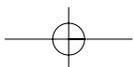
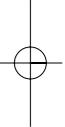
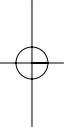


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## Extra Rempublicam Nulla Justitia?

In a world of rivalrous states whose peoples are connected ever more directly by globalization, Thomas Nagel has forcefully reasserted a classical thesis of early modern political thought: outside the state, Nagel argues, there is no justice.<sup>1</sup> From this it follows, given the absence of a global state, that there can be no global justice.<sup>2</sup>

Apart from this striking conclusion, however, little in Nagel's argument echoes the Hobbesian variant of the early modern tradition to which he appeals. Even in our globally stateless condition, Nagel assumes, a humanitarian morality, including protections of basic, universal human rights, imposes obligations across borders, although these obligations fall short of requirements of justice. He acknowledges, too, the growing importance to the lives of individuals the world over of global forms of cooperation organized by specialized institutions that

A reply to Thomas Nagel, "The Problem of Global Justice," *Philosophy & Public Affairs* 33 (2005): 113–47. We have placed page references to Nagel's article in the text. The authors thank Josiah Ober and Denis Feeney for assistance with the title. We are grateful for comments on an earlier draft from Suzanne Berger, John Ferejohn, Barbara Fried, Robert Keohane, Gerald Neuman, Josiah Ober, Mathias Risse, Debra Satz, Joanne Scott, William Simon, Jonathan Zeitlin, and the Editors of *Philosophy & Public Affairs*.

1. Nagel notes the parallels between his conclusions and those in Michael Blake's important article, "Distributive Justice, State Coercion and Autonomy," *Philosophy & Public Affairs* 30 (2001): 257–96. But there are also large philosophical differences. Although Blake, like Nagel, thinks that state boundaries make a large difference to moral requirements, in particular, that concerns about "relative deprivation" are confined to relations between co-citizens, Blake sees domestic and global political moralities as resulting from the application of liberal ideas of autonomy and "egalitarian justice" to different institutional settings. So Blake is not a skeptic about global justice and appears to embrace a comprehensive moral liberalism rather than the kind of political conception that Nagel endorses.

2. At least none that cannot be reduced to the domestic justice of the separate parts.

commonly operate with substantial independence from their initial sovereign authors.<sup>3</sup>

Despite this assumption and acknowledgment, Nagel argues that a normative order beyond humanitarianism's moral minimum emerges only within states whose central authority coercively enforces rules made in the name of everyone subject to those rules: only, that is, when individuals are both subjects in law's empire and citizens in law's republic. More particularly, Nagel traces the political morality of egalitarian justice to this co-authorship of coercive law, and correspondingly confines its exacting requirements to the circle of co-authors. Thus the arresting and puzzling novelty of Nagel's argument, which:

- (1) Affirms, against Hobbes and his realist descendants, that the world outside the state is a normative order;
- (2) Endorses, in constructivist spirit, the view that norms of political morality need to be political in the generic sense of being sensitive to the circumstances of human engagement, the "different cases or types of relation" (p. 123), for which they are formulated,<sup>4</sup> and that changed relations among people can therefore generate "a new moral situation" (p. 133) with new normative requirements;
- (3) Acknowledges that the global space outside the state, the space of global politics, is incomparably richer in interdependence, cooperation, rule making, regimes, institutions, debate, social movements, and political contest than in Hobbes's day;
- (4) But concludes that normative requirements beyond humanitarianism only emerge with the state.

We endorse premises (1) through (3), but reject Nagel's "strong statist" conclusion (4). We will start by explaining the force of strong statism by distinguishing it from several alternative normative conceptions that are arguably suited to what we will be calling "the conditions of global

3. This assumption is suggested by Nagel's discussion at pp. 136–43. For a useful if slightly dated description of the organizational terrain, see Cheryl Shanks, Harold K. Jacobson, Jeffrey H. Kaplan, "Inertia and Change in the Constellation of International Governmental Organizations," *International Organization* 50 (1996): 593–627. Note in particular that 70 percent of intergovernmental organizations (IGOs) are "emanations," that is, IGOs created by other IGOs (p. 594).

4. He cites approvingly the generic idea that, as Rawls put it, "the correct regulative principle for a thing depends on the nature of that thing" (p. 122).

politics,” the features that seem especially salient for reflection on norms of justice that apply beyond the state (Section I). We then discuss Nagel’s defense of strong statism, and explain why we are unpersuaded (Section II). Finally, we sketch the conditions of global politics, and explain why we think that they generate new norms, both procedural and substantive (Section III).

Our criticisms are not founded on a commitment, associated with some formulations of cosmopolitanism, to a globe circling, egalitarian-democratic political morality. Indeed, part of our point is that discussion of global justice should move past the intellectually and politically limiting debate between cosmopolitanism and its nationalist or statist antithesis. Instead we argue that a political morality can be political in a capacious sense, that is, sensitive to the circumstances and associative conditions, to the “different cases or types of relation” for which it is formulated, without being statist. We propose in particular that reflection on the political morality suited to global politics is aided by attending to the general class of justice-generating political relations of which the relation of co-citizen is one particular (and important) case. However intimate the connection may have been between justice and the state in the world that Hobbes (as well as Rousseau, Hegel, Mill, and Morgenthau) occupied; and whatever we may think of the victory of modern accounts of sovereignty and justice over a tradition of “associative justice” (*Genossenschaftsrecht*), which rooted norms in a variety of forms of human association not confined to the state,<sup>5</sup> it is now a mistake to assign the state so fundamental a role in political morality.

