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Walton A. [Justice, Authority, and the World Order](#).  
*Journal of Global Ethics* 2009, 5(3), 215-230.

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**Further information on publisher website:** <http://www.tandfonline.com>

**Date deposited:** 11<sup>th</sup> October 2013

**Version of file:** Author final



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## RESEARCH ARTICLE

### Justice, Authority, and the World Order

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**Abstract:** This paper defends the pertinence of global justice in the contemporary world. It accepts, for the sake of argument, Nagel's view that matters of justice arise only when political authority is asserted or exercised and, connectedly, his rejection of the cosmopolitan thesis. However, it challenges his conclusion that considerations of justice do not apply beyond the state. It argues that on any plausible account of the relationship between authority and justice international institutions, such as the World Trade Organisation, are now authoritative in the right way to justify their evaluation from the point of view of justice.

**Keywords:** Justice, Authority, International Institutions, World Trade Organisation.

#### Introduction

Despite it often being said that we live in a global world, where borders are of decreasing significance, authors writing on matters of justice often still 'assume that the basic structure is that of a closed society...self-contained and as having no relations with other societies' (Rawls 2005, 12). This may be somewhat unfair. 'Global justice' is receiving an increasing attention in literature. Yet, it is also true that many are sceptical of this idea.

In this paper I will challenge the views of a leading global justice sceptic, Thomas Nagel. The argument will be constructed as follows. First, I will introduce the global justice debate. Second, I will outline Nagel's objection to the idea of global justice, which focuses on asserting an important place for authority in matters of justice. Third, without challenging Nagel's overarching normative thesis I will argue that we should not accept his conclusion that there is no justice beyond the state because even if we accept the pivotal place he attributes to authority in matters of justice on any plausible understanding of the relationship there is now reason to think this has global application. In section four I address another dimension of the relationship between justice and authority: the idea that the realisation of the former requires an enforcement mechanism to provide assurance. I argue that even if this claim is valid it, for two reasons, does not follow that issues of justice do not have global application in the contemporary world.

#### 1. Justice

Throughout modern history the sovereign nation-state has been considered the primary, and often sole, site of justice and such thinking remained prevalent even amongst notable political theorists at the turn of the century (cf. Rawls 1999a; Rawls 1999b).

This view takes a particular stance on two matters. First, there is the distinction between institutional and pre-institutional views of justice. The former holds that issues of justice arise only within certain types of associational schemes. The latter holds that justice is

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a pre-institutional ideal which applies to all people in all places regardless of their institutional affiliations. Those that affirm the idea that justice applies only within states take an institutional approach.

Second, there is the question of whether the institutional view of justice has application beyond the domestic level; whether, that is, global institutions qualify as ‘institutions’ such that they should be regulated by considerations of justice. Are they, in other words, the appropriate kind of institutions for issues of justice to arise? The state-based view answers “no” to this question.

Given this typology, it is possible to challenge the state-based view in two ways. First, it could be argued that the institutional approach to justice favours its application at the global level because global affairs are relevantly institutional (cf. Pogge 1989; Beitz 1999). I shall return to this issue. It could also be challenged for holding that justice is an institutional virtue. Associational ties, it could be argued, are simply arbitrary features by which to structure justice. This is the view of many cosmopolitans (cf. Steiner 1994; Singer 2002; Caney 2005). Their challenge, in short, is that contingent facts (such as the geographical dominions of states) should not influence the life prospects of an individual because they are undeserved and therefore arbitrary from the moral point of view.

The cosmopolitan thesis is certainly a forceful one. There have been a number of attempts to respond to it. Rawls gave his own reasons for refuting it (Rawls 1999b, 117-118). These, however, have been the subject of much criticism (cf. Martin 2006; Pogge 2006). The cosmopolitan claim has also been challenged by so-called ‘reciprocity’ accounts, which claim that justice applies only to schemes of cooperation of a certain sort and is therefore limited to the domestic realm where social interaction is of the right kind (cf. Sangiovanni 2007, 19-38). However, this will not suffice to defend the state-based view of justice for one of two reasons: either the definition of cooperation is relatively weak, in which case it is hard to deny that the relevant kinds of cooperation exist across borders, or the definition is relatively stringent (the approach adopted by Sangiovanni), in which case it becomes more difficult to believe that this is the only condition that initiates concerns of justice. Cooperation-based accounts of justice (especially of the reciprocity form) also face a more significant criticism (one that cosmopolitans are likely to endorse); namely, explaining why any concern is owed to those unable to contribute (such as the severely disabled). In addition, there have been other attempts to justify the traditional focus on the state as, at least, the historical focal point for considerations of justice, such as Julius’ assertion that different types of interpersonal co-option raise a requirement of justice (Julius 2006, 187-192). However, this too suffers from a major problem; namely, explaining why some types of co-option meet the criteria but others do not and, perhaps more importantly, why only co-option and not pure coercion require justification.

## **2. Justice and Authority**

This challenge to the idea of global justice is set forth by Thomas Nagel (2005). There are two parts to his position: a response to the cosmopolitan thesis and a claim that principles of justice do not apply to international institutions. He affirms, that is, the institutional approach to justice and the answer “no” to the question of whether this has application at the global level. In this section I will outline Nagel’s view.

The challenge cosmopolitans establish for those that restrict the scope of justice to the state is this: if a domestic/international split in moral principles is to be affirmed its defender must show, as Caney puts it, ‘*a reason can be given as to why the two contexts are morally disanalogous*’ (Caney 2005, 66). Nagel attempts to meet this challenge by citing what he believes to be a distinctive feature: authority, by which he means, broadly, an entity that rules

over a population (Nagel 2005, 120-121). Nagel suggests two reasons for thinking the existence of an authority is important.

