

Coercion, Responsibility and the Scope of Justice:
A critique of Nagel's anti-cosmopolitan account

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Abstract

This thesis offers a critique of the influential anti-cosmopolitan position put forward by Thomas Nagel. This position holds that duties of egalitarian justice exist if and only if there is a coercive political authority these duties can apply to, and the effects coercively imposed by this authority can be attributed to those coerced by it. As there is no global authority fulfilling these conditions, the scope of justice is not global on this account. After a brief contextualization of the scope-debate, I offer a twofold criticism of Nagel's account. First, I argue that the existence of the required kind of political institutions cannot be a sufficient condition for the existence of robust egalitarian duties. Second, I show that even if egalitarian duties arose as Nagel suggests, the account given for their generation would not entail that their scope is restricted. Finally, I argue that even if the account of the generation and anti-cosmopolitan scope of these duties were right, the reasons Nagel accepts for leaving the state of nature also serve as reasons for establishing a global coercive authority to which egalitarian principles would apply on his account. Thus, it is shown that Nagel's central normative premises are false, but their truth would not yield his desired conclusion either; and due to his assumptions concerning the state of nature, a consistent interpretation of his account should conclude that there is a duty to realize egalitarian justice globally.

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I dedicate this thesis to A. K., who did not exactly make it easier for me to write it, nor anything else eventually, but who made life during the period of writing definitely much more worth living. (In the end, it was all the fault of Global Justice—but that's no complaint.)

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Introduction

The aim of this thesis is to provide a critique of Thomas Nagel's (2005) anti-cosmopolitan account of the scope of egalitarian distributive justice: I argue that it fails to establish that the right scope of egalitarian justice is national. My critique addresses two specific aspects of Nagel's theory. First, I investigate into the implicit theory of citizens' responsibility for state action and that of political legitimacy, as conceived by Nagel, and the role they play in his argument for a restricted scope; I argue that these considerations cannot provide sufficient support for Nagel's account of the generation and scope of duties of egalitarian justice. Second, by means of a detailed scrutiny of Nagel's conception of the state of nature, I show that Nagel's rejection of a duty to establish a global political community where duties of egalitarian justice would emerge on his account is unfounded, given his own assumptions concerning moral reasons to stay out of the state of nature.

Nagel's account has recently received ample criticism in two major respects. On the one hand, it has been argued that his account, even if normatively correct, does not yield empirically as restricted a scope as he intended (see e.g., Ypi, Goodin & Barry [2009], or even Cohen & Sabel [2006] who leave substantial parts of Nagel's theoretical argumentation largely untouched). This line of criticism mainly concerns the correctness of Nagel's empirical presuppositions. On the other hand, a strand of criticism more theoretical in focus has questioned or denied the normative relevance of coercion, an important but not specific element in Nagel's theory, in triggering or generating duties of justice (this line of criticism siding Nagel simply with, e.g., Blake's [2001] account).

My aim is to further the debate about the right scope of justice in favor of a global scope by criticizing Nagel's account on two grounds not tackled by either line of extant criticism. First, I criticize the normative premises specific to his account of the generation and scope of egalitarian duties. In particular, I question the relevance of citizens' responsibility for state

action to the generation and scope of these duties. Second, I reject Nagel's account by showing that Nagel's conclusions do not follow under coherent interpretations of his normative premises, regardless of the truth-value of his empirical premises. To the best of my knowledge, criticism on these grounds has been relatively sparsely, and not systematically, presented to date.

The structure of my thesis is as follows. In Chapter 1, I will contextualize the Nagelian account by a brief, selective critical presentation of the debate on the scope of justice. Providing an avowedly biased overview, I will analyze and criticize some of the prevalent anti-cosmopolitan arguments for determining the scope of justice on grounds of social cooperation or interaction, pervasive impact, and coercion, so as to highlight the normatively interesting differences between these theories and Nagel's account. My aim in this chapter is not to provide an exhaustive inventory of all the possible anti-cosmopolitan positions, but rather to emphasize the differences between Nagel's theory and those theories which share at least some of its important fundamental assumptions.

In Chapter 2, I will focus in on Nagel's theory, analyzing his concept of political legitimacy and the concept of responsibility figuring in his implicit account of citizens' responsibility for state action. The aim of this chapter is, first, to provide a charitable interpretation of Nagel's argument for the national scope of justice, with special emphasis on the analysis of his responsibility-condition, a necessary condition of the emergence of egalitarian duties on his account. This condition requires citizens' authorship of, or responsibility for, coercively enforced policies. Second, my aim is to show that the existence of a legitimate coercive political authority which fulfills Nagel's responsibility-condition is insufficient both for the generation of egalitarian duties of justice, and for the restriction of their scope. My argumentation, as declared above, will concern exclusively normative

matters, i.e., its soundness does not depend on the empirical circumstances in which the Nagelian conditions obtain or fail to obtain.

The upshot of this chapter is twofold. First, since the Nagelian conditions do not generate higher standards of justice, they either already exist independently, and we have a duty to realize them globally, or these standards come into existence for some reasons other than those offered by Nagel, or they do not exist, and hence are not applicable either internationally or domestically. As I will have no room for presenting a positive argument for any of these disjuncts, I merely indicate here that my sympathies lie with the first one. The second upshot of this chapter is that even if the Nagelian conditions could generate duties of egalitarian justice, the scope of these duties would not be limited to the polity of the nation states generating them.

In Chapter 3, I will nonetheless assume the truth of Nagel's normative premises, for the sake of the argument, so as to show that even if Nagel's normative assumptions concerning the generation and scope of egalitarian duties stood, in conjunction with his justification for our duty to stay out of the state of nature, they would still not entail, *contra* Nagel, that we have no duty to establish a global polity to which egalitarian principles would eventually apply. In the course of discussion, particular attention will be given to the analysis of Th. W. Pogge's (1992, 2008) and A. J. Julius's (2008) related views on the supranational state of nature, as contrasted with Nagel's account.

With regard to our possible duties to stay out of different levels of the state of nature, Nagel holds three claims. First, we have a duty of justice to leave the state of nature, but only to realize quasi-libertarian and humanitarian standards of justice. Second, higher standards of justice between citizens of different states are realized only by bringing them under the same legitimate coercive institutions, leaving a second level of the state of nature. Third, we have no duty to establish these institutions, i.e., to leave this level of the state of nature. The aim of

this chapter is to show that the first of these claims entails the negation of the third: given Nagel's assumptions, it is not possible to maintain a discontinuity between the moral objectionability of the first-order state of nature and that of the second-order, supranational state of nature. The upshot is that since, even on Nagel's assumptions, we should establish a global polity to which egalitarian principles would apply on his view, the practical anti-cosmopolitan relevance of his argument diminishes.

The contribution of my thesis to the scope-debate is a systematic criticism of the Nagelian coercion and responsibility-based accounts, with a firm emphasis on their normative premises. Thus the critique presented at once undermines accounts which accept Nagel's normative premises but reject his empirical presuppositions, and provides a non-question-begging defense of cosmopolitanism against one particular, yet influential anti-cosmopolitan position.

1. The Scope of Justice: Contextualizing the Debate

1.0. Introduction

The aim of the present chapter is to contextualize the arguments and stakes involved in Nagel's (2005) account of the national scope of justice by providing a brief outline of some of the most prevalent positions in the debate concerning the right scope of distributive justice. The debate itself is extensive and complex, and a contextualizing chapter is not the right place to provide a detailed assessment of each and every position. Nevertheless, I am convinced that it is much more interesting both to read and to write a chapter that aims at mapping out the crucial positions in a debate if the chapter does take a clear stance toward the positions outlined, and I also think that a lack of any evaluative stance would reflect the absence of an interpretation of these positions. Accordingly, I present the debate with an admitted bias toward cosmopolitanism—the thesis that the scope of justice is global.

The structure of the chapter is as follows. Relying chiefly on Abizadeh's (2007) classification, I will distinguish three major versions of anti-cosmopolitanism—the thesis that cosmopolitanism is false, i.e., the scope of justice is restricted—and point out their major difficulties by outlining some relevant cosmopolitan rebuttals. The anti-cosmopolitan accounts will be discussed in an order of increasing plausibility, at least in the sense that each account is presumed to be immune to at least some objections the previous ones face. First, I will address cooperation- and interaction-based accounts of the national scope of justice. Second, I will criticize anti-cosmopolitanism arguing from the pervasive impact of the basic structure. Third, finally, I will sketch up the general characteristics and challenges of coercion-based accounts, so as to pave the way for the more detailed critical discussion of Nagel's theory in the ensuing chapters.

It is to be noted that my presentation of the debate is far from comprehensive. For instance, I will not consider anti-cosmopolitan arguments whose proponents accept the *prima*

facie global scope of justice, but attempt to justify the all-things-considered national scope by justifying partiality toward fellow-citizens (in the vein of Thomas Hurka [1997]; see also Miller [2005]). Nor will I discuss anti-cosmopolitanism arguing from value-relativist premises to substantiate the claim that the concept of global justice itself is devoid of significant pre-theoretical content, given that specific social practices and contexts determine the relevant meanings of justice within each (local) site-cum-scope (following Michael Walzer [1983], and also David Miller [1999]). My interest lies here with anti-cosmopolitan theories which share at least some fundamental assumptions or a broad theoretical framework with Nagel's account, and whose discussion hence helps to situate the latter more precisely among the anti-cosmopolitan accounts of scope on offer.¹

1.1. Social cooperation, interaction and the scope of justice

According to one of the most influential strands of theories of justice, originally attributable to John Rawls (1971), distributive justice concerns the distribution of the cooperative surplus produced by a community engaged in socio-economic cooperation. Anti-cosmopolitanism argued along these lines aims to show that the right scope of justice, i.e., the right range of persons who owe and are owed by each other duties of justice, is the citizenry of a nation-state, because socio-economic cooperation is limited to the nation-state. I will distinguish two major versions of this argument: one regards the basic structure of society as the subject matter (site) of justice, while the other regards particular interactions within a cooperative enterprise as its subject matter.

According to the first variant of the anti-cosmopolitan argument, principles of justice apply to the so-called basic structure of a given society, which is defined as

¹ Among these fundamental assumptions are also individualism (the thesis that the ultimate units of moral concern are persons) and universality (the thesis that every person is an appropriate object of moral concern)—these are shared by cosmopolitan positions, too (see Pogge 1992, pp. 48–49).

the way in which the main political and social institutions of society fit together into one system of social cooperation, and the way they assign basic rights and duties and regulate the division of advantages that arises from social cooperation over time. (Rawls 2001, p. 10)

The first variant of the anti-cosmopolitan argument, then, goes as follows. Since justice applies to the basic structure, the question of justice arises only if there is a basic structure. However, there is no global basic structure. Therefore, there is no global justice, only national, given that there are only basic structures within national societies.

