On the Scope of Justice: In Defence of the Political Conception

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The paper defends the so-called political conception of the scope of justice proposed by Thomas Nagel. The argument has three stages: (a) I argue that A. J. Julius’ influential criticism of the political conception can be answered. Pace Julius, actual and (relevant) hypothetical cases of state coercion do in fact involve a claim to the effect that people have a duty to obey, so the problem of justice does arise, according to Nagel’s criterion, in the critical cases scrutinised by Julius. Hence the ‘perverseness’ objection lapses. (b) I argue, against other critics of Nagel’s view, that in central instances of international coercion such as immigration control people are not asked to accept the ongoing coercion. Consequently, the problem of justice does not, on Thomas Nagel’s view, arise internationally. Furthermore, to the extent that political authority is exercised internationally, it does not give rise to justificatory burdens involving principles of distributive justice. (c) I relate the notion of authority to other aspects of the political conception, including responsibility, and argue that together they constitute an attractive alternative to an influential allocative conception of justice.

Keywords: Thomas Nagel, global justice, political conception, A. J. Julius, authority, responsibility.

I. Introduction

The so-called political account of the scope of justice proposed by Thomas Nagel suggests that the problem of justice arises, and only arises, once a sovereign state claims a right to rule and asserts that its citizens have a correlative obligation to obey. It is only within such a structure...
that a group of individuals achieve a moral standing in accordance with which they may reasonably demand the justification or removal of arbitrary inequalities within the structure. This view has met with forceful resistance. Critics point out that the political conception incorporates a perverse criterion for determining when the ‘justice relation’ obtains, and that it arbitrarily limits the scope of justice.

In this paper, I present an argument in favour of the political conception. It has three main steps. First, I argue that A. J. Julius’ influential criticism of the political conception can be answered. Pace Julius, actual and (relevant) hypothetical cases of state coercion do in fact involve a claim to the effect that people have a duty to obey, so the problem of justice does arise in the critical cases scrutinised by Julius. Hence the ‘perverseness’ objection lapses. Second, I argue, against other critics of Nagel’s view, that in central instances of international coercion such as immigration control people are not asked to accept the ongoing coercion. Consequently, the problem of justice does not, on Thomas Nagel’s view, arise internationally. Furthermore, to the extent that political authority is exercised internationally, it does not give rise to justificatory burdens involving principles of distributive justice. Third, I relate the notion of authority to other aspects of the political conception, including responsibility, and argue that together they constitute an attractive alternative to an influential allocative conception of justice.

Before presenting these arguments I explicate the structure of the anti-cosmopolitan, or political, view, explaining what a satisfactory argument in its favour needs to do. This takes up Section II. Section III briefly reiterates Nagel’s statement of the political view and suggests a fruitful way of interpreting it. The three-step argument in its favour is conducted in Sections IV–VI.

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4 I here adopt Julius’ terms; see ‘Nagel’s Atlas’, p. 176. Two people are, according to Julius, in the justice relation ‘if the allocation of goods across them is just or if it is unjust’ (p. 176).

5 Julius, ‘Nagel’s Atlas’.
II. The structure of the political conception

As is well known, an argument for substantial egalitarian or prioritarian conclusions appealing to the claim that inequalities in distributive shares caused by natural and social contingencies are arbitrary from a moral point of view plays a key role in John Rawls' *A Theory of Justice*. The intuition that inequalities that are not caused by people's choice or fault are unjust is prominent in debates between cosmopolitan and anti-cosmopolitan Rawlsians. The former appeal to the fact that nationality is plausibly a factor that is arbitrary from a moral point of view. It is as arbitrary as, for example, talent, sex, and colour. The latter argue that the application of the moral presumption against arbitrary inequalities is most appropriately restricted to inequalities within a certain context: it applies to the inequalities that arise within a societal context or through the regulation secured by the coercive structure of the sovereign state.

The structure of the anti-cosmopolitan view is, as Thomas Nagel points out, remarkable in that the context itself seems both clearly arbitrary and of profound importance for people's life prospects. This, as stated above, is stressed in the cosmopolitan argument, but clearly admitted as well by proponents of the political anti-cosmopolitan con-

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ception. So it is an integral aspect of the anti-cosmopolitan argument that whilst the profound impact of an arbitrary factor on people’s life chances is plausibly a necessary condition for the presumption against it, it is not a sufficient condition. It is only intrasocietal sources of arbitrariness that are objectionable.

The success of the anti-cosmopolitan argument therefore hinges on efforts to identify the unique property in virtue of which intrasocietal arbitrary factors appear unjust. This property clearly cannot be coercion, or coercion \textit{simpliciter}, for the immigration policies of affluent western democracies appear obviously coercive\(^\text{11}\) (sometimes amounting to cases of clear prevention\(^\text{12}\)). Nor can it be the sheer magnitude or quantitative nature of state coercion, since this would at best support a ‘sliding-scale’ view in accordance with which the claims of justice apply unqualified within the coercive institutions of the state and in a diluted form internationally.\(^\text{13}\) That would not ground the sharp distinction between state structures and other structures implied by the political conception. The political conception must point to a certain facet of state coercion that is qualitatively different in nature from international or global coercion.