First, Nagel highlights what we may call Hobbes' dilemma (Nagel 2005, 115-117). Hobbes argued that justice – a set of rules that served everyone's self-interest if conformed to – was possible only with the assurance of widespread conformity. Such coordinated conduct of a large population can be achieved, Hobbes thought, only with a sovereign power. The point also extends to non-egoist theories of justice. All such conceptions rely on maintaining patterns of conduct and this, Nagel maintains, 'requires the external incentive provided by the sovereign' because it only needs a small number of defectors to unravel an entire system (Nagel 2005, 115-116). While domestic states do have such an actor, the lack of a global sovereign, the argument continues, renders global justice an illusion. I shall address the strength of this claim in section four.

In this and the next section I shall focus on the second reason Nagel offers for supposing there is something unique about relations under authority (Nagel 2005, 126-130). He does not think, departing from Hobbes here, that the international sphere is a non-moral zone because he concedes that individuals have some human rights that do not depend on institutional relations. However, Nagel has a restricted view of the duties owed to others to whom we are not related through ties of authority: these consist of humanitarian duties and negative claims (such as the right to bodily integrity). By contrast, socio-economic rights and duties – the positive obligations of justice – are 'fully associative' (Nagel 2005, 127). They are 'something we owe through our shared institutions only to those with whom we stand in a strong political relationship' (Nagel 2005, 121). Why? It is due, Nagel thinks, to the particular involvement of citizen will in relation to authority. Authorities invoke our will by exercising power in our name and commanding our active cooperation in upholding the laws they prescribe. Of significance is the 'complex fact – that we are both putative joint authors of the coercively imposed system, and subject to its norms' (Nagel 2005, 128). That our will is invoked in this manner gives us a certain standing to ask for justification of the enforced rules. Moreover, it places us in a unique relationship with those with whom we share the position. As we are all equally subject to the parameters and requirements of the framework imposed in our collective name we are entitled to demand treatment as an equal. We are entitled to ask why the imposed framework places us in a particular social position and whether this displays consideration equivalent to that shown to our fellow citizens; otherwise our will has been co-opted to serve others. It is not, then, as cosmopolitan theorists assert, inequality *per se* that is objected to; it is imposed frameworks that generate inequalities which reflect unequal treatment. It is, in other words, the system of rights, rules, and distribution that invoke our collective will which requires legitimating in egalitarian form. The positive demands of justice this creates are an issue arising solely in the context of such authority because this puts 'citizens...into a relation that they do not have with the rest of humanity, an institutional relation which must then be evaluated by the special standards of fairness and equality that fill out the content of justice' (Nagel 2005, 120).

In short, the cosmopolitan question is this: What makes the domestic realm morally distinct from the international? The second part of Nagel's response has three components: a normative premise (N); a factual premise (F); and an ensuing conclusion (C). The argument is this:

N: It is only an authority relation that raises the particular positive demands of socio-economic justice.

F: Domestic institutions meet the criteria for issues of justice to arise – i.e. they are authorities in the relevant sense – but international ones do not.

C: There is no justice beyond the state.

With other aims in this paper I do not have space to arbitrate between institutional and pre-institutional views of justice. For what it is worth, I believe some version of Nagel's normative thesis is correct. In the dispute between the two positions on whether justice extends beyond the state though, it is sufficient to accept his normative position for the sake of argument because even on its own terms it fails to substantiate the negative conclusion. As I will now show, Nagel's argument gains its purchase by remaining ambiguous in what he means by N. When his claim is disambiguated Nagel faces a dilemma: either he can maintain that justice does not apply at the global level by making implausible claims about the relationship between justice and authority or he can affirm a plausible account of this relationship but must then accept that it has application to international institutions. On any plausible understanding of N, that is, F is unsustainable and C, therefore, is not valid.

### **3. Justice, Authority, and the World Order**

3.1. In essence, Nagel claims that because authority invokes the will of a governed population it is the initiator of concerns of justice. This, however, is an ambiguous claim and cannot be assessed without some further definition of what qualifies an actor as an authority in the relevant sense, or, perhaps more specifically, without more detail with respect to what constitutes invoking citizen will in the required way.

There are, I think, three conceptions of authority Nagel might be advocating as the necessary condition for issues of justice to arise. First, it might be bodies with authorised power. Perhaps, that is, Nagel thinks that we must be, in a sense, co-authors of the rules that regulate society (at least indirectly by electing the government that devises them) for a collective framework to implicate citizen will in the appropriate sense. Second, Nagel could be referring to actors that assert the right to rule, bodies, that is, that claim they are justified in regulating citizens' lives and that citizens, consequently, have a duty to obey them. The will is implicated insofar as citizens have reason to comply with its dictates. Third, it may be that authority is meant to imply any actor enforcing conformity with the law and rules. The rules established *for* the collective are *of* the collective insofar as they embody the non-voluntary framework in which citizens live their lives and which they must obey. By having no choice but to uphold and conform to them their will is procured.

In this section I will argue that neither of the first two offers a plausible understanding of the connection between justice and authority but that while the third is more palatable employing it to defend N will not allow Nagel to maintain his conclusions on global justice because F is not sustainable on this definition.

3.2. Before I expand upon this argument it is worth pausing briefly to highlight the distinctive nature of the challenge I pose Nagel here. I am not the first author to criticise his views but, as a review of other critiques of his work will now show, the particular formulation of my critique is uniquely able to disarm his position because my view is sensitive to different possible interpretations of Nagel, while other criticisms are wedded to particular readings of his argument.