The basic structure account faces, nonetheless, the following objections. First, its empirical premise concerning the lack of a global basic structure (as defined for its purposes) is arguably false: for instance, international norms regulating the distribution of natural resources, assigning rights to them on territorial basis, can very well qualify as (part of) a global basic structure (for discussion, see Beitz 1979). Second and more important, as Abizadeh (2007) argues, once a group of individuals engage in some mutually advantageous enterprise, justice demands and not presupposes the existence of a basic structure: the latter is a precondition of justice in the sense that it is optimally instrumental to the realization of just background conditions (pp. 328–329). Therefore, wherever there is already cooperation for mutual advantage, on this account, justice requires us to establish a basic structure. Feasibility objections to its establishment are also largely off the mark, as the aim, in Abizadeh's interpretation, is not the establishment of the basic structure itself, but the optimal realization of justice—if not by the establishment of a basic structure, then by other means (ibid., pp. 340f); or if not by its the *full* establishment, then by the second best feasible alternative. Thus, the first variant of the anti-cosmopolitan argument based on considerations regarding the basic structure arguably cannot show that the scope of justice is national, for both empirically wrong assumptions and normative misconceptions of the role of the basic structure in the Rawlsian theory of justice.

The second version of the cooperative account of national scope requires mere economic interaction for mutual advantage, as opposed to a basic structure regulating it, as an existence condition of duties of justice. However, whereas the previous requirement (the existence of the global basic structure) was misconceived and implausibly biased toward the status quo, this necessary condition seems too weak for the anti-cosmopolitan to support her argument: it is empirically true that there is wide and pervasive economic cooperation among nation states; hence, the empirical premise of this kind of cooperation-based anti-cosmopolitanism is false. If the scope should be determined by the domain of cooperation, or interaction for advantage, then it is most probably global, but certainly not restricted to nation states (see Beitz 1983). Thus, the interactionist, as much as the basic structure-dependent cooperation-theorist, has a hard time maintaining the national scope thesis.

Empirical considerations notwithstanding, a crucial objection against the normative premises of either version of the cooperative theory of scope is that they fail to account for the pre-theoretical intuition that concerns of justice also arise with regard to persons who are not participants of any cooperative venture or economic interaction, because they are in principle not capable of that, e.g., due to some congenital handicap (Goodin 1988, p. 683). Moreover, it seems pre-theoretically intuitive that an unjust socio-economic system may itself incapacitate those under its impact to participate in certain forms of economic interaction. These considerations suggest that, while cooperation-based accounts of justice cannot convincingly establish an anti-cosmopolitan scope, they cannot fully account for the right kind of scope in another way, either, lacking in inclusiveness.

1.2. Pervasive impact and the scope of justice

Taking the underinclusiveness of cooperation-based approaches as its point of departure, the pervasive impact theorist of justice aims to establish that the right scope of justice includes all and only those persons on whose life, “aims, aspiration, and character” (Rawls 2001, p. 10) a

given, non-voluntarily chosen establishment has a “profound and pervasive impact” (Rawls 1971, p. 96). According to pervasive impact theories, the underlying justification of considering the basic structure of a society as an appropriate site of justice is exactly its pervasive impact of the requisite kind. Anti-cosmopolitans who argue in the spirit of pervasive impact theories rely on this justification, insisting that the right site of justice is the basic structure—thus sharing an assumption with their cooperation theorist counterparts.

The anti-cosmopolitan pervasive impact theorist argues as follows. A society’s basic structure has pervasive impact on those who live in the given society, but not on others. Since principles of justice apply only where there is pervasive impact, they do not apply outside the jurisdiction of the given society’s basic structure: there is no global justice. The basic structure seems, on the justification outlined, to be legitimately regarded as an existence condition of justice (since it is the source of pervasive impact itself)—as opposed to social cooperation theories, where it serves as a constitutive element or an instrumental condition of justice which is required, but not presupposed, by principles of justice.

Cosmopolitan objections, again, may address both the empirical assumption and the normative justification of the anti-cosmopolitan position. First, granting that the basic structure of a society is the right site of justice, it is empirically false in the present-day world economy that the basic structure of national societies do not have externalities in terms of pervasive impact. The national basic structure of a given country has pervasive impact on those, for instance, whose home country is de facto dependent on interactions with the given country, or on those whose life prospects are severely influenced by the immigration policies of the given country. Consequently, the anti-cosmopolitan scope thesis is hardly sustainable in light of the empirical facts.

Second, the normative basis of pervasive impact theories is open to the following objection: it does not offer in itself any way to determine the baseline against which pervasive

impact is measured. If the baseline is historical (an earlier, actual state of affairs), the choice of the right historical moment as a baseline seems entirely morally arbitrary. If, however, the baseline is normatively defined, the normative theory providing this definition will be an independent (component of a) theory of justice, rendering pervasive impact at best necessary, but not sufficient, for duties of justice to emerge.

Moreover, the normative justification of the basic structure as the site itself will provide a reason against an anti-cosmopolitan conclusion. For this justification, relying on pervasive impact, no longer seems to establish the basic structure as the only subject of justice: if having pervasive impact of the kind described above is a necessary and, in itself, sufficient condition for qualifying as a subject matter of justice, then most of the established institutions and social practices not belonging to the basic structure also qualify as appropriate sites of justice; e.g., the family, churches, universities, and so forth (see Cohen 1997).² In other words, the existence of a basic structure is arguably not a necessary existence condition of justice for the pervasive impact theorist. But without reliance on the basic structure in the argument, it seems impossible, again, even to attempt to put forward an anti-cosmopolitan scope thesis—practices of pervasive impact occur across the national borders, rendering again the requisite empirical assumption of the pervasive impact theorist who does not rely on the basic structure false.

So as to resist the cosmopolitan conclusion, it is certainly possible to block the extension of the site by arguing that pervasive impact is a necessary, but not a sufficient condition for an institution or practice to qualify as a site of justice. (Although, as we have seen, the anti-cosmopolitan relying on the basic structure as a restricted site must answer serious empirical objections, too.) One could return to the assumption that the basic structure is optimally instrumental in the realization of justice, and it is this condition, in conjunction with its

² Alternatively, the same substantive point can be made by claiming that these institutions, contrary to the Rawlsian assumption, do belong to the basic structure. Within the present discussion, this terminological point has no theoretical import.

pervasive impact, that establishes it as the proper site of justice. Alternatively, it may be argued that the basic structure is the most difficult to change of all entities having pervasive impact, or it can be presumed (not necessarily independently of the previous consideration) that the fact that the basic structure is coercively imposed on those subjected to its pervasive impact plays a role in the justification of its uniqueness as the site of distributive justice (Scheffler 2006). Nevertheless, most of these directions point toward different accounts of the scope: the argument from optimal instrumentality returns to a cooperation / interaction-based account, with its own difficulties, while the argument from the coercive imposition of the basic structure leads us on to the discussion of coercion-based accounts of the scope of justice.

1.3. Coercion and the scope of justice

Coercion-based accounts of the scope of distributive justice are designed to show that the scope should be restricted to individuals subject to one particular coercive authority of some specific kind. Theorists in this strand conceive of coercion of the requisite kind as in need of moral justification; principles of justice apply to the coercive authority and / or those coerced by it in order to provide this justification. Coercion is considered necessary as a means to morally significant aims, yet with severe morally adverse effects which are thus counterbalanced by considerations of justice. On these accounts, then, similarly to pervasive impact theories, a coercively imposed basic structure as a site is assumed to be an existence condition of principles of justice. However, coercion-based accounts diverge in some theoretically significant ways. Accordingly, my aim in this subsection is, in part, to emphasize the shared as well as the distinguishing features of two dominant variants of this line of reasoning: Blake's (2001) and Nagel's (2005) accounts, respectively. The Nagelian version awaits further detailed discussion in the next two chapters.

The anti-cosmopolitan coercion-theorist can argue along the following lines for the restricted scope thesis. State coercion, as opposed to other kinds of coercion, is necessary for the provision of certain moral goods, or circumstances of life which, in turn, are necessary for autonomous life. However, coercion should not limit the autonomy of anyone, absent special justification. This special justification is provided by considerations of distributive justice.— This is the essence of Blake’s (2001) normative reasoning.³ Empirically, the anti-cosmopolitan assumes that the relevant kind of (state) coercion does not coerce non-citizens. Therefore, so the argument goes, concerns of justice do not apply to non-citizens.

The empirical plausibility of Blake’s version of anti-cosmopolitanism depends on the interpretation of what counts as a “relevant kind of coercion”: depending on its interpretation, it can be judged whether it is in fact devoid of externalities. If the empirical premise concerning the lack of externalities regards state coercion *simpliciter* as the relevant kind of coercion, the premise is blatantly false. If, in a theoretically more restrictive manner, only state coercion having pervasive impact is considered relevant, the premise is still false: state coercion (e.g., in terms of immigration policy) obviously has coercively enforced pervasive impact on non-citizens, too.⁴ Therefore, the anti-cosmopolitan conclusion can hardly be maintained unless further specification is provided with regard to the relevant kind of state coercion. This specification may be provided in two ways: either it is expected to explain why a certain kind of state coercion has no externalities, or it should justify why these externalities are not morally relevant in generating duties of justice. Since the first route seems very

³ As it is clear from my reconstruction, I offer a compensatory interpretation of Blake’s account. I do not wish to suggest, however, that this is the only possible, or even plausible, interpretation. Nonetheless, I have chosen this interpretation as it seems to be the most distinct one from a standard interpretation of Nagel’s account, and hence it seems more fruitful to discuss it in the course of a partly contrastive contextualization of the latter.

⁴ An even more severe objection would maintain that there is, in fact, a global coercive structure with global pervasive impact, which consists in decentralized coercion mechanisms realized by the enforcement of a given state’s coercively imposed policies by other states on the basis of bilateral or multilateral treaties (see Christiano 2008, esp. p. 6). (Think, e.g., of extradition treaties that distribute the coercive enforcement of state laws among the states participating in such agreements). Although there is no central coercive agency assuring the enforcement of these treaties, the other parties often do have the option to sanction non-compliance. Hence, in a sense, there already exists a global coercive authority, arguably making the coercion theorist’s empirical premise straightforwardly false.

difficult to take without serious ad hocery, it is not surprising that both Blake and Nagel opt for the second alternative.

Blake argues for the moral irrelevance of the externalities of coercion by assuming that the only kind of state coercion relevant for the generation of duties of justice is that which is legally regulated. Under this interpretation of the ‘relevant kind of coercion’, the empirical assumption may be considered largely true: there is no international coercive legal system at present that regulates state coercion against non-citizens (see Abizadeh 2007, p. 350). (Although consider note 4 above.) Hence if such a system is required for coercive externalities to be relevant, there really are no relevant externalities. And, since the scope of justice is that of (the relevant kind of) coercion, the scope of justice is restricted to the nation state.