In making the case that global politics provides a terrain of moral-political argument, we will suggest that an idea of inclusion, both procedural and substantive, is central to the domain of global justice. Conceptions of global justice offer accounts of human rights, standards of fair governance, and norms of fair distributions (including access to such basic goods as health and education). Competing conceptions can be understood, then, as advancing alternative accounts of what inclusion demands: of the kind of respect and concern that is owed by the variety of agencies, organizations, and institutions (including states) that operate on the terrain of global politics. One such conception of global

5. See Otto von Gierke, *Natural Law and the Theory of Society* (Boston: Beacon Press, 1960); ed. Paul Hirst, *The Pluralist Theory of the State: Selected Writings of G. D. Cole, J. N. Figgis, and H. J. Laski* (New York: Routledge, 1990).

justice may be correct, but we should of course expect that alternative conceptions will always compete for attention. In any case, our aim here is neither to defend any particular interpretation of inclusion or of global justice, nor even to evaluate political philosophy's aptitude for working out a compelling account of global justice. The debate about what justice demands beyond the state does not belong only to political philosophy; it is already part of the world of global politics. Nagel turns philosophical argument against that debate. "Fighting philosophy with philosophy," we write to defend the debate.<sup>6</sup>

#### I. STATISM

Nagel assigns special normative importance to the state. That importance can be understood in at least two distinct ways, however, one much stronger than the other, and Nagel defends not only the weaker claim but the stronger one as well:<sup>7</sup>

*Weak Statism:* The existence of a state is necessary and sufficient to trigger norms of egalitarian justice, where those norms are understood to require, generally speaking, that individuals be given equal consideration in collective decisions. A mark of egalitarianism, thus understood, is a concern with relative well-being, expressed in the requirement that inequalities in well-being, at least inequalities that trace to collective decisions about rules, be given an especially compelling justification.

*Strong Statism:* The existence of a state is necessary and sufficient to trigger *any* norms beyond humanitarianism's moral minimum.

Strong Statism is a strong claim. To see just how strong distinguish a practical interpretation of it, which Nagel suggests, from the philosoph-

6. The phrase comes from John Rawls's unpublished lectures on Bishop Butler.

7. All combinations of affirmation and rejection of Strong and Weak Statism are possible. Cosmopolitans, who think that the state does not make a difference to the requirements of justice, reject both. Nagel, who thinks that the existence of a state changes the normative terrain by shifting us from humanitarianism to egalitarianism, accepts both. Classical liberals, who reject the claim that the state triggers egalitarianism and thus reject Weak Statism, might accept Strong Statism. We suspect that many egalitarians accept Weak Statism while believing, against the Strong Statist, that requirements of justice shift with increased interdependence or cooperation.

ical interpretation that he defends. Nagel's skepticism about global justice sometimes reads as a counsel of patience. Today's inchoate global institutions, established to provide public goods, may, he suggests, eventually mature into some approximation of a global state, which can then be commandeered for nobler purposes. But reason's magic takes time. For now the powerful should be given a relatively free hand to create and shape global arrangements, and people who care about global justice must resist the temptation to impose premature demands for justice on still-fragile supranational institutions. Those efforts—say, to incorporate strong labor or human rights standards such as a right to freedom of association into the “international standards” deployed by the World Trade Organization (WTO) in assessing trade barriers—are likely to obstruct the construction of stronger institutions and thus to be morally counterproductive.<sup>8</sup> With global justice as with love: you just have to wait.

But Nagel's Strong Statism is first and foremost philosophically ambitious, not practically prudent: absent a global state, he says, we cannot “even form an intelligible ideal of global justice.” Strong Statism is founded on the thesis that norms of justice only apply to people who stand to one another in certain relations: in particular, as members of a single state, subject to the same coercively enforced rules, and presented as sharing responsibility for those rules. Outside a state, in the absence of those norm-generating relations, justice simply does not impose determinate requirements for anyone to (fail to) fulfill.<sup>9</sup> Appeals to global

8. Article 2.4 of the WTO's Technical Barriers to Trade (TBT) Agreement requires that member states use “international standards” as the “basis” for technical regulations. Labor and human rights standards are not now understood to be among the relevant “international standards.”

9. Nagel asserts in effect that attributions of justice presuppose a particular relationship. Thus the injunction to act justly is best understood as, roughly, the following injunction: act toward those persons to whom you stand in a certain relation, namely that of common citizenship, in a way that is appropriate to that relation. So the injunction to act justly is like the injunction to be a good mother, which requires that you act toward those persons *to whom you stand in the relation mother-of* in a way that is appropriate to that relation. The relational character of the norm is simply closer to the surface in the latter case. It is different with the injunction to be maternal, which says that you should act toward people in a way that is appropriate to the relation of a mother to child. Although you can in principle be maternal toward anyone (even irritated strangers), you can only be a good mother with your children. Similarly, Nagel's point is that you can be humane or charitable toward any person, but only just to those to whom you bear the relation of *co-citizenship*.

justice are, then, not pragmatically premature demands on emerging institutions but a kind of high-minded badgering, or, even worse, an effort to protect the powerful and advantaged by keeping the less powerful and less advantaged out of the club until they meet impossibly demanding conditions.

To clarify this ambitious thesis, we make four background points, each of which will play a role in our criticism of Strong Statism.