Nagel has gone furthest down this route, I think—although his argument is sketchy at crucial points. I therefore make his view the primary focus of this paper. Michael Blake tends to emphasise the importance of coercion \textit{simpliciter},\(^\text{14}\) or the profundity or magnitude of state coercion.\(^\text{15}\)


\(^{11}\) This is denied, however, by David Miller, ‘Why Immigration Controls Are Not Coercive: A Reply to Arash Abizadeh’, Political Theory, 38, 1 (2010), pp. 111–120. In this paper I assume, however, that the international structure is coercive and discuss anti-cosmopolitan suggestions to the effect that it involves coercion of a nature relevantly different from domestic coercion.


\(^{14}\) Cf. Blake, ‘Distributive Justice, State Coercion, and Autonomy’, p. 287: ‘To insiders, the state says: Yes, we coerce you, but we do so in accordance with principles you could not reasonably reject. To outsiders, it says: \textit{We do not coerce you}, and therefore do not apply our principles of liberal justice to you …’ (italics added).

III. Nagel: state coercion as an exercise of political authority

Nagel claims to find the unique property of the state making it the only locus of principles of distributive justice in a ‘complex fact’ pertaining to this institution, namely: ‘... that we are both putative joint authors of the coercively imposed system, and subject to its norms, i.e., expected to accept their authority even when the collective decision diverges from our personal preferences...’ Without being given a choice, people are attributed joint authorship of the legally coercive structure of their society and asked to obey its rules and regulations. In this way, they achieve the moral standing to demand a justification for the way in which their institutions influence distributive shares; and the only satisfactory justification, according to the Rawlsian presumption against arbitrary inequalities, is that the institutions are directed by principles that only allow arbitrary inequalities if they render the worst off better off than they would otherwise be.

Internationally, as mentioned above, coercion takes place as well, especially in the form of the immigration policies of affluent western democracies. This has a profound and arbitrary impact on the life chances of individuals. The complex fact pertaining to domestic institutions is not, however, according to Nagel, true of international patterns of coercion. The coercive policies in this context: ‘... 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’. As a consequence, nationals of other states do not have moral standing to demand justification of these discriminatory and arbitrary-inequality-generating policies.

We may briefly elaborate two crucial facets of this account. First, people subjected to state coercion are held to be ‘joint authors’ of the system, or of the decisions of the state, including those determining the degree to which people’s distributive shares are affected by arbitrary inequalities; stated differently, such decisions are taken ‘in their name’. I take this to imply that the relevant rules purport to be in the interests of the governed. Second, people are ‘subject to its norms

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16 I take the relevant set of principles to include some concerning ‘relative deprivation’ (Cf. Michael Blake, ‘Distributive Justice, State Coercion, and Autonomy’, pp. 258–260), but not to be exhausted by these. If the set included only principles of the former kind, it would rule out, for example, various prioritarian principles concerned with people’s absolute standings. The question whether or not such principles apply globally importantly divides proponents of the political conception and cosmopolitans.

[the norms of the coercively imposed system], i.e., expected to accept their authority ...’ I propose to interpret this second aspect of Nagel’s criterion in terms of a classical conception of political authority. On this conception legitimate political authority implies a right to rule and a correlative obligation to obey on the part of those subject to the authority.22 The right to rule includes: ‘a right to make laws and regulations, to judge and to punish for failing to conform to certain standards, or to order some redress for the victims of such violations, as well as a right to command’.23 A de facto political authority claims a right to rule and asserts that its subjects have a corresponding obligation to obey (i.e. asks them to accept its directives).

IV. Julius’ ‘perverseness’ objection

Julius points to the implausible implications of Nagel’s criterion in a number of cases.24 First, he argues that it is far from clear that existing states claim a right to rule implying that citizens have an obligation to obey. That is, they cannot plausibly be seen as asking their subjects to accept their commands. Often they undertake a purely coercive imposition of terms with no pretence to acceptability. For example, government policies are designed to satisfy the agendas of unelected campaign donors, not to be generally acceptable to citizens, and citizens are often not even consulted or informed when it comes to high-policy issues. Accordingly, given Nagel’s account of the conditions under which the problem of justice arises, many states are not domains within which that problem arises; and this appears to be an implausibly narrow delineation of the scope of justice.

Secondly, even if existing states may in some sense ask people to accept their laws, and even if such states purport to impose a duty to obey, it seems clear that, for example, the laws of the antebellum era United States, or those applied in apartheid South Africa, did not aim to engage the will of those subjected to them by claiming that they had a moral reason to uphold these laws. In such cases, Nagel’s criterion implies, incredibily, that these systems cannot be criticised in the vocabulary of justice.

Rousseauian ‘general will’ account (see p. 128). However, first, government in the interest of everyone is at least (perhaps minimally) part of Rousseau’s notion of the general will (see N.J.H. Dent, Rousseau—An Introduction to his Psychological, Social and Political Theory, Oxford, UK, New York, USA: Basil Blackwell, 1988, p. 175); and, secondly, and more controversially, the ‘interest’ account represents perhaps the non-obscure aspects of the notion of the general will (this being coercion mutually agreed upon facilitating the solution of dilemmas of collective action).