Nevertheless, in the first place, it is hard to justify the restriction of the normatively relevant kinds of coercion: why would one restrict the scope of justice to the jurisdiction of a legal system?—Most probably, because one assumes the basic structure, legal regulation inclusive, is an existence condition of principles of justice. This assumption, however, requires independent justification not provided by reference to the fact of coercion itself. As it has been shown, this justification cannot be provided by reference to social cooperation either, as the ground of justice. It can be provided, though, by reference to the pervasive impact of the basic structure—but this line of reasoning would face the same objections pervasive impact-based anti-cosmopolitans must face concerning their normative and empirical assumptions.⁵

⁵ Specifically, as far as normative assumptions are concerned, on a coercion-compensatory account of the generation of duties of justice, it is difficult to determine the baseline of compensation in the same way as it is difficult to determine the baseline in accounts relying purely on pervasive impact. Another strictly normative problem of the coercion-compensatory account of justice is that once it is conceded that coercion is morally necessary, moreover, it is done in the interest of the coerced, it is not straightforward that further compensation in the form of justice is due to the coerced at all, especially so as to justify coercion itself.

On the one hand, Nagel's (2005) theory also assumes that a shared coercive authority, taken as the basic structure, is an existence condition of principles of justice. Still somewhat akin to Blake's in another respect, his account claims that the specific kind of coercion that determines the scope of justice is lawful coercion—although Nagel seems to have a more elaborate implicit theory of legitimacy offered in support of this account, which I will reconstruct in the next chapter. Also, Nagel shares Blake's view that independent moral considerations—in Nagel's case, humanitarian and libertarian duties—require the existence of state coercion, which in turn generates duties of justice.

On the other hand, the value of autonomy does not play any explicit justificatory role in Nagel's account. In his view, duties of justice are generated only if there are subjects to whom the morally arbitrary, pervasive impact on others' lives state coercion has can be properly attributed. That is, the existence condition of these duties is not state coercion, or coercively imposed pervasive impact *simpliciter*—similarly to Blake. What is required is that the would-be subjects of duties of justice be responsible for coercively imposed pervasive impact. This condition, on Nagel's account of political legitimacy, is met in the case of legitimate state coercion, which ensures that citizens (subjects) are responsible for state action.

In other words, according to Nagel, duties of justice are not generated because of the existence of the pervasive impact itself, or because its imposition is coercive, and limits personal autonomy. Nagel's central normative assumption is that duties of justice are generated not only because of considerations regarding a relation between the site of justice and those affected by this site, but because of complex relations determining how the effects of this site on those affected can be ascribed to individual agents. Adopting a strictly deontic theory of justice, Nagel finds it unjust if there are people responsible for certain morally significant effects of the basic structure, while they do not mitigate these effects, but he finds

nothing unjust in states of affairs where like effects (even of the basic structure) obtain, but there is no-one responsible for these, and no mitigation takes place.

By way of empirical assumption, Nagel assumes that there is no legitimate global coercion for whose acts individuals are responsible (in the relevant sense to be discussed in the next chapter). Relying on this assumption, Nagel argues along lines similar to the cooperation-account, or to Blake's theory: since there is no appropriate global basic structure to which principles of justice could apply, there is no global justice, either. However, as much as the cooperation-theorist has difficulties in showing why the limited site of justice entails its limited scope, and why the basic structure should be taken as an existence condition of justice instead of an instrumental or constitutive condition, Nagel also faces (as I hope to show, fatal) difficulties in establishing both that the scope of justice is national even given the present empirical circumstances, and that there is no duty of justice requiring the establishment of empirical circumstances more suitable for realizing justice globally. These difficulties will be discussed at length in the next two chapters, respectively.

1.4. Conclusion

In this chapter I have provided a selective outline of some of the most important anti-cosmopolitan positions in the scope of justice debate, attempting to take a critical stance on them while emphasizing their distinct ways of argumentation. I have presented some of the crucial empirical and normative considerations counting against anti-cosmopolitanism argued on a cooperation or interaction-based account, on the basis of pervasive impact, and by reliance on the moral specificity of state coercion, and emphasized a few significant structural analogies and shared assumptions of these three kinds of anti-cosmopolitanism. I have situated Nagel's account in contrast to Blake's among the coercion-based theories of scope, and highlighted some of its connections to pervasive impact accounts. In the following chapters, I will take Nagel's account under close scrutiny so as to show that it fails to provide

a justification of the generation of duties of justice and their restricted scope, as well as failing to justify the claim that we have no duty to establish some kind of a global basic structure.

2. Legitimacy, Responsibility and the Scope of Justice

2.0. Introduction

In this chapter I address Thomas Nagel's (2005) argument for restricting the scope of distributive justice to nation states. In Section 1, I will provide a critical reconstruction of his account, along with some preliminary remarks guiding my interpretation in the remainder of this chapter. In Section 2, I will criticize Nagel's claims concerning the relation between political legitimacy, citizens' responsibility for state action, and the existence of duties of distributive justice. My aim is twofold: first, to show that Nagel's account of political legitimacy and the ascription of collective responsibility it entails are insufficient to generate duties of egalitarian distributive justice; and second, to argue that even if they are necessary for the existence of such duties, they are nonetheless insufficient to justify the national restriction on the scope of said duties.

2.1. Reconstructing the argument, preliminary remarks on Nagel's dualism

In this section I succinctly lay out what I take to be Nagel's account for a restricted scope of justice, and provide some initial analysis to be exploited in its further discussion. The argument in question centers around the role of coercion, on the one hand, and the role of the joint authorship of coercively enforced decisions made by a legitimate political authority, on the other. I propose the following, fairly neutral reconstruction of Nagel's argument:

P1: *Coercion thesis*: Policies decided by a political authority are coercively enforced.

P2: *Moral arbitrariness of coercively imposed consequences*: Coercively enforced policies have a morally arbitrary, pervasive impact on the life prospects of the coerced.

P3: *Legitimacy of coercion implies acceptability*: If a political authority is legitimate, it seeks acceptance of its norms by accommodating every citizen's rightful interests with equal weight.⁶

⁶ I will use "citizen" and "subject" interchangeably, albeit aware of the wider extension of the latter. Since the Nagelian conditions paradigmatically, though as I will argue, not exclusively, obtain in democratic polities, there is no harm in this usage.

P4: *Acceptability of coercion implies citizens' responsibility*: If a political authority accommodates every citizen's rightful interests with equal weight in decision-making procedures, every citizen is responsible for the decisions these deliver.

C1: (from P3 and P4)

If a political authority is legitimate, every citizen is responsible for its decisions.

C2: (from P1, P2 and C1)

If a political authority is legitimate, every citizen is responsible for the morally arbitrary, pervasive impact of its policies on the life prospects of every other citizen.

P5: *Necessity of responsibility for the existence of duties of justice (Deontic justice thesis)*: One has a duty to mitigate morally arbitrary effects only if one is responsible for them.

C3: (from C2 and P5)

Only if a political authority is legitimate do citizens subject to it have a duty to mitigate its policies' morally arbitrary impact on the life prospects of every other citizen.

P6: *Sufficiency of political coercion for the existence of duties of justice*: Duties of distributive justice are generated if there is a duty to mitigate the morally arbitrary impact of political coercion on the life prospects of the coerced.

C (from C3 and P6):

Duties of distributive justice arise if and only if there is a political authority aspiring to legitimacy, and these duties are owed by and to fellow-citizens subject to this authority.

As it is straightforward from the reconstruction, on Nagel's account, there are no duties of distributive justice existing or reaching outside the state. However, Nagel does not endorse the strong Hobbesian thesis that there are no prepolitical duties people would owe each other in absence of a political authority, in the state of nature. Although the sketch of the argument above is (and was intended to be) ambiguous about this, Nagel's conception of the state of nature is closer to Locke's, where a limited set of negative rights such as the right to bodily integrity, freedom of expression, freedom of religion, and compliance with voluntarily undertaken contractual duties apply (pp. 127, 131). As Miller (2007, p. 256) notes, there are good reasons to conceive of these "humanitarian" duties as also realizing some notion of justice. Nagel does not explicitly refer to these duties as duties of justice, for the latter, on his account, concern only relative conditions under interpersonal comparison (ibid.), but not the absolute conditions of individuals.⁷

⁷ That is, Nagel endorses the thesis that justice is always comparative. While I have no space here to provide conclusive arguments against this position, I will offer some considerations in the following paragraphs which do suggest that the duties in question are duties of justice. Here I merely indicate that Nagel's endorsement of the "no justice without comparison" thesis is highly controversial, with numerous theorists rejecting this position. See, e.g., Feinberg 1974 and Montague 1980 for further discussion. Parfit (1998) also argues for the existence of

However, the set of duties Nagel refers to as merely “humanitarian” concern in part enforceable constraints on the way human persons ought to be treated, even though not comparatively, which strongly suggests that they are also duties of justice of some sort.⁸ Moreover, Nagel accepts a version of the Kantian thesis that we have a duty to leave the state of nature wherein we already have certain duties (namely, humanitarian duties, in Nagel’s case), but we are not in the position to discharge them—and such a duty to leave the state of nature is usually taken to be one of justice (Nagel 2005, p. 133).

It is plausible to interpret Nagel, as Thomas Christiano (2008, p. 9) observes, as claiming that citizens do owe duties of justice to citizens of other countries (or the stateless), as conceived under some modified conception of libertarianism. Accordingly, the duty to leave the state of nature is a duty to find ways of specifying and realizing *libertarian* duties of justice and humanitarian duties, on Nagel’s account.⁹ Once the state of nature is left, though, and a legitimate political authority is established, additional moral norms of egalitarian distributive justice come into existence. They are not merely specified or realized when political institutions are in place: they did not exist beforehand as imperfect duties, either, and therefore the duty to leave the state of nature did not aim at their specification or realization. Thus, while Nagel may be considered a pluralist insofar as he upholds that different moral norms apply to different types of entities, Christiano’s interpretation seems correct in

noncomparative justice; moreover, he shows that Nagel’s early (1979) analysis of what he takes to be egalitarianism is in fact a kind of noncomparative justice based on facts of absolute, rather than relative, deprivation (Parfit 1998, p. 13).

⁸ As Feinberg (1974) argues, noncomparative justice requires that individuals be treated in a way that give them what is their due, in accordance with their rights or deserts (pp. 300f). While this concept of noncomparative justice may be especially problematic as applied to deserts (see also Montague [1980], pp. 132f, for discussion), it is considered far less controversial as applied to rights.

⁹ In the ensuing discussion, I will mostly refer to the duties posited by Nagel in the state of nature as *libertarian* duties for expository ease, with a view to contrasting them with *egalitarian* duties. By this manner of presentation, I do not mean to imply that libertarian duties entail humanitarian ones, or the other way round. Humanitarian duties, for instance, involve minimal positive duties (e.g., relief of suffering even without any causal responsibility for the adverse state of affairs) that are standardly not considered members of the set of libertarian duties which include exclusively negative duties.

suggesting that he is at once a dualist with regard to justice.¹⁰ Interestingly, both libertarian and egalitarian principles apply to political institutions, although it is only the former that ground a duty to establish them.