### A. Content

Weak Statism asserts that we are required, as a matter of justice, to give equal consideration—“equal concern, equal respect, equal opportunity” (p. 125)—to others when and only when we and those others are members of a common state. It conflicts with “monistic” theories of morality—utilitarianism is the classical example, but cosmopolitan egalitarianism may be another—according to which a single set of fundamental norms of justice always applies to individuals, even if the implications of those norms varies with circumstance.<sup>10</sup> But it is essential to understanding the force of the designation “statism” to see that Weak Statism belongs to the family of nonmonistic views, which includes nonstatist members, as well as the Strong Statism we discuss later. All members of the family are political in accepting that we owe equal consideration only when certain social or political background

10. We say that cosmopolitan egalitarianism “may be” monistic because some cosmopolitans think that egalitarian principles apply globally *because* of the nature of global politics, not irrespective of that nature. Thus one of Charles Beitz’s main arguments in his *Political Theory and International Relations* (Princeton, N.J.: Princeton University Press, 1979) is that the presence of a global “basic structure” triggers a global difference principle (see especially p. 151). Nagel offers Thomas Pogge as an example of a cosmopolitan. But some of Pogge’s work depends on the assertion that there are coercive global institutions that trigger norms more demanding than those that would hold even in the absence of such institutions. And some of what he writes about global justice is not founded on egalitarianism, but on the relatively weak *normative* premise that we are morally required not to harm others, together with strong (and highly contentious) *positive* claims about the extent to which current global arrangements, including the rights to command resources that are associated with sovereignty, harm people who are badly off. See his *World Poverty and Human Rights* (Cambridge: Blackwell Publishing, Inc., 2002). It might be argued that Pogge’s use of the harm principle depends on a strongly egalitarian baseline relative to which worsenings count as harms. Absent such an argument, however, it is not clear that Pogge counts as a cosmopolitan, on Nagel’s understanding.

conditions are in place, but the nonstatist relatives reject the idea that a state with coercive authority is among the relevant conditions.

Consider three such views:

*Weak Institutionalism*: the existence of an institution with responsibilities for distributing a particular good (education, or health, or decent wages and working conditions, for example) is necessary and sufficient to require that institution to meet the obligation of equal concern in fulfilling its responsibility;<sup>11</sup>

*Weak Cooperativism*: the existence of a consequential scheme of organized, mutually beneficial cooperation under rules (a regime)<sup>12</sup> is necessary and sufficient to trigger equal concern.<sup>13</sup>

*Weak Interdependence*: equal concern is owed whenever the fate of people in one place depends substantially on the collective decisions taken by people in another place, and the fate of people in that latter place depends substantially on the collective decisions of people in the former.

Suppose we understand cosmopolitanism as requiring equal concern, equal respect, equal opportunity regardless of background conditions. Then doubts about cosmopolitanism do not select between Weak Statism and any of these other members of the noncosmopolitan family.

But our interest here is in Strong Statism, and we report on the weak branch of the noncosmopolitan family only to highlight the distance from Weak Statism to its Strong cousin. Notice that each of the three views just stated has a strong analog (Strong Institutionalism, Strong

11. See Thomas M. Scanlon, "When Does Equality Matter?" (unpublished), especially his discussion of institutional agents with responsibilities for distributing a particular good: "In at least some cases, if an agency is obligated to deliver some good to various beneficiaries, it must, absent special justification, deliver it in equal measure to all of them" (p. 12).

12. When we say that the rules are consequential, we mean both that they increase level of cooperation over what it would otherwise be, and that the increased level of cooperation has normatively relevant consequences for social welfare or for the protection of rights. Whether or not regimes are in this sense consequential remains a matter of live controversy. On the case of the trade regime, see Judith Goldstein, Douglas Rivers, and Michael Tomz, "Institutions in International Relations: Understanding the Effects of GATT and the WTO on World Trade" (unpublished paper, March 2005).

13. Beitz, *Political Theory and International Relations*, suggests a view of this kind.

Cooperativism, Strong Interdependence). What defines each of these analogs is that some condition less demanding than common political authority suffices to trigger norms more demanding than humanitarianism but less demanding than egalitarianism, with its requirement of “equal concern, equal status, and equal opportunity.”

Strong Cooperativism, for example, says that cooperation in the shadow of a consequential scheme of rules, with significant effects on conduct and well-being, suffices to trigger norms of justice more demanding than humanitarianism, and that nothing less involving suffices. One variant might include the claim that it is unjust when, in a world that operates in the shadow of rule-making and cooperating-organizing trade and financial regimes, the circumstances of people who are badly off are not improving at all, although the circumstances of others who are vastly better off are improving a great deal. The focus of concern is not distinctively egalitarian: not that some people are better off than others, nor that some improvements are larger than others; nor is there any assumption that all inequality requires an especially compelling justification. Instead, on this variant of Strong Cooperativism, it is unjust when—against the background of a cooperation-organizing regime that makes rules but could have made different rules, where the different rules would have produced differences in conduct and well-being—the very urgent needs of some people are going unaddressed, although they could be addressed without large costs to others, whose circumstances are improving a great deal.<sup>14</sup> More simply stated, people who are badly off are not getting an acceptable share, decent opportunities, or reasonable improvements, on any conception of acceptable, decent, or reasonable. The concern expressed by this variant of Strong Cooperativism is not with a failure to treat them as equals, owed equal concern, status, and opportunity, but with *inclusion*. Some people are treated by consequential rule-making processes as if, beyond the humanitarian minimum owed even in the absence of any cooperation, they count for nothing. Whatever the more precise content of inclusion (and the content varies across cooperative relations), the norm of inclusion (the requirement of treating people as members, whose good

14. The reference to “urgency” and “large costs to others” does not make the concern comparative or focus attention on relative well-being, any more than a humanitarian duty of rescue is made comparative as soon as it says something about the urgency of the need for rescue and the burdens of meeting that need.

counts for something) requires more than humanitarianism but need not be egalitarian.<sup>15</sup>

Cosmopolitanism, understood as egalitarianism regardless of background conditions, appears to be Nagel's principal target, but in arguing against it, he rejects all of these Strong alternatives as well. For him, the state is the unique normative trigger: unique in establishing the conditions not only for egalitarianism, but also for the validity of any norms of justice more demanding than humanitarianism.

### *B. Specifically Normative*

Strong Statism has affinities with the normatively skeptical variant of realism that once dominated the study of international politics.<sup>16</sup> But it differs from such realism in two ways. First, Strong Statism holds that humanitarian morality is binding even in the absence of a state. Hence global politics is never the moral vacuum, with states moved only by national interest, that realism (an ultra-Strong Statism) takes it to be.