There are several problems with the recent literature on Nagel, because his views are not always interpreted altogether charitably. A number of authors have characterised Nagel as suggesting that justice is initiated by coercion (cf. Caney 2008, 490; Pevnick 2008, 400). However, as will become clear in what follows (especially section 3.6.) and as noted by some others (cf. Sangiovanni 2007, 14-19), it is not obvious that Nagel equates authority with coercion, and a critique of his position is more forceful to the extent that it does not depend on such a disputed interpretation.

Similarly, other critics who recognise the aforementioned ambiguity in Nagel's position do not consider the alternative readings in a fair light. For example, although Julius (2006) and Sangiovanni (2007) note that Nagel could be interpreted as implying that justice arises in the context of an authority that makes some claim about the right to rule neither of them specify the authority relation in the sense that Nagel means it. Julius thinks it involves an equilibrium point between state claims of legitimacy and citizen acceptance of the law as having moral force (Julius 2006, 181). However, this conception of authority does not give a fundamental role to citizen acceptance. The only issue of relevance is how the authority sees itself. As such, Julius, who often focuses on the attitude of citizens (Julius 2006, 182, 186), misreads Nagel's view. Sangiovanni's interpretation is more promising but he argues that the claim right to rule is best interpreted as those institutions which establish non-voluntary rules (Sangiovanni 2007, 16-17). However, he dismisses too swiftly the idea that Nagel might be making the distinct claim that justice pertains to authorities that take a certain attitude to their citizens.

Perhaps more importantly, other critics have neglected to highlight the ambiguity in Nagel's claim about what constitutes an authority in the relevant sense. Paying attention to this ambiguity is crucial for disarming his position because any critique focused on a particular reading of Nagel (any, in fact, that considers a non-exhaustive list of the possible interpretations of Nagel's account of authority) leaves Nagel easily able to escape by claiming he meant to imply an alternative conception of the justice-authority relation.<sup>2</sup> Those who interpret Nagel as offering a coercion-based account (cf. Caney 2008, 490; Pevnick 2008, 400) suffer this problem because Nagel can claim he meant to imply that justice is initiated by authorities that claim a right to rule or that are authorised by citizen consent. Those who claim that Nagel's view can be cast as either a coercion-based account or one focused on authorities that claim a right to rule (cf. Julius 2006, 181; Abizadeh 351-352) suffer this problem because Nagel can claim he meant to imply authorities that are authorised by citizen consent. Given this difficulty, the most promising strategy for critique, therefore, is to distinguish the different possible interpretations of Nagel's account of authority and show that each is either implausible as a conception of the conditions for justice to apply or fails to deliver the conclusion Nagel affirms because global institutions are authoritative in the appropriate sense.

There are also a number of other ways my comments on Nagel depart from ideas offered in previous literature but these can be addressed in due course. With the major discrepancies in other accounts and the distinct nature of the challenge I pose Nagel highlighted I can now turn to formulating this argument in full.

3.3. Before addressing the conceptions of authority directly consider the following example:

*Pure Tyranny:* The citizens of Country M live under the rule of a tyrant. The laws and policies that exist are those that he commanded. They are designed to keep the tyrant in power (censorship, no elections, the banning of political opposition, state-authorized torture and arbitrary arrest) and serve his interests at the expense of the people (serfdom, education for obedience to hierarchy, and lavish expenditures on monuments in his honour while the people starve). These are enforced by armed forces.

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<sup>2</sup> It should be noted here that not all the existing critiques of Nagel aim to provide a conclusive refutation of his view. Some, such as Sangiovanni (2007), criticise it primarily as a prelude to offering an alternative account of the conditions that initiate justice (and therefore restrict its application to the domestic sphere). This, of course, is merely a matter of having a different aim to that of this article but it does mean that conclusive refutation of Nagel has remained elusive.

Country M is unjust. Few, I think, will dispute that. There is certainly some form of authority so Nagel's broad premise is upheld. Moreover, as we can acknowledge the existence of injustice it is clear the issue of justice is pertinent. Let us explore now which of the above conceptions can sustain this conclusion.

3.4. Some have thought that authority essentially amounts to authorised power.<sup>3</sup> Political institutions are unique, in part, because they employ coercion to enforce their laws but as coercion is typically deemed troublesome it is thought some special justification is required. One position on this is that the coercion of governments is unlike other forms because it is legitimised through citizen agreement. By collectively accepting an authority or a set of rules we give normative weight to the power to enforce. Our will is invoked in a very obvious way here and it may be this necessity for our authorisation that raises an egalitarian concern, possibly on the grounds that being entrusted with such power places a duty upon the authority to act responsibly, something that would entail fair treatment of each subject. Although this is the least emphasised connection between authority and justice Nagel seems to acknowledge there are suggestions it is what he deems of import. 'Justice', he states, 'requires a collectively imposed social framework' (Nagel 2005, 140) and when arguing present global institutions are not an appropriate site for justice his reasoning includes the thought that 'they do not ask for the kind of authorization by individuals that carries with it a responsibility to treat all those individuals in some sense equally' (Nagel 2005, 138).

On this view Nagel's argument would read as follows:

N<sub>1</sub>: It is only citizen-authorised coercion that raises the particular positive demands of socio-economic justice.

F<sub>1</sub>: Domestic institutions meet the criteria for issues of justice to arise – i.e. they are citizen-authorised coercive bodies – but international ones do not.

C<sub>1</sub>: There is no justice beyond the state.