It is not immediately clear, nevertheless, why political institutions should not be evaluated exclusively on the basis of existing prepolitical moral principles, once Nagel presumes there are such principles (Christiano 2008, p. 11). It is this question that I will address in the next section.

2.2. Justice, responsibility and legitimacy

What is specific to Nagel's account of the scope of distributive justice is the justification of egalitarian duties with reference to an implicit concept of political legitimacy which, in turn, is related to the coerced subjects' responsibility for the consequences of the decisions made, and norms established and maintained, by a coercive authority. In this section, I reconstruct Nagel's account of political legitimacy, on the one hand, and the sense in which citizens are responsible for the acts of political institution with authority over them, on the other, with a view to arguing that these fall short of justifying the political duties of egalitarian distributive justice. Although Nagel's discussion of these points is brief and often metaphorical to an extent which caused some to believe that he does not intend related discussion to be argumentative for, but rather merely interpretive of, a conception of justice (see Cavallero 2010, pp. 28–29, esp. n. 44 at p. 29), my aim is to unfold possible arguments for Nagel's position, partly relying on his earlier work, and to criticize them accordingly in their more explicit form.

¹⁰ I do not mean to use the term 'dualism' in the sense used in the monism-dualism debate concerning the question whether there are separate sets of moral standards applying to institutions (the basic structure of a society, specifically), on the one hand, and to individual conduct, on the other, or these realms of moral life should be governed by the same principles (see, e.g., Murphy 1999).

Let us begin with the analysis of the notion of responsibility used in Nagel's account. Subjects' responsibility for the coercively enforced policies is, on his view, coextensive with membership in the (legitimate) polity (see C1 above):

The society makes us responsible for its acts, which are taken in our name and on which, in a democracy, we may even have some influence; and it holds us responsible for obeying its laws and conforming to its norms, thereby supporting the institutions through which advantages and disadvantages are created and distributed. Insofar as those institutions admit arbitrary inequalities, we are, even though the responsibility has been simply handed to us, responsible for them, and we therefore have standing to ask why we should accept them. (Nagel 2005, p. 129)

The short passage above raises the following issues: (i) responsibility is clearly not meant in the sense of "duty";¹¹ (ii) responsibility for society's acts does not imply a democratic political authority, or any direct causal input on the citizens' part to the political decision-making process; nor does it imply voluntariness of political membership or that of participation in political practices; (iii) to have a standing to ask for moral justification concerning the norms according to which a political authority operates, one must be responsible for them in the relevant sense. I will discuss these issues one by one.

First, the required sense of responsibility is not that related to duty, but the one related to attributability. If someone can act "in our name", this means that their acts in question are justifiably attributed to us as agents.¹² On Nagel's account this is a necessary condition of incurring duties of egalitarian justice: we owe these duties to people only if the effects of state action on them can be attributable to us (see P5 above). Duties are in part justified by, but are not identical to, the notion of responsibility at hand. Crucially, joint responsibility for coercively enforced action is offered as the only plausible moral fact which sets apart justice-

¹¹ More precisely, responsibility in this sense would be a kind of duty to achieve an aim which leaves the means to some extent unspecified, the choice and finding of the appropriate means left at the discretion of the responsible party. See Feinberg 1966, p. 141.

¹² Attributability is complicated by a structure of delegated agency, which I neglects here for expository ease, since if it has any relevance to Nagel's argument, it would weaken, rather than strengthen, it—however, my aim is to criticize the argument on a stronger reconstruction.

generating and not justice-generating collective enterprises in a normatively non-arbitrary way (Nagel 2005, pp. 140–142).

However, to be individually responsible for state action in the required sense, it is not necessary for any individual citizen to agree with or actively support in person the state action in question. Since responsibility for state action is a necessary condition of political legitimacy, this seems intuitively right: we owe at least a *prima facie* duty to obey a legitimate political authority even in disagreement with its decisions. An individual's responsibility for state action does not require an intention to contribute to any particular coercively enforced action, nor the endorsement of any principles upon which the action rests in conjunction with awareness of its possible consequences. If awareness of this kind were required, individuals would hardly be responsible for any state action, as political decisions have far-reaching consequences which are dependent on a complex nexus of not reliably foreseeable circumstances beyond the control of state agency. As far as explicit intentions to contribute to particular state actions or the endorsement of the principles on which they rest are concerned, though, their unnecessary for responsibility for state action is more ambiguous. If they are not required, citizens are responsible for political decisions content-independently, which is usually justified only if either certain procedural constraints on political decision-making are met, or contribution to the enforcement of the decisions is voluntary. Nagel holds neither position, but he can be interpreted as offering something akin to the first alternative, as I will argue below.

As regards the second point of discussion concerning the relevant notion of responsibility, on Nagel's view, the necessary and sufficient conditions of ascribing responsibility to citizens for state action are fulfilled even in non-democratic polities. Colonial regimes and military occupation are also coercive authorities which, on a "broad interpretation of what it is for a society to be governed in the name of its members", are also considered authorities for whose

actions the coerced are responsible for, assuming that “if a colonial or occupying power claims political authority over a population, it purports not to rule by force alone” (Nagel 2005, n. 14 at p. 129). The foregoing assumption is an empirical one, whose truth-value is up to historiography to decide. Nonetheless, granting the assumption that regimes do aspire for legitimacy, for the time being, I will concentrate on the normative argumentation supporting the view that the coerced can be content-independently responsible for decisions made by non-democratic regimes they are subjected to. Nagel argues that even a non-democratic, colonial or occupying power

is providing and enforcing a system of law that those subject to it are expected to uphold as participants, 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. (ibid.)

Andrea Sangiovanni (2007) interprets this passage as claiming that the state is, by definition, a “norm-generative system of societal rules which expects our compliance with it”, and the only necessary and sufficient condition for its acting in our name is that “we actively comply with it” (p. 16). Although this is clearly part of what it means—descriptively—to “uphold” the norms, practices and decisions coercively enforced, the moral weight of compliance in itself is highly (and trivially) questionable, absent further specification of the circumstances of compliance. Sangiovanni concludes, for this very reason, that the responsibility- or authorship-condition hardly plays any normative role at all: it contributes “surprisingly, little to the overall success of the argument” (ibid.).

Nonetheless, the alleged normative weight of compliance, I contend, is not meant to be justified by the mere descriptive fact referred to above. The required justification is provided in the clause in Nagel’s claim cited above which is neglected by Sangiovanni; namely, that the system of law is “intended to serve [the subjects’] interests” (2005, n. 14. at p. 129). Subjects’ interests are given consideration in coercively enforced decisions since they are

expected to actively comply with them not *simpliciter*, but because of accepting them (see P4 above) (ibid., p. 130). In other words, the coercively imposed political authority should expect compliance only if it appeals to reasons citizens have—independently of the fact of coercion.

On this interpretation, coercively enforced decisions are made in our name, irrespectively of either the decision-procedure yielding them or their ultimate content, because decisions are sensitive to the interests of all the coerced. Even if citizens have no causal input into the decisions, the latter would be different, were citizens' interests different. Assuming, further, that decisions are sensitive to each and every citizen's interests weighted equally, there is a definite sense in which all citizens exercise joint authorship over these decisions, even if the outcome runs counter to the particular interests of some citizens. Although this kind of sensitivity is usually (intended to be) guaranteed by democratic decision-making processes, the latter are not strictly necessary for the former: a sufficiently informed absolute ruler, for instance, may equally meet the sensitivity-criterion, while offering no procedural guarantee that the information input will yield the policy output it determines. Legitimacy does not entail the tracking of *all* kinds of interests and reasons, though: only those interests and reasons are to be considered which are within the constraints imposed by independent moral norms.¹³

Supposing that coercively enforced decisions and ensuing state action are attributable to citizens in the above sense, however, this still leaves unanswered the question why new moral principles of egalitarian distributive justice are generated by the fact of shared responsibility for state action. Instead, it seems much more plausible, as Christiano (2008) argues, that the morally arbitrary effects on other citizens' life prospects caused by state action, now ascribed to citizens, should be evaluated in light of the already existing moral principles (p. 11).

¹³ This interpretation is close to Nagel's (1991) earlier, more explicit views on legitimacy: "if a system is legitimate, those living under it have no grounds for complaint against the way its basic structure accommodates their point of view, and no one is morally justified in withholding his cooperation from the functioning of the system" (p. 35). Here, Nagel endorses a contractualist account of legitimacy whose basis is that it is not reasonably rejectable by any subject (ibid., p. 36).

Although citizens should take care not to allow, i.e., not to incur any negative responsibility for, coercively imposed morally arbitrary consequences, the criteria of moral arbitrariness may simply be determined by the prepolitical principles of justice. The interests and reasons to which the state appeals should be legitimate according to some independent standard of justice, so that citizens could comply with, and take responsibility for, the coerced norms because these meet this independent standard. That is, in Nagel's case, if the prepolitical standard of justice is some form of libertarianism, a legitimate political authority will track our reasons to comply with it that are justified in terms of libertarianism:

No new principles need emerge beyond the fact that the state is acting in accordance with the minimal morality. The appearance of arbitrariness can be fully dispelled if we accept the conception of morality the state is acting on. And if there is nothing wrong with inequality of distribution there will be no basis for criticism here. Everyone is treated as an equal citizen to the extent that everyone's rights are protected and no one is interfered with on any basis that is not common to all. (Christiano 2008, p. 11)

Christiano claims that the fact of the subjects' responsibility in some sense of attributability is insufficient to generate new responsibilities in the sense of duties. The dilemma he seems to argue for is the following: either some principles of distributive justice exist, and hence they apply to norms coercively enforced by the state (and, possibly, generate a duty to establish a state which realizes *those* principles of justice), or these principles do not exist, and will not come into existence because some norms, to which they would apply *if* they existed, are coercively enforced by a state.

The dilemma as outlined above, however, does not stand as a general metaprinciple governing the generation and applicability of moral principles. The abstract structure of the two kinds of duties Nagel hypothesizes is the following. Set A of duties obliges a group G of individuals to establish circumstances, or enter into relations, C among themselves. The establishment of circumstances / relations C, in turn, generates a set B of duties which apply to G within the established circumstances / relations C. First, this structure of duties may arise

because the fulfillment of duties B is necessary for the fulfillment of duties A within circumstances C. In this case, the establishment of circumstances C was itself merely instrumental to discharging duties A, and the fulfillment of duties B will also be instrumental to the same aim. Second, alternatively, the structure discussed may arise because the establishment of circumstances C, whether it was the very aim of fulfilling A, or merely instrumental in its fulfillment, generates duties which apply in circumstances C without being instrumental to discharging duties A. Both ways of the emergence of the structure of duties at hand seem plausible in the abstract—hence it remains to be shown, so as to amend Christiano’s objection, why the same structure cannot be applied to the emergence of egalitarian duties from the circumstances (i.e., those of the polity governed by a legitimate coercive authority) originally established in order to discharge libertarian duties.