A second, related difference is more important. Strong Statism is meant to be neutral in the debate between realists and their institutionalist and constructivist opponents about the empirical importance of international regimes and more formal institutions in organizing and shaping cooperation in areas of trade, finance, environment, labor standards, human rights, and security, among others.<sup>17</sup> In particular, Strong Statism

15. Consider Rawls's idea of a decent hierarchical society. Such a society is not founded on an idea of equal concern and respect, but is guided by a common-good conception of justice that requires attention to the good of members beyond what humanitarian concern already commands. We are of course not proposing the idea of a decent hierarchical society as a model of global justice, but observing instead that the notion of a common-good conception of justice provides one way to understand a normative terrain that is neither basic humanitarianism nor egalitarianism. See John Rawls, *Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999).

16. See Hans Morgenthau, *Politics Among Nations* (New York, McGraw-Hill, 1985); Kenneth Waltz, *The Theory of International Politics* (Boston: McGraw-Hill, 1979); John Mearsheimer, *The Tragedy of Great Power Politics* (New York: Norton, 2003).

17. For the germinal argument on the importance of regimes in international political economy, see Robert Keohane. *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton, N.J.: Princeton University Press, 1984). For a crisp statement of realist skepticism, see John Mearsheimer, "The False Promise of International Institutions," *International Security* 19 (1994 / 1995): 5–49. Mearsheimer is especially skeptical about the capacity of international institutions to reduce threats of violent conflict. But because military power depends on resources, states have to be concerned about the

is not founded on the empirical-realist claim that the underlying distribution of power among states explains everything worth explaining in global politics.<sup>18</sup> It accepts that, or at least is meant to be consistent with the claim that, organized cooperation at the global level is positively consequential: for example, that trade regimes do not simply reflect and codify the underlying distribution of power across states, that they promote continuing mutual adjustment among states, and that such adjustment can increase trade flows and improve social welfare. Although acknowledging such possibilities, Strong Statism affirms a sharp and *specifically normative discontinuity* between a world without an overarching coercive authority—the world of humanitarian morality—and a world with such an authority—the world of egalitarian political morality.

### C. Generality

Although Nagel's case for Strong Statism focuses exclusively on norms of "socioeconomic justice" (p. 114), the implications are completely general and apply with equal force to political-process norms, which apply to the governance of supranational arrangements. Thus if we assume that justice requires a state, and put aside the implausible and unmotivated idea that in the absence of a state suprahumanitarian norms of justice apply, but exclusively to processes of rule making, then current debate about the justice or injustice of forms of global governance is misguided: there are no such norms, because the conditions for evaluating arrangements as just or unjust are simply absent. So normatively motivated worries about whether global institutions are fair, or accountable and relatively transparent, or democratic, or about how to structure greater participation or representation in their decision making are all misguided.<sup>19</sup>

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distribution of the benefits of cooperation on economic and environmental issues as well, and that "relative gains" concern, he argues, will vex other forms of cooperation as well.

18. The realist view of transnational regimes and institutions sometimes takes an epiphenomenalist form and sometimes an intervening variable form. The epiphenomenalist claim is that regimes have no causal importance; the intervening variable form says that regimes are one of the ways that national power is expressed and exerted.

19. See, among many others, Robert Keohane, *Power and Governance in a Partially Globalized World* (London: Routledge, 2002), chaps. 10, 11; David Held, *Global Covenant* (Cambridge, Mass.: Polity, 2004); Benedict Kingsbury, Nico Krisch, and Richard Stewart, "The Emergence of Global Administrative Law," *Journal of International Law and Policy* (forthcoming).

This relaxed attitude about governance norms is surprising in view of the second point of disagreement with realism. Assume that transnational institutions with distributive responsibilities or transnational regimes are positively consequential: that they foster cooperation by helping to pool information, providing a sharper definition of property rights, enabling bargaining over the distribution of the benefits of cooperation, or sanctioning violations of agreements; that such cooperation has important welfare implications; and that such arrangements generate expectations about future cooperation or shape political mobilization. Against this backdrop, maintaining a relaxed attitude about governance norms depends on the claim that even if institutions or less formal regimes have significant effects on cooperation, and those effects on cooperation have significant welfare effects, and those welfare effects would be very different under different rules, the institutions do not shift the normative terrain.

#### *D. Voluntarist Exception*

An apparent exception to the fixity of the normative terrain outside the state is that new norms may be added by states when they make voluntary agreements. But Nagel thinks that voluntary agreement is not simply a “passing trait”<sup>20</sup> of institutions and regimes, a fact about their historical origins but irrelevant to their normative consequences. Instead, originating conventions (and continuing agreement) fix the content of the suprahumanitarian norms to which they give rise. So if states agree to an institution, the new norms to which they are subject are those, and only those, determined by their agreement.<sup>21</sup>

This persistently voluntary or contractual character of agreements (and agreements derived from agreements) among states contrasts sharply with the norm-generative power that Strong Statism assigns

20. We borrow the phrase from Quine: “Conventionality is a passing trait. Significant for classifying terms on the moving front of science, but useless for classifying terms behind the lines,” W.V.O. Quine, *The Philosophy of Rudolph Carnap*, ed. Paul Schlipp (LaSalle, Ill: Open Court, 1963), p. 395.

21. A difficulty with this position that we will not explore here is that such agreements are not only inevitably open-ended, but also often intentionally vague because precision would defeat the possibility of future flexibility and indeed of any agreement at all. So some method of subsequent elaboration of commitments is always needed, and those subsequent elaborations do not always require consensus.

to the state. When individuals are members of a state they acquire a normatively new status, and are required to treat other members as equals, *even if the state originates in an equality-denying convention*. Justice does not permit nightwatchman states, even if they originate in expressly nightwatchman conventions. When it comes to states, but only states, conventionality is a passing trait and equality is always in the fine print of any originating social compact.<sup>22</sup> Put otherwise, in the case of the state, the regulative political-moral norms are fixed *by the nature of the relationship that people have entered*, not by its origins.

