, Scanlon himself accepts the thought that impersonal ideas and values can be morally important for us. He explains how he understands the way they influence our thinking by pointing out that:

One possibility is that [the impersonal value] is essentially a moral idea (rather than one whose basis lies in a notion of rationality or in a conception of value that is independent of ideas of right and wrong). On this view it is (at least) part of "what we owe to each other" that we must promote certain states of affairs, plausibly called "the good".<sup>410</sup>

Therefore, also James's appeal to the Scanlonian picture of morality cannot justify a normative primacy of the detrimental effects of human actions over naturally harmful states of affairs.

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<sup>408</sup> We should note that this example refutes James's 'Attributability Condition', see Section Four of this chapter.

<sup>409</sup> See Aaron James, "The Significance of Distribution", pp. 279, 280.

<sup>410</sup> Thomas Scanlon, *What We Owe to Each Other*, p. 86. Elsewhere, Scanlon thus also acknowledges the possibility that "impersonal values can be relevant to the reasons a person has for rejecting a principle 'on his behalf'" (see Thomas Scanlon, "Reply to Gauthier and Gibbard", *Philosophy and Phenomenological Research* 66(1) (2003): pp. 176-189, p. 186).

Finally, we should note that the strong notions of interaction that practice-dependent theories rest on are not self-evident. Such rich notions, to recall, are necessary to establish the ‘doing versus allowing distinction’ as a sharp contrast between human-caused inequality and purely naturally-occurring inequality. For two of the great modern philosophers, Kant and Locke, hold (as we saw) that owning objects or appropriating them always presents a case of excluding all others from this object, which requires justification.<sup>411</sup> That is to say, by acquiring something and excluding others from its use one always makes a claim on others to accept their exclusion. From Kant’s and Locke’s perspective, acquisition and ownership are not morally neutral acts but have to be morally acceptable to everyone else.

However, if we accept (as most philosophers do) Kant’s or Locke’s view about initial acquisition and private property, it is not implausible to think that, by owning an object, we much more *do* something to others, rather than merely *allowing* something to happen to them. Acquiring and owning therefore have a sense of activity to them and for Kant and Locke require giving a justification to everyone else – not only to one’s fellow participants. This tells us that it is not unreasonable for us to think of existing practices as involving doing things to others. What that means, though, is that we cannot as neatly square practice-internal effects of interaction with ‘doing’ and practice-external effects of interaction with ‘allowing’ as practice-dependent theorists like to think. This is to say that, even if the ‘doing versus allowing distinction’ were correct, it is not clear that interactionists are entitled to think that we allow, rather than actively

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<sup>411</sup> See Immanuel Kant, *The Metaphysics of Morals* (trans. Mary Gregor) (Cambridge: Cambridge University Press, 1996), pp. 73, 88, and John Locke, *Second Treatise of Government* (Indianapolis: Hackett Publishing Company, 1980), p. 21.

uphold, global inequality. We thus have good reasons to dismiss the first objection against the idea of the global scope of justice.

### **9. Why Ought does not imply Can in a Strict Sense**

Is the ‘ought-implies-can’ principle plausible and can it justify the thought that we never have duties to work toward improving what is currently unfeasible because infeasibility rules out injustice? Or, put differently, does it matter for our thinking about morality that we cannot fully change certain states of affairs that are detrimental to people? This thesis, as well, has come under attack.

While philosophers who invoke the ‘ought-implies-can’ requirement normally try to object to goals that are impossible to achieve for *any* person, on one interpretation of this demand the rule has an unwelcome, relativistic consequence. It certainly makes sense to gear the rules that regulate our social practices toward what we are capable of doing. Otherwise such rules could not be followed, which would defeat the very purpose of formulating these instructions and they would be “an intolerable burden on liberty.”<sup>412</sup> But, as G. A. Cohen explains, such “rules of regulation”<sup>413</sup> (that is to say: practical rules we adopt to regulate our interactions in light of what we can expect people to be able to do<sup>414</sup>) do not state or incorporate themselves what would be ideally morally desirable or just. The necessary control of our on-going interactions and the formulation of optimal moral goals (what Cohen calls the “normative ultimate”<sup>415</sup>) are really two separate things.

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<sup>412</sup> John Rawls, *A Theory of Justice*, p. 208.

<sup>413</sup> G. A. Cohen, *Rescuing Justice & Equality* (Cambridge, MA: Harvard University Press, 2008), p. 253.

<sup>414</sup> See also G. A. Cohen, *ibid.*, p. 276.

<sup>415</sup> G. A. Cohen, *ibid.*, p. 251.

The relativistic reading of ‘ought-implies-can’, in contrast, runs together two aspects: (1) what we think should ideally be the case, and (2) what rules we can expect people to conform with. James offers a clear example of this kind of confusion when he argues that “if the human condition as we know it (on some or any plausible specification) precludes the achievement of one of our favoured ideals, the realist asks us to conclude not that the world is tragically unjust, but that the favoured ideal cannot be justice.”<sup>416</sup>

But our aspirations of what is desirable are precisely not constrained by our physical capacities. It always seems possible for us to imagine a way in which things could be better. According to a weaker interpretation of the ‘ought-implies-can’ requirement, such idealized notions are of practical importance for our moral thinking. This might seem contradictory when we know that our idealized goals are not realizable for us. But there are a number of examples that show that there is nothing inconsistent in the thought that unattainable ideals can be of practical relevance to us.

The probably most striking case in defence of the importance of unrealizable moral goals is presented by Christiano. He points out that if our actual capacities would determine what can be regrettable or not regrettable then a mistaken legal verdict would be merely technically inaccurate – but not regrettable. “We know that even the best penal system is likely to convict some innocent persons and let some guilty persons go free.”<sup>417</sup> In such cases almost all of us will not notice the mistake or else we would try to correct such legal errors. However, there is at least one person who – if the relativistic sense of ‘ought implies-can’ would be correct – would have to accept an absurd conclusion.

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<sup>416</sup> Aaron James, “Equality in a Realistic Utopia”, p. 703.

<sup>417</sup> Thomas Christiano, *The Constitution of Equality. Democratic Authority and its Limits* (Oxford: Oxford University Press, 2008), p. 36.

Imagine you know you are innocent but are wrongly convicted of a crime by a juridical system that works as well as humans can achieve. If Anderson and James would be correct then you would have to believe that this verdict is indeed not only ‘not regrettable’ for you. Given that the verdict is to determine what is just you would also have to accept the mistaken verdict to be a just one and that justice has been done to you. This, though, seems to deprive the term justice of all of the content we normally attribute to it. This thought has at least the following practical implication: if we accept that punishing the innocent is unjust we have a strong duty to put a lot of efforts into not punishing the innocent – even if we know this is something impossible to always achieve. If it would be otherwise it would be hard to claim for us that justice is important or that it matters whether we achieve it in our judgment.

Another example Christiano offers to reveal the implausibility of the relativistic version of ‘ought-implies-can’ is cases of lumpy goods. In such a situation two persons equally contribute to the production of two unequal goods with the result that one of them gets the bigger good and thus more for her work than the other one.<sup>418</sup> If our actual capacities really would limit what can be just or unjust, in case we are the person receiving the less valuable good, we could not think that there is something morally regrettable or inappropriate about this necessarily unequal distribution. Again, the strong sense of the requirement pushes us toward a counter-intuitive result.

As these cases demonstrate, moral ideals can be of practical relevance even if we are unable to completely realize them. A relativistic notion of ‘ought-implies-can’ and an interpretation that allows for unfeasible goals of justice both include the thesis that there are things that we cannot achieve and that it does not make

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<sup>418</sup> Thomas Christiano, *The Constitution of Equality*, p. 36.

sense to design rules that command us to make futile efforts toward realizing such ends. However, while sharing this idea the two interpretations arrive at fundamentally different conclusions about morality and the world. Given the counter-intuitive implications of the relativistic sense of the rule, philosophers like Christiano hold that the requirement can establish at most that *blameworthiness and injustice come apart*: no one might be at fault for an injustice that exists or could not be prevented from coming about. What also comes apart on the non-relativist sense of ‘ought-implies-can’ are the ideas of *duty and injustice*: our actual capacities naturally influence what duties we can have and what can be our fault. What our human capacities do not influence, though, is what we can think to be ideally just or desirable. Thus, contrary to Rawls’s, Anderson’s and James’s arguments it can make sense for us to regard detrimental natural inequalities as unjust or regrettable – even if we cannot be thought to have obligations to change these states as such duties would have to be futile. This amounts to a rejection of the relativistic sense of the ‘ought-implies-can’ requirement and the role practice-dependent accounts of morality assign to it: the rule cannot limit the scope of ideal justice.<sup>419</sup>

The fact that the first two objections of interactionist philosophers against the idea of the global scope of justice fail has an important consequence. Since allowing harm is in principle not less bad than doing harm and since what is just is not limited by our actual capacities, natural states of affairs, and not merely human interferences with nature, are subject to considerations of justice. If some aspect about the world is such that it is bad for people, who did not do

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<sup>419</sup> For a further discussion of the different interpretations of ‘ought implies can’ see See Robert Stern, “Does ‘Ought’ Imply ‘Can’? And Did Kant Think It Does?”, *Utilitas* 16(1) (2004): pp. 42-61.

anything to deserve to suffer from it, then we are faced with injustice, no matter whether its causes are natural or man-made.

### **10. Why the Value of Equality does not imply Levelling Down**

However, the fact that states of affairs (and not just our actual capacities) can be just or unjust does not show that equality is a value that is *per se* important for justice. We saw that Parfit thinks that what matters is that people are as absolutely well off as they should be; for instance, that they have enough air to breathe and food to eat. What Parfit thinks is less important is how well off people are in relative terms, that is to say: in comparison to one another. The latter point, though, is argued for by global egalitarianism and partly accounts for the principle's attractiveness.

The idea that, if there is nothing that would justify that some people are better off than others then no one should be better off than anyone else, is an essential egalitarian notion. Philosophers focusing on deontic judgments, like Nagel, Anderson, and James, reject the thought that equality is inherently valuable. According to their practice-dependent interpretations of morality, equality does not matter as such but only if it is necessary to justify something else, like the laws we impose on each other (Nagel) or the immediate relations in which we stand toward each other (James).

So in order to defend a global egalitarian view of justice we still have to determine whether there is a way for strict or telic philosophers (who hold the basic egalitarian belief of the intrinsic value of equality) to avoid the levelling-down objection. Parfit describes the sort of egalitarian approach that could overcome this obstacle as a *moderate version of egalitarianism* that is located

(normatively speaking) in between strict and deontic theories.<sup>420</sup> Such a moderate view would stay committed to the core egalitarian claim that “something is lost if there is inequality.”<sup>421</sup> But in addition, a moderate egalitarianism would acknowledge that equality is not the only value that is relevant for justice.

We can indeed find an example of such a moderate egalitarian account in Christiano’s global theory of equality that aims at promoting the value of states of affairs in non-wasteful ways. Christiano’s egalitarian approach allows considerations other than equality since he thinks that we cannot comprehend this ideal when we see it in isolation. Christiano therefore agrees with Parfit that, in order to make sense of equality, we need to view it in connection with other ends. For this purpose not just any additional goal will do. When we think about distributive justice we are not concerned with, for instance, the distribution of pebbles at a beach. It simply is not of normative importance, or even a matter of justice, in what pattern these stones are dispersed. That, which can render equality morally meaningful, has to be important and conducive to us as human beings. The other value, which gives meaning to equality in Christiano’s theory, is the well-being of persons. To Christiano it is “the requirement of justice that the well-being of persons be equally advanced.”<sup>422</sup>

This is an intuitively plausible thought. Well-being, as Christiano points out, is of instrumental as well as intrinsic importance to us. Well-being, on the one hand, is good for us while, on the other hand, a person that has well-being

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<sup>420</sup> See Derek Parfit, “Equality or Priority?”, p. 112.

<sup>421</sup> Thomas Christiano, Will Braynen, “Inequality, Injustice, and Levelling Down”, *Ratio* 21(4) (2008): pp. 392-420, p. 399.

<sup>422</sup> Thomas Christiano, “A Foundation for Egalitarianism” in Nils Holtug, Kasper Lippert-Rasmussen (eds.), *Egalitarianism: New Essays on the Nature and Value of Equality* (Oxford: Oxford University Press, 2007): pp. 41-82, p. 70.



flourishes.<sup>423</sup> Since well-being is that crucial there are strong reasons for us to think that justice has to do with its advancement.<sup>424</sup> And it is precisely the fact that well-being occupies such an important place in Christiano's theory that makes him a moderate (rather than a strict) egalitarian and his view immune to the levelling down objection. For Christiano equality (while being inherently valuable) is, firstly, not mandatory irrespectively of what is equalized. He furthermore holds, secondly, what is to be equalized (well-being) is such that having more of it is better than having less of it. Thus, his egalitarian theory does not commit him to the claim that equality is a mandatory aim regardless of what its achievement costs.