An example for both alternatives will help to clarify the specific problem with Nagel’s application of the given structure. Imagine two people, Jane and Jack, who take a long, romantic walk along the shore of a pond where a carefree child is playing around. As expected by the reader, but not by the lovers, the child suddenly loses balance in the water and begins to suffocate, thereby generating an imperfect duty for Jane, or Jack, or both, to save him (duty A in the structure). Due to the limited physical force of both of them, this duty cannot be discharged on either part without establishing some cooperation with the other person (circumstance or relation C). Here, let the versions of the thought-experiment diverge. In the first version, the physical capacities, stamina etc. of the two people involved are such that if the physical burdens of saving the child are not equally distributed during the whole duration of the process, Jack will not have sufficient physical energy left by the end to help Jane bring the child to the shore (and vice versa). Therefore, Jane and Jack could not discharge their duty to save the child within their cooperative venture without an egalitarian distribution of burdens. Consequently, they have a new duty which arises in their novel

situation of cooperation (duty B), and requires that they share the burdens of the cooperation equally. The fulfillment of this duty is instrumental in the fulfillment of the original duty that was conducive to the new circumstances / relations of the two people.

In the second version of the thought-experiment, the distribution of physical capacities and stamina between the two people are such that Jane and Jack could easily save the child if they are willing to cooperate, even if the contribution of one of them is marginal, but the physical strength of either of them would be, in itself, insufficient to save the child. In this case, they may still have a duty, emerging in the circumstances of cooperation, to share the burdens of saving the child equally (duty B): this seems to be the only morally non-arbitrary distribution of burdens. In this scenario, the fulfillment of duty B is, by assumption, not instrumental in discharging duty A.

Whereas the structure of duties is plausible in both examples, the problem is that Nagel cannot justify the emergence of the widely applied egalitarian norms within the state by recourse to either subcase. As for the first alternative, it might be assumed that the original, libertarian duties for the fulfillment of which we ought to establish coercive institutions cannot be fulfilled unless we contribute roughly equally to their establishment and maintenance costs. Although there is nothing logically inconsistent about this assumption, it seems blatantly wrong as an empirical claim in at least the overwhelming majority of modern, larger polities, and hence it fails to justify the generation of egalitarian duties concurrently with the establishment of a polity. But there is also a more important problem with this assumption: even if it were true, it could only justify a very limited site where egalitarian justice would apply. Although the burdens of maintaining coercive institutions that protect libertarian rights, such as the police or the army, might be shared on an egalitarian basis, but this, in itself, is still insufficient to show why egalitarian principles should apply more widely than necessary for the maintenance of these (libertarian) institutions. To justify, e.g., an

extensive health care or social security system, or income taxes conducive to the substantial redistribution of resources—measures customarily justified by egalitarian justice—the instrumental model of the emergence of new duties is not sufficient, once the original duties were merely libertarian or humanitarian.

In the spirit of the second alternative, however, the relevant assumption is that the establishment and maintenance costs of the coercive institutions required for the fulfillment of our libertarian duties should be fairly distributed among the subjects of coercion, because the burdens of providing protection against the violation of all subjects' negative rights should be distributed in a morally non-arbitrary way. Nonetheless, the normative problem for the first alternative also applies here with full force. If it is only the burdens of maintaining libertarian institutions that are to be shared equally, the kind of widely applying egalitarian duties that Nagel presumably intends to derive from this structure cannot be derived from it. Consequently, the dilemma discussed seems to hold: egalitarian principles either already exist, and state action is evaluated in egalitarian terms, or they only come into existence together with the state, in which case they cannot justify the kind of broad egalitarianism Nagel calls for under the label of “socio-economic justice” (2005, p. 114).

If the dilemma outlined above holds, some further necessary condition is required to generate or trigger egalitarian principles of justice in addition to citizens' responsibility for coercively enforced decisions—the responsibility-condition is not sufficient for the emergence of egalitarian principles. As Cavallero (2010, pp. 29–30) observes, Nagel does not appear to offer any independent argument for the *necessity* of the responsibility-condition, either (see my reconstruction of the argument above: P5 is an unargued premise). This, even taken in conjunction with Christiano's conclusion, does not as yet yield the result that the fact that coercive decisions are made “in our name” is neither necessary nor sufficient to generate the norms of egalitarian distributive justice. Nevertheless, both the necessity thesis (P5) and

the sufficiency thesis (P6, if interpreted under egalitarian principles of justice) beg for further argumentation. This crucial theoretical point is less emphasized in at least one strand of extant criticisms of the Nagelian account, represented by Cohen and Sabel (2007) and Ypi, Barry and Goodin (2009). This line of criticism does not question whether coercion, or at least involuntariness, and responsibility ascribable to the coerced for the coercive acts, are necessary and sufficient for determining the scope of distributive justice, but argues that these properties are instantiated by various associative relations outside and beyond the state.

However, even assuming that responsibility for coercively enforced state action is a necessary condition of the existence of duties of distributive justice, it remains unclear why the scope of these duties should be restricted to those who also bear responsibility for the same coercive acts. In other words, even if the *subjects* of these duties have to be responsible for state action in order to bear the burdens of mitigating its morally arbitrary effects, this consideration in itself does not limit the possible *objects* of these duties to those who share responsibility for state action. Nagel assumes that those who do not share this responsibility do not have a standing to ask for justification for the coercively enforced, morally arbitrary consequences imposed on them. Immigration policies are offered as a paradigmatic example:

Immigration policies are simply enforced against the nationals of other states; the laws are not imposed in their name, nor are they asked to accept and uphold those laws. Since no acceptance is demanded of them, no justification is required that explains why they should accept such discriminatory policies, or why their interests have been given equal consideration. (Nagel 2005, pp. 129–130)

Nonetheless, as Julius (2006) observes, the assumption that “no acceptance is demanded” of non-citizens is an empirical claim here about the present state of affairs, rather than a normative consideration proper (p. 185). As he puts it, one

cannot simply report that people are disposed only to conform to the policies of foreign states and not to accept them or that foreign policymakers are not claiming acceptability for them. What we want to

know is whether acceptability is something that imposers *should* claim and the imposed-on *should* demand. (ibid.)

Nagel does not deny that some effects of state coercion on foreigners are morally arbitrary just as much as its effects on citizens are so. He denies, however, the relevance of coercively enforced, morally arbitrary pervasive impact on foreigners' life prospects. Yet it seems hugely counterintuitive to claim that since foreigners are not responsible for these effects themselves, these effects need not be mitigated by duties of justice. Abizadeh (2007) calls this the "problem of perversity": it is morally perverse, in his words, to assume that justice does not apply to coercion once it is proclaimed as pure coercion not even aspiring to the acceptance of the coerced (pp. 351–352). For the point is that foreigners *cannot* be responsible for these effects, and it is precisely this fact that renders these effects morally objectionable: they are not voluntarily undertaken by, nor are they justified to, the effected parties. This seems to be an unjust state of affairs, rather than a morally non-evaluable one in terms of justice.

Nagel's response to the foregoing objection might be that as far as the moral justification of foreigners' treatment is concerned, "[i]t is sufficient justification to claim that the policies do not violate [foreigners'] prepolitical human rights" (2005, p. 130). Yet again, if involuntarily incurred morally arbitrary effects on one's life prospects are proper objects of mitigation, they are so within and without the borders, without further justification of the moral difference between these two types of cases. And if the standards of moral arbitrariness are quasi-libertarian, as Nagel seems to suggest in the foreign case, they are so in both cases—or the other way round, if they are egalitarian in the domestic case, the fact that foreigners are not responsible for the arbitrariness does not, in itself, make a case against their egalitarian treatment.

Although Nagel's (2005) account of the scope of justice is independent of accounts of the content of justice-related duties (p. 122), the necessity of the responsibility-condition (P5 above) might best be interpreted as ultimately motivated by concerns about the content of

these duties. Even if there is no room here for a full treatment of the relation of scope and content in Nagel's theory, a brief digression into these matters will help to further clarify the place of some considerations in the theory under discussion. Thus, in what follows, I offer a short discussion of concerns of content and scope in Nagel's later seminal works on justice.

As far as the content of justice is concerned, the kinds of moral arbitrariness that should be mitigated by justice on Nagel's view decrease in number, or least restrictions on them become gradually more explicit, from his *Equality and Partiality* (1991) to his "Justice and Nature" (2001) to "The Problem of Global Justice" (2005). In *Equality and Partiality*, Nagel calls attention to the principle that a society "has no 'life of its own' to lead, apart from the way it arranges the collective life of its members" (1991, p. 101), thus, absent agent-centered prerogatives, there is no morally significant distinction between state action which aims at particular consequences on people's life prospects, and state action which allows for the same consequences:

the pursuit of equality requires the abandonment of the idea that there is a morally fundamental distinction, in regard to the socioeconomic framework which controls people's life prospects, between what the state does and what is merely allows. [...] [W]ith regard to income, wealth, social position, health, education, and perhaps other things, it is essential that the society should be regarded by its members as responsible for how things are, if different feasible policies and institutions would result in their being different. And if the society is responsible, they are responsible through it, for it is their agent. (Nagel 1991, pp. 99–100)

However, as it is empirically true that state action does allow for morally arbitrary consequences with regard to the life prospects of non-citizens, acknowledgement of the state's negative responsibility for such effects seems consistent with this earlier position of Nagel's.

In his "Justice and Nature", Nagel's position on the content of justice is more explicitly restricted: only those effects of moral arbitrariness should be mitigated, so Nagel contends, which are not directly due to interpersonal differences in natural properties, but are the consequences of social institutions, possibly established in response to such differences (2001,

p. 121, 130). Morally arbitrary inequalities arising from natural causes unmediated by social institutions, on this account, should be mitigated by a “humanitarian concern for the welfare” of the affected (p. 126). This may be interpreted as an earlier instance of a, by now, familiar dichotomy: some morally arbitrary effects are subject to principles of egalitarian justice, while others are (or can plausibly be interpreted as) subject to principles of some kind of libertarian justice and humanitarian principles. As far as natural inequalities are concerned, our primary duty is non-intervention into the ways natural differences determine the distribution of certain goods.