So when Nagel says that voluntary agreements among states create new norms whose content is exhausted by the terms of their agreement, he is not simply describing the origins of cooperation, or simply affirming one implication of a general voluntarist normative outlook, but reaffirming that the relationships engendered by those agreements are not independently norm-generating, in contrast with the relationships among the members of a state.

## II. WHY STATISM?

Since the early nineteenth century a familiar argument for Strong Statism has taken the nation state to be uniquely propitious for solidarity. Underlying this solidaristic form of statism is the idea—elements of which are suggested in Hegel and Durkheim, in the 1980s communitarianism of Michael Walzer and Michael Sandel, and in current arguments of euroskeptical social democrats and some U.S. constitutionalists deeply indebted to the legacy of the New Deal—that suprahumanitarian norms (especially norms of distributive justice) depend on prior group solidarities.<sup>23</sup> Such norms are founded on and express a shared sense of membership in particular groups (cultural, religious, ethnic), each less encompassing than humanity.

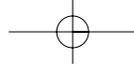
22. Hegel rejected a contractualist theory of the state for more or less precisely this reason: he thought that the normative demands that states make on their members could not be explained by reference to a voluntary agreement. For discussion of the objection and a response to it, see John Rawls, *Political Liberalism*, pb ed. (New York: Columbia University, 1996), pp. 285–88.

23. For an especially illuminating discussion of national identity and political morality, see David Miller, *On Nationality* (Oxford: Oxford University Press, 1995).

But if group solidarities, a sense of a “we” that shares a common fate, lie at the root of norms, what is so special about the state? After all, there are lots of groups, many less encompassing than the state. According to the solidaristic statist, the state is important in part because it provides the setting in which a plurality of solidary groups can sustain their distinct identities and practices. The solidaristic statist goes further, however: the special moral significance of the state ultimately is founded on the fundamental importance of a person’s identity as a member of a nation or people associated with a particular state. The normative requirements on the laws of that state are rooted in what we, as members of a particular national group subject to a common authority, owe to one another. But, the solidaristic statist argues, the content of those requirements becomes determinate only when they are crystallized in legal regulations, which express the identity of the demos. Outside the state there is no justice, then, because outside the state and its laws, we have no way to determine what any solidary group, the nation in particular, requires of its members.

Nagel scants this tradition (see pp. 143–44). His aim is to explain the special normative importance of the state without founding it on antecedent group solidarity: norms of justice do not express a sense of pre-political group membership or identity, but are founded on the distinctive relations that persons bear to one another as members of a state.

Nagel’s case for statism, then, starts with a rejection of cosmopolitanism and the broader family of “monistic” theories of morality that deny that particular relations among persons generate new moral requirements. Conceptually, however, the alternative to monism is, as Nagel observes, not dualism (one set of norms for individuals, another to govern the relations among members of a state) but pluralism (p. 122): the idea that there are distinct normative principles appropriate to different types of relations depending on some normatively salient features of those relations. John Locke’s distinction between the moralities of the natural condition (interaction between independent and equal persons), family (ties of birth and affection), and state (coercive authority) is a form of pluralism, as is Michael Walzer’s idea of distinct spheres of justice associated with distinct goods, and John Rawls’s distinction between principles of justice for a single society and principles for the foreign policy of a liberal society in a society of distinct peoples.

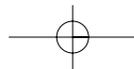


But Nagel's Strong Statism *is* a form of dualism, and his defense of it proceeds in two steps: he argues, first, that the "complex" combination of centralized coercion and co-authorship of laws distinctive of sovereignty does trigger new norms, in particular, requirements of egalitarian justice, but that, second, various forms of global association that might be thought to have that effect do not trigger any new norms at all. Thus he rejects Strong Interdependence, Institutionalism and Cooperativism, so that pluralism in practice reduces to Strong Statism.

Why, then, does the state "move us past humanitarianism"? Nagel suggests two answers. The first is that the state triggers new norms because cooperation triggers new norms and the state, with its coercive powers, is necessary to sustain a willingness to cooperate by assuring cooperators that their willingness to do their part will not be exploited by others. More particularly, the theory might be that cooperation triggers norms of reciprocity and fairness, which require that beneficiaries of the cooperative self-restraint of others must contribute to the joint effort by a like restraint in order to deserve a fair share of the benefits. On this first answer, the state comes into the picture derivatively: without a third-party enforcer in the background, norm-generative cooperation cannot be sustained.

This answer shades into and is decisively reinforced by a second: that states not only foster cooperation by coercively enforcing rules but implicate the will of those subject to their coercive authority by making, in the name of all, regulations that apply to them all and with which they all are (normatively) expected to comply. Because the regulations are represented as authorized by all—as generally willed and thus as the object of collective responsibility—the content of the regulations is normatively constrained: the regulations must be a possible object of joint authorization. The central idea in this "involvement of will" theory is that it is impermissible to speak in someone's name (and therefore in the name of all) unless that person (and therefore all) is (are) given equal consideration in making the regulations, which are represented as jointly authorized. Thus the regulations made by the state must comply with standards that can be justified to their co-authors.