However, the value of well-being does not by itself explain why distributive equality is morally important. To show that equality in distribution is itself valuable Christiano points to three other considerations. All of them concern aspects that are fundamentally relevant for our thinking about how to distribute goods that enable people to achieve well-being in their lives.

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<sup>423</sup> See Thomas Christiano, *The Constitution of Equality*, pp. 18, 19

<sup>424</sup> This is a claim about the significance of well-being that might seem bolder than Rawls's idea of a political conception of justice. Rawls thinks of his own (political) conception of justice as a merely partially comprehensive notion of justice "for the main institutions of political and social life, not for the whole life" (John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 175). For Rawls, truths about what is good are only supposed to inform the design of our institutions as long as they are reasonable and do not presuppose acceptance of any fully comprehensive doctrine about the good. However, with his claim that justice is about the promotion of well-being, Christiano wants to say that justice demands of us to ensure the conditions of people exercising their distinctive authority with respect to value in life. In his mind, "the account of well-being presupposed here is neither entirely subjectivist nor objectivist strictly speaking. It includes an objective factor and the subjective appreciation of the objective good as it is realized in the person" (Thomas Christiano, *ibid.*, p. 18). This is to say that, on the one hand, we can objectively say what people need to be able to generally value things in life (they must not be killed or enslaved, require an education and so on). On the other hand, though, we cannot prescribe what they actually value as individuals, which must be largely up to them (being a devote religious believer or an environmentalist can generally be acceptable fundamental values in life, exterminating people of a certain colour, faith, or nationality is not).

In the First Chapter of this thesis<sup>425</sup> we already came across the first two points. The *generic sense of justice* demands that we treat like cases alike and unlike cases differently. This rule ensures the impartiality that we normally associate with the idea of justice. On its own though, it cannot explain why we all ought to have our well-being advanced equally. This is because the generic principle does not indicate by itself what persons are to be considered alike cases. The second consideration Christiano appeals to gives us some material to which to apply this principle.

According to the *principle of propriety* people should be given their due. The latter is determined by their status or a particular quality of theirs.<sup>426</sup> What characterizes all of us healthy human beings is our shared humanity that is normally taken to establish an equal moral worth or status that all of us possess. The question of what exactly justifies this exclusive human moral status is, as Christiano admits, extremely difficult to answer.<sup>427</sup> In Kant's spirit he argues, though, that only we humans possess a capacity to see, appreciate, and even produce values or things of value in this world. Every one of us, in his words, is "a kind of authority in the realm of value."<sup>428</sup> This is to say that, on the one hand, human beings possess the unique capacity to recognise, appreciate, and produce values. On the other hand, Christiano holds that the exercise of this capacity is itself valuable. For him, these two aspects about human beings constitute the unique quality that entitles all of us to a certain respect. However, our equal moral status, which indicates that we all present alike cases in some respect, is not sufficient either to show that justice requires that we are equally treated when it comes to the distribution of what is beneficial for us. Our equal

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<sup>425</sup> See Chapter One, Section One.

<sup>426</sup> See Thomas Christiano, *The Constitution of Equality*, p. 20.

<sup>427</sup> Thomas Christiano, "A Foundation for Egalitarianism", p. 45.

<sup>428</sup> Thomas Christiano, *The Constitution of Equality*, p. 15.

moral worth still leaves open the possibility that there are other aspects about us relevant for the determination of our distributive entitlements.

The final element of Christiano's case for the intrinsic importance of equality is therefore the 'no-relevant-difference' thesis. The latter is a core argument of strict egalitarian views and says that "there is nothing to make it just that some are better (or worse) off than others."<sup>429</sup> For Christiano, even differences in our actual capacities to value things in the world cannot endanger this thesis. According to him such inequalities in our abilities are either negligible or they are themselves the results of the external circumstances we live in.<sup>430</sup> Thus, we are not responsible for them in a sense that could have an effect on the determination of what distributive shares of goods we can claim.

Christiano holds the 'no-relevant-difference' thesis since he is in general critical of all ideas that other philosophers invoke with the aim of justifying a differential treatment of people. He rejects the thought that people are entitled to greater distributive shares than others in virtue of what they produce (the principle of productivity) or have achieved (the principle of desert). The problem of these principles is that "each [...] requires that prior conditions be in place in order for them to be legitimate."<sup>431</sup> They need a baseline that ensures a level 'playing field' for all persons to try to be productive and become deserving. At least up to a certain age we normally think none of us is entirely responsible for our choices. As a result, we normally think that until we have reached a certain level of maturity there are no morally relevant differences between us with respect to our distributive entitlements. This situation, Christiano thinks, largely stays the same throughout our lives as we always require equal

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<sup>429</sup> Ingmar Persson, "A Defence of Extreme Egalitarianism", p. 83.

<sup>430</sup> See Thomas Christiano, "A Foundation for Egalitarianism", p. 55.

<sup>431</sup> Thomas Christiano, *ibid.*, p. 79.

opportunities to merit special praise for our achievements or blame for failing to use the options available to us.

However, as with most egalitarian theories Christiano's approach is not deterministic. His view leaves room for the possibility that we waste or forfeit the entitlements that we are normally due as human beings when we, for instance, unduly infringe upon what justly belongs to others. Christiano's approach also allows for a situation in which some are worse off because they wasted the opportunities and goods that they were initially entitled to.

Christiano builds his argument for the intrinsic importance of equality in the following way:

- (1) If justice is concerned with the advancement of the intrinsic value of well-being,
- (2) And if it requires us to treat like cases alike,
- (3) When justice furthermore tells us to give people what they are due and we all possess the same moral worth,
- (4) And it is also true that, with respect to the distribution of goods, there are no morally relevant differences among us in addition to our equal moral status,
- (5) Then it follows that the only distribution that can do justice to us and our status is an equal one: "there is only one level of well-being that can satisfy the generic principle of justice, the fundamental value of well-being, and the fact of no relevant differences among equals, and that is the level at which there is equality of well-being."<sup>432</sup>

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<sup>432</sup> Thomas Christiano, "A Foundation for Egalitarianism", p. 63.

Since it constitutes the only defensible distribution equality has intrinsic value. Every state of distributive inequality accordingly presents a case of injustice or is morally bad in the sense that the equality that is normatively demanded is absent in this situation. So here we have a rather extreme answer to the question we started out with at the beginning of our discussion: according to Christiano *all* detrimental inequalities among persons are morally objectionable.

The fact that equality is not the only intrinsic value in Christiano's theory saves it from succumbing to the levelling down objection. The latter, to recall, argues that equality is problematic since it favours aiming for an equal state of affairs when there is nothing beneficial in achieving this state. But this is not what Christiano's moderate egalitarianism implies. He identifies a crucial gap in the levelling down objection that he can exploit because of the role he assigns to the value of well-being in his theory: the importance of well-being indicates that what is to be equalized as a matter of justice must be of such a quality that it must be true that *having more of it is better than having less*. With respect to justice, we saw, we are concerned with what is beneficial to us as human beings and not with something negligible like pebbles on a beach. Therefore, Christiano argues that

There is an internal connection between the rationale for equality and the value of the relevant fundamental good that is equalized. If it were not true that more well-being is better than less, then there would be no point in equality. There would be no reason to care about equality.<sup>433</sup>

So given the importance well-being has for us there can be nothing in the value of equality that would suggest that it is better if some people are worse off as a

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<sup>433</sup> Thomas Christiano, *The Constitution of Equality*, p. 33.

result of our efforts to increase interpersonal equality if no one is thereby made better off.

The crucial consequence of this insight is that not every kind of equality is better than any sort of inequality.<sup>434</sup> If we take up again the example of blind and sighted persons Christiano's theory does tell us that there is something bad about this unequal state. No person has done anything to deserve being blind and it thus would be better if no one would be blind because being blind is a disadvantage. The fact that some persons are nonetheless blind therefore constitutes a (natural) injustice. However, the badness of the inequality between blind and sighted people does not call for a form of equality that could only be achieved in ways that would be good for no one. The injustice of the blindness of some does not require us to make everyone blind so as to restore interpersonal equality. Blindness is unjust *only because* it is detrimental to people. Thus, justice (which is concerned with the distribution of what is good for us in accordance with our status) cannot call for the mutilation of all sighted people. What it would call for, though, is to make blind people see if this would be possible for us in ways that does not make everyone significantly worse off due to the involved costs.

Furthermore, in contrast to interactionist views of morality Christiano's moderate egalitarianism gives us reasons to think that the fact that some people cannot be helped and have to be worse off than others is not merely something to feel sorry about. If some have to have less well-being through no fault of their own this is rather something we ought to deplore like we deplore any other instance of injustice.<sup>435</sup> However, this leaves us with the following problems.

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<sup>434</sup> See Thomas Christiano, Will Braynen, "Inequality, Injustice, and Levelling Down", p. 400.

<sup>435</sup> See Thomas Christiano, Will Braynen, *ibid.*, p. 406.

How can an unjust unequal state be better than some just equal state? And how are we to know when inequality is preferable over equality?

### **11. The Least Unequal Possible Distribution as Justified Injustice**

We need a principled way to determine when inequality can be acceptable although it involves injustice. Without such a method we necessarily meet conflicts between equality and well-being when distributing a limited amount of benefits among persons.

We encounter such situations all the time. One example is the comparison between the blind and the sighted: according to Parfit, equality seems to require levelling down but with Christiano we can understand that the importance of well-being tells us to not waste benefits like vision. If there would be no rule for solving situations in which equality and well-being demand different things Christiano's theory (and with it the kind of egalitarianism that is save from the levelling down objection) would be impractical and thus incoherent.

Christiano offers a rule that helps us to come as close to the ideally just state of an equal distribution as is possible in every situation.<sup>436</sup> His "divergence rule of approximation"<sup>437</sup> is a complex construct. Fortunately he also names four general criteria a standard that is egalitarian but avoids the levelling down objection must have.

- (1) The first desideratum accounts for moderate egalitarianism's commitment to the belief that only equality is fully just and that, conversely, all detrimental interpersonal inequalities are unjust. It says that the optimal state is an equal one and must be realized when feasible.

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<sup>436</sup> See Thomas Christiano, Will Braynen, "Inequality, Injustice, and Levelling Down", pp. 407 - 419.

<sup>437</sup> Thomas Christiano, Will Braynen, *ibid.*, p. 412.

- (2) The second criterion limits the first one by stating that we must not aim at equality when this means that we have to waste benefits. If for bringing about an equal state we have to make some people worse off in a way that benefits no one then justice does not demand equality. Christiano reminds us that “this aspect of the rule follows from the importance of the well-being of all persons that is essential to the principle of equality.”<sup>438</sup>
- (3) The third constraint on the rule is that it must never aim for average or total utility. Since we are concerned with the distribution of well-being as a matter of justice it does essentially matter who of us receives how much of the available means for our pursuit of well-being. This criterion therefore rules out a utilitarian calculus that would want us to maximize overall well-being irrespectively of the way it is distributed among people.
- (4) The last desideratum for a rule that tells us when unjust inequality is better than just equality has the purpose of avoiding an additional problem that can arise for moderate versions of egalitarianism. According to what Christiano calls “quasi levelling down”<sup>439</sup> equality seems to demand that, no matter how great the gains for some, we cannot allow them to come about if they would cause others to be a little worse off than they would otherwise be. In this way, an egalitarian rule that would never allow suchlike gains would effectively prohibit and thus “waste” potentially large amounts of benefits that people could have. To

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<sup>438</sup> Thomas Christiano, Will Braynen, “Inequality, Injustice, and Levelling Down”, p. 408.

<sup>439</sup> Thomas Christiano, Will Braynen, *ibid.*, p. 409.



avoid this conclusion Christiano wants to allow for distributions that save a large amount of benefits at the expense of some persons.<sup>440</sup>

A method that respects these four criteria accounts for the fact that perfect justice is often not realizable for us. As we saw in the criticism of the ‘ought-implies-can’ thesis, our capacities constrain what we can achieve. But this does not mean that what is just must not be infeasible. Ideal justice, Christiano holds, plays an important role for us as “it serves as an ideal to be approximated.”<sup>441</sup> What distributive justice therefore demands of us is to “identify a circumstance or situation in terms of the highest level of average utility that is feasible for the persons involved.”<sup>442</sup>

Due to our equal moral status and the lack of relevant differences among us justice demands that we distribute the benefits that are available to us equally. It does not require us to share in each other’s misfortune that cannot be changed. What we therefore ought to aim at is the least unjust state of affairs that often will not be full justice but a case of “justified injustice.”<sup>443</sup> The illustration of the divergence rule of approximation concludes Christiano’s

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<sup>440</sup> The ‘divergence rule of approximation’ is too complex to be described in detail here. However, it rests on the insight that the sum across different possible distributions is not the same. To see this we can consider the case of a sinking life boat that has three passengers. Throwing one person over board will save the other two. If they stay on board they will all drown. Let us suppose that the sum of the well-being that is available for all three passengers in the face of the sacrifices their situation requires is expressed by the figure 10. In this case the ideal and only just distribution of well-being would be (3.3, 3.3, 3.3). The point of full justice in this life boat case is thus at 9.9 which is close to the entire available figure of 10. However, since the three cannot just cut off an arm and a leg each, the best feasible alternative is to sacrifice one person. In this case the distribution of well-being would be (5.0, 5.0, 0.0) and would lead to an overall well-being level of 10. While this solution is unjust it comes closer to the ideally just distribution, which has a sum of 9.9 as the alternative of everyone drowning. In the latter case the distribution of well-being would be (0.0, 0.0, 0.0) and its sum 0.0 much further from the ideal 9.9 than the unjust but also feasible overall well-being level of 10. Thus, the idea of the ‘divergence rule of approximation’ is that a distribution is the more just the closer its sum is to the sum of the ideal distribution (see Thomas Christiano, Will Braynen, “Inequality, Injustice, and Levelling Down”, p. 412-419).