In “The Problem of Global Justice” (2005), a crucial further move from these earlier formulations of the content of justice is represented by the explicitness of the thesis that even within socially caused inequalities, only those are proper objects of the duties of (egalitarian) justice that affect members of the society operating under the same coercive institutions. This seems a largely arbitrary distinction between citizens and foreigners as possible objects of justice, as membership in a given polity is not voluntary, nor is it assigned on the basis of rights or deserts of any kind. While the restriction of the global scope of justice to national seems to be continuous with Nagel’s project of restricting the content of egalitarian justice, the national scope limitation seems unfounded even given a restricted content, for it cannot be grounded in the distinction between inequalities for which a given society is responsible, on the one hand, and inequalities for which it is not responsible, on the other. The fact of responsibility is established in both cases of morally arbitrary effect (viz., on citizens and foreigners, respectively), and the lack or moral insignificance of negative responsibility for arbitrary effects on foreigners’ life prospects begs for further justification, once negative responsibility for similar effects on citizens’ life prospects is granted.

2.3. Conclusion

In this chapter, I reconstructed and analyzed Nagel's argument for the relevance of citizens' responsibility for state action in generating egalitarian duties of justice. After a formal reconstruction of the argument and some clarifying remarks on Nagel's dualist account, I examined the sense in which subjects of a political institutional set-up can be responsible for the consequences of its coercively enforced decisions, and I offered an interpretation of Nagel's account of political legitimacy in light of this concept of responsibility. I argued that the coercion-condition and the responsibility-condition are not sufficient to generate new egalitarian principles of justice. Furthermore, I argued that even if these conditions are necessary to generate principles of justice of the required kind, they would not provide sufficient reason for limiting the scope of justice to nation-states. In the next chapter, however, I will set aside these conclusions for a while and criticize Nagel on different grounds: I will argue that even if the conclusions of the present chapter did not hold, Nagel's reasons for staying out of the state of nature serve as reasons for establishing a global polity to which egalitarian justice would apply on his account.

3. Nagel's States of Nature and the Scope of Justice

3.0. Introduction

In this chapter I criticize Thomas Nagel's (2005) view of the state of nature and its supranational counterpart and the role these play in his argument for a restricted scope of egalitarian distributive justice. In Section 1, I will provide a critical reconstruction of the views in question, clearly demarcating their place among accounts of the state of nature. In Section 2, I will criticize Nagel's argument against the existence of a duty to leave the supranational or global state of nature. My aim is to show that, in the light of the findings of the previous chapter, Nagel's account of the generation and scope of duties of justice would be consistent with the existence of such a duty, and inconsistent with its non-existence. Consequently, I will argue that even if Nagel's account of the generation of egalitarian principles were right, we would still have a duty to leave the supranational state of nature and establish a global polity where egalitarian principles eventually apply.

3.1. Nagel's conception of the state of nature

In this section I will critically reconstruct and contextualize Nagel's account of the state of nature within related views so as to provide the analytic devices for the following discussion. By way of definition, I intend to use the term 'state of nature' in the following sense throughout this chapter: a set S of individuals are in a state of nature if and only if there is no such coercive authority which has a right to enforce obligations owed to the members of a subset S' of said individuals by members of a subset S'' of said individuals (where S' and S'' may be coextensional).¹⁴

¹⁴ Two caveats are in place. First, although it might be more customary to define the state of nature with reference to rights, rather than obligations, the given definition will be more simply applicable to the problems to be discussed. Since I take rights in the state of nature, given that there are any, to generate obligations on other individuals' part, my choice of the obligation-based definition seems to bear no theoretical burden of great import. Second, the term 'individual' is meant to designate here any entity that is a proper subject of rights and obligations, including human beings, states etc.

States of nature are usually supposed to exist, actually or hypothetically, on two different levels. The first-order state of nature is characterized by the absence of state-level coercive authority enforcing individual rights and obligations within a given community—I will refer to this level as the national state of nature. Even when a set of individuals leave this first-order state of nature, i.e., a coercive political authority is established over them, there may exist a second-order state of nature which is constituted by the absence of a coercive authority enforcing rights and obligations borne by or owed to states—I will refer to this level as the supranational state of nature. The moral reasons for leaving the national state of nature may or may not, logically, serve as (at least *prima facie*) reasons for leaving the supranational state of nature, too, depending on the substantive content of these reasons.

Nagel explicitly endorses the thesis that we have an obligation to leave the first-order, national state of nature:

all humans have to create and support a state of some kind—to leave and stay out of the state of nature. It 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. [...] This requirement is based not on a comprehensive value of equality, but on the imperative of securing basic rights, which can be done more or less locally. (2005, p. 133)

As already emphasized in the previous chapter, Nagel's national state of nature is not Hobbesian, but Lockean in kind: persons have negative rights to which obligations on the other persons' side to respect these rights correspond. The reason for leaving or staying out of this state of nature is to guarantee the discharge of essentially libertarian (in Nagel's terminology, merely "humanitarian") duties of justice,¹⁵ by providing appropriate assurance

¹⁵ As I made it clear in the previous chapter, I will mostly refer to the duties in question as libertarian for expository ease, without implying that there is an overlap or even a subset relation between libertarian and humanitarian duties. Since the substantive content of the prepolitical duties Nagel posits has been made explicit and will be further discussed below, this terminological choice will not affect my arguments.

that a sufficient number of individuals will comply with them (following Hobbes),¹⁶ and by sufficiently specifying the supposedly imperfect duties (in a Kantian spirit).

While as regards the national state of nature, Nagel clearly holds that we have an obligation to stay out of it, as far as the supranational state of nature is concerned, he holds that we have no similar obligation to leave it, i.e., to establish an independent coercive authority which would enforce obligations owed by states to states, or by states to aliens, or by aliens to states. In his words,

even if [there is a tendency of increasing] global governance for the future, there remains a clear line [...] between the call for such institutions and a call for the institutions of global socioeconomic justice. Everyone may have the right to live in a just society, but we do not have an obligation to live in a just society with everyone. The right to justice is the right that the society one lives in be justly governed. Any claims this creates against other societies and their members are distinctly secondary to those it creates against one's fellow citizens. (Nagel 2005, p. 132)

As the passage above goes to show, Nagel does not merely claim that although there is a *prima facie* moral obligation to establish a global state of some kind, it is outweighed or overridden by further considerations. Such claims, though, are also put forward. On the one hand, he insists that the establishment of a global sovereignty would necessarily involve substantial moral wrongs on the way, in the course of accumulating and competing over coercive power (Nagel 2005, pp. 145–147, in effect recapitulating Nagel 1991, pp. 175–176). On the other hand, in his earlier work, Nagel also raises a feasibility objection to the establishment of a global state: on a strong contractualist account of political legitimacy, due to the extreme diversity of rightful interests represented by the world's population, it is likely that any proposed terms of cooperation and mechanisms of political decision-making would

¹⁶ The duties discussed, depending on their conceptualization, may be fulfilled without full compliance. For instance, the rights giving rise to these duties may be interpreted as comprising only a right to live in an institutional scheme which is reasonably effective in assuring the low risks of the violation of non-interference etc. On this construal, the imperfect duties such rights give rise to are discharged even if a sufficiently large subset of a given community, but not all of its members, maintain and comply with institutions which are reasonably effective in preventing rights-violation, or a sufficiently large number of the members are willing to reform them adequately. (This conception would be along the lines proposed by Pogge [1992] in his “institutional approach” to human rights and related duties.)

be reasonably rejectable by at least some subset of the individuals to be subjected to the would-be global coercion (Nagel 1991, pp. 174–175).¹⁷ Nonetheless, Nagel’s claim here is different: it is not only the case that the establishment of a global state is, all things considered, ill-advised, or that it faces problems of feasibility—Nagel claims that it is not even *prima facie* required.

Although the existence of the state implies the existence of duties of egalitarian justice, since it is not the case that we are required to have egalitarian duties toward everyone, it is not the case either that we are required to establish a global state—so the argument goes. Egalitarianism is a sheer normative corollary of the *libertarian* duty to establish a (say, local, or any geographically arbitrary) state. In the following, I will question that this view can be maintained on a careful analysis of how the negative rights and corresponding duties Nagel hypothesizes in the second-order state of nature can be fulfilled.

3.2. The second-order state of nature

Even though Nagel holds that judgments of justice are not applicable outside the scope of the nation state, he acknowledges that there are moral standards that apply globally. Relying on the interpretation offered in the previous chapter which regards Nagel’s theory as a dualist account of justice, arguing that libertarian principles of justice do obtain outside of nation state, my aim in this section is to reject the claim that given our libertarian duties of justice, we have no obligation to leave the supranational state of nature. In addressing this issue I will amply draw upon Thomas W. Pogge’s (1992 and 2008) and A. J. Julius’s (2008) related work.

¹⁷ This problem does not seem to be specific to the establishment of a *global* state, though. In sharply divided societies, it may be (and often is, I submit) equally difficult to offer terms and decision-making procedures that cannot be reasonably rejected by any member of the society. Thus, even if Nagel (1991) is right about the necessary and sufficient conditions of political legitimacy—which I have no space to argue for or against here—the feasibility objection can be as convincingly put against the establishment of nation states as against the establishment of a global coercive authority. It is merely a matter of empirical contingency that in the present world at least there are *some* societies where the problem discussed may not arise with such force, whereas it certainly arises at present at the global level.

Nagel (2005) clearly states that adequate respect for persons' negative rights is a prepolitically existing duty toward every human being, which is not overridden or outweighed by the establishment of nation states:

This minimal [...] morality governs our relation to all other persons. It does not require us to make their ends our own, but it does require us to pursue our ends within boundaries that leave them free to pursue theirs, and to relieve them from extreme threats and obstacles to such freedom if we can do so without serious sacrifice of our own ends. (ibid., p. 131)

Further, he writes:

Those rights [...] set universal and prepolitical limits to the legitimate use of power, independent of special forms of association. It is wrong for any individual or group to deny such rights to any other individual or group, and we do not give them up as a condition of membership in a political society, even though their precise boundaries and methods of protection through law will have to be determined politically in light of each society's particular circumstances. (ibid., p. 127)

Interestingly, Nagel himself emphasizes that without appropriate global institutions, it seems hardly feasible to discharge these duties of ours toward aliens: "it may be impossible to fulfill even our minimal moral duties to others without the help of institutions of some kind short of sovereignty" (2005, p. 131). After mapping the nature and content of these duties, however, I will argue that the global institutions we plausibly need to fulfill our libertarian obligations are not any "short of sovereignty". In other words, my argument aims at showing that even if Nagel is right about there being only libertarian duties of justice in the first-order state of nature, these will, on Nagel's own account, provide sufficient reason for staying out of not only the first-order, but also of the second-order state of nature. This amounts, in turn, to claiming that we are required to establish the conditions in which principles of egalitarian justice are generated, on Nagel's own assumptions.

As far as the content of internationally applying norms are concerned, Nagel sets up three (certainly not independent) classes of moral requirements: (1) respect for negative rights of personal inviolability and immunity to coercively imposed restrictions on self-governance

unacceptable to the coerced (see the excerpts quoted above), (2) moderate norms (presumably those listed in (1)) as applicable to international bargaining (Nagel 2005, p. 143), and finally, (3) withdrawal of economic support from internally unjust states, and suspension of economic relations that are beneficial to them (*ibid.*).