This argument, however, is clearly false because neither premise is persuasive. F<sub>1</sub> is not persuasive because even if it is correct in asserting that global institutions do not meet the criterion it is not correct in claiming that domestic governments do any better, at least not all of them. In order to be consistent, then, the conclusion would need to read that justice applies in some states but not others. This, however, does not defend a generic state-based view of justice and it does not align with our intuitions on where justice is at issue even in the domestic context. Nor does it align with our normative intuitions. The view would suggest that Country M is not a site in which we should be concerned with justice because citizens here have not authorised the tyrant's power (they have not even had the opportunity to do so). This idea of invoking the will, in short, does not align with our intuitions concerning when issues of justice arise.<sup>4</sup>

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<sup>3</sup> It is perhaps worth noting that this is a rather obscure view of authority. For a good review of its difficulties see J. Raz. 1990. Introduction. In *Authority*, ed. J. Raz, 1-19. (Oxford: Basil Blackwell). It is, nonetheless, one view of authority that has a clear connection to invoking citizen will so it is worth discussion here.

<sup>4</sup> It is worth noting that the role of authorisation might have other functions in questions of justice. It might, for instance, be used to test whether a regime is just, for example by asking whether it is a regime to which individuals (à la Locke and Kant) (or possibly hypothetical individuals (à la Rawls)) could consent. We can, that is, state that the reason why the Tyrant's regime is unjust is because citizens or hypothetical individuals could not consent to it. Such questions, however, do not pertain to the issue of what conditions initiate justice. Neither of these ideas, for reasons similar to those made about actual citizen authorisation, can offer plausible explanations of what initiates justice.

3.5. The second conception is essentially that expressed by Raz and is the common idea of ‘authority over persons as centrally involving a right to rule, where that is understood as correlated with an obligation to obey on the part of those subject to the authority’ (Raz 1986, 23). The thought here is that an authority is an actor that claims its ‘utterances are themselves reasons for action’ (Raz 1986, 35) and that we should, we in fact have a duty to, adhere to them not because we will otherwise be forced to or because an authority adds extra weight to existing reasons for action but because they emanate from the particular source (Raz 1990). As such deferent alignment of our will is invoked it is necessary, for the demand to have any weight, that the authority can substantiate its claim to legitimacy and this can only be achieved by showing us equal treatment.<sup>5</sup>

This is much closer to the idea Nagel seems to endorse. ‘Justice applies’, he says, ‘only to a form of organization that claims political legitimacy’, only to frameworks designed for citizens by an actor ‘aspiring to command their acceptance of its authority even when they disagree with the substance of its decisions’ (Nagel 2005, 140). The system’s ‘requirements claim our active cooperation’, and this differs from the manner in which our laws relate to outsiders because the latter are not ‘asked to accept and uphold those laws’ (Nagel 2005, 129-130).

On this view Nagel’s argument would read as follows:

N<sub>2</sub>: It is only the existence of an actor claiming it has a right to govern the actions of citizens and, therefore, that citizens have a duty to comply with its dictates that raises the particular positive demands of socio-economic justice.

F<sub>2</sub>: Domestic institutions meet the criteria for issues of justice to arise – i.e. they are actors that claim a right to rule and a duty of citizen compliance – but international ones do not.

C<sub>2</sub>: There is no justice beyond the state.

There are two problems with this argument. First, it is not clear that F<sub>2</sub> is sustainable. Provided we separate the assertion of the right to govern from the ability to enforce, it might plausibly be suggested that the directives of the World Health Organisation or the International Labour Organisation involve a claim that the institution has the expertise to guide conduct and even that we have some form of duty to obey (particularly in the case of the latter). It certainly cannot be denied that the UN, especially in the instance of human rights, claims such authority.

Perhaps more problematic is the evident falsity of N<sub>2</sub>, which can be seen by returning to the example set forth in 3.3. Here we are confident that concerns of justice are at issue. However, the ‘authority’ does not assert any right to rule or that the people have any putative duty to obey. He makes no claim that he is a legitimate guide for their actions and he makes no suggestion that because his guidance is legitimate citizens have an exclusionary reason to follow his dictates.

Nagel considers a problem of this kind when he addresses the question of colonial rule (Nagel 2005, 129n14). He suggests that issues of justice do arise in such instances once we take ‘a broad interpretation of what it is for a society to be governed in the name of its members’ (Nagel 2005, 129n14). ‘If a colonial or occupying power claims political authority over a population, it purports not to rule by force alone’, Nagel continues, ‘it is providing and enforcing a system of law that those subject to it are expected to uphold as participants, and

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<sup>5</sup> It is worth noting that Raz does not endorse the conclusion that egalitarianism issues from the existence of authorities of this kind (on which see Raz 1986, 217–44). However, others do affirm the connection (see, for instance, Dworkin 2001, 1) and it is evident (based on quotes noted earlier in this paper) that if Nagel does mean to endorse this conception of authority then he does believe the demand for equal concern issues from it.

which is intended to serve their interests' (Nagel 2005, 129n14). It is a little unclear to me what Nagel means here.<sup>6</sup> It could, I think, be one of two things. It could be the claim that colonial powers did make some assertion that they were the legitimate authority of colonised peoples. Simply stated this claim is empirically inaccurate at least in some instances. Alternatively, it could be that colonial powers can be thought to have purported to rule not by force alone if we relax the stringency of the idea. Perhaps, that is, colonial powers could be considered to have implicitly suggested that they were acting in the name of colonised peoples and this is sufficient. I still doubt this empirical claim because there are instances of colonial rule that do not meet it. Whatever the actual history though, the suggestion that justice relies in some way on this claim must still be false because we can imagine scenarios where no such claim is even implicitly made, such as Country M, but where we are sure justice is at issue. In essence, Nagel faces the following problem. He could formulate the suggestion as asserting that we relax the stringency so far that it includes all authorities that command conformity, in which case it amounts to no more than suggesting that questions of justice arise in the context of all non-voluntary institutions (the subject of the following subsection). Alternatively, he could make a distinct claim about some more stringent criteria associated with claiming a right to rule but however this is defined as different from the first possibility it will always leave space for some tyranny scenarios that do not meet it, in which case it will exclude instances where we are sure justice is at issue. Either, then, Nagel can assert  $N_2$  and maintain that issues of justice arise neither in the global order nor in (at least some instances of) tyranny or we can seek a view that accommodates the last of these and test its validity in the present international system. I will proceed on the assumption that most people will feel inclined towards the second of these options.