<sup>441</sup> Thomas Christiano, Will Braynen, *ibid.*, p. 400.

<sup>442</sup> Thomas Christiano, Will Braynen, *ibid.*, p. 404.

<sup>443</sup> Thomas Christiano, Will Braynen, *ibid.*, p. 409.

argument for equality. With his theory at hand we are now in a position to arrive at an answer to what detrimental inequalities are morally objectionable.

## **12. Conclusion: the Scope of Justice is Global**

What does Christiano's account of moderate egalitarianism mean for our discussion?

We began considering this theory as a possible defence of the idea that equality is valuable as such against the charges of Parfit. Parfit's arguments against the idea that equality has inherent value support the case of philosophers who think of morality as practice-dependent. Christiano's view, however, shows that it is possible to hold the position of strict egalitarians, that there is something bad and unjust about all inequality, without having to accept Parfit's powerful levelling down objection: even though equality is *per se* valuable it does not require us achieve it in ways that are good for no one.

Since Christiano's defence of equality seems plausible and successful in avoiding Parfit's objection we can consider the third objection of advocates of practice-dependent views of justice to the principle of global egalitarianism void. Moderate egalitarianism tells us that the scope of justice is not limited to those inequalities that regard absolute levels of well-being. Instead, as soon as we have a situation in which goods are not infinite, how much one person has in comparison to others does matter morally. Parfit's example of the mountaineer short of breath does not really hit home because air is a good of which we normally have enough to satisfy everyone's needs.

This is different, though, if we imagine a situation on board a space station that has a leak. Assuming that rescue is under way and it therefore still matters how the remaining air is used it now matters how much oxygen every astronaut

is allowed to use. If we assume that every astronaut needs the same amount of air to survive, equal levels intuitively seem to be the only just solution in this situation. However, as Christiano's defence of equality shows, even in case there is only enough breathable air to save some of the astronauts moderate egalitarianism does not demand that the oxygen is distributed equally so that all are left to suffocate. In this situation justice can be thought to demand (cruel as this is) to draw lots and in this way to save as many people as possible. Thus, the scope of justice is global with respect to the all kinds of detrimental inequality. Contrary to Parfit's assumptions it encompasses relative as well as absolute levels of the possession of goods.

Before we examined Christiano's view we had already established that the scope of justice is global in another respect. The invalidation of the first two objections that supporters of practice-dependent accounts of morality advance against a universal conception of justice showed that the latter idea is not limited to existing interactions. The rejection of the thought that 'doing versus allowing' constitutes a fundamental moral distinction has the consequence that judgments of justice are not reserved for human interferences with nature. We can instead also think in terms of justice of purely naturally-occurring states of affairs such as the distribution of talents, handicaps, and natural resources.

As we saw, there are furthermore strong reasons telling against the second objection of defenders of interactionist interpretations of morality that is based on the thesis that 'ought-implies-can'. Morality works with ideal, counterfactual ends and conceptions of value that are not influenced by our physical capacities.<sup>444</sup> What we are able to achieve certainly constrains the duties we can

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<sup>444</sup> Perhaps an exception arises insofar as our intellect as humans might be in general too limited to conceive of 'the real' moral ideals.

be thought to have because instructions we cannot follow are pointless. However, this does not mean that the world could not be more just if we could improve certain states of affairs that we cannot currently influence. What is ideally just or correct or accepted as plausible is, on the other hand, safe from our individual limitations or mistakes. Justice therefore does not obey the relativistic sense of ‘ought-implies-can’. The invalidation of these first two objections indicates that the value of natural states of affairs as well can become subject to considerations of justice. Morality, this is to say, is not purely of a practice-dependent nature and does not exclusively regard the effects our existing interactions have on us and others.

Taken together the rejection of all three objections against the idea of the global scope of justice constitutes a severe blow to advocates of practice-dependent views of morality such as the actual and reformed practice views of justice. Their claim that detrimental inequalities, which are not the result of our common practices, are not concerns of justice seems implausible now that we determined their objections to be invalid. So even though the detrimental inequality in scenario E has purely natural causes we should not believe that they are not offensive and unjust to the ones who are disadvantaged by them.

Consequently, when we think about what justice requires with regard to those things that are beneficial to us we have to consider everyone’s claims on the planet as equal – which amounts to embracing the global egalitarian perspective on justice. Thus, it does not come as a surprise that Christiano sees his own theory as an instance of global egalitarianism. As such it “asserts that the fundamental norms of justice that ground the legitimacy and justice of the political communities of modern states are ones that hold for the whole world

community.”<sup>445</sup> Thus, in contrast to the assumptions of defenders of interactionist conceptions of morality the existence of common practices and political authority is *not* a necessary condition of the application of justice. This equals saying that the scope of justice is in fact global. As Christiano’s moderate egalitarianism shows, everyone’s (practice-independent) distributive entitlements are the same, no matter the associations to which we belong.

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<sup>445</sup> Thomas Christiano, “Immigration, Political Community, and Cosmopolitanism”, *San Diego Law Review* 45(4) (2008): pp. 933-962, p. 933.

## Chapter V: The Argument for Coercive Global

### Authorities

In the last chapter we saw that there are weighty reasons to think that the scope of distributive justice is global. That is to say that, in general, detrimental inequalities and naturally-caused but remediable harm are as much concerns from the perspective of distributive justice as are absolute harmful disparities among persons and socially-caused harm. The consequence of this view is that, due to our equal moral status, every person's entitlement to a share of what enhances human beings' well-being is generally equal.

However, it would be premature for us to conclude from this abstract universal equality that a plausible account of distributive justice has to demand that we aim at actually making everyone everywhere equal with respect to their access to (or even possession of) such beneficial goods. The latter as an objective can be called *complete substantive* (in contrast to merely formal) *equality in distribution*. It is important for us to understand what this idea would require of us.

Given the naturally occurring inequalities among persons and the difficulties to obtain the information about everything that is relevant for the achievement of well-being, we can expect that working toward such an objective would take up most of our resources and time. This is, of course, not a decisive argument against adopting complete global substantive equality as one of our goals if that is what distributive justice does require of us. In the literature on distributive justice, though, there are a number of important reasons that tell against this conceivable but demanding objective.

However, the main focus of this chapter will not be on arguments that constrain what duties and goals we can derive from the principle of global egalitarianism. Rather, we will centre our attention on defending one particular and pivotal obligation that must be entailed by global egalitarianism: the duty to establish coercive global authorities that can administer and enforce global egalitarian justice. For this purpose we will discuss and invalidate two important general reservations about the possibility of institutionalizing conceptions of global justice. The chapter will begin, though, with some requisite remarks on considerations that can be thought to influence the duties and objectives that are justifiable and based on the principle of global egalitarianism.

### **1. Deontic Considerations: Relevant for the Content, not the Scope, of Duties of Justice**

It is important to note that the relevant considerations tempering the pursuit of complete global substantive equality are not available from within the telic structure of the global egalitarian argument (which derives from the idea of the global scope of justice).

As we saw in Chapter Four, Thomas Christiano's principle of equality (which constitutes one of the pillars of the argument for the global scope of justice) does allow for certain departures from complete distributive equality. But these deviations, as was shown, are concessions to the way our world actually is. They are permissible only in circumstances where actual equality is either infeasible or would require us to make some people worse off without thereby making anyone better off. The arguments against complete global substantive equality

we will briefly mention here are of a different, non-telic and non-instrumental kind.

These additional non-telic, non-instrumental reservations against complete global distributive equality importantly are of a primarily deontic nature.<sup>446</sup> Derek Parfit, to recall, defines deontic aspects about justice as those that do not derive fundamentally from the value of outcomes but from something else.<sup>447</sup> Deontic considerations instead are concerned with how outcomes and aims are brought about, and in particular with actions.<sup>448</sup> However, contrary to the claims of interactionist philosophers (as we saw in Chapter Four) these deontic reasons do not affect the *scope* of distributive justice. Instead, they affect the *content* of our duties of global distributive justice. This role of deontic considerations adds a new dimension to our discussion of global egalitarian distributive justice and does not simply tell us how best to achieve the ends set by this idea.

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<sup>446</sup> There also is another instrumental reason against complete distributive equality mentioned by Christiano (see Thomas Christiano, “Cohen on Incentives, Inequality, and Egalitarianism” in Christi Favor, Gerald F. Gaus, Julian Lamont (eds.), *Essays on Philosophy, Politics & Economics: Integration and Common Research Projects* (Stanford: Stanford University Press, 2010): pp. 173-200). Christiano thinks that the efficient production of distributable goods depends on people knowing what their interests are and what they are good at. But this “crucial information [about our talents and interests] can only come about when people act in their self-interest to some extent. Individuals will only be able to acquire information about these matters if they focus on their interests and ignore the interests of others, and then act on those interests. Otherwise each will be lost in a maze of unmanageable considerations” (Thomas Christiano, *ibid.*, p. 192). Christiano thinks that in order for us to find out about our talents and inclinations in general we need to explore our interests. And in this regard “wage incentives are opportunities for me to discover whether and to what extent a job is desirable to me and whether the wage incentive adequately compensates the burden undertaken.” (Thomas Christiano, *ibid.*, p. 195). Therefore, some substantive inequality in distribution seems necessary if we want our society to also be efficient and to not lapse into poverty. However, this consideration stays within the telic structure of the global egalitarian argument and, thus, does not belong to the group of deontic reasons against complete equality which we want to explore at this point.

<sup>447</sup> See Derek Parfit, “Equality or Priority?” in Matthew Clayton, Andrew Williams (eds.), *The Ideal of Equality* (Basingstoke: Palgrave Macmillan, 2002): pp. 81-125, p. 84.

<sup>448</sup> See Derek Parfit, *ibid.*, p. 90.



### (1) The Legitimate Pursuit of Justice

The first deontic reservation with respect to complete substantive global equality regards an aspect about the conditions of a legitimate collective decision-making process that we already came across in Chapter One.<sup>449</sup> Still, it is important for us to understand how this deontic consideration can affect the realization of global egalitarianism.

Global egalitarians like Christiano acknowledge that there is an important distinction between abstract ideal justice and social justice as we implement it among people. In Christiano's understanding, social justice denotes "the attempt to realize the highly impersonal and abstract conception of justice [...] in the institutions and interactions among persons."<sup>450</sup> In contrast to abstract philosophical argumentation that follows certain criteria accepted by the academic community, social justice has to be acceptable to persons outside academia as well who often apply different standards in discussion. Because we must not disrespect the opinion of people whose views we cannot disregard as obviously false Christiano emphasizes that "social justice requires that justice must not only be done, it must be seen to be done."<sup>451</sup>

Rawls, to recall, thinks that the fact of reasonable pluralism, which is "the characteristic work of practical reason over time under enduring free institutions,"<sup>452</sup> necessitates two things. Firstly, we have to adopt egalitarian collective decision-making procedures (like democratic elections). Secondly, we have to respect the outcome of this procedure as long as the result is acceptable

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<sup>449</sup> See Chapter One, Section Five.

<sup>450</sup> Thomas Christiano, *The Constitution of Equality. Democratic Authority and its Limits* (Oxford: Oxford University Press, 2008), p. 46.

<sup>451</sup> Thomas Christiano, *ibid.*, p. 46.

<sup>452</sup> John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 135.

to those holding what Rawls calls “reasonable comprehensive doctrines”<sup>453</sup> of what is good and just in like. It is therefore possible that people would select other, less plausible but not unreasonable, objectives than to aim at complete substantive global equality.

## (2) Issues of Complexity Concerning the Implementation of Goals of Justice

The second deontic reservation that has to be mentioned here is the problem of complex variables that might impair our efforts to realize global egalitarianism. Jerry Gaus states, for instance, that when trying to realize particular socio-economic objectives (like forms of distributive equality or an increased interest of the population in political issues) we are faced with a highly problematic complexity of variables. Referring to the studies of the mathematician Donald Saari, Gaus argues that “the level of complexity of economic systems dwarfs that of the systems studied by most natural scientists.”<sup>454</sup> This complexity of socio-economic systems “derives from aggregation out of the unlimited variety of preferences, “preferences that define a sufficiently large dimensional domain that, when aggregated, can generate all imaginable forms of pathological behavior”.”<sup>455</sup> As a result, we are often unable to predict what policy can best realize a desired end.<sup>456</sup>

The problem of lacking the means to achieve distributive justice also worries David Hume who argues that

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<sup>453</sup> John Rawls, *Political Liberalism*, p. 58.