The third norm above, crucially, rests on the same condition of responsibility as principles of internal justice: if the international relations of economic cooperation are forged and maintained by our state, for whose acts we are responsible as its citizens, we are also responsible for the outcomes these relations bring about or help to sustain. In this case, we are potentially responsible for violations of two kinds. First, for the violation of libertarian duties brought about by the national institutional scheme we indirectly support via our state's economic and foreign policies. Second, interestingly, we are also responsible for contributing to the violation of egalitarian duties of justice within another state, once it is established. In this respect, Nagel acknowledges the negative responsibility of the state for its externalities, and its subjects' duties of justice this negative responsibility gives rise to—even though as a matter of “secondary offense against justice” (Nagel 2005, p. 143).

The above concession incorporates into Nagel's account Pogge's insight that no state agent has the right to violate moral principles as long as it acts on behalf of subjects who are bound by the same principles (2008, pp. 126f).¹⁸ Moreover, as states do not have agent-centered prerogatives, they are morally even more constrained in their available courses of action than their subjects in whose right they act. However, if we have a duty not to impede other states' in discharging their egalitarian obligations, or to provide counterincentives by our economic support of unjust regimes, this already seems a remarkable concession entailing possibly huge economic sacrifices in the name of (egalitarian) justice as (to be) established outside the borders, imposing constraints on every state's international bargaining and treaty

¹⁸ Although this statement might look anachronistic, given that the edition of Pogge's collection of papers I use is that of 2008, whereas Nagel's paper dates back to 2005, the paper by Pogge cited here is the revised reprint of a version earlier than Nagel's paper discussed herein.

policies that go well beyond the libertarian and humanitarian conditions of just contracting.¹⁹ Remarkably, this duty to refrain from the “active support or perpetuation of an unjust regime” is much more demanding than a duty simply *not* to undermine the justice of already just regimes (Nagel 2005, p. 143).²⁰ Still, the duty in question might not appear to entail a duty to leave the second-order state of nature; on the face of it, it requires only some kinds of indirect support for the justice of already established polities within the existing international institutional arrangements. However, I submit, the requisite kind of support is hardly possible to provide without the assurance and coordination of a global coercive authority—the reasons for this will be analogous to why global assurance and coordination are needed to comply with requirements of global non-interference and moral bargaining, to be discussed below.

Let us return, then, to the other two sets of moral requirements governing international cooperation between states as well as between states and aliens, in the second-order state of nature: duties of non-interference with persons, and the concurrent constraints these duties impose on bargaining and international treaties. Non-interference is interpreted rather broadly: if “it does require us to pursue our ends within boundaries that leave [foreigners] free to pursue theirs” (Nagel 2005, p. 131), it is a rather robust requirement. State action should, then, be directed so as to avoid at least certain kinds of pervasive impact (by means of coercively imposed policies) on aliens’ lives. Although interpreting Nagel as proposing the complete

¹⁹ They go beyond humanitarian considerations since, as you will recall, the obligation in question does not only concern the support of oppressive, tyrannical regimes, but any regime in general that violates egalitarian principles of justice, on Nagel’s account.

²⁰ It might seem mistaken to talk about a state undermining the internal justice of another state or supporting its internal distributive injustice by economic means, once egalitarianism provides the norms of justice: as egalitarianism is about comparative levels of goods, so the objection goes, it can be realized no matter the aggregate level of goods in the affected state. This objection, nevertheless, fails to take account of the plausible empirical assumption that nation states are not always “distributionally autonomous”, i.e., they can be, and mostly are, constrained in their choice among possible internal distributions by external economic relations which have a pervasive impact on the aggregate level of goods in the state (Buchanan 2000, pp. 702, 708). According to the insights of dependency theory, the choice and distribution of economic incentives might be severely affected by the need to sustain a minimally functioning economy: “a government may have to choose between being able to attract and sustain enough capital investment to have a strong economy and being able to determine how wealth is distributed” (ibid., p. 702)—where a “strong economy” may mean, in extreme cases, one that is at least able to supply the population with goods sufficient for survival or the satisfaction of minimal humanitarian needs.

avoidance of such impact would seem to be in tension with his explicit position on restrictive immigration policies—which he does not find morally objectionable—avoidance of a large (albeit rather vague) extent of pervasive impact on aliens does seem to be a highly demanding, but necessary condition for the fulfillment of the non-interference requirement.

Refraining from pervasive impact on non-citizens lives to the required extent, however, seems to face a number of feasibility objections. First, it is hardly a realizable option in the case of resident aliens. Second, more to the point, as much as poor countries have no feasible alternatives at present to accepting the terms of international cooperation imposed on them by better-off states, it may well be an equally unfeasible alternative for the latter parties to withdraw from the role they play on the international economic scene. Yet, even if it is a feasible alternative for them, it is implausible to assume that better-off countries have a duty to refrain from exerting the morally questionable influence they do exert on the citizens of other countries, for the following reason. If country A refrains from activities that have a pervasive, adverse impact on the lives of citizens of country Z, A has no assurance that B will not take its place, maintaining the same effects on the citizens of Z. Thus, while citizens of A suffer a loss, this loss is not likely to result in the improved circumstances of citizens of Z. Pogge (2008) calls attention to the dangers of a similar kind of argumentation, which he calls the “sucker exemption” argument (p. 127):

no one should ask us to subordinate our pursuit of our national interest to a concern for a minimally just international order so long as other countries are not practicing similar self-restraint. This thought invokes a “sucker exemption”: an agent is not morally required to comply with rules when doing so would lead to his being victimized (“made a sucker”) by non-compliers. (ibid.)

Even though Pogge criticizes countries for relying on this argumentation instead of cooperating to forge multilateral agreements, he fails to notice that what makes this objection

plausible is the lack of independent international *assurance*, i.e., the second-order state of nature itself.

A. J. Julius (2008) articulates a position similar to Nagel's, as the latter is interpreted herein, arguing for a moral requirement to refrain from the coercive limitation of the choices, and guidance of actions, of non-citizens, even if we do not form a justificatory community with them. However, while Nagel is, very counterintuitively, reluctant to call such limitation and guidance of action unjust, Julius does not object to this intuitive judgment:

A theory that traces the complaint of injustice exclusively to people's failure to meet the obligations faced by members of a justificatory community draws the objection that it can't call a society unjust unless the people who live there already make up a justificatory community. However that verdict *can* be sustained by identifying injustice with the wrongful direction of others' action, since I can wrong you by manipulating your action even if we're not already trying to live together on jointly acceptable terms. (ibid., p. 8, original emphasis)

Nevertheless, whereas Nagel, Pogge and Julius share the core assumption that some minimal moral requirements should be fulfilled by wrongful interference with other states' (and their citizens') projects and choices, none of them realizes that the kind of objection to this requirement described under the label of "sucker exemption" can be rejected only by leaving and staying out of the second-order, supranational state of nature.

Another aspect of the same problem is that the impact exerted on a given state and its citizens by external coercion or unavoidable cooperation often does not have a single source. It is not invariably the case that if country A refrains from exerting objectionable influence on country Z, provided that country B does not intervene, country Z's (and its citizens) negative rights are observed. Rather, it is frequently the joint effect of A and B's actions that leave Z without appropriate alternatives, but either A or B would be individually sufficient, while not necessary, to impose the same limitations and action-guidance on Z. In such cases, A has no

reason to withdraw from the cooperation with Z without assurance that B would follow suit (and vice versa).

The lack of second-order assurance, as well as the absence of appropriate international coordination, also hinders the evolution of a more restricted international bargaining as well as treaty policy. Nagel finds morally unrestricted international bargaining problematic (“even self-interested bargaining between states should be tempered by considerations of humanity” [2005, p. 143]), an observation which seems to be a call for some constraints in negotiating economic and trade treaties. But, interestingly, when it comes to the discussion of the morality of international treaties themselves, broadly conceived, he retreats into a much more reserved position concerning their moral evaluability:

international treaties or conventions, such as those that set up the rules of trade, have a quite different moral character from contracts between self-interested parties within a sovereign state. The latter may be part of a just socioeconomic system because of the background of collectively imposed property and tax law in which they are embedded. But contracts between sovereign states have no such background: They are “pure” contracts, and nothing guarantees the justice of their results. [...] Insofar as they transcend societal boundaries, [...] the requirements of background justice are filtered out and commercial relations become instead something much thinner: instruments for the common pursuit of self-interest. (ibid., pp. 141–142)

Cohen and Sabel (2006) neglect Nagel’s statement concerning the lack of guarantees with an air of irony (“After all, nothing guarantees the justice of anything”; n. 36 at p. 171), without fully appreciating the oddity of Nagel’s mere registration of the empirical fact that there is no guaranteed background justice with regard to international treaties. Again, while Nagel’s statement stands as an empirical claim, no justification is offered for its acceptance as a normative claim. Why *should* there not be such guarantees? Moreover, the absence of institutions guaranteeing the background justice of international contracting is in tension with Nagel’s own view that such contracts, or at least some of them, should be tempered by moral considerations. Since appropriate assurance of all parties’ compliance (including third parties,

as I argued above) is a necessary condition of the fulfillment of moral requirements pertaining to international bargaining, or international treaty-formation more broadly, and these requirements are in force, it should be concluded, *contra* Nagel, that there is an obligation to leave and stay out of the supranational state of nature in some way so as to provide the requisite assurance.

To sum up the forgoing, the three, not independent sets of minimal moral obligations which apply internationally, as put forward by Nagel (2005)—indirect support of just national institutions of other states, non-interference, and bargaining and treaty-formation in accordance with non-interference—all require assurance and some coordination for their realization, even without any assumption of egalitarian principles applying internationally. Consequently, I submit, Nagel is unjustified in rejecting a *prima facie* duty to establish a global institution as an agency of international assurance, even if such a duty is outweighed, and is void, all things considered.

Nagel's argument for the all-things-considered relevance of a (not granted) *prima facie* duty to leave the supranational state of nature seems to rely on the implicit assumption that the only way to stay out of the second-order state of nature is by the establishment of a single world state with highly concentrated powers. On this assumption, even if the *prima facie* duty under discussion exists, it is not clear whether it survives as an all-things-considered obligation because the immediate burdens imposed by the process of accumulating power necessary for the establishment of a central world government might well outweigh the benefits of staying out of the state of nature (which may obtain only in the very long run). But the initial assumption does not seem warranted: as Pogge (1992) argues, there are numerous reasons to prefer a federal cosmopolitan authority, with a multilayered, highly devolved power structure whose establishment involves probably as much decentralization as centralization world-wide. Such a federal world government would distribute its powers

across the various levels of global and local authorities, but would also enable people all over the world to have a say in decisions exerting a pervasive impact on their lives, and to provide the assurance, specification and coordination needed for the protection of human rights and the fulfillment of duties of justice discussed above.