24 In fact, he focuses on two reconstructions of Nagel’s original suggestion which he finds initially more plausible. However, his objections mentioned below apply to Nagel’s original criterion as well; the latter is the one I defend in this paper.
Thirdly, hypothetical cases of societies run purely by the use of threats or fear obviously involve no believable imposition of a moral duty to obey; and again, the fact that the language of injustice cannot be used to condemn such societies seems to throw serious doubt on Nagel’s view. I deal with Julius’ three points in turn.

It seems to me that Julius is too swift in concluding that governments of existing states do not aim to engage the will of their citizens. In fact, the two cases he mentions seem to me to suggest that governments do purport to impose duties on citizens. To the extent that governments allow organised interests a say in policy formulation they are sure to imply that this reflects their adoption of the principle that all affected interests should be considered—a principle plausibly implying that some interests have more weight than others and accordingly have a stronger claim to be heard. As a consequence, they can present their policy as catering to all citizens. Thus those citizens have an obligation to obey. This is, of course, perfectly compatible with what Julius implies about government policies—namely, that occasionally, if not often, they are heavily influenced by powerful organised interests, and that this background gives us reason to doubt that governments are sincerely concerned with the acceptability of policies to the public at large. The important point is that governments apparently present their policies in such a way as to imply that the policies are acceptable to people and impose duties upon them.

It is a fact of some importance that political discourse is often conducted under constraints similar to those Rawls takes to be relevant to moral argumentation. Rawls gathers these constraints together and treats them as generally shared presumptions of moral argumentation. That is, political arguments seldom involve blatant reference to the narrow interests of one or several groups; instead political purposes are integrated in political propositions purportedly to the benefit of society at large.

One example here is the argument for material incentives scrutinised by G. A. Cohen. In its typical form it has advantaged groups, or the political representatives of such groups, claiming that a policy of allowing material incentives to them or those they represent is at the same time maximally beneficial to the worst off group in society; indeed the plight of the latter group occupies a prominent place in such arguments (being an integral part of its normative premise). One of Cohen’s points is, of course, that this alleged ecumenical concern for the well-being of different social groups is of a dubious nature, but this does nothing to alter the fact that the policies in question are promoted

26 TJ, 18–19/16–17 rev.
as being in the general interest of the public, purportedly providing them with a reason to obey.

Michal Walzer makes a related observation about certain common-good constraints on moral discourse: no one would deny that they value toleration or the peaceful coexistence of individuals with different conceptions of the good and the life and liberty it serves.28

It is also doubtful whether the case of government actions on issues in high politics supports Julius’ argument. It seems true that government handling of these issues raises genuine doubts about the extent to which governments attempt to ensure that policies are truly acceptable to all citizens. Still, it seems equally true that they will present such policies, including the secrecy surrounding them, as being in the best interests of the citizens and hence ultimately acceptable to them. We should distinguish between claiming a right to rule and that citizens have a corresponding duty to obey, on the one hand, and being justified in making such claims.29 The former suffices to trigger justificatory requirements.

About the historical case of the US antebellum era Julius says that:

[T]here is no obvious respect in which the laws ... can be said to have been enacted in the name of the slaves. The slaves had no moral reason to play their legally assigned parts in the institutions of slavery, and since only slaves and a few abolitionists regarded the slaves as moral actors, whips and hunger were anyway substituted for normative engagement in reconciling the slaves to it.30

Apparently the apartheid laws of South Africa were similar. We would hardly say that blacks subjected to such laws had a moral reason to comply with them, and perhaps the white majority did not believe black South Africans to be moral agents and accordingly substituted various forms of coercion for normative engagement of the will of blacks.

I believe, however, that points similar to those made above about cases of the rule exercised by existing states are valid here as well. It seems correct to say that American slaves and blacks under apartheid had no ultimate moral reason to obey the law, but can it be denied that it was claimed, at the time, that they had such reasons? It seems more plausible to contend that the slaves and blacks here were granted an inferior moral standing and expected to accept their position in society reflecting this standing; and that they were believed to have moral reasons to do so. After all, a profound part of the moral badness of such systems seems to consist precisely in the fact that victims of domination and blatantly unequal treatment are asked to accept their position—and in point of fact, owing to various socio-psychological

mechanisms, tend to do so. Surely, these mechanisms would have been supplemented, or even to some extent triggered, by various forms of coercion and violence; but it seems an incomplete picture of the cruelty of these systems to hold that coercive strategies exhaust the measures of suppression or the morally problematic features of these systems. The victims of the systems were not seen and treated as wild dogs. For better or worse, they were granted some title or standing, and it was on this title or standing that they were expected to accept their own suppression.

It might be objected that no effort was made to explain to members of oppressed groups that it was reasonable or just that they accepted the terms imposed on them.\(^{31}\) I would maintain, however, that such efforts—however distasteful and implausible their content—are an integral part of discriminatory and suppressive regimes. Under these regimes elaborate moral codes often exist explaining the appropriateness of performing or avoiding certain acts (e.g. entering public sites reserved for whites, or entering into relationships with white members of the opposite sex).

There may be historical examples of regimes in which no appeal for acceptance by those suppressed was made. These would certainly represent a challenge to Nagel’s criterion. I have in mind gruesome regimes such as the Third Reich.\(^{32}\) Here we can plausibly say that Jews were treated like dogs, or worse, with no pretence whatsoever that they accepted such treatment. Their acceptance, it appears, did not seem to count at all; nor was it at any time appealed to by Nazis.