<sup>454</sup> Gerald F. Gaus, “Is the Public Incompetent? Compared to Whom? About What?”, *Critical Review* 20(3) (2008): pp. 291-311, p. 299.

<sup>455</sup> Gerald F. Gaus, “Social Complexity and Evolved Moral Principles” in Louis Hunt, Peter McNamara (eds.), *Liberalism, Conservatism, and Hayek’s Idea of Spontaneous Order* (Basingstoke: Palgrave MacMillan, 2007): pp. 149-176, p. 157.

<sup>456</sup> For Gaus, herein lies a particularly strong argument for the importance of deontic considerations and rules when it comes to realizing telic goals, see Gerald F. Gaus, “Is the Public Incompetent? Compared to Whom? About What?”, p. 306. See also John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 75.

However specious these ideas of *perfect* equality may seem, they are really, at bottom, *impracticable*; [...]. The most rigorous inquisition too is requisite to watch every inequality on its first appearance; and the most severe jurisdiction, to punish and redress it. But besides, that so much authority must soon degenerate into tyranny, and be exerted with great partialities; who can possibly be possessed of it?<sup>457</sup>

Liberal and global egalitarian philosophers alike acknowledge that abstract ideals, like compensation for a lack of natural talents or handicaps, would require information that it is hard, impermissible, or impossible to come by. If we were, for instance, to try to make everyone completely equally well off we would need to know, among other things, how much well-being and satisfaction people get out of the work they do.<sup>458</sup> We would also have to be certain about how much effort they put into their work that contributes to the production of goods that then can be distributed.

According to the egalitarian idea if a person is, through no fault of her own, less able to produce things of value (for example because she lacks the physical conditions, the natural talents, or ambitiousness for this task) then this person ought not to have less of those things that can increase persons' well-being. However, if a person is simply lazy and thus chooses to be less productive, or wastes the benefits she receives in accordance with the demands of social justice then she ought not to be compensated for the losses in distributive benefits she thus incurs.<sup>459</sup> This is to say that often we will encounter problems of feasibility

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<sup>457</sup> David Hume, "An Enquiry Concerning the Principles of Morals" in *Moral Philosophy* (ed. G. Sayre-McCord) (Indianapolis: Hackett Publishing Company, 2006): pp. 185-383, p. 205.

<sup>458</sup> For the difficulties that individuals face in comparing their own situation to that of others see Andrew Williams, "Incentives, Inequality, and Publicity", *Philosophy & Public Affairs* 27 (3) (1998): pp. 225-247. Here Williams points out, for instance, that "in a large society, it is extremely unlikely that individuals could obtain reliable information about each other's relative levels of job satisfaction, the extent to which their past decisions render them responsible for inequalities in those levels, and the appropriate amount of financial compensation for any remaining unchosen disadvantages" (see Andrew Williams, *ibid.*, p. 239).

<sup>459</sup> Different egalitarian theories disagree about the degree to which people should be held responsible for their own productivity. In this respect Rawls's *Theory of Justice* and the Difference Principle it advocates are more permissible than, for instance, Ronald Dworkin's

when it comes to implementing goals we accept collectively as those we should pursue.

These two deontic reservations regarding legitimate public decision-procedures and the realisability of collective goals of justice do not challenge the plausibility of the principle of global egalitarianism. They do not affect the scope but rather the content of the duties that are derivable from this principle. Nonetheless, in the context of this final chapter it was necessary to mention these concerns to avoid giving the impression that when we accept global egalitarianism we are incapable of taking into account other (possibly countervailing) reasons. This would in general be a violation of the idea of moderate egalitarianism,<sup>460</sup> of which global egalitarianism is a variant.

## **2. Justifiable Global Egalitarian Duties**

What global egalitarian goals are justifiable despite these two deontic reservations we just considered? Our discussion of global egalitarianism has shown that according to this principle we have at the least the following duties.

Within existing practices we need to ensure background justice (which includes the material basis of fair equality of opportunities and compensation for undeserved disadvantages) and a fair distribution of the benefits and burdens among the participants of such cooperative efforts. These duties require quite clearly, for instance, a reform of the existing global governance institutions (such as the UN, WTO, IMF, World Bank) and possibly the creation of new ones in areas where global interactions are under-regulated.

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conception of 'equality of resources'. According to the latter people should always bear the costs of their cherished preferences.

<sup>460</sup> See Chapter Four, Section Ten.

However, according to the principle of global egalitarianism any particular practices are only permissible within a larger framework of rules that ensure certain procedural and substantive entitlements for everyone. Every human being must at least enjoy a socio-economic minimum which is “necessary to advancing the interests that are secured by liberal and democratic rights. [...] Without a basic minimum a person normally cannot successfully exercise the liberal and democratic rights.”<sup>461</sup> Therefore, also the deontic reasons emphasizing the importance of public processes and justification back this call for a socio-economic minimum.<sup>462</sup> Such a goal is certainly a very modest demand and we might be able to theoretically justify more extensive global distributive duties on the basis of global egalitarianism. In the context of the present discussion, though, we are concerned with identifying clearly justifiable practical demands that global egalitarians can defend.

However, what is important to note is that the global egalitarian position does not therefore amount to another version of the well-known sufficiency principle. The latter, as Harry Frankfurt explains, tell us that distributive justice ‘merely’ demands of us to ensure “that each should have *enough*.”<sup>463</sup> As Paula Casal shows, egalitarians (like global egalitarians) also can, and should, accept the positive thesis affirmed by the sufficiency principle, namely “that it is extremely important to eliminate deprivations.”<sup>464</sup> What distinguishes egalitarians from sufficientarians, though, is that the former, but not the latter, reject the negative thesis of the sufficiency principle, which claims that beyond this sufficiency threshold detrimental inequalities are not a matter of

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<sup>461</sup> Thomas Christiano, *The Constitution of Equality*, p. 273.

<sup>462</sup> see also Gerald F. Gaus, “On Justifying the Moral Rights of the Moderns: A Case of Old Wine in New Bottles”, *Social Philosophy & Policy* 25(1) (2007): pp. 84-119, pp. 104, 105.

<sup>463</sup> Harry Frankfurt, “Equality as a Moral Ideal”, *Ethics* 98(1) (1987): pp. 21-43, p. 21.

<sup>464</sup> Paula Casal, “Why Sufficiency is not Enough”, *Ethics* 117(2) (2007): pp. 296-326, p. 299.

distributive justice.<sup>465</sup> The low key demand for a global socio-economic minimum is rather due to our moderate objective to find clearly defensible global egalitarian rules and goals. What constitutes the particular nature of global egalitarianism is the thought that this decent minimum is an entitlement that human beings possess irrespectively of where they live, what resources their states controls within its territory, and whether they are participants in any particular practice. This is the crucial outcome of the argument for the global scope of justice that forms the core of global egalitarianism.

Furthermore, this principle requires of us that, even if we assume a situation in which everyone has enough, it is not enough for us simply to refrain from making others worse off than they currently are. The universal importance of practice-independent entitlements we identified in Chapter Three also leads to the demand that all of us should possess the same opportunities and access to the resources available to humankind and that we need to develop and progress. This also regards goods and resources that are right now unavailable to us but might become accessible in the future. Global egalitarianism cannot allow for a usage of currently unused and unclaimed resources on a ‘first-come-first-served’ basis. Thus, we see that already these few but (from a global egalitarian standpoint) uncontroversial obligations indicate that we have quite extensive duties of redistribution and reform on a global scale.

The obligations we just outlined all point toward one vital obligation: as supporters of the principle of global egalitarianism we must endorse the duty to reform existing and establish new coercive global authorities. Without these institutions, it can be reasonably claimed, no duties of global distributive justice are realizable whatsoever. As Thomas Nagel plausibly claims, “justice [...]

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<sup>465</sup> See also Thomas Christiano, *The Constitution of Equality*, pp. 27-30.

requires government as an enabling condition.”<sup>466</sup> This is because justice presupposes “the coordinated conduct of large numbers of people, which cannot be achieved without law backed up by a monopoly of force.”<sup>467</sup> On the other hand, if there reasons to think that we cannot create the institutions necessary to enforce and work toward global justice, Nagel would seem correct in thinking that global justice is an idea without application.<sup>468</sup> Thus, we can now turn to the main problems this chapter aims to address. These are issues that generally concern the institutionalizability of conceptions of global justice.

### **3. Democratic Qualms about the Realisability of Global Egalitarianism**

In what follows we will consider two important objections to the possibility of coercively enforcing global egalitarianism by means of creating global governance authorities. One challenge to the idea of coercive global institutions is voiced by democratic theorists,<sup>469</sup> another by Kantian philosophers who refer to Kant’s rejection of the idea of a world government.<sup>470</sup> We shall start with the democratic challenge to global egalitarianism.

Some democratic theorists take the premise of the moral equality of people to imply that everyone needs to have an equal say in the public debate and

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<sup>466</sup> Thomas Nagel, “The Problem of Global Justice”, *Philosophy & Public Affairs* 33(2) (2005): pp. 113-147, p. 114.

<sup>467</sup> Thomas Nagel, *ibid.*, p. 115.

<sup>468</sup> See Thomas Nagel, *ibid.*, p. 116.

<sup>469</sup> See Thomas Christiano, “Democratic Legitimacy and International Institutions” in Samantha Besson, John Tasioulas (eds.), *The Philosophy of International Law* (Oxford: Oxford University Press, 2010): pp. 119-137 and Allen Buchanan, Robert O. Keohane, “The Legitimacy of Global Governance Institutions” in Allen Buchanan, *Human Rights, Legitimacy, and the Use of Force* (Oxford: Oxford University Press, 2010): pp. 105-133. In contrast to Christiano, however, Buchanan and Keohane do not think that the impracticability of global democratic institutions renders conceptions of global distributive justice generally impossible. Nevertheless, it is important for us to take a look at the reasons they offer against the idea of building international democratic institutions in order to get a full picture of the problems connected with this notion.

<sup>470</sup> See Katrin Flikschuh, “Kant’s Sovereignty Dilemma: A Contemporary Analysis”, *The Journal of Political Philosophy* 18(4) (2010): pp. 469-493.

decision-making process on collective matters (like distributive justice). Otherwise, these democrats hold, rule enforcement in these matters is not morally acceptable. This is to say that also the global egalitarian account of global egalitarian justice must presuppose democratic global institutions so that we can arrive at legitimate objectives and rules of global justice.

However, as Allen Buchanan and Robert Keohane point out, the empirical conditions for global democratic structures do not currently exist and cannot reasonably be expected to develop any time soon.<sup>471</sup> Among the missing social and political conditions for international democratic authorities they mention are a functioning global democratic structure (like a world parliament, executive, and judiciary), an interlinked global *demos*, and indispensable non-political democratic institutions like a free global press or an active global civil society. Furthermore, Otfried Höffe draws attention to the fact that widespread literacy among people is a precondition for both, a free global press to have an effect, and for the formation of a global civil society.<sup>472</sup> Thus, establishing global democratic structures, within which people could deliberate and decide on the details of distributive justice on a global scale, simply seem unfeasible.

However, what is worse, according to Christiano, is that even if global democratic institutions would be feasible the normative conditions for their legitimacy are currently unfulfilled. Democratic procedures, Christiano argues, are valuable within and only within political contexts in which people have

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<sup>471</sup> See Allen Buchanan, Robert O. Keohane, “The Legitimacy of Global Governance Institutions”, pp. 113, 114.

<sup>472</sup> See Otfried Höffe, *Democracy in an Age of Globalisation* (Dordrecht: Springer, 2007), p. 228: “a positive freedom of the press is indispensable for a functioning participatory democracy. A sufficient level of educational attainment is, for the same reason, also required, so as to establish at least a minimum level of literacy among citizens. For cultures that do not rely on written texts, alphabetization is no legal-moral precept *per se*, but in a world society in which the media play such an influential role it is necessary.”



“roughly equal stakes”<sup>473</sup> in the decisions that are collectively made. Within modern nation states people decide on, and live by, public rules that profoundly influence the ways they can live their lives while they often disagree on what the correct rules are. Here democratic decision-making is indispensable since it is the only way to give everyone the equal say in public matters that they are entitled to by virtue of their equal moral status. Furthermore, democratic structures are the most effective way we know of to check the power of political authorities and to hold them accountable for their actions.

Christiano argues, though, that there are good reasons to think that not all of us have equal stakes in the exchanges and cooperation that is going on in the global sphere. One example of uneven stakes is the different degrees to which national economies are involved in international trade. In 2011, a much larger part of the gross national product of a national economy like Germany’s is generated by (and dependent on) exports than is the case with an economy like Mali’s. Thus, Germany currently has a greater stakes in the way international markets are regulated than Mali.