Crucially, the establishment of a federal system Pogge describes is a gradual process, for which present circumstances, so he argues, provide a feasible point of departure. Thus Nagel's argument that the second-order state of nature can only be left at the expense of the historical wrongs usually involved in the establishment of new states in place of old ones, and hence reasons for this moved may well be outweighed, does not stand: it is not necessary at all that "the path from anarchy to justice must go through injustice" (Nagel 2005, p. 147).

Once it is conceded that there is, indeed, a duty to create some form of centralized global authority to leave and stay out of the supranational state of nature, Nagel's claim that we have no egalitarian duties toward aliens loses much of its practical significance. Even if we assume, for the sake of the argument, that egalitarian distributive justice presupposes a shared coercive authority (i.e., it is an existence-condition of egalitarian duties), it remains the case that the negative duties of justice and humanitarian duties we owe, according to Nagel, to every human being require us to establish this global authority. That is, on a coherent interpretation of Nagel's plausible assumptions, we are required to establish the necessary and sufficient existence conditions of egalitarian principles of justice, even if not for the sake of egalitarian principles themselves.

Julius (2008) reaches similar normative conclusions on his own account, which is very close to Nagel's theory of the scope of justice. In contrast to Nagel, nonetheless, he rejects the deontic analysis of injustice as a predicate applying to states of affairs where duties of justice have not been fulfilled. Julius instead identifies the injustice of an institution with "its being such that by aiming for that institution people are directing others' action in a way that those

people have no good reason to accept” (ibid., p. 7).²¹ This move allows him to hypothesize a disjunctive duty: if one is involved in creating or sustaining injustice, *either* one ought to refrain from the actions, or avoid the omissions, resulting in the direction of others’ actions, *or* one ought to direct others’ actions in such a way that they have good reason to accept it, i.e., to make the institutions directing their actions just. Similarly to Nagel, Julius conceives of duties of justice as associative duties that arise only in (contingent) justificatory communities formed by nation states; therefore, the second disjunct applies to the direction of fellow-citizens’ actions, while the first disjunct applies to the direction of aliens’ actions. Much in Nagel’s spirit, obligations toward aliens are thus exhausted by negative duties, whereas obligations toward fellow-citizens may include further duties not strictly required to discharge those negative duties.

As opposed to Nagel, though, Julius intends to resist the conclusion that we have no duties whatsoever to create a global justificatory community, and hence no duty, on his account, to leave the supranational state of nature:

The trouble is that each of us is now responsible only for living up to the standards worked out in the communities to which she already belongs. None is responsible for making new communities, let alone ushering in the universal one. So what could bring us together? (Julius 2008, p. 11)

The motivation to “bring us together” is not entirely clear within Julius’s account, as he nowhere implies that merely refraining from the violation of negative rights without forming a global community or authority is either logically impossible or empirically unfeasible (which I argued it is), nor does he assume the existence of duties of justice outside the polity which would require us to leave the second-order state of nature. However, he offers the following justification for the requirement to stay out of the supranational state of nature:

²¹ On Julius’s account, X directs the action of Y if and only if X performs an action A with the intention to help to bring it about that Y perform an action B (2008, p. 6).

The people on whom the world's unacceptable institutions are imposed will, we can hope, answer that imposition by insisting on acceptable ones. By doing this they will have made a universal community. They will have set for the world the challenge of finding institutions authorizable from every position within it, a challenge that each of us can meet only by casting her lot with a just world society. (Julius 2008, p. 11)

Unfortunately, his position, as formulated above, amounts to the claim that a justificatory community is established as soon as someone *believes* she has a rightful claim to demand justification from a given (set of) person(s). By providing this formulation, however, Julius commits exactly the same mistake for which he criticizes Nagel's (2005) account in an earlier paper: he names an empirical criterion for when one considers a justificatory community to have been established, instead of providing the normative criteria for when it *should* be (considered to be) established (Julius 2005, p. 185; see also the previous chapter of this thesis, esp. p. 29). Hence Julius fails to account for his pre-theoretical intuition that there are moral reasons for leaving the supranational state of nature. The reason for this failure, I contend, is the same one that prompts Nagel to posit such a duty: in absence of either the assumption that omnipresent negative duties cannot be discharged without a global coercive authority, or the assumption that duties of justice (going beyond libertarianism) pre-exist coercive authorities, Nagel and Julius are equally left without reasons to leave the second-order state of nature. While I have not explicitly argued for the second assumption, I hope to have established that they are wrong in ignoring the first one.

In light of the conclusions of the previous chapter, the Nagelian account of the lack of global justice is in need of amendment so as to be able to justify why egalitarian principles of distributive justice are generated by the conditions of (legitimate) statehood, if they are not existent already in the first-order state of nature, and why this justification should also serve as a justification of the national scope of justice. As I have shown in this chapter, however, Nagel's account also fails to justify the absence of a duty to establish the circumstances of egalitarian justice by leaving and staying out of the second-order state of nature.

3.3. Conclusion

In this chapter, after I critically reconstructed Nagel's conception of the first-order (national) and second-order (supranational) states of nature, I argued (in part relying on Pogge's work) that on the grounds Nagel posits for a duty to leave the first-order state of nature, he cannot consistently reject that we also have a duty to leave the second-order state of nature. The fulfillment of the minimal moral obligations we have toward our fellow human beings in terms of non-interference, indirect support of justice, and the requirements these place on international treaties and economic cooperation, all require assurance and coordination that are impossible within the supranational state of nature. However, if we have a duty to leave the second-order state of nature on a coherent interpretation of Nagel's account, we are also required to establish what Nagel takes to be the existence conditions of egalitarian justice globally. Thus even if Nagel's account of the generation and scope of egalitarian duties were right, it would be of very limited practical significance in restricting the scope of egalitarian justice, as we should still establish on his account a global institutional order where egalitarian justice would apply. This conditional claim notwithstanding, I did not aim to settle here the question as to what principles of justice actually apply to the global coercive authority we ought to establish—whether we ought to establish it on humanitarian and libertarian grounds, following Nagel, or on more demanding egalitarian grounds. As the findings of the previous chapter show, this is a question to be decided upon independently of the fact of coercion, whatever scope it takes.

Conclusion

In the foregoing chapters I have discussed various aspects of Thomas Nagel's account of the scope of egalitarian justice, and hope to have established that his attempt to argue for a national scope ultimately fails, for various reasons. First, I have argued that his model of the generation of duties of egalitarian justice underlying his anti-cosmopolitan scope thesis, though not inconsistent in itself, does not offer sufficient conditions for the emergence of the kind of robust egalitarianism Nagel pre-theoretically sees justified at least within the nation state. This is a problem concerning the normative basis peculiar to coercion-based accounts. Second, even if the account of the generation of these duties were right, it would be, in itself, insufficient to yield the conclusion that the scope of egalitarianism is national—this problem is inherited from pervasive impact theories, elements of which are present in Nagel's own account. Thus, one major conclusion of the present thesis is that the egalitarianism Nagel's theory can account for is either too limited (in terms of site, as it applies only to a very restricted basic structure), or too broad (in scope, as there is no reason why it should not apply outside the borders) for the position he explicitly wants to endorse.

The other major tenet of my discussion of the Nagelian account is that given the assumptions concerning the prepolitical rights persons have, his other assumptions, regardless of their theoretical correctness against which I argued at length, have very limited practical relevance. This is because the prepolitical rights Nagel posits generate not only a duty to leave the state of nature by the establishment and support of just political institutions, but also a duty to go beyond the Westphalian nation state system by the establishment and support of just supranational political institutions with coercive privileges to provide assurance and coordination, though probably with a high level of devolution of power. The upshot of my discussion of this issue is that on his very own assumptions about the state of nature, Nagel

would be more consistent in arguing for the establishment of a global coercive structure to which egalitarian principles could apply—ironically, in an eventually cosmopolitan vein.

As a point of clarification with regard to my first focus of discussion, viz., the generation and scope of egalitarian duties, it is to be emphasized here that I have provided no defense of egalitarian justice in this thesis. My claim against Nagel is more limited in this regard, but theoretically substantial—once the wide application of egalitarian norms is conceded in a restricted scope, his account fails to offer sufficient reasons against at least the *prima facie* applicability of the same norms to a wider scope, too. Yet, I left open the question as to which alternative position, *contra* Nagel's conclusion, should be endorsed. On the cosmopolitan side, one possibility is to assume the existence of prepolitical egalitarian duties, and merely regard political institutions as constitutive of, as well as instrumental to, the egalitarian ideal. Another way to go, still on this side, is to assume egalitarian duties to be politically generated, and yet argue for their global scope. The adversary of the cosmopolitan egalitarian, in contrast, can either insist on the non-existence of egalitarian duties, or accept their extremely limited applicability within the state, too. Alternatively, she might attempt to argue for anti-cosmopolitan, but full-blown egalitarianism on some grounds different from Nagel's.

Notwithstanding the number of alternative positions that the arguments presented here still leave logical space for, this is a place to make my sympathies clear. Without even the appearance of rehearsing or assessing any arguments for egalitarianism, I simply assert here that I believe the first option mention above—viz., the prepolitical existence of egalitarian duties—to be correct, in some form or other. This option, in turn, is normally taken to entail the existence of a duty to establish and support political institutions providing global assurance, coordination, and specification necessary for us to live up to egalitarian norms.

As a clarificatory remark to my second focus of discussion, viz., the continuity between duties to leave the first- and second-order states of nature, respectively, it is to be added that

the duty to leave the supranational state of nature by the creation of supranational coercive institutions—for either the initially egalitarian reasons I favor, or the less demanding reasons Nagel is forced to accept according to my argumentation—is only a *prima facie* duty. Yet, whether standard objections of feasibility against its being an all-things-considered duty can be maintained or not, the practical relevance of even a *prima facie* duty of this kind should not be underestimated. Provided that we are obliged to leave and stay out of the supranational state of nature in order to be instrumental in the realization of certain moral norms, even if we face problems of feasibility in some ways to discharge this duty, we still have an obligation to strive for practicable second-best alternatives to realize the norms at hand in the best possible way.

The critique of Nagelian anti-cosmopolitanism I have provided in this thesis does not directly help to defend cosmopolitan egalitarianism, but it serves to reject one particular, important anti-cosmopolitan position. In addition, it highlights some underemphasized normative considerations central to the cosmopolitan vs. anti-cosmopolitan egalitarianism controversy. It is acknowledged here that proponents of cosmopolitanism have yet to show that egalitarian duties are either prepolitical, or they are political but apply with a global scope. Nonetheless, this thesis has contributed to the scope of justice debate by shifting the burden of proof on anti-cosmopolitans arguing from coercion-based premises.

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