It seems, then, that Nagel’s criterion rules out of the ‘justice relation’ regimes of this type. This may be considered an unwelcome implication. However, I am not sure that it is. Needless to say, such regimes merit an unfavourable moral verdict, but I wonder whether the charge of injustice is the most appropriate here. The concept of justice need not exhaust the moral vocabulary in which we seek to say that a regime is in some specific way morally bad. Indeed a verdict to the effect that the Nazi regime was guilty of atrocities against part of its population seems more appropriate. It seems somewhat misguided to say, in response to the murderous acts of the Nazi regime, ‘How unjust the Nazi regime was!’\(^{33}\)

One could grant this but point out that it is not wrong to call the

\(^{31}\) I owe this objection to Nils Holtug.

\(^{32}\) I owe this Point to Rasmus Sommer Hansen.

\(^{33}\) Cf. Kasper Lippert-Rasmussen, ‘Discrimination: What is it and What Makes it Morally Wrong?’, pp. 51–72 in *New Waves in Applied Ethics*, ed. by J. Ryberg, Thomas S. Petersen, & Clark Wolf (Houndmills and New York: Palgrave Macmillan, 2007), p. 61 on the Nazi regime and discrimination. He points out that it would belittle the moral wrongness of this regime and its acts to speak only about discrimination. Note, however, that my suggestion is to refrain from using the concept of justice at all with respect to a certain range of regimes (not merely that the vocabulary of injustice is insufficient with respect to certain regimes). See, further, the paragraph below.
Nazi regime unjust, but merely insufficient, in that it was morally objectionable in several other (arguably graver) respects. It would then remain a failing of Nagel’s criterion that it implies that the Nazi regime was not unjust. I am not, however, convinced by this point. It is plausible to suppose that a social system may be bad in such a way that the concept of injustice is not even applicable to it. If we take justice to concern, centrally, the distribution of benefits and burdens in society, it is not clear that it speaks to a situation in which some persons or groups are simply exterminated as beneficiaries of and contributors to this distribution. This, of course, revises Rawls’ claim that the first vice of social institutions is injustice. I suggest that some regimes have other vices of an equally problematic nature, and, perhaps, that others have virtues other than justice. The latter might, for example, be blissful, with abundant means of achieving lives with immense well-being, and not give rise to matters of justice or injustice because scarcity and conflict, which one might take to be necessary conditions for the problem of justice to arise, do not figure in them.

The upshot of this discussion of Julius’ first two points is that states do in fact appeal to acceptance, by their citizens. The Nazi case seems to be one in which at least part of the population was not asked to accept the regime, but it does not seem to challenge Nagel’s criterion (even if it implies that the Nazi regime was not unjust) since accusations other than that of injustice seem appropriate with regard to this system. So these challenges to Nagel’s criterion can be deflected.

Turning to hypothetical cases as a challenge to Nagel’s delineation of the circumstances in which the problem of justice arises, Julius brings up what he calls a naked tyranny in which: ‘People do what the tyrant tells them to do so that he will not kill them. Though no one imagines that there is any moral reason to obey him, it is hard to agree that the society is not unjust if people are going hungry as they build his pleasure palaces’. So Nagel’s criterion is implausible to the extent it fails to accommodate this (and perhaps other) hypothetical cases: it implies, surely questionably, that the tyrant cannot be indicted on the grounds of injustice.

I believe that we should be careful in stating a case of the kind Julius alludes to. It seems that he is aiming to set out, as he needs to, a case of pure or naked coercion—i.e. a case in which there is no indica-

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35 One could, of course, say that they were denied the most fundamental primary goods, namely life itself; but I find it more plausible to say that injustice concerns the denial of a fair share in the ongoing distribution in society dictated by its basic structure (when, for example, individuals or groups receive nothing so that average utility can be maximised).

36 TJ, 3/3 rev.

37 Cf. TJ, 110/127 rev.

tion of a duty to obey. If we intuitively feel that the relations in this society may properly be characterised as unjust, the Nagel criterion appears to be defeated (implying as it does that the problem of justice does not arise in such circumstances). Furthermore, the case would appear strongest if it involved recognisable patterns of suppression (stated in a purist way)—patterns, I mean, which might (perhaps in an impure form), given what we know about human nature and social organisation, obtain; and which, if they did obtain, we would surely find repugnant, and would do so partly because they appear unjust. It should be hypothetical in an ideal-typical sense meaning that it should reflect in a clear and systematic way real social patterns that obtain or may obtain in an impure fashion in our social world. Nagel’s criterion would then be shown to run afoul of important aspects of unjust relations that may obtain between people.

Julius’ naked tyranny can be seen as an attempt to satisfy these desiderata simultaneously; there is no hint of an appeal to compliance; nor is there any suggestion that the subjects have a moral duty to obey; and this may be seen as an idealisation of tyranny as we know it from the literature of political theory, beginning at the latest with Aristotle’s account, and from different historical or present-day tyrannies. It is a common theme in a regime of tyranny that fear—i.e. the subject’s fear of the tyrant and his machinery of surveillance and violence, and the mutual fear amongst subjects, none resting assured that others, including his nearest and dearest, will refrain from reporting on him, and hence not knowing whether or when he might face some dreadful sanction in the hands of the coercive machinery of the tyrant—is pivotal in a tyrannical exercise of political power. Prima facie this implies that tyranny essentially involves coercive threats, or credible propositions to the effect, that if a given subject performs a certain act serious consequences (perhaps the loss of one’s life as Julius suggests) will follow.