But even in our globalized age it is still true that the closer we are to each other the more we affect the way we can live our lives. Nation states simply have evolved as the political structures in which we primarily regulate our public lives

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<sup>473</sup> Thomas Christiano, “Democratic Legitimacy and International Institutions”, p. 132. Christiano mentions two further considerations that count against creating democratic global institutions. He holds that, firstly, due to the sheer size of its domain global democracy will create persistent minorities: “there is a significant chance that some groups will simply be left out of the decision-making process” (Thomas Christiano, *ibid.*, p. 133). This would be a problem since members of such persistent minorities would not have their well-being equally advanced. The democratic global institutions would thus illegitimately rule these marginalised people. Secondly, Christiano thinks that, due to the lack of a global civil society, a political party system and global media, global democracy power would be hard to check and thus come to be ruled by elites rather than a global *demos* (see Thomas Christiano, *ibid.*, pp. 134, 135). However, these worries present technical difficulties with respect to realising global democratic institutions. In our discussion we will instead focus on the more fundamental normative problem Christiano mentions, the inequality of stakes people would have in a global democracy.

with common rules. And this is why it matters morally that within these states there are democratic procedures to make collective decisions about the rules that coordinate our co-existence as citizens. Democratic procedures in a state would have less value if it would not be true that states constitute the primary contexts within which we intensely affect each other. As citizens of the same state we are interdependent to an extent that is not reached in the international sphere. Thus, normatively speaking, the jurisdiction for collective decision-making about social justice is based on the impact we have on each other. As Christiano says,

There must be some kind of equality of stakes in the interdependence, where by ‘stake’ I mean the susceptibility of a person’s interests or well-being to be advanced or set back by realistically possible ways of organizing the interdependent group. If one group of persons has a very large stake in a community, in which there is interdependence of interests, and another has a fairly small stake, it seems unfair to give each an equal say in decision-making over this community.<sup>474</sup>

But apparently the situation is not quite like this in the global sphere. Here what people do at one place does not always or often have an equal impact on all others. The magnitude of the impact largely depends on how intensely people are connected with each other. For this reason, it seems inappropriate to give everyone an equal say in how international trade should be set up. This thought leads to the conclusion that currently, and given the way our world is at present, there are no normative grounds for establishing global democratic structures for all decisions and matters of justice. As Christiano concludes, “we find ourselves in the position which usually calls for democratic decision making but without

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<sup>474</sup> Thomas Christiano, “Democratic Legitimacy and International Institutions”, p. 131.

the possibility of global democratic institutions.”<sup>475</sup> For democrats like Christiano, we have thus no reasons to hope that a coercive enforcement of conceptions of global justice is possible at all.

Someone might argue that global democracy could still be a better way to promote justice globally than the current system of states which generates so much problematic inequality. But given the current lack of the social and political as well as the normative conditions of global democratic structures we have to assert that it would take enormous efforts and resources to establish these necessary elements. It therefore seems more plausible for us to work toward some international political order that would rest on a sound normative basis in light of how our world currently is. Thus, the objections against global democracy are also worries about the feasibility of institutionalizing a global discourse about many of the details of social justice. A global discourse and decision-making procedures, as we saw in the beginning of the chapter, though, might be thought necessary for the legitimate selection of the details of global social justice.

#### **4. Kantian Doubts about the Possibility of Global Institutions**

There is of course no space here to outline the whole system of Kant’s legal and political philosophy, of which the argument against global institutions is one ultimate result. As Arthur Ripstein shows, this legal and political theory rests on two controversial assumptions that we rejected in our defence of global egalitarianism.<sup>476</sup>

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<sup>475</sup> Thomas Christiano, “Is Democratic Legitimacy possible for International Institutions?” in Daniele Archibugi, Mathias Koenig-Archibugi (eds.), *Global Democracy. Normative and Empirical Perspectives* (Cambridge: Cambridge University Press, forthcoming).

<sup>476</sup> See Arthur Ripstein, *Force and Freedom. Kant’s Legal and Political Philosophy* (Cambridge, MA: Harvard University Press, 2009), ch. 1.

Firstly, in Kant's view, while moral duties arise for us in the hypothetical authority-free state of nature, duties of justice cannot. This is most clearly expressed in Kant's claim that in this state of nature "men do *one another* no wrong at all when they feud among themselves"<sup>477</sup> about their seized possessions. Kant's position on justice, which is based on his radical view about freedom and people's independence, is thus even more extreme than Nagel's. Kant does not only deny that in the absence of a common coercive authority that acts in our name, we have duties of distributive justice toward each other. Furthermore, people are allowed to use coercion only for two purposes: to protect their bodies in self-defence and (what will concern us shortly) to force each other to leave this ungovernable state devoid of a common coercive authority. From the perspective of justice, in the state of nature we have no obligations but to not interfere with other people's bodies.

Secondly, Kant holds that injustice or "a hindrance to freedom"<sup>478</sup> can only be caused by being (unjustifiably) coerced by someone else. As Ripstein stresses, "Kantian independence can only be compromised by the deeds of others. It is not a good to be promoted; it is a constraint on the conduct of others, imposed by the fact that each person is entitled to be his or her own master."<sup>479</sup>

Fortunately, though, it is not necessary for us to discuss Kant's whole political theory or to engage with his two basic and controversial assumptions about justice in order to see the reasons why Kant rejects coercive global institutions. Instead, what we require for this purpose is an understanding of the function and value that Kant accords coercive sovereign authority.

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<sup>477</sup> Immanuel Kant, *The Metaphysics of Morals*, (trans. Mary Gregor) (Cambridge: Cambridge University Press, 1996), p. 122.

<sup>478</sup> Immanuel Kant, *ibid.*, p. 57.

<sup>479</sup> Arthur Ripstein, *Force and Freedom. Kant's Legal and Political Philosophy*, p. 15.

The reason why Kant thinks political authority is indispensable for us lies in the fact that human beings have to be able to make exclusive use of things outside their bodies to exercise their agency and freedom.<sup>480</sup> But this is only possible if there is a way for them to be justified in claiming things as their property and thus to exclude others from using these objects.<sup>481</sup> For Kant, what is therefore necessary is the creation of a common coercive ruler that authoritatively resolves our conflicting claims about what is justly ours.<sup>482</sup> As Katrin Flikschuh explains, in Kant's theory, "it is impossible in principle for a private person to act as legitimate enforcer of coercive universal laws."<sup>483</sup> General rules, such as that everyone has to have enough or the same, are not of much help in this respect and do not render political authority superfluous. As Ripstein notes, we always encounter problems when trying to apply general rules to particular cases as those rules necessarily are underdetermined.<sup>484</sup> This need for authoritative regulation is a familiar idea that does not depend upon acceptance of Kant's two controversial claims about justice.<sup>485</sup> Political authority, we saw in Chapter Two, is required for social coordination as well as the arbitration of conflicts. It is therefore not difficult for us to agree with Kant that coercive authority is an indispensable element of coexistence and social human life in general.

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<sup>480</sup> See Immanuel Kant, *The Metaphysics of Morals*, p. 70. See also Arthur Ripstein, *Force and Freedom. Kant's Legal and Political Philosophy*, ch. 3; Gerald F. Gaus, "On Justifying the Moral Rights of the Moderns: A Case of Old Wine in New Bottles", p. 104.

<sup>481</sup> See Immanuel Kant, *ibid.*, p. 71.

<sup>482</sup> See Immanuel Kant, *ibid.*, pp. 77-79.

<sup>483</sup> Katrin Flikschuh, "Reason, Right, and Revolution: Kant and Locke", *Philosophy & Public Affairs* 36(4) (2008): pp. 375-404, p. 392.

<sup>484</sup> Arthur Ripstein, *ibid.*, p. 171

<sup>485</sup> H. L. A. Hart, for instance, explains that "whichever device, precedent or legislation, is chosen for the communication of standards of behavior, these, however smoothly they work over the great mass of ordinary cases, will, at some point where their application is in question, prove indeterminate; they will have what has been termed an *open texture*" (H. L. A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1961), pp. 127, 128.

Given this importance of coercive authority, Kant thinks, we “ought to leave the state of nature and proceed [...] into a rightful condition, that is, a condition of distributive justice.”<sup>486</sup> Since we cannot authoritatively resolve our conflicting claims without submitting ourselves to an “omnilateral”<sup>487</sup> will (that is to say: to a common coercive authority acting in the name of all of us) this situation in Kant’s view justifies the use of extreme measures. To him, we are permitted, if necessary, even to “impel [each] other by force to leave this state [of nature] and enter into a rightful condition.”<sup>488</sup>

However, Kant thinks that not only individuals but also coercive sovereign authorities like states have moral obligations toward others states and people.<sup>489</sup> But – curiously – for him the moral necessity of having a coercive common authority does not generalize to the international arena. Quite to the contrary, he argues that internationally states should not form one coercive world government to adjudicate their conflicts of justice. Instead, they should agree to join together in a “particular kind of league”<sup>490</sup>, a voluntary association of states. The latter contrasts with the coercive authority of states in that “this federation does not aim to acquire any power like that of a state, but merely to preserve and secure the *freedom* of each state in itself, [...], although this does not mean that they need to submit to public laws and to a coercive power which enforces them, as do men in a state of nature.”<sup>491</sup>

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<sup>486</sup> Immanuel Kant, *The Metaphysics of Morals*, p. 121, 122.

<sup>487</sup> Immanuel Kant, *ibid.*, p. 84.

<sup>488</sup> Immanuel Kant, *ibid.*, p. 124.

<sup>489</sup> They are, for instance, not allowed to interfere with the internal affairs of other states (see Immanuel Kant, “Perpetual Peace. A Philosophical Sketch” in *Political Writings* (ed. H. S. Reiss) (Cambridge: Cambridge University Press, 2007): pp. 93-130, p. 96) or to deny foreigners hospitality (see Immanuel Kant, *ibid.*, pp. 105-108).

<sup>490</sup> Immanuel Kant, “Perpetual Peace. A Philosophical Sketch”, p. 104.

<sup>491</sup> Immanuel Kant, *ibid.*, p. 104.

Kant's denial of an involuntarily acquired duty to form coercive global authorities for the resolving of conflicting international claims of justice prompts an obvious question. Why does Kant diagnose a discontinuity between the situations of individuals in the state of nature and nation states that exist in what Höffe calls a "residual state of nature"<sup>492</sup> (that is to say: the international authority vacuum in which states constitute independent 'bubbles' of authority)?

Kantians like Flikschuh point out that within Kant's system coercive international authorities are not merely undesirable. They are rather *conceptually impossible*.<sup>493</sup> This is because, for Kant, sovereign authority must be thought of as "indivisible, supreme, and final."<sup>494</sup> According to this picture, states that are subject to coercive international authorities are incapable of definitively resolving conflicts of justice as their decisions can be subject to further evaluations of supra-state institutions. As Kant puts it, "the idea of an international state is contradictory, since every state involves a relationship between a superior (the legislator) and an inferior (the people obeying the laws), whereas a number of nations forming one state would constitute a single nation."<sup>495</sup>

Consequently, Flikschuh holds, with respect to global justice there arises a dilemma within Kant's political philosophy. The dilemma occurs because

Kant conceives of Right in general as an inherently coercive morality. He designates states as supreme enforcers of Right domestically, yet he also thinks of states as bearers of juridical obligations internationally. If Right in general is inherently coercive then states, in honouring their juridical obligations, should submit under a

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<sup>492</sup> Otfried Höffe, *Kant's Cosmopolitan Theory of Law and Peace* (Cambridge: Cambridge University Press, 2006), p. 167, 168.

<sup>493</sup> See Katrin Flikschuh, "Kant's Sovereignty Dilemma: A Contemporary Analysis", p. 471.

<sup>494</sup> Katrin Flikschuh, *ibid.*, p. 473.

<sup>495</sup> Immanuel Kant, "Perpetual Peace. A Philosophical Sketch", p. 102.

supra-state juridical authority internationally. Yet if states are themselves supreme enforcers of Right, they cannot be juridically compelled – the application of Right against them cannot be coercive. This is Kant’s sovereignty dilemma.<sup>496</sup>

If unavoidable, this dilemma would have the following implications for our defence of global egalitarianism. Since the authoritative power of states is required for definitely resolving conflicting claims of individuals there is no conceivable reason that could justify the empowerment of coercive international authorities. This would also be true for obligations of distributive justice that derive from the principle of global egalitarianism. States simply could not be forced to work toward greater global equality. States’ compliance with the demands of global egalitarianism would be (albeit for other reasons than in Christiano’s view) dependent on their voluntary acceptance of these duties.

### **5. A Problematic Suggestion: a Voluntary Association of States**

Given these two objections we seem to face a “deliberative impasse”<sup>497</sup> with respect to realizing conceptions of global justice like global egalitarianism.

On the one hand, our moral reasoning tells us that the scope of justice is global and that we have duties of distributive justice that ought to be implemented worldwide. On the other hand, we cannot set up the coercive global institutions required for deliberating about and enforcing the details of global justice. This is because either the necessary normative preconditions for these institutions are not fulfilled or the conceptual impossibility of such institutions would make global justice unenforceable.