3.6. The final conception of the relationship between authority and justice I will discuss here is the contention that the latter is initiated by the unique demands made on citizen will by non-voluntary institutions. This is essentially the thought that what makes a political institution unique is that, to all intents and purposes, we have no choice but to obey it or even in whether we continue to live under its rule. Perhaps it is this special circumstance that Nagel thinks gives rise to issues of justice: because we are obliged to accept the rules of an authority and the social position they place us in, we are owed (equal) consideration in their design.

Before assessing this view it is necessary to clarify a number of its components. First, the term non-voluntary here does not imply a situation in which individuals have literally no option to act otherwise but, rather, refers to a state of affairs in which one conforms because non-conformity is unreasonably costly. It follows Olsaretti's suggestion that 'a choice is voluntary if and only if it is not made *because* there is no acceptable alternative' (Olsaretti 2004, 139). In the domestic context this is manifest in the fact that there are penalties for breaking the law and emigration is no more than a Hobson's choice for most. This is not, as some might suggest, an attempt to employ a controversial thesis on what it means for state institutions to be non-voluntary.<sup>7</sup> It is the rationale Rawls relies upon (Rawls 2005, 136, 136n4) and it was the substance of Hume's criticisms of Locke's tacit consent thesis, in which the former points out that obedience to rules aboard a ship on which one did not choose to sail is not voluntary just because one is free to jump into the sea (Hume 1777, 485). Moreover, the alternative – that state institutions are non-voluntary in the sense that there is literally no alternative to conformity – is highly implausible because the possibilities of breaking the law and emigrating do exist (there is even a right to the latter). If justice only

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<sup>6</sup> I thank David Stevens for pushing me to think about Nagel's assertion here in more depth.

<sup>7</sup> I thank Ed Page for pushing me to respond to this challenge and highlighting that the idea of non-voluntariness here required more detail.

arose in the literal absence of such possibilities it would only be at issue in extreme totalitarian states, if at all (given even the strictest regimes cannot actually stop people breaking the law). The view, then, is coherent only on the formulation that a non-voluntary system raises unique concerns because we have no reasonable alternative to conformity.<sup>8</sup>

Second, it must be noted that this is not the claim made by some (cf. Blake 2001) that justice arises in the context of coercion. The view is similar and they are interesting for similar reasons: both involve certain types of impositions on people. However, they are distinct in what types of rules and regulation can be deemed concerns of justice. Coercion focuses on rules backed by the sanction of force. Non-voluntariness focuses on all rules that command conformity by establishing unreasonable alternatives to obedience. This includes but is not exhausted by coercion. The following points, therefore, apply to coercion-based accounts but are more extensive. There are a number of reasons for my focus on non-voluntariness. First, as I will show, Nagel's choice of wording seems to suggest it is non-voluntariness he deems of relevance. Second, it is a more plausible idea about where justice is at issue. This is partly backed by the support for a broader interpretation from key authors, such as Rawls, who focused on 'a public system of rules' that was meant to include the non-coercive institution of the family (Rawls 1999a, 47 and 10 respectively) and Williams, who argues that Rawls' intended focus was on all rules that could be made the property of public knowledge (Williams 1998, 233). It is also backed, following Williams' observations, by the fact that only by interpreting the point in this manner can we properly address issues such as gender justice which is violated most through informal social sanctions (which are not coercive but are non-voluntary in the sense used here).

Third, it is important to note the particular reason for thinking non-voluntariness raises a demand for equal treatment. As I note above, it is of concern because it involves a certain type of imposition on people. In particular, non-voluntary rules establish the framework and the distribution of rights and burdens under which individuals must live their lives. Because they are placed in a particular social position by these rules they are entitled to ask for justification and they are entitled to demand that they are treated equally. Otherwise a system has been imposed upon them that invokes their will for the benefit of others and this violates Kant's famous maxim that people should not be treated as a means. This background justification for the normative significance of non-voluntary institutions is important because it is often overlooked, especially by those who focus only on the coercion-based understanding of the idea. Some attribute the significance of coercion to the manner in which it restricts an individual's options. They then object to the claim that state coercion requires justification because this, unlike normal forms of coercion is actually a facilitator of options, justified by its positive consequences (cf. Pevnick 2008, 401-402). However, this misconstrues the significance of coercion.<sup>9</sup> It is not merely the fact that one's option set is

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<sup>8</sup> It is sometimes objected to this cost-based understanding of voluntariness that an such conception faces a problematic dilemma: either accession to highly attractive offers (such as being paid a billion pounds to tie someone else's shoelaces together) can be deemed non-voluntary because the alternatives are unreasonably costly (which seems to undermine the force of the term's meaning) or the theory needs to set an objective baseline for what counts as an unacceptable alternative (a notoriously controversial task). For what it is worth I think a plausible account of the latter can be given. For the purposes here, however, I believe this is unnecessary. Even without a clear objective line we will be able to recognise circumstances in which we can agree the costs of alternatives are too high, situations in which the other options are unacceptable on any definition of unreasonable. As I think this is the case in what follows I will reserve further definition on this point.