Julius’ case does not, however, seem to satisfy the second desideratum just mentioned; it is not a credible idealisation of the social system of tyranny. I do not question the centrality of an element of fear in a tyranny; my point is that appeals for moral engagement, or willing compliance, seem to play a crucial role in generating this fear. Mutual fear and mistrust, as stated above, are central aspects of tyranny. They can be engendered in part by some form of draconian coercive mechanism. But they require as well, I submit, an engagement of the will of a certain kind. To generate fear that is sufficient to stabilise the tyranny, an unrelenting and uncompromising duty to obey and to motivate others to obey, on the part of at least some part of the population—the moral avant-garde, so to speak—appears to be required. Ordinary people, it seems, are the subjects of a similar expectation; it is just that they

are more resilient when it comes to understanding and accepting their obligations, and hence stand in need of guidance. The duty of obedience may, of course—in different ways and on different levels, pertaining to the various groups of officials, role models or moral pioneers, and ordinary people—be inculcated, or encouraged, by a series of credible threats (‘If you do not report on your family, you risk deportation and forced labour’). It is overwhelmingly implausible to suggest that people have such a duty, but this does not affect the point I want to make here, which is that, according to a standard and practically relevant conception of tyranny, it does harbour, in a prominent place, some sort of duty to obey, or at any rate the tyrant’s claim that such a duty exists.

Julius’ case therefore fails to show that Nagel’s criterion has the wrong implications in cases involving a recognisable pattern of suppression or threat to our social organisation. He may, of course, renounce any attempt to appeal to realistic cases. This is not an unreasonable interpretation. Julius emphasises that we should consider a case ‘constructed to fail even the broadest interpretation [of Nagel’s criterion]’.\(^{40}\) We may, then, imagine a tyranny that is hypothetical in some sense other than the one recommended by the second desideratum mentioned above. It is not hypothetical in the ideal-typical sense implying that it is an idealisation of realistic social practices. It is not constructed with this constraint in mind. It is simply constructed to challenge a given criterion or principle. In the present context we can imagine a tyranny deprived of the appeal for a kind of obedience that I claimed was part of tyranny as a real social system. We can envisage a system in which a ruler is able immediately, by pushing a button on his cell phone and thus engaging electronic technology, to make his subjects act according to his wishes.

This refurbishing of the case comes, however, I submit, at a price. For Nagel’s criterion will now not be indicted on the grounds that it gives the wrong answer with respect to real threats to social organisation—threats\(^{41}\) we would tend to speak about in the terms of justice, but which, according to Nagel’s criterion, do not constitute unjust state of affairs. I would not deny that cases without a clear relation to standard threats that we may face with respect to organising socially may

\(^{40}\) Julius, ‘Nagel’s Atlas’, p. 183 (italics added).

\(^{41}\) The idea of normative claims being appropriately sensitive to general social facts, or to dangers or standard threats to our fundamental interests, I derive from the account of rights suggested by Scanlon in his ‘Rights, Goals, and Fairness’, pp. 74–92 in Consequentialism and its Critics, ed. by S. Scheffler (Oxford: Oxford University Press, 1988), esp. sec. 3. For a recent application, see Charles R. Beitz, The Idea of Human Rights (Oxford: Oxford University Press, 2009), pp. 108–112, 136–141. I acknowledge that this idea may be more uncontroversial as a part of an account of rights than it is in relation to principles of justice. As I note in text below, however, my claim is not that normative principles should only be plausible in the light of standard threats pertaining to social organisation, but rather the less ambitious claim that failure to be plausible with respect to such threats (as opposed to being plausible with respect to hypothetical cases having no obvious relation to them) seems to suggest a much graver defect on the part of the principle.
be relevant in some way to the acceptability of criteria defining when the problem of justice arises. (We may learn more about the criteria by confronting them with such cases.) But it seems to me that defects of criteria revealed by cases that do have such a relation are much more serious. Accordingly, Julius’ construction of the case tends to drain it of much of its force. The fact that Nagel’s criterion looks unattractive when applied to the case therefore does not speak conclusively against it.

The upshot of this section is that Nagel’s criterion appears to suggest that the problem of justice arises in the relevant range of cases of state coercion.

V. Only the state claims a right to rule and a corresponding duty to obey

The state coerces its citizens, let us agree. It claims that this is in the interests of the citizens, and that they have an obligation to obey. In this way it renders itself subject to the justice-implicating justificatory burden pointed to above. It also, as mentioned above, coerces immigrants. The question is whether, by doing so, it claims that the individuals it coerces have a duty to obey. If the answer is affirmative it would seem that the state must justify this type of coercion as well by appeal to principles of justice.