We have seen that both Christiano and Kant, albeit for different reasons, suggest focusing our efforts for making the world more just on arguing for the

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<sup>496</sup> Katrin Flikschuh, “Kant’s Sovereignty Dilemma: A Contemporary Analysis”, p. 471.

<sup>497</sup> Thomas Christiano, “Is Democratic Legitimacy Possible for International Institutions?”



voluntary formation of some non-coercive association of states. However, resolving the impasse by means of a voluntary association is dissatisfying: the demands of distributive justice established by the principle of global egalitarianism thus would be answered by the idea of a merely voluntary fulfilment of these obligations on the part of states. The option of a voluntary association is unsatisfactory since we have overwhelming reasons to look for further identifiable duties and goals that derive from the argument for the global scope of justice. After all, in the previous chapters we found important reasons (provided by the argument for equality, the importance of practice-independent entitlement, and the lack of a moral difference between socially versus naturally-caused detrimental inequalities) to promote distributive equality on a global scale.

The solution of creating a voluntary association of states, on the other hand, tells us to accept that when states fail to form such an association (and thereby also leave a range of rules and objectives of global justice undetermined) they merely commit a reproachable moral failure. There would, then, be no way of justifying the coercive implementation of duties of global justice on states. Global egalitarianism would be unenforceable and Nagel's conclusion about the realisability of global justice would again be imminent – despite the validity of global egalitarianism. We therefore have to find an answer to these two challenges to the institutionalizability of conceptions of global justice.

## **6. Answering the Kantian Challenge**

We will start by addressing the Kantian objection to global institutions since it is the more fundamental one. As it turns out, the core of Kant's idea of political authority – the notion of sovereignty as indivisible – also presents its greatest

weakness. This shortcoming opens up a way for us to defuse the charge of the conceptual impossibility of coercive global authorities.

Philosophers like Thomas Pogge reject the idea of sovereignty as necessarily indivisible.<sup>498</sup> For Pogge, the question whether a sovereign authority can be subject to the coercive rule of another authority while remaining capable of authoritatively resolving conflicts among its subjects is an empirical question rather than a matter of logic.<sup>499</sup> And when we consider our practical experience, Pogge holds, we find that, for one thing, the purpose of the very idea of indivisible sovereignty is infeasible: it is impossible for us to have a complete authoritative conflict-resolution mechanism. Drawing on this assumption, both Pogge and Höffe believe that Kant's theory actually supports the case for coercive global authority and does not deny its possibility. So how does their argument work?

#### (1) The Impossibility of a Complete Conflict-Resolution Mechanism

Kant actually endorses the idea of coercive global authorities as the way to overcome the authority vacuum in the international sphere. He tells us that

There is only one rational way in which states coexisting with other states can emerge from the lawless condition of pure warfare. Just like individual men, they must renounce their savage and lawless freedom, adapt themselves to public coercive laws, and thus form an *international state (civitas gentium)*, which would necessarily continue to grow until it embraced all the peoples of the earth.<sup>500</sup>

We learned, though, that such a world state is not conceivable within Kant's system as it would render states subject to the power of other authorities. Kant, in contrast, thinks that in a democratic state the ultimate, indivisible authority

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<sup>498</sup> See Thomas Pogge, *World Poverty and Human Rights. Cosmopolitan Responsibilities and Reforms* (Cambridge: Polity Press, 2002), pp. 178, 179.

<sup>499</sup> See Thomas Pogge, "Kant's Vision of a Just World Order" in Thomas E. Hill (ed.), *The Blackwell Guide to Kant's Ethics* (Oxford: Wiley-Blackwell, 2009): pp. 196-208, p. 204.

<sup>500</sup> Immanuel Kant, "Perpetual Peace. A Philosophical Sketch", p. 105.

rests with the legislative branch government.<sup>501</sup> It can appoint and dismiss the executive officials of government and it produces the laws to which the state's judicial institutions appeal to adjudicate conflicts.

However, what works in theory does not always function in practice. Pogge points out that there always have been examples of cases in which one of the three branches of a democratic state engaged in an “all-out power struggle”<sup>502</sup> trying to negate the power of the other ones. Furthermore, Christiano points out that also within democratic theory a moral justification can be given for the power of constitutional courts to overturn democratically made decisions of the legislature. If constitutional courts do a fine job of overturning only unjust laws then they have to be considered legitimate.<sup>503</sup> This is because the democratic legislature cannot be thought to be justified in passing unjust laws. By doing so it would negate the reason it is vested with power in the first place and overstep its authority. Thus, there are even strong moral reasons against the conceptual claim that the sovereignty of political authorities must be undivided to be effective at all. Complete authoritative conflict-resolution mechanisms therefore are infeasible and morally undesirable. Pogge consequently concludes that “Kant – quite understandably, of course, in light of the more limited historical experience available to him – is operating with a false dichotomy”<sup>504</sup>: he thinks there can either be undivided sovereignty or anarchy.

## (2) The Desirability of Divided Forms of Sovereign Power

However, Pogge does not only argue that the checks and balances of divided democratic authorities provide good instruments for preventing the latter from turning into anarchy. He also argues that in circumstances like the ones we

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<sup>501</sup> See Immanuel Kant, *The Metaphysics of Morals*, p. 128.

<sup>502</sup> Thomas Pogge, “Kant’s Vision of a Just World Order”, p. 204.

<sup>503</sup> See Thomas Christiano, *The Constitution of Equality*, p. 279.

<sup>504</sup> Thomas Pogge, “Kant’s Vision of a Just World Order”, p. 205.

currently face in our world of only voluntarily regulated states, divided and vertically dispersed authority is also desirable.

In such a possible multi-layered authoritative world order “there would indeed be a world government with central agencies that fulfil certain legislative, executive, and juridical functions. But there would also be smaller political units [...] whose governmental agency would also have some ultimate authority over the unit’s internal affairs.”<sup>505</sup> There are various benefits from such a dispersal of authority that are unavailable on the model of indivisible sovereignty. For Pogge, a multi-layered world order is our best hope of a peaceful resolution of conflicts among states. The checks and balances the different levels of authority would exert on one another could also reduce the likelihood of oppression. Furthermore, what is crucial from the perspective of global egalitarianism, global authorities could enable us to promote global socio-economic justice and work toward greater global distributive equality. Another benefit of global vertically divided authority would be that it is likely to foster democracy and environmental protection worldwide: the different authorities connect people and can prevent them from producing environmental hazards whose effects they do not suffer directly or at all themselves.<sup>506</sup>

However, once we discard the idea that political authority must be undivided in order to be effective the Kantian argument for the duty to leave the state of nature (as Kant acknowledges himself) translates to the global sphere as well. If we follow Höffe, we can interpret the existing states as forming ‘bubbles of sovereignty’ within which they enforce justice and embody the unilateral will of their citizens. Outside these sovereignty bubbles, though, there is “an

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<sup>505</sup> Thomas Pogge, “Kant’s Vision of a Just World Order, p. 205.

<sup>506</sup> See Thomas Pogge, *World Poverty and Human Rights*, pp. 181-189.

international state of nature”<sup>507</sup> in which no lawful condition is possible. And just as individuals are under a moral duty to leave the state of nature, exiting the global “secondary state of nature”<sup>508</sup> is something that states have an obligation to do and “may ‘demand’ from each other.”<sup>509</sup> This means that, if Pogge’s critique of the idea of sovereignty as necessarily undivided is plausible, Kant’s political theory is not an obstacle, but lends support, to the duty to create coercive global authorities that are charged with the pursuit of justice.

Höffe’s idea of what such an international order would have to look like is unsurprisingly quite similar to Pogge’s. The global authorities Höffe envisages do not have the task of replacing the existing sovereignty of states. They are rather supposed to exercise supplementary authority that is effective where states have no authority themselves and face global coordination and arbitration problems: “within the framework of the legal-moral fundamental task of arbitrating conflicts without the rule of force, the international legal community has only the remaining responsibility of overcoming the residual state of nature.”<sup>510</sup> What is required for establishing supplemental global authorities, though, is that states (like individuals in the state of nature) yield some of their sovereignty and powers to these supra-institutions.<sup>511</sup>

This conclusion is also far from unavailable to Kantian sceptics about global authority like Flikschuh. Elsewhere, Flikschuh acknowledges that for Kant the creation of states is but a step to a morally required complete global legal

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<sup>507</sup> Otfried Höffe, *Kant’s Cosmopolitan Theory of Law and Peace*, p. 167.

<sup>508</sup> Otfried Höffe, *ibid.*, p. 168.

<sup>509</sup> Otfried Höffe, *ibid.*, p. 193. It is noteworthy that Nagel denies that we have a duty to leave the international state of nature. He says that this duty “is not an obligation to all other persons, in fact it has no clear boundaries; it is merely an obligation to create the conditions of peace and a legal order, with whatever community offers itself” (Thomas Nagel, “The Problem of Global Justice”, p. 133).

<sup>510</sup> Otfried Höffe, *ibid.*, p. 194

<sup>511</sup> See Otfried Höffe, *ibid.*, p. 193

condition: “Kant envisages the gradual but steady transformation of provisional into peremptory Right as a process of reform which will eventually encompass the spherical surface of the earth as a whole.”<sup>512</sup> In support of this interpretation of Kant Flikschuh cites Karlfriedrich Herb and Bernd Ludwig, who state that

With Kant's account, the conception of the individual state as the paradigm of civil society and of peremptory mine-thine relations begins to lose its importance. For Kant the individual state constitutes a transitional phase in the development towards global relations of Right. While the individual state appears like a *status civilis* from the confined local perspective, it remains a condition of merely provisional mine and thine from the enlarged global perspective.<sup>513</sup>

This is to say that the jurisdiction states claim cannot be final until it is approved by some competent authority to be consistent with the demands of justice. These demands are prior to the existence of states themselves and the only competent authorities are those that are in a position to impartially and authoritatively adjudicate conflicts among states. We earlier saw that Miriam Ronzoni plausibly points out that this is only possible for global authorities.<sup>514</sup> However, if this is the case then for Kant there exists no real sovereignty dilemma in the global sphere of the kind Flikschuh affirms.<sup>515</sup> The sovereignty of states and their powers to determine their subjects' just entitlements are merely

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<sup>512</sup> Katrin Flikschuh, *Kant and Modern Political Philosophy* (Cambridge: Cambridge University Press, 2004), p. 176.

<sup>513</sup> Katrin Flikschuh, *ibid.*, pp. 176, 177.

<sup>514</sup> See Chapter Three, Section Six. Here she is quoted saying that background justice “cannot be stopped by any rules of conduct that states can adopt; only supra-national institutions can fulfil this task, by setting up appropriate incentives, sanctions, and counterbalances” (see Miriam Ronzoni, “The Global Order: A Case of Background Injustice? A Practice-Dependent Account”, *Philosophy & Public Affairs* 37(3) (2009): pp. 229-256, p. 245).

<sup>515</sup> Flikschuh holds that her statements in her earlier book and her later article are not contradictory. She is skeptical of global authorities since Kant's theory does not include an instrumental conception of authority. She is also critical of putting our hope for a more just world into global authorities since this would require problematic forms of strong, centralized power (private correspondence). In response to Flikschuh's reply we need not deny that global authorities can have a constitutive (not only an instrumental) role for enforceable distributive entitlements of people. Also, the global authorities that are defensible on the basis of the global egalitarian principle are of a limited, subsidiary nature. They would not be authorized to take on tasks that states already fulfill to a sufficient degree.

provisional and do not have ultimate binding force for all other states (just as the latter's claims to external objects are not decisive either). This does, of course, not mean that states are morally allowed to go and take whatever they consider theirs. Quite to the contrary, this means that states can never ultimately be conclusively sure what is rightly theirs and their subjects'.

The decisive points to be taken from Pogge's and Höffe's critique of Kant's political theory and his assumption of the indivisibility of authority is that, morally speaking, forming global authorities is not merely an option for states. It is a necessity that arises from the demands of distributive justice that do not stop at the borders of states. Vertically dispersed global authority is not an impossible construct. It is rather a morally mandatory project. Thus, we can even plausibly hold that Kant's legal and political theory supports, rather than negates, the central global egalitarian demand to establish global authorities that enable and enforce obligations and rules of global egalitarian justice.

## **7. Rebutting Democratic Qualms about Global Institutions**

How damaging is Christiano's democratic challenge to coercive global institutions? His argument is that institutions must be democratic to be legitimate but that globally people have unequal stakes in the cooperative practices that require authoritative regulation. Therefore, even if democratic global institutions would be possible (which is currently unlikely), they would not be desirable. Thus, he thinks we have no way of institutionalizing global egalitarianism.

To start with, we have to notice two issues about Christiano's claim that people currently have unequal stakes in global interactions. Firstly, these unequal stakes might be the result of injustice. It might be the case that certain

national economies are not given equal access to the global markets for unjustifiable reasons.<sup>516</sup> If such injustice is the cause of unequal stakes then the latter are themselves a problem and not a reason to think there is no moral basis for democratic global institutions.