<sup>9</sup> Aside from the following criticism it is also worth noting that to think state coercion is justified by its positive consequences is not altogether plausible because it suffers the objection that if positive consequences are sufficient to justify coercion then almost any scheme of laws and redistribution can be considered just provided it improves on the state of nature.

affected by coercion that is of import. Rather, it is the concern that one's life is structured in a particular way by the rules and this makes demands upon our will. We are asked to live with the social situation it places us in and uphold the laws even if we disagree with them. Because we are asked to bear this imposition we are entitled to demand equal justification. This is true regardless of the consequences of such imposition. The same mistake is made by Sangiovanni (2007, 13–14) with reference to non-voluntary rules. Sangiovanni thinks non-voluntary systems are necessary to preserve our autonomy and because of this beneficial consequence they do not require the same justification as coercion, but this is clearly false. If one has no reasonable exit option one must conform to rules and accept the social position in which they place her. In this sense, her will is still invoked by them and justification is still required.

With these details clarified, we can now summarise Nagel's argument on this view as follows:

N<sub>3</sub>: It is only non-voluntary institutions that raise the particular positive demands of socio-economic justice.

F<sub>3</sub>: Domestic institutions meet the criteria for issues of justice to arise – i.e. they are non-voluntary institutions – but international ones do not.

C<sub>3</sub>: There is no justice beyond the state.

This avoids the problems of aforementioned conceptions. In Country M the tyrant's laws must be obeyed even though he is not authorised by the people and he does not claim a right to rule. We think his rules are unjust but the first step towards validating our opinion is verifying that matters of justice are at issue. The value of this conception is that it can achieve just that. N<sub>3</sub>, in other words, is plausible.

Moreover, F<sub>3</sub>, under the specific definition of non-voluntariness adopted here, seems to correlate with some of Nagel's assertions. Differentiating from minimum moral concerns, he states 'political institutions are different because adherence to them is not voluntary' and '[a]n institution that one has no choice about joining must offer terms of membership that meet a higher standard' (Nagel 2005, 133). Arbitrary domestic inequalities and society's laws are of special significance because we are bound 'without being given a choice' (Nagel 2005, 129). International institutions are different, Nagel continues, because, although they set forth rules, these agreements are just mutual self-interest bargains, controlled and financed by member states, attended by delegates representing separate states seeking to advance their own interests, and 'mere economic interaction does not trigger the heightened standards of socioeconomic justice' (Nagel 2005, 138).

Nagel's defence of F<sub>3</sub>, however, is unconvincing because there are international institutions, such as the World Trade Organisation (WTO), that are also non-voluntary.<sup>10</sup> This institution is attended by national delegates (amongst others) and its inception might

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<sup>10</sup> A similar point to this is acknowledged by Sangiovanni (2007, 18). However, Sangiovanni does very little beyond stating that the present international system is non-voluntary. While I agree with his point it will hardly suffice to refute Nagel's thought that the present international system is voluntary. It merely begs the question. Here I will expand upon and prove the claim. It is also worth noting that as Sangiovanni says nothing to challenge the non-voluntariness conception normatively it is somewhat perplexing that he abandons it. To be sure, employing it does not allow him to draw his state-centric views about justice but this alone is no reason to discard the conception. If the view is normatively plausible then the conclusions that follow from it are those we should accept. Simply highlighting that as a view it leads to demands of global justice hardly qualifies as an objection to the view unless one assumes the conclusion that *extra rempublicum nulla justitia*. It is possible to deflect this criticism to a certain extent by providing a plausible alternative view that does restrict the scope of justice to the domestic realm. However, as noted above and as argued by Abizadeh (2008, 325-341, in particular 336-337), Sangiovanni fails to do even this.

have relied on agreements between individual nations but it would be a mistake to think that it is now constituted by nothing more than a set of private contracts, established and easily revocable at state discretion. It now has a package of regulations and procedures that members must follow. To be sure, there is a formal right to withdraw but there is no genuine option to do so. The stigma associated with withdrawing and likely consequences for other areas of a state's political and economic life would be far too high for us to consider this an 'acceptable alternative'. This is evidenced by how much non-members are willing to sacrifice to join and by noting just how much relies on WTO membership in the present world. Given that members view each other as 'most favoured nations' any state that chooses to withdraw will lose its right to be treated non-discriminatorily which will mean not only an absolute decline in terms, and, therefore, gains, of trade but also a relative disadvantage, thus increasing the likelihood of losing trading agreements to others. Even aside from these direct costs, many, even the very wealthiest, have economies so ordered through WTO arrangements that this would cause structural chaos. Moreover, as it is so difficult to acquire International Monetary Fund and World Bank aid packages, or, for that matter, to gain much international credibility at all, without WTO affiliation a country can be confident of very little help with any troubles it faces. Its very existence, in other words, makes the option of being a non-member extremely costly; a point perhaps conclusively proven by the fact that despite continual complaints about WTO rules no state has ever even attempted to withdraw. It is hard to deny that membership is valuable and that there might be good reason to join voluntarily but this is true of many states. More importantly, the cost of non-membership is dramatic and if unacceptable costs are sufficient to deem domestic residence non-voluntary then inclusion in the world trade system qualifies too. In short, if what is important about authorities in matters of justice is that they establish non-voluntary frameworks then the condition is one that exists at the global level.