I admit that immigrants facing the coercive immigration policies of a given state are in some sense asked to accept the coercion. At any rate, appeals for their compliance are made, in the sense that they are prevented from entering the country unless they follow established procedures or receive penalties of some sort if they enter illegally. I deny, however, that this amounts to the state claiming that immigrants have a duty of some suitable kind. This would stretch the concept of an obligation to obey, or the claim to the effect that one’s subjects have such an obligation, too far. The mere fact of facing credible threats to the effect that consequences of a grave nature would result if one performs certain actions properly makes it wise not to undertake the acts, but it does not give rise to a duty.42 Thus we cannot infer from the mere fact that the state coerces immigrants that it claims that they have a duty to obey. It might, however, seem that the state does more: it claims a right to restrict the access to its territory, and such a right, like rights in general, implies a duty on the part of immigrants not to enter the country illegally. To every right, we may say, there is a correlative duty.43

There is no point in denying that the state claims a right to restrict access to its territory; it asserts a right to determine the membership

42 Cf. Rousseau, The Social Contract and Discourses, Everyman, 1993, p. 184: ‘Force is a physical power, and I fail to see what moral effect is can have. To yield to force is an act of necessity, not of will—at the most, an act of prudence. In what sense can it be a duty?’.

of the community it governs. 44 The right it claims need not, however, be a claim-right involving a correlative duty on the part of immigrants. It may be a liberty-right or a justification-right implying no such duty. 45 Whilst the state may have a legitimate interest in controlling its membership and a liberty-right catering to this interest, an immigrant may have an interest (e.g. in subsistence) in entering an affluent liberal democratic country; and this interest might be of such a nature and extent that it justifies a liberty-right to enter the destination country. 46 Irrespective of the strength of the latter interest, and what it justifies, it seems clear that there is a tension between it and the interest of the state in controlling its membership. In other words, the state does not coerce immigrants in their name or claim that the coercion it exercises is in the interest of the immigrants. It follows that there is no plausible basis upon which immigrants have a duty to obey. Thus the problem of justice does not, if Nagel is right, arise in this context.

There are others instances of international coercion, however, apart from immigration policies. International regimes and institutions might be thought to claim that group agents and individuals within its jurisdiction have a duty to obey the terms it imposes. Consider the policies of the IMF. It offers assistance to heavily burdened societies on condition that certain reforms are made (e.g. in present trade regulations and/or in regulatory structures inhibiting such reforms). It does so in the sincere believe that citizens of the country in question will benefit (from conditionality as such and from the reforms it facilitates). In such cases we may think that the coercive pressures placed on the overburdened government are exercised in the interest of its citizens. Accordingly, the measures appear to stand in need of justification by appeal to norms of equal consideration of the nature Nagel has in mind. 47

Let us agree that the policies in question are imposed in the interests of the citizens of the burdened country, that they are coercive in nature and that this gives rise to justificatory demands. However, these need not concern the distribution of benefits and burdens between individuals, that is, to be related to principles of justice. 48 The principles guiding international law, regimes and institutions have a role different from that of principles guiding the distribution of benefits and burdens between individuals. They serve primarily as standards for the interactions of states. The human rights regime, for example, can be seen fundamentally as a standard of state legitimacy; a state must satisfy certain basic human rights if it is to be in good standing in

44 Cf. Walzer, Spheres of Justice: A Defence of Pluralism & Equality (Oxford UK & Cambridge USA, 1983), chap. 2
45 Jones, Rights, pp. 17–22.
48 See n. 34.
the international community meaning, for example, that it is immune to external intervention.49

Similarly, the principles behind the policies of the IMF and the other Bretton Woods institutions (i.e. the World Bank, and the General Agreement on Trade and Tariffs (GATT) later the World Trade Organization (WTO)) 50 do not necessarily have as their primary role to bring about a certain global pattern of distribution of benefits and burdens between individuals; rather their role is to serve as standards for countries to count as worthy of assistance and to offer guidelines for this assistance.

Hence, in so far as justificatory demands arise internationally they do not involve principles of justice; rather they concern principle of the law of peoples or states.51

VI. The political versus the allocative account of justice

In this section I introduce aspects of the political conception in addition to its emphasis on authority (or coercive measures in the names of citizens and with an expectation that they accept the terms imposed) and argue that together they constitute an attractive alternative to the main competing account of justice, namely the allocative account. Specifically, I stress a notion of responsibility integral to the political conception.

The allocative conception of justice regards justice either simply as the problem of assigning value to different states of affairs, or distributions—or as this problem in conjunction with the question of appropriate action. The former view is concerned with axiology (i.e. the goodness of outcomes or states of affairs) only. Axiological principles order outcomes in terms of their goodness or (distributive) justice.52 An influential axiological principle says that we should order states of affairs with respect to the welfare they contain: thus state A is better than state B if it contains more welfare. The second kind of allocative view, as stated above, conjoins an axiological principle with a theory of correct action. A consequentialist view says that we should choose acts on the basis of the states of affairs, or outcomes, they produce. Utilitarianism may be seen as a combination of a particular (summa-


tive) welfarist axiological principle and a particular (consequentialist) theory of correct action: we should choose actions on the basis of the state of affairs or outcomes they produce, and state of affairs should be assessed in terms of welfare (that is, we should pick the action in the feasible set that is most conducive to welfare).\(^53\)