And not just any justification will do. The justification must speak to each individual in whose name the coercion is exercised and on whom the laws impose obligations: the justification must treat each person to whom justification is owed—each in whose name the coercion is



exercised—as an equal.<sup>24</sup> So the state's claim to speak in the name of a law-generating general will—to treat all the subjects of its regulations as their co-authors—generates the new normative standards with which the laws and institutions are to comply. In short, egalitarian justice is the internal morality of the association of equals that is formed by a legal order in which the subjects of the law are represented as its authors.<sup>25</sup>

We will return to this line of thought later. Assume for now that the “complex fact” (p. 128) of coercion plus co-authorship, “that we are both putative joint authors of the coercively imposed system, and subject to its norms” (p. 128), is necessary and sufficient for equal consideration. We come now to the second step: we need to know why coercion and co-authorship of a kind that we associate with the state are required to trigger any norms more demanding than humanitarianism, for example, the norm of inclusion that we mentioned earlier. Nagel recognizes the concern. It follows from his explicit recognition that pluralist non-monism, as distinct from dualism, “is a natural suggestion, in light of the general theory that morality is multilayered” (p. 141). But if monism is wrong, if morality is multilayered, and new requirements can emerge with new kinds of relations, then why does nothing other than a state, with its distinctive mix of coercion and coauthorship, actually generate new moral requirements? Nagel seems to have two reasons for rejecting a nondualist pluralism: an argument founded on voluntarism and one founded on arbitrariness.<sup>26</sup>

We mentioned the argument from voluntarism earlier. It says that justice does not apply “to a voluntary association or contract among

24. Coercion by itself does not produce the demand for such special justification: wars are the ultimate coercive projects, and there is a morality of war, but that morality is not founded on the idea that members of the opposing state are owed equal consideration. Instead, the roots of the requirement of treating people as equals lie, Nagel argues, in the conjunction of coercion and the claim of collective authorization.

25. As Gerald Neuman observed in comments on a previous draft, this argument leaves some large questions unanswered: what happens when the state is populated in part by resident noncitizens? What moral requirements apply to lawmaking by subunits in a federal system: do they owe equal concern to citizens from other subunits (say, Texas)? Do the answers to the previous two questions vary with the subject matter of the laws: could it be that everyone gets equal concern when it comes to criminal procedure, but not when it comes to social provision? We share Neuman's suspicion that the plausibility of Strong Statism diminishes with reflection on these questions.

26. These two arguments correspond respectively to Sections VIII and IX of Nagel's article.

independent parties concerned to advance their common interests” (p. 140). Thus, intergovernmental agreements or other forms of supranational arrangement can give rise to new normative requirements but the content of those requirements is exhausted by the agreements or conventions: the relations themselves do not trigger norms, only the agreements do. But the idea that voluntary agreements can extend obligations is already part of the minimal humanitarian morality, which may be understood to include the principle that “pacts must be respected.” So we need something more to get us to equality.

This point about voluntary membership will not do. Pointing to ideas about network governance and delegation, Nagel acknowledges that the “traditional model of international organizations based on treaties between sovereign states has been transcended” (p. 139). So we need an account of why these other “newer forms of international governance” are not norm-generative, why they do not give rise to a new set of social and political relationships among agents subject to them that, although different from the state, suffice to generate new norms whose content cannot be fully explained by reference to the authorizing conventions.

Nagel’s answer is that, even with these newer forms of governance, the relationship of individuals to the supranational bodies is completely mediated by governments.<sup>27</sup> So those bodies do not speak in the name of all, their conduct is not authorized by individuals, and the wills of those individuals are not implicated. In the next section of the paper, we will suggest that this is not obviously true, even in the case of organizations that, like the WTO, are formally intergovernmental.

The second case for step two in the defense of Strong Statism is an argument from arbitrariness, suggested in Nagel’s distinction between “continuous” and “discontinuous” political conceptions. On the continuous view, which he rejects, there is a “sliding scale of degrees of co-membership in a nested or sometimes overlapping set of governing institutions. . . [and] a corresponding spectrum of degrees of egalitarian justice that we owe to our fellow participants in these collective structures. . .” (pp. 140–41). This conception argues for a difference of degree, but not kind, between the norms governing Nagel’s relations to the Brazilian who grows his coffee and the American who picks his

27. For a crisp assertion to the contrary, see Sabino Cassese, “Shrimps, Turtles, and Procedures: Global Standards for National Administrations,” IILJ Working Paper 2004 / 4, p. 19.

lettuce or irons his shirt (to borrow his examples). On the discontinuous view, which he favors, he owes nothing beyond humanitarianism to those with whom he shares no state.

In reference to the continuous view, Nagel asks: "But if those institutions [that are not a state but that foster global economic cooperation] do not act in the name of all the individuals concerned, and are sustained by those individuals only through the agency of their respective governments or branches of those governments, what is the characteristic in virtue of which they create obligations of justice and presumptions *in favor of equal consideration* for all those individuals?" (p. 142, emphasis added). Nagel answers: "If the default really is basic humanitarianism, permitting voluntary actions for the pursuit of common interests, then something more is needed to move us up to the *higher standard of equal consideration*. It will not emerge merely from cooperation and the conventions that make cooperation possible" (pp. 142–43, emphasis added).

Both question and answer are misleading, and the earlier distinction between Strong and Weak Statism explains why. The Strong Statist thesis that the state is the unique normative trigger is much stronger than the claim that the state is necessary to trigger equal consideration in particular. Consider again the Strong Cooperativist who says that norms more demanding than humanitarianism, even if not egalitarian, emerge with cooperation that is fostered by rules that are decided by a rule-making body and could be decided differently, with different consequences for affected parties, say, a norm requiring that such rule-making bodies give special weight in their decisions to particularly urgent needs. So the right question is, "What is the characteristic in virtue of which they create obligations of justice and *greater normative demands than humanitarianism?*" And the right way to state Nagel's answer, "If the default really is basic humanitarianism, permitting voluntary actions for the pursuit of common interests, then something more is needed to *move us past humanitarianism*. Norms more demanding than humanitarianism, which is always binding, will not emerge merely from cooperation and the conventions that make cooperation possible."