There are three possible objections I can envisage to this. First, it could be suggested that I have exaggerated the non-voluntary nature of the WTO. That some states remain non-members shows, it could be argued, that the costs of being unattached are not sufficiently high to deem the option an unacceptable alternative. I do not think this objection succeeds, however, because the presence of non-conformers cannot substantiate this conclusion. In fact, they might be the exceptions that prove the rule. Let us examine this. To begin we can note that those that remain outside the system do suffer extreme consequences. North Korea is, for this as well as other reasons, in political exile while Turkmenistan's economy is in dire straits (with unemployment and poverty figures both over 50%). These are costs which can surely be deemed excessive. If either country had succumbed to such pressures (or does so in the future) it would not be unreasonable to suggest that they had no genuine alternative. Even while they remain in dissent it would not be untenable to label their defiance as enduring costs greater than we would expect most to be able to bear. This would be sufficient then to maintain that those that remain in the system have no reasonable alternative to conformity and that their situation is non-voluntary in the relevant sense. There is nothing incoherent about this. There are people who violate laws and people who emigrate but this does not lead us to deem the state legal system is voluntary. Even when there is a full legal right of exit the idea still has application. Women within a legally gender neutral state who become housewives due to extreme social pressure are not usually thought to be acting voluntarily even if there are some who break the norm. For similar reasons, the existence of non-members should not lead us to think that alternatives to WTO membership are

reasonable or, accordingly, question the idea that it is a non-voluntary institution and a site of justice.<sup>11</sup>

Second, it could be argued that although the WTO is a non-voluntary institution it is not analogous to the domestic state because it regulates only trade, whereas the latter establishes non-voluntary rules for many key areas of life.<sup>12</sup> This challenge, however, suffers a number of problems. If it is the thought that only trade is regulated in the international sphere then it ignores the plethora of global organisations that preside over at least as many areas of life as the domestic state. Alternatively then, it could be the thought that only trade is regulated by a non-voluntary institution and this is insufficient for issues of justice to arise. This idea would need supplementing by the (I think dubious) empirical claims that the WTO is the only non-voluntary international organisation and that it is an institution completely independent of others in the world order such that it should not be seen as the conformity-inducing branch of a broader scheme (because otherwise it would be hard to see the moral distinction between this and a government with an independent judiciary). However, let us set this problem aside and focus on the normative claim. This would appear to be the idea that the quantity of life-aspects regulated by an institution must be over a certain threshold for justice to be at issue, a concern perhaps motivated by the thought that institutions must have a significant impact for such matters to arise. This, however, is implausible, partly because it seems arbitrary, partly because the idea that the significance of impact must be beyond a certain level for it to raise moral concerns has been well refuted (Glover 1986), and partly because any qualification on the types of non-voluntary institutions that raise issues of justice will exclude scenarios in which we are certain justice is pertinent. If the Country M's tyrant relinquished control over education would he thereby be excused the charge of injustice?

Third, it is possible to suggest that the non-voluntariness of international institutions is not sufficient for issues of justice to arise between individuals worldwide because justice is only a concern between the individuals who are non-voluntarily implicated in the framework. For all that the WTO might be non-voluntary it is still only a structure for national representatives; it is not the collective framework of individuals. I am not sure how much this would show because even if the reasoning is valid it would still suggest there should be some concerns of justice within the 'society of states', which is more than Nagel wishes to accept. However, I do not think it can even achieve this much because we do not have any more genuine option to refuse conformity to the compacts agreed by our representatives than we do domestic laws.<sup>13</sup> Moreover, it is not merely that we are connected here through a third party. The laws passed down from the international system implicate us directly in a non-voluntary way. This is so in two respects. First, they are the product of a system which binds our governments who in turn bind us. That we have delegates interacting with the higher tier on our behalf does not sever the tie to our will because in this system these delegates merely become intermediaries through whom the rules are administered. There is, in other words, a transitive line of non-voluntary relationships between us and the global order: B (the state) is non-voluntarily bound by A (the global order); C (the individual) is non-voluntarily bound by B (the state); therefore C (the individual) is non-voluntarily bound by A (the global order).

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<sup>11</sup> One other possible consequence of acknowledging non-member states is that the argument above only suffices to show that there are concerns of justice between those involved in the WTO system and not those beyond. It might be necessary to accept this claim but it should be noted that even doing so will only restrict the scope of the claim to include fourteen less countries and two provinces. It should also be highlighted that this restriction would not apply to some of the other pillars of the international system, such as the UN. If we were to perceive the array of global institutions as one system (a basic structure with a number of parts) then there is no country that is not involved.

<sup>12</sup> I thank Victor Tadros for bringing this concern to my attention.

<sup>13</sup> This point I believe follows a line of reasoning similar to that of J. Cohen and C. Sabel. 2006. Extra Republicam Nulla Justitia? *Philosophy and Public Affairs* 34: 2: 147-175, pp. 166-168

Second, and perhaps more importantly, we are in one sense less free to extract ourselves from it. Given WTO laws pervade almost the entire planet, even if we could voluntarily leave our present country of residence we would be unlikely to escape them. We have almost literally no choice but to live under its rule. In short, if the arrangements bind us in the same non-voluntary way, both through the conformity of an authority which we must obey and directly, then they implicate our will by commanding conformity and they therefore raise issues of justice.

Such then is Nagel's dilemma. He can affirm  $N_1$  or  $N_2$  and face the charge that his understanding of the relationship between justice and authority is implausible. Alternatively he can accept the more plausible account given in  $N_3$  but he is then forced to accept that  $C_3$  is false because  $F_3$  is unsustainable. In other words, on any plausible reading of the relationship between authority and justice we must admit the latter applies at the global level.

#### 4. Justice, Enforcement, and a Coercive World Order

The point proffered in section three raises doubts over the second part of Nagel's objection to global justice, but it may not be sufficient to refute his views for even with the engagement of citizen will it is possible the international system does not have other assets necessary for the issue to take hold. It may still remain hindered by Hobbes' Dilemma. One could, that is, accept that the global order is unjust but argue, nonetheless, that without a sufficiently developed mechanism for guaranteeing obedience to the rules justice cannot be realised. This argument would read as follows:

$N_4$ : Justice requires a method of collective enforcement to provide assurance of widespread conformity.

$F_4$ : The domestic sovereign state can fulfil this role but present international institutions are not sufficiently powerful to do the same.

$C_4$ : Global justice, even if a pertinent question, is a chimera.