Rawlsianism, when focused on the difference principle and formulated as a conception of allocative justice, may be seen as involving a specific resourcist axiological principle saying that one outcome is better than another when the non-culpable worst off group is at a higher level in the former than it would be at in the latter in respect of primary goods. This is conjoined with a consequentialist view saying that we should act in such a way that we promote good consequences (in this case, maximise the position of the non-culpable worst off group in respect of primary goods).\(^54\)

On this view, it is clear that the problem of justice arises internationally with the same force as it does domestically—or, perhaps, the two issues are aspects of the same problem of justice.\(^55\) In both cases we can assess outcomes in terms of the applicable axiological principle\(^56\) and claim, in accordance with the consequentialist view we hold, that we should act in such a way that the non-culpable worst off are as well off as they can possibly be. On this understanding of the difference principle it becomes puzzling why Rawls suggests that reciprocal or cooperative relations are a necessary condition for the problem of the justice to arise. It suffices, it seems, that non-culpable inequalities exist and there are feasible means for rectifying or mitigating this situation. This is nicely brought out by Nozick’s original separate islands case.\(^57\)

Proponents of the political conception argue, however, that the allocative account of justice leaves out crucial elements of the justice relation. Rawls himself famously argued that this account neglects an


\(^{55}\) The alternatives indicated in the text reflect what has been termed ‘mild’ and ‘radical’ cosmopolitanism (Caney, ‘Review Article: International Distributive Justice’, *Political Studies*, 49 (2001), pp. 974–997, pp. 975–976). The former claims that principles of justice have application internationally, but that other principles of justice with special application at the domestic level are relevant as well. The latter claims that only one global set of principles of justice applies. The distinction between these two cosmopolitan types of view is not, however, relevant to the problem addressed in this paper (since my argument denies the mild version of the view and a fortiori the stronger view).

\(^{56}\) While the very considerable attention devoted to the luck egalitarian view in the domestic context has thrown important light on what such a principle would mean domestically, internationally the account is still in the making. See, however, Cécile Fabre’s account in ‘Global Distributive Justice: An Egalitarian Perspective’, *Canadian Journal of Philosophy*, Supplementary Volume, 31 (2007), pp. 139–164.

\(^{57}\) Nozick, *Anarchy, State, and Utopia*, p. 185.
important question concerning the production of the goods the distribution of which it concerns, and how the principles of justice apply to this aspect of goods.\textsuperscript{58} Furthermore, it can be argued that reciprocal relations, or cooperation, are an integral aspect of justice and a necessary condition of the problem of justice arising.\textsuperscript{59} More importantly, however, I believe that the allocative conception should be resisted because it leaves out of the picture an essential element of justice and of the conditions within which the problem of justice arises.

Giving further background to the claims made towards the end of the last section regarding the political conception and patterns of national and international regulation, I assert that justificatory requirements presuppose that someone is responsible for a certain distribution or a set of normative standards and that these requirements are shaped by what precisely it is that the agent is responsible for. Furthermore, they presuppose that the imposer of certain terms claims that those subjected to them have an obligation to obey.

This view is most easily accounted for within a Rawlsian view on the scope of justice according to which principles of apply primarily to social institutions or social schemes.\textsuperscript{60} A given social scheme is upheld by officials shaping or coercively imposing the basic terms of interaction and by citizens supporting and sustaining these terms in various ways for example by paying taxes and filling positions in the basic structure of society and so forth. They are jointly or collectively responsible for the distribution of benefits and burdens obtaining in this society, especially for the extent to which it embodies arbitrary inequalities. They have a negative duty not to impose unjust institutions on others which on the standard Rawlsian view means that they should refrain from upholding or participating in upholding inequalities that do not work to the advantage of the worst off. If they violate this duty they should either seek to shield the victims from the harms imposed by these institutions or they should work for their reform.\textsuperscript{61}


\textsuperscript{59} Rawls himself, as indicated above, appears to hold such a view (see \textit{TJ}, 4/4 rev.; \textit{Political Liberalism}, Lec. I, §3). A recent contribution stressing cooperation as an existence condition for justice (or as the relations within which the presumption against arbitrary inequalities gets a foothold) is Andrea Sangiovanni, ‘Global Justice, Reciprocity, and the State’, \textit{Philosophy & Public Affairs}, 35, 1 (2007), pp. 3–39, esp. pp. 22–29.

\textsuperscript{60} This view on what justice judges or on the scope of justice is, to be sure, not uncontroversial. For criticism see G.A. Cohen, ‘Where the Action Is: On the Site of Distributive Justice’, \textit{Philosophy & Public Affairs}, 26, 1 (1997), pp. 3–30 and Liam B. Murphy, ‘Institutions and the Demands of Justice’, \textit{Philosophy & Public Affairs}, 27, 4 (1999), pp. 251–291. This controversy is not, however, central to my concerns in the present paper.

\textsuperscript{61} This paragraph is intended to be a brief recap of Thomas Pogge’s influential Rawlsian view the broad lines of which I accept. We differ, however, regarding its
The standing of others not to have certain types of institutions imposed on them (or only to have institutions imposed upon them that are morally acceptable to them) is, on the political account, partly dependent upon such institutions being imposed in their name and with an expectation that they accept and act in conformity with its rules and regulations; given such imposition they may reasonable ask on what ground they should accept the regulations and its guiding principles, that is, they may ask for a justification.