But why not? Nagel's point seems to be that we lack any plausible explanation for why norms become gradually more demanding as our lives become gradually more intertwined, even when the intertwining is the product of consequential rule choices. The Strong Statist points to

the complex fact of coercively enforced, co-authorized rules as the source of the transcendence of simple humanitarianism. In contrast, the more pluralistic, continuous view asserts that forms of connection that do not require a state suffice to trigger norms beyond humanitarianism, for example, norms of the kind expressed in labor codes, requiring “minimum compensation, fair labor practices, and protection of worker health and safety” (p. 141), as well as restrictions on overtime and freedom of association, all expressing the general norm that attention is owed to the interests of workers. But it lacks, according to the argument from arbitrariness, a coherent moral story to support that assertion.

We disagree. We think that global politics does implicate more demanding norms, and think that the rationale lies in a mix of the factors suggested by Strong Interdependence, Cooperativism, and Institutionalism, as well as a degree of involvement of will on the global scale that is more extensive than Nagel’s argument suggests.

### III. GLOBAL JUSTICE

In this section we explore two arguments for the conclusion that global politics implicate norms more demanding than humanitarianism though not expressly egalitarian. The first draws on Nagel’s claims about the involvement of will and its normative implications, and suggests that the requisite involvement of will does not require a state. A second proceeds more intuitively, and asks, by reference to some examples, whether the mix of coercion and co-authorship associated with the state should really be made to bear the normative load that Nagel assigns to them: whether it is really plausible that the world of global politics leaves the normative terrain untouched. We consider these arguments in turn. But as both presume the same broad characterization of the conditions of contemporary global politics, much of which would win general agreement among informed observers, we begin with a brief statement of this characterization:

- (1) Economic integration, as measured by communication and transportation costs, trade and trade dependence, and movements of capital, has made the global economy a substantial presence in the economic lives of virtually all states.
- (2) Cultures, economic circumstances, and political institutions and traditions vary widely, and much more widely between states than within them.

- (3) While states remain essential players, to a considerable and growing extent, rule making, as well as rule elaboration and application, especially in the arena of economic regulation, but also in areas of security, labor standards, environment, rights, food safety standards, product standards among others, are taking place in global settings that, even if established by states (and many regulatory functions are provided by private or public-private bodies), conduct their activities of making, elaborating, and applying rules activities with some de facto decision making independence from their creators.
- (4) The rules made in those settings are consequential for the conduct and welfare of individuals, firms, and states, in part because they provide standards for coordinated action and in part (though not only) because national rule making itself proceeds subject to rules, standards, and principles established beyond the national level.
- (5) Those settings are the focus of a transnational politics of movements and organizations, and not only an intergovernmental politics between states, that contest and aim to reshape the activities of supranational rule-making bodies, in part through protest, in part by representing interests to those bodies.<sup>28</sup>
- (6) Whatever the origins of these rule-making bodies, they are expected, by states, firms, individuals, and organizations, to continue to exist and to make consequential decisions, so that agents (including states, firms, and nongovernmental organizations) and movements need to take them into account in making decisions and pursuing goals.
- (7) Even when rule-making and applying bodies lack their own independent power to impose sanctions through coercion, they have the capacity to encourage conduct by providing incentives and permitting the imposition of sanctions; moreover withdrawing from them may be costly to members (if only because of the sometimes considerable loss of benefits).

28. Mary Kaldor, *Global Civil Society: An Answer to War* (Cambridge, Mass.: Polity, 2003); John Keane, *Global Civil Society?* (Cambridge: Cambridge University Press, 2003); John Ruggie, "Taking Embedded Liberalism Global: The Corporate Connection," *Taming Globalization*, ed. David Held and Mathias Koenig-Archibugi (Cambridge: Cambridge University Press, 2003).

Global politics is thus not an occasional matter of sparse agreements; while much is changing quickly, it seems to be enduring and institutionally dense. Confining attention to intergovernmental organizations with permanent administrative staffs, the world's least integrated country is a formal member of fourteen organizations, and virtually all other countries are formal members of more than a hundred organizations. In addition, there are agreements that establish rights and obligations but do not create administrative capacity.<sup>29</sup> So in contemporary global politics we have a mix of precisely the conditions of interdependence, cooperation, and institutions that have justice-generating implications according to Strong Interdependence, Cooperativism, and Institutionalism. These three views offer different explanations for *why* the conditions of global politics carry such implications, but converge on the conclusion that they do.

Of course global politics as sketched does not require a global state, even a nascent one. But its features are sufficiently important to throw into question, in two ways, the Strong Statist claim that the normative terrain has not been enriched beyond the "pre-political" humanitarian baseline.

A first approach to the Strong Statist conclusion is to ask whether global politics meets Nagel's norm-triggering conditions of involvement of will and co-authorship. To respond, of course, we need some rough gauge of the scope of involvement of will, of the conditions under which the exercise of coercive, rule-making authority implicates the will of those it coerces. Nagel offers an expansive account of these conditions. In particular, he supposes that a colonial or occupying power, at least if it "claims political authority over a population . . . [and] . . . purports not to rule by force alone" (p. 129, n. 14), makes regulations in the name of, and "intended to serve the interests" of, those over whom it exercises authority. Therefore the legitimate occupying power or colonizer must make regulations that treat its subjects as equals. Even though the subjects do not have rights to participate in making the laws, they are expected to comply; and by complying, and especially by paying taxes, they lend their support to the laws, and are normatively expected to do so. Because of these normative expectations of compliance and support, those subject to the laws bear some responsibility for the laws. It is not

K1 29. See Shanks, Jacobson, Kaplan, "Inertia and Change."

simply that the laws affect them. Their will is implicated, and they are therefore owed a special justification: "Since their normative engagement is required, there is a sense in which it is being imposed in their name" (n. 14).<sup>30</sup>