I am unsure whether  $N_4$  is sustainable. It is worth noting that states do not rely on coercive power alone to secure obedience and there are many examples of long-term cooperation achieved without force (consider the UK National Blood Service). As Caney notes, moreover, there are also alternative means of ensuring conformity (Caney 2005, 136-139). On the other hand, it is certainly difficult to resist Hobbes' thought because we have so often seen cooperation (especially in the name of justice) unravel due to the defection of only a few (consider the failures of the Kyoto Protocol). On many occasions no amount of noble motives on the part of some can bypass the obstinacy of others. This is what Ralph found in *Lord of the Flies*.

However, we do not need to solve this puzzle because the above sequence fails regardless of  $N_4$ 's validity. This is so for two reasons. First, even if we accept both the normative and factual premises  $C_4$  does not follow. This can be shown by simply stating a possible alternative conclusion, such as  $C_4'$ : we should give our global institutions the power to enforce conformity. That there is no less logical consistency in  $N_4$ - $F_4$ - $C_4'$  shows that  $C_4$  is not a valid inference of the argument. If anything the latter seems the less obvious conclusion.

Second, even aside from conceptual errors, the validity of the argument is questionable because  $F_4$  – the claim that there is no actor beyond the state with an enforcement mechanism – is empirically dubious. UN rules, for example, are backed by the legal recognition that sovereignty is violable if a state fails to meet its obligations. To be sure, the system is not perfect. The Security Council is renowned for its deficiencies and

there are numerous cases in which the system has failed to uphold the conventions. However, miscarriages of justice are not the same as there being no authority to enforce it. Not all domestic crimes are redressed (or even solved) but this does not imply the state should not be considered a coercive authority. In fact, that there was such outcry about the ineffectiveness of the Security Council in the delay over humanitarian intervention in, for instance, Rwanda, in part goes to show that the system is deemed to have some form of governance remit and is expected to enforce the rules.

Perhaps this example will not convince some. Perhaps it will be argued that although the UN does have some enforcement criteria it does not have any enforcement capacity (its military forces are nothing more than assemblages of national armies at state discretion) and it can only “keep order” over weak states (not force powerful states to respect human rights (cf. Guantanamo Bay) or prevent unauthorised exercises of power (cf. the invasion of Iraq)). I am not convinced by these objections, not least because anomalies also arise in domestic states (such as riots or forms of political disobedience) and these do not raise doubt over the enduring capacity of the state system to enforce the law. Regardless, perhaps a more compelling example can be offered.

On its gateway page it is stated that ‘the WTO’s procedure for resolving trade quarrels under the Dispute Settlement Understanding [(DSU)] is vital for enforcing the rules’ (WTO 2008). At this branch of the institution states can bring each other to account by filing reports against one another for not upholding WTO trade agreements. If the accused is found guilty it faces penalties for its transgressions. For example, the EC has faced heavy sanctions for its banana importation policy and its ban on hormone-fed beef (see WTO DS27 and WTO DS26 respectively). It has been widely used, seeing investigations of 181 disputes by July 2002, and it is worth noting that of the conclusions of these cases there has been ‘a successful implementation rate of 83%’ (Davey 2005, 46-47). This surely qualifies the WTO as a body with an enforcement mechanism.

There are two objections I can envisage to this point. First, it might be claimed that this enforcement mechanism still remains a system implemented by the actions of states through interactional means of redress, not one involving higher powers. After all, the WTO notes that ‘ultimate responsibility for settling disputes...lies with member governments’ (WTO 2008). This poses little challenge though, because even if we accept that penalties within the system are enacted with one-to-one transactions it would not follow that they are not regulated by a higher authority. One could, in fact, imagine, in libertarian society for instance, a system of domestic law where the only major function of an arbitrating authority was to direct private actor disputes and recompense. Moreover, no matter how the WTO describes its operations it cannot be denied that final jurisdiction on disputes is the property of the institution’s panel.

Second, one might claim that the DSU is merely a tool of the wealthy to enforce rulings on poorer states. I do not think this claim can be substantiated because although there are known complications with the DSU system for poorer states, some developing countries (notably India and Brazil) have made regular and effective use of it (Davey 2005, 40-45) and there have even been examples of David-Goliath type victories (cf. WTO DS285). Regardless, even if this objection could be substantiated it would only reinforce my argument: that injustice can be imposed upon some (the essential complaint) shows that the system has the capacity to enforce conformity, and, therefore, that it can do so fairly if so directed.

In short, even accepting  $N_4$  we have good reason to doubt  $F_4$  and even accepting  $N_4$  and  $F_4$  we have good reason to doubt  $C_4$ . We can only conclude, therefore, either that the world order has the capacities necessary to enforce justice or that we should enable it such. On neither account is there reason to believe that the idea of global justice lacks application.

## Conclusion

Nagel argues that global justice is not pertinent in the present world because it is an issue only raised by a unique authority relation and possible only in the presence of an enforcement mechanism. The moral foundations of his view will be disputed by some. Such objection, however, may not even be necessary. In this paper I have shown that even if we accept his broad normative claim his conclusions are invalid because the two necessary conditions he cites for issues of justice to arise exist in the contemporary world order. We have, that is, a global system sufficiently developed to raise and (at least potentially) administer questions of justice even on an institutional conception.

## Acknowledgments

I thank audiences at the Warwick Critical and International Studies Working Group and the Warwick Centre for Ethics, Law and Public Affairs for their comments on earlier drafts of this paper, and in particular Dominic Kelly, Victor Tadros and Edward Page for their inputs. I am especially grateful to Matthew Clayton for extensive feedback and discussion in the development of this paper. I also thank my two referees at the *Journal of Global Ethics*, David Stevens and Ronald Tinnevelt, for their suggestions and comments on how it needed improving.

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