The imposition of terms in a state, we have seen, can indeed be construed as being undertaking in the name of those subjected to it (and with the kind of support of terms and institutions stressed above) and with an expectation that they accept and comply with these terms. Furthermore, what gets imposed is a certain distribution of benefits and burdens between individuals. It is this distribution, including the arbitrary inequalities it embodies, that calls for justification. In contrast, what gets imposed at the international level is not a certain distribution of benefits and burdens between individuals, but rather a set of terms for the interaction of states; it is with respect to those that justificatory demands gain traction at the international level.

One considerable virtue of this conception, I believe, is that it does away, constitutively, with what may be called the recipient- or beneficiary-centeredness of the allocative conception. This centredness emerges in many contemporary discussions of justice, which focus on the extent to which certain people should be compensated, or on how ‘we’ ought to compensate them, rather than the contribution side of the equation. In fact recent discussion sometimes suggests that there are general moral reasons for certain people to have certain goods, but not for anyone, or any mechanism, including coercive institutional structures, to see to it that people get the share they deserve. The contribution side is an integral aspect of the political conception: it is the state that is held accountable for the distribution it imposes, and if that distribution is not imposed in accordance with appropriate principles of justice, it is the state that needs to rectify it.

This of course has an obvious and important instrumental aspect, since state coercion seems a strong, if not the only plausible, instrument with which to stabilise principles of justice society-wide only a implications for global justice. See esp. Thomas Pogge, Realizing Rawls (Ithaca and London: Cornell University Press, 1989); World Poverty and Human Rights (Cambridge, UK and Malden, MA: Polity Press, 2002). Se further my ‘On Thomas Pogge’s of Global Justice: Why We Are Not Collectively Responsible for the Global Distribution of Benefits and Burdens between Individuals’, SATS, Northern European Journal of Philosophy (forthcoming 2012–2013)


public set of institutions protected by a legally coercive structure can solve the assurance problem—i.e. assure each person that others are willing to comply as well, and do in fact comply, so that each person is willing to comply. But this instrumental aspect of the contribution side of the political conception does not exhaust its importance. If it did, as Abizadeh correctly points out,\textsuperscript{64} it would not support the notion that the problem of justice only arises under such conditions—or, in other words, that this is part of a necessary ‘existence’ condition of justice. It would not be the case that the problem of justice only arises once the contribution side is in place; rather it would suggest that a contribution side is necessary if justice is to be implemented. The problem of justice arises in accordance with a genuine existence condition—e.g. that social interaction takes place. It demands a contribution side in terms, say, of a coercive structure, meaning that if such a structure is not in place, we should work to bring it into being.

The non-instrumental aspect of the contribution side of the political conception consists, in my view, in the fact that an agent that is responsible for a given distribution and claim that those subjected to ought to accept it and comply with it is a necessary ‘existence’ condition for justice, that is, characterises the circumstances in which the justice relation gains traction.

I conclude by considering the following case apparently challenging the implications of Nagel’s criterion:\textsuperscript{65} ‘Going through space in your spaceship, you encounter a meteor very rich in minerals. You can either divert it such that it lands on planet A, which is very low on minerals. However, people don’t starve and so forth—but they are poor, and only manage through incredibly hard work. Or you can divert it to planet B, which has huge amounts of minerals, and where people live in extreme luxury—which they can obtain through only two hours of work a day. Don’t you have an obligation of justice to divert it to planet A—even though political authority is not even an issue here?’

Well, I think we do, but I insist that we do so precisely in virtue of Nagel’s criterion being satisfied. The case does not constitute a counterexample to this criterion. First, we have an agent (you, the spaceship captain) that is responsible for crucial aspects of the distribution of

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\textsuperscript{65} Suggested to me by Nils Holtug. It is a reformulation of Larry Temkin’s case in ‘Equality, Priority or What?’, \textit{Economics and Philosophy}, 19, pp. 61–87, p. 69. It is admittedly of the hypothetical nature whose relevance I questioned above. Note, however, that I did not reject the idea that they may have a relevant role in clarifying the implications of principles. Thus, in so far as I can plausibly argue that Nagel’s criterion does not in fact have implausible implications with respect to this case, this is of some interest (although failure to have plausible implications in such circumstances would not speak conclusively against the principle or criterion in question).
benefits and burdens between individuals on planet A and B: that is, you can either mitigate arbitrary inequalities by diverting the meteor to planet A, exasperate arbitrary inequalities by diverting the meteor to planet B, or fail to mitigate arbitrary inequalities by doing nothing. Second, in undertaking one of these acts or failing to act you presumably believe that recipients or potential recipients have reasons to accept the resulting distribution and not for example try in some way to undue it. Consequently, citizens of planet A and B have standing to challenge you to justify the distribution you bring about, and you can arguably only meet that challenge if you choose to divert the meteor to planet A thus mitigating arbitrary inequalities to the best of your abilities (in this way making the distribution universally acceptable).

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66 You might of course act with no such attitude (perhaps you decide on your course of action out of simple convenience or on the ground of what act of diversion that would be most challenging to you or whatever). If this is how the case is constructed Nagel's criterion would not apply. I would then, however, in line with the considerations above (sec. IV) question the extent to which this implies that the criterion is defective.