But this same line of argument appears to extend to international regimes and institutions. Suppose the IMF will lend structural adjustment funds to a country on the brink of economic chaos only if the borrower agrees, as a condition of the loan, to reduce regulatory barriers to trade, and improve its courts and other rule-of-law institutions, whose current deficiencies make it impossible to enforce any regulatory reform. IMF officials insist emphatically, and are indeed wholly convinced, that both sets of measures will enhance the freedom and well-being of citizens in the borrower country (and they have a set of theories, about how conditionality is essential given weak institutions and about how good institutions provide the commitment devices needed to bind the hands of decision makers, to support their case). Why not say in these cases that the wills of debtor-state citizens are implicated? That the regulations their government is forced to make are made in all their names, and must therefore pass some normative test beyond humanitarianism? The people in the country may have a complaint against the government for creating the disaster, or they may think that the current government should resist the plan, but there appears to be sufficient involvement of will for people also to think that the plan, and its institutional background, is unjust, and not to blame the government for making the best of a bad thing. Or imagine that the WTO approves trade sanctions on a country that has adopted some nontariff trade barriers. Or, perhaps more to the point, assume that a country changes its trade policies to remain in compliance with WTO agreements, which are binding on all member states. Why not say that citizens in member states are expected to take account of WTO decisions, which have binding

30. Several commentators on an earlier draft worried that we were making too much of Nagel's remarks about the moral requirements on imposed regimes. But his treatment of these cases seems natural, given other elements of the view. If the absence of a state, with co-authorization by citizens, leaves us with nothing more than humanitarianism, then colonial or occupying powers would be more or less free to do as they wished, unless they were operating subject to more demanding restrictions imposed by a treaty-based international organization, or, as Nagel supposes, bound by requirements of justice rooted in their claim to act in the name of the people they rule.

legal force: that they ought not to oppose a new trade regulation that is made pursuant to a WTO finding? Of course in all these cases the citizens of the affected states are not consulted. But the same is true with the occupying power.

To be sure, people may want to complain that the IMF impositions or the WTO decisions are illegitimate either because the procedures of rule making are not accountable or because neither organization takes itself to be bound by suprahumanitarian norms. But these complaints do not defeat our point; they give voice to it. The fact that the impositions and rules are binding on them adds strength to their claim that the rule-making process needs to conform to more demanding procedural and substantive standards.

Still, it might be said that any complaint against global rule-making bodies should really be directed against the state for accepting their directives: that if citizens object to the WTO agreements that have binding force, or to sardine standards devised by the Codex Alimentarius Commission that the WTO uses as a baseline for national regulations,<sup>31</sup> their complaint should be directed against the government for joining, or against their fellow citizens for authorizing the membership, and that the relationship to the rule-making bodies is entirely mediated by the state's decisions and thus insufficiently direct to trigger new norms. But this point seems almost facetious. Opting out is not a real option (the WTO is a "take it or leave it" arrangement, without even the formal option of picking and choosing the parts to comply with), and given that it is not, and that everyone knows it is not, there is a direct rule-making relationship between the global bodies and the citizens of different states. In an attenuated but significant way, our wills—the wills of all subject to the rule-making authority—have been implicated, sufficiently much that rules of this type can only be imposed with a special justification, though whether that justification must be egalitarian, instead of, say, merely inclusive, is, as we will now see, another matter.<sup>32</sup>

The very malleability of the involvement of will idea that allows for this extension reveals, however, a fugitive aspect to the concept that may provoke unease about using it as a cornerstone in an argument about when our relations to one another suffice to trigger requirements of

31. For example, see *European Communities—Trade Description of Sardines* (WT / DS231R, 29 May 2002 and WT / DS231 / AB / R, 26 November 2002).

32. Nagel disagrees: see the last paragraph of Section VIII (p. 140).

justice, and whether such relations obtain in the world of global politics. So a second strategy is to ask more directly about the plausibility of the thesis that global politics, with its conditions of interdependence, cooperation, and institutional responsibility, does not trigger requirements of justice, either procedural or substantive, more demanding than humanitarianism. How, for example, could it be that when a decision-making body operating in the conditions of global politics makes consequential rule choices, fully aware that the choices could have been different, and that body has a distinct area of responsibility (and is subjected to pressures from movements and states in the exercise of that responsibility), that the processes of rule making and the substance of the rules are entirely at the discretion of the agency? Nagel focuses on distributive norms, but a conception of global justice includes concerns about distribution (including access to basic goods), governance, and human rights. And Nagel's argument, as our earlier discussion of "generality" indicated, limits the normative terrain to humanitarianism in each of these areas.

Consider first, then, the case of governance norms. Suppose, for example, that the International Labor Organization (ILO) announced that, although its rule-making activities were important for ensuring decent standards for child labor as well as adult compensation and working conditions (a disputable proposition), it would, in the future, shift away from its traditional tripartite political process, with independent representation from governments, employers, and workers in its standard-setting deliberations, and develop and review compliance with labor standards with no mechanisms for the representation of labor, and no way for organizations of workers to hold it accountable. Whatever one's doubts about the institutional strength of the ILO, and the magnitude of the effects of its decisions on compensation and working conditions, this proposal is surely objectionable. If the ILO takes on responsibility for formulating labor standards, asserts that its formulations are consequential, accepts that a different formulation would have different consequences, understands that withdrawal from the organization would have costs, and appreciates that no comparable institution will emerge to take its place, it cannot permissibly deny that there are any process norms it must meet—norms for the fair representation of affected interests—so long as it conforms to the demands of basic humanitarianism.

But what is true of governance norms is surely true as well of norms focused on outcomes. Consider again the ILO. In 1998, the ILO announced a shift to a focus on “core labor rights” and away from detailed codes of rights. In the 1998 Declaration on