Secondly, though, Christiano's notion of stakes might track the wrong factors. The citizens of countries with weak economies might have small stakes in the actual global trade relations. However, they might be particularly vulnerable to changes in the rules and regulation of these international practices.<sup>517</sup> For this reason the stakes the poor have in the organization and regulation of global markets are much more elemental and urgent than those of richer people who try to make profits in global trading. From this point of view, as well, unequal stakes do not seem like a hindrance but rather as a reason to establish international authorities that enforce rules of justice globally.

However, the main reason for us to dismiss the democratic challenge to coercive global authorities is the service conception of authority that we encountered in Chapter Two. The service conception, to recall, tells us that we have weighty moral duties to subject ourselves to the commands of an authority if the latter makes us better conform with reasons that already apply to us independently of authoritative commands. In the preceding chapters we saw that there are a number of such morally mandatory reasons that lead to the conclusion that the states in this world should empower and subject themselves to the authority of certain global institutions. Among those reasons are the need to ensure background justice within existing international practices, the

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<sup>516</sup> One popular example of such injustice is the European Union's import tariffs on agricultural products from outside the union. These tariffs make it unprofitable for farmers abroad to try to sell their products in the EU while the EU has to subsidize the agricultural products of its own farmers with tax payers' money for them to be profitable.

<sup>517</sup> As an example of this phenomenon we can consider increasing global food prices that threaten the well-being and even lives of the poorest people on the planet.



demands of the global egalitarian principle to promote distributive equality among all persons, and the fact that we have to solve global collective action problems like preventing the destruction of our environment. In fact, as the proponents of the reformed-practice view of distributive justice and defenders of practice-independent conceptions like Buchanan show, the existing system of sovereign states does quite a bad job at complying with the reasons that apply to them.

While there is insufficient space for restating the arguments of these two perspectives we can recapitulate that the multitude of existing sovereign states minimally face assurance and coordination problems in the international sphere. So *if* it is true that

- Existing international trade relations are under-regulated, and that
- Even democratic states pursue their global interests in objectionable ways and to the detriment of others (due to, as Buchanan diagnosed, a structural bias pro its own citizens), and
- Existing global governance institutions (like the UN, WTO, IMF, World Bank) are not adequately designed for being reliable enforcers of duties of justice,

*Then* there is some plausibility to Buchanan's thesis that states risk their legitimacy if they do not design and transfer authority to institutions that can enforce salient goals and obligations of distributive justice on these states.<sup>518</sup>

But why do these institutions that should regulate and aid states be global ones? Could states not simply agree on common rules for regulating their global

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<sup>518</sup> See Allen Buchanan, "Reciprocal Legitimation: Reframing the Problem of International Legitimacy", *Politics, Philosophy & Economics* 10(1) (2011): pp. 5-19.

exchanges and promoting goals of global egalitarian justice? The problem with this solution is that it does not offer a secure way authoritatively to resolve conflicts between states. We might think that in cases of such disputes the disagreeing states could decide on a third party to function as an impartial mediator whose judgment they will accept. But the issue here, it appears, is that such mediation only works as long as the clashing parties both accept the authority of the impartial arbiter. If they refuse, then there is no one to ensure that the disputants really settle their disagreement in a morally permissible way.

Another problem with the voluntary third-party arbitration model is that there might be no unbiased party available that does not have a stake in the decision itself. If two states argue, for instance, about the ownership of a small territory that is rich in natural resources (which would be beneficial for the people in all states) and which no one has a privileged claim to then on the state level, there will not be a single party who could function as an unbiased mediator between the two states.

The service conception of authority explains that and why in the light of the currently unfulfilled obligations of justice we can be thought to have stringent moral duties to create authoritative global institutions. The fact that these global authorities cannot be democratic is of secondary importance. It is certainly the case that it would be ultimately desirable that the coercive rule enforcement on the global level does not only happen in the interests of those subject to these regulations. Ideally, the subjects are also (where appropriate) involved in the decision-making process and have their moral equality publicly expressed in the exercise of global political authority.

However, according to the service conception the democratic kind of authority is not the primary notion of political authority. In light of the results of

the previous chapters, we have strong reasons to hold that authoritative coordination and conflict-solutions currently take precedence over the desirability of a democratic set-up of international institutions. Such coercive global authorities without doubt are morally preferable to the voluntary association of democratic states Christiano suggest, for the following reasons.

Firstly, as we saw earlier, Buchanan points out that “there is an inherent structural bias in democracy toward excessive partiality”<sup>519</sup> in favour of the members of the democratic entity. Decisions made in democratic states often neglect or completely ignore the interests of outsiders. Politicians are only accountable to their own citizens. The latter, of course, can be thought to have a moral duty do consider the effects their collective choices have on foreigners. However, in our evermore interdependent world it seems quite impossible for individual democratic voters to be fully aware of all the consequences of their political choice. The problem for a voluntary association of states is that there is no one who can regulate the choices of democratic citizens if they choose not to become members of this association. Also, contracts like those a voluntary association would be based on can run out and it must be at least possible for member states to withdraw their membership again. This is to say that on the basis of the idea of a voluntary association of democratic states there is no guarantee that democratic citizens are prevented from making choices whose effects are not justifiable to foreigners.

Secondly, some appeal of the idea of the solution of a voluntary global association of states might derive from the ‘democratic peace thesis’. The latter

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<sup>519</sup> Allen Buchanan, “Reciprocal Legitimation: Reframing the Problem of International Legitimacy”, p.13.

(traceable to Kant's essay *On Perpetual Peace*<sup>520</sup>) says that citizens of democratic states rarely, if ever, wage war on each other. Since they have to carry the burdens of war and can decide themselves on whether to avoid these costs they are thought to have overwhelming incentives to not pursue a violent path.

However, Höffe presents a hypothetical case in which this rule could become invalid. The situation he has in mind is one in which a democratic society (1) possesses weapons, which make it unnecessary to risk the lives of a great number of their own soldiers, (2) uses only voluntary troops, (3) attacks a much weaker democracy, (4) has the advantage of a surprise attack, (5) has a major interest in power and wealth, and (6) recoups the material costs of the war from weaker allies or the subdued opponent. This is certainly not a very common situation and involves a democratic people that has little regard for moral considerations. But no matter how realistic the scenario appears, Höffe's point is that the "self-interest [of a democratic society] in no way speaks against all wars."<sup>521</sup> Although the democratic peace thesis seems widely accepted today among academics the situation Höffe describes at least shows that the contingent validity of this thesis cannot replace the services and security coercive global authorities can provide.

Thus, in response to the democratic objection to the duty to establish coercive global institutions we can assert that (1) the service conception of political authority generally debilitates worries about the legitimacy of non-

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<sup>520</sup> See Immanuel Kant, "Perpetual Peace. A Philosophical Sketch", p. 100. Here Kant writes that the democratic "constitution [...] offers a prospect of attaining the desired result, i.e. a perpetual peace, and the reason for this is as follows. If, as is inevitably the case under this constitution, the consent of the citizens is required to decide on whether or not war is to be declared, it is very natural that they will have great hesitation in embarking on so dangerous an enterprise. For this would mean calling down on themselves all the miseries of war."

<sup>521</sup> Otfried Höffe, *Kant's Cosmopolitan Theory of Law and Peace*, p. 186.

democratic global institutions. (2), though, we have also seen reasons contra the idea that a voluntary association of democratic states could administer and enforce duties of global justice as likely and effectively as such coercive supra-state authorities. (3), Christiano's normative basis for rejecting the idea of global democratic structures, the inequality of stakes in global matters, might put the cart before the horse: this inequality might be the result of injustice and another reason to aspire toward global democratic institutions, not a normative reason against them.

### **8. The Global Egalitarian Duty to Create Coercive Global Authorities Confirmed**

In summary, we have seen that neither the Kantian objection nor the democratic challenge to the duty to create global authorities are convincing. Once we drop Kant's idea that sovereign rule is necessarily indivisible we find that his theory actually offers reasons to think that we should establish global institutions to overcome the residual international state of nature. And also the democratic challenge to global authorities becomes implausible in light of the service conception of authority. In addition, the voluntary association of states that both Kant and Christiano suggest as a solution to the problems we face on a global scale seems quite unpromising on empirical and normative grounds.

There are numerous sound arguments in favour of an obligation to create a multi-layered scheme of political authorities around the globe that has the aim to promote egalitarian justice and to ensure the universally valid entitlements of everyone. We therefore can consider this duty, which is pivotal to the practicality and effectiveness of the principle of global egalitarianism, as justified.

## 9. 'Who Guards the Guardians?' and Mandatory Epistemic Virtues of Global Authorities

There are, of course, many follow-up questions to the global egalitarian argument for the duty to create global service authorities, such as: who guards these guardians and how can we fill in the gaps with respect to the details of global justice?

Our discussion in this chapter has the main purpose to demonstrate the plausibility of the duty to create international coordinating authorities. However, at the end of this thesis it is necessary to briefly address these subsequent questions so as to round off the idea of mandatory and feasible global governance institutions. For this purpose, it is helpful to take a look at Buchanan's and Keohane's pioneering work on the structural requirements such institutions have to fulfil to meet various criticisms.<sup>522</sup> When we consider their suggestions we find that Buchanan and Keohane do not make a case against but rather for global egalitarianism.

Buchanan's and Keohane's main thesis is that "to be legitimate a global governance institution must possess certain *epistemic* virtues that facilitate the ongoing critical revision of its goals, through interaction with agents and organizations outside the institution."<sup>523</sup> Their emphasis on these epistemic virtues of supra-state authorities is instructive for the question how it is possible to control these institutions. Buchanan and Keohane assert that there are certain identifiable *minimal conditions* that global service authorities and their officials must fulfil if they should be considered legitimate. Among these conditions are the "minimal moral acceptability requirement, understood as

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<sup>522</sup> Allen Buchanan, Robert O. Keohane, "The Legitimacy of Global Governance Institutions" in Allen Buchanan, Human Rights, Legitimacy, and the Use of Force (Oxford: Oxford University Press, 2010): pp. 105-133.

<sup>523</sup> Allen Buchanan, Robert O. Keohane, *ibid.*, p. 106.

refraining from violations of the least controversial human rights,”<sup>524</sup> which we can for our purposes read as referring to universal distributive entitlements. In addition, supra-state authorities (just as constitutional courts<sup>525</sup>) have to clearly yield comparative benefits as to a situation in which they do not exist. This means that “the legitimacy of an institution is called into question if there is an institutional alternative, providing significantly greater benefits, that is feasible, accessible without excessive transition costs, and meets the minimal moral acceptability criterion.”<sup>526</sup> Finally, Buchanan and Keohane mention that supra-state authorities and their officials are clearly illegitimate if they do not possess or ensure the institutional integrity of their agency. This is to say that “an institution should be presumed to be illegitimate if its practices or procedures predictably undermine the pursuit of the very goals in terms of which it justifies its existence.”<sup>527</sup>

If none of these conditions are obviously violated (which can itself be a matter of dispute and source of problems) then it seems the subjects of global governance authorities (states and their subjects as well as business corporations) should accept the latter’s decisions – even if they do not agree with them. In case these institutions do breach these conditions it is helpful to keep in mind that the global egalitarian argument for international service authorities does not include a call for giving them command over military power. The coercive force of these institutions rather derives from the acceptance of their rulings by their subjects who require their services (similarly to the way the WTO is able to instruct its members without disposing over an

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<sup>524</sup> Allen Buchanan, Robert O. Keohane, “The Legitimacy of Global Governance Institutions”, p. 118.

<sup>525</sup> see Thomas Christiano, *The Constitution of Equality*, p. 280.

<sup>526</sup> Allen Buchanan, Robert O. Keohane, *ibid.*, p. 118.

<sup>527</sup> Allen Buchanan, Robert O. Keohane, *ibid.*, p. 119.

army). Ultimately, it can be up to the members themselves to enforce the rules issued by a global authority. While such enforcement and compliance is a matter of justice when the authority is justified, states would not have to fight the army of a despotic institution if the authority should become illegitimate.

It is exactly for the purpose of trying to make supra-state authorities' decisions as transparent and comprehensible as possible for its subjects that Buchanan and Keohane stress the importance of the *epistemic virtues* they should exhibit, of which they mention three.<sup>528</sup> The crucial aspect of Buchanan's and Keohane's suggestion about how to structure global service authorities and how to make them accountable is that their ideas only make sense if we accept something like the global egalitarian principle. Ultimately, they think it is the task of these international authorities to enable and facilitate more local debates about the details of social justice. Thus, with respect to the exemplary question of what the idea of a general right to health care has to encompass Buchanan points at the need for local implementations of this idea. He proposes a regarding two-level model of sovereignty in which the final details about rights, entitlements, and justice are made within democratic processes.<sup>529</sup> However, there is still a crucial task for global institutions in this model as they have to ensure the framework within which such local deliberation can take place. With respect to the universal right to health care Buchanan argues that

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<sup>528</sup> Buchanan and Keohane mention that global governance institutions must, firstly, generate and make publicly available information about their services. Secondly they must aim to be transparent by supplying their accountability-holders (which can include non-governmental organizations) with accurate information about how the institution works. Third, they need to be open for discussion and input about revising the terms of their own accountability: there must be possible public discussion about and influence on the aims of global justice and the means global authorities are allowed to use to achieve these tasks (see Allen Buchanan, Robert O. Keohane, "The Legitimacy of Global Governance Institutions", pp. 123, 124).

<sup>529</sup> See Allen Buchanan, Kristen Hessler, "Specifying the Content of the Human Right to Health Care" in Allen Buchanan, *Justice and Health Care. Selected Essays* (Oxford: Oxford University Press, 2009): pp. 203-218.



The role of international institutions should be limited to two functions. First, they should specify *minimal* conditions for effective democratic procedures within states. [...] Second, international institutions should review national healthcare situations and point out any obviously inadequate policies.<sup>530</sup>

That is to say that coercive global authorities have to function as the guarantors of global justice. Buchanan's proposal aligns with the global egalitarian principle at least in two ways. Firstly, it confirms the crucial role that global service authorities must play in a just world. Furthermore, though, his two-level-model of sovereignty is based on the idea of people's universally valid "moral claims grounded in *basic human interests* [and] equal consideration for all persons."<sup>531</sup>

Thus, also for Buchanan a just world is not possible without global governance authorities that secure the equally important essential interests of everyone to some kind of equal protection from harm and shares of beneficial goods. More importantly, though, Buchanan's work confirms what we have seen in the last five chapters, namely, that and why a plausible conception of distributive justice has to be practice-independent and has to affirm something like the global egalitarian principle.<sup>532</sup> The plausibility of this principle is not obvious from the fundamental premise of the moral equality of human beings as such. However, after our examination of various opposing arguments we can confirm that this basic premise has to lead to the conclusion that many, if not most, of the detrimental interpersonal inequalities that exist on the

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<sup>530</sup> Allen Buchanan, Kristen Hessler, "Specifying the Content of the Human Right to Health Care", p. 217.

<sup>531</sup> Allen Buchanan, Kristen Hessler, *ibid.*, p. 213.

<sup>532</sup> A case in point is Charles Beitz's attempt to devise a practice-dependent account of human rights (see Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009). Beitz takes human rights to be suitable objects of international concern. This is to say that for him human rights are those important concerns of persons that some member of the international community is in a position to protect. However, in this way Beitz's conception of practice-dependent human rights is contingent on, and becomes hostage to, existing power relations and on-going practices. If there is no one who can do something about a violation of certain basic interests of some people (for instance, because they are harmed by a state too powerful to oppose for other states) then, on Beitz's account, these interests cannot be considered human rights (see Charles Beitz, *ibid.*, pp. 136-141).

international level are objectionable from the perspective of distributive justice. These disparities are problematic to the extent that they are not beneficial to everyone, threaten the legitimacy of the actual system of power relations in our world, and make demands on all of us to change the current global situation.



## **Conclusion**

The aim of this thesis was to decide how to evaluate global inequality. We ultimately found that the principle, which best accommodates our egalitarian notions (such as the equal moral status of persons and the thought that no one's chances in life should be determined by morally arbitrary factors), is practice-independent global egalitarianism.

According to this principle many, if not most, of the detrimental inequalities that exist on the planet are unjust. This is not to say that we should aim for complete substantive global equality in the distribution of goods. However, the principle demands that we at least (1) eliminate grossly unjust distributions of power and influence in the global sphere that rest on contingencies and not on morally relevant differences, (2) ensure a global socio-economic minimum that includes resources for all to take part in their local political decision-making processes about the details of social justice, and (3) create and empower the global institutions that are needed to achieve and enforce these goals. The following summary of the previous five chapters restates how we arrived at the idea of global egalitarianism.

### **1. Summarizing the Results of Chapters One to Five**

In the first chapter, we began our discussion of which inequalities are objectionable from the perspective of justice by looking for justifications of the distinction between domestic and international interpersonal disparities. After dismissing the attempts of Andrea Sangiovanni and Michael Blake to base this distinction on particular features of states, we found that Thomas Nagel offers a more complex defence of the status quo in the world. Our discussion of Nagel's

argument against global justice showed that Nagel makes a strong case for the idea that we can non-voluntarily acquire duties of distributive justice in situations in which we limit the legitimate options of others (for instance by enforcing a certain regime of rules). In addition, Nagel is in agreement with John Rawls that sovereign government or coercive authority is a necessary enabling condition of all forms of justice. However, Nagel takes the lack of authorities that act in our name in the global sphere as a reason to limit the demands of justice to existing nation states. We identified his approach as an *actual practice view of justice* according to which what justice demands and how far it extends depends on particular actual social practices. Egalitarian concern, for Nagel, only applies as part of justifying the exercise of coercive political authority.

In the Second Chapter we found Nagel's and Ronald Dworkin's claim that the legitimate exercise of coercive power requires the authority to display equal concern for its subjects to be wanting. We found evidence for the view that the primary standard of political legitimacy is not that of democratic authority but that of the service conception of authority as having moral powers to command its subjects grounded in enhancing their conformity with reasons applying independently of those commands. On this view one of the main reasons the claim to possess political authority is sound is that we cannot do without the social coordination that authorities provide. This is true for public issues that are either caused by a lack of reasons or by an overabundance of reasons to believe that certain goals and actions are required. Thus, the main conclusion of Chapter Two was that, on the basis of his actual practice view of justice, Nagel cannot even justify egalitarian justice within states.

In Chapter Three we looked for another normative foundation of egalitarian duties of justice. Such a justification is offered by proponents of what we identified as the *reformed practice view of justice*. According to the latter, what distributive justice requires and how far it extends depends on what suitably reconstructed actual practices would look like. The adherents of this perspective employ (in contrast to Nagel) a more Rawlsian approach to egalitarian justice that focuses on the distribution of the benefits and burdens of cooperation. As a result, reformist writers acknowledge egalitarian duties also beyond states, namely, wherever we entertain non-optional interdependent practices that have pervasive effects on the lives of people. Such practice, reformists plausibly argue, these days extend well beyond the borders of individual nation states.

However, we found that in the end also the reformed practice view is implausible since it cannot adequately accommodate the justified interests and entitlements of non-participants in common good practices. This shortcoming, it turned out, is due to the practice-dependent nature of the reformed practice view which causes it to object to detrimental inequalities only insofar as (and because) they are the product of human cooperation of a non-voluntary kind. As such, practice-dependent approaches are generally incapable of addressing many urgent issues we encounter in our world, like the need to fairly share the burdens of preventing climate change or the idea that we should provide for the ones who will live after us.

In Chapter Four, we evaluated three arguments that practice-dependent approaches are founded on and that pose objections to the idea that all detrimental inequalities any person suffers from present problems of distributive justice. These arguments were the idea that doing harm is worse than allowing harm, the 'ought-implies-can' rule, and the levelling down

objection to the inherent value of equality. By debilitating these three arguments we confirmed the inherent value of interpersonal distributive equality. As a result, we concluded that the scope of justice is global in the sense that it also encompasses naturally-caused harm (such as those resulting from earthquakes and by nature unequally distributed natural resources) and detrimental inequalities that are not absolute. In this way we established the plausibility of the *principle of global egalitarianism*. This principle importantly rests on telic reasons that require the improvement of states of affairs and not centrally (like practice-dependent approaches) on deontic egalitarian concern. We also saw that global egalitarianism is a version of a *practice-independent view of distributive justice* according to which what justice requires and how far it extends does not depend on existing practices but on what is feasible and required by relevant moral considerations. As such it is the idea that best aligns with our fundamental egalitarian convictions about human beings.

In the last chapter, we tried to determine what concrete duties and goals can be thought to derive from the principle of global egalitarianism and how these can help us avoid problems other approaches to global justice run into. We scrutinized a number of deontic considerations that regard the legitimate implementation of objectives and duties of justice as well as the possibility to establish the global authorities necessary for realizing global egalitarianism. We found that the fact that global egalitarianism embraces the service conception of political legitimacy enables it to call for international institutions that can administer global justice even if they are not democratic. We also identified a number of salient goals that the principle of global egalitarianism can justify and that do amount to much more than a minimalist theory or a denial of global justice. We found that in particular the duty to establish global governance

institutions can be supported by approaches (like Kant's legal theory) which, at first sight, seem to speak against the general possibility of having global authorities.

Of course, many questions about the principle of global egalitarianism remain unanswered: since a thesis like this one is a limited project this is an inevitable incompleteness. However, what we can claim to have achieved in this thesis is to have casted serious doubts on a currently prominent perspective on global justice, namely the one that makes global distributive obligations conditional upon the existence of contingent human practices. The thesis furthermore has generated support for accepting the principle of global egalitarianism. The latter not only presents a more consistent and cogent idea than popular practice-dependent theories. It also best reflects the ideas that we are all morally equal and that none of us should fare worse in life due to factors that are arbitrary from the moral point of view.

## **2. Final Remark on the Practical Convergence of Practice-Dependent Views and Global Egalitarianism**

One thing must be stressed with respect to the debate between adherents of practice-dependent approaches and practice-independent views about global justice (as, for instance, global egalitarianism). Philosophers like Simon Caney note, that – given the global interdependence that already exists on our planet today – this “philosophical distinction does not make any practical difference.”<sup>533</sup> This is also reflected in the arguments of practice-dependent theorists like Darrel Moellendorf who holds that we are all part of the same

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<sup>533</sup> Simon Caney, *Justice Beyond Borders. A Global Political Theory* (Oxford: Oxford University Press, 2005), p. 106.



“global economic association”<sup>534</sup> and who therefore supports the idea of “global equality of opportunity.”<sup>535</sup> Such notions are clearly also part of the global egalitarian position. Some readers might therefore worry that the whole debate between, for instance, proponents of the reformed practice view like James and Moellendorf and global egalitarians like Christiano is not of much importance or of little consequence.

However, we should not overstate the relevance of this convergence between certain practice-dependent views and global egalitarianism. First of all, as Caney points out, it is important for us to have a plausible and sound theory of global justice<sup>536</sup> and it is unlikely that both perspectives are equally plausible. But there are also practical ramifications of accepting either a practice-dependent or a global egalitarian position on global justice and detrimental inequalities. If we accept global egalitarianism we surely still face questions as to whether the idea is practicable at all or whether there is enough moral insight and motivation within humankind for this idea ever to be realized. Defenders of practice-dependent theories, though, face at least one further problem if they care about and want to argue for eliminating global detrimental inequalities. Since their argument for global justice depends on contingent empirical facts they always have to show first that their theory of global justice really applies in this world.

Empirical debates about the applicability of a normative theory can be extensive and weaken the appeal of a theory significantly. One example of such a debate is the argument among philosophers about the accuracy of Thomas Pogge’s idea that we have intermediate, remedial duties of global distributive

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<sup>534</sup> Darrel Moellendorf, *Global Inequality Matters* (Basingstoke: Palgrave MacMillan, 2009), p. 75.

<sup>535</sup> Darrel Moellendorf, *ibid.*, p. 70.

<sup>536</sup> See Simon Caney, *Justice Beyond Borders*, p. 106.

justice since our current world order is harming the poor.<sup>537</sup> Pogge's argument for global distributive justice is attractive because it is based on fulfilling negative duties of non-harming – obligations that are widely recognized. But Pogge's approach is dependent on the accuracy of the empirical assumption that the rich globally violate their negative duties toward the poor by enforcing a global order on them which is unjust and harmful. And this empirical assumption can be and has been questioned by many of Pogge's critics.

When we are convinced of the plausibility of global egalitarianism we do not face any such troubles. Since global equality is a demand that applies independently from the existence of contingent empirical facts (like on-going practices of a certain kind) the only matters of debate are how to best achieve these goals. This gives a practical advantage to global egalitarianism over its practice-dependent rivals.

Ultimately, though, the main support for the principle of global egalitarianism derives from the way it accommodates our egalitarian notions. On the basis of global egalitarianism, everyone's moral equality is finally worth something concrete – independently of whether other factors apply. This is a great step forward from the current situation in the world where people's fates are often seen to be justly predetermined to a large extent by the arbitrary fact of where they are born. On practice-dependent views like Nagel's (which reflect the current status quo in the world) we are left to wonder how it can be the case that our moral equality demands of us to keep our compatriots from suffering from factors beyond their control, while people abroad are dying by the thousands every day due to such influences. Global egalitarianism has an

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<sup>537</sup> For Pogge's argument see Thomas Pogge, *World Poverty and Human Rights. Cosmopolitan Responsibilities and Reforms* (Cambridge: Polity Press, 2002), in particular ch. 4; for the debate about Pogge's argument see Alison M. Jagger (ed.), *Thomas Pogge and his Critics* (Cambridge: Polity Press, 2010).

answer to this puzzle. It tells us that it is not morally acceptable but unjust to not support those people who happen to be born into poverty and a lack of opportunities. If we are really all moral equals, no one's life should be worth more than anyone else's and global egalitarianism is the plausible normative response to this idea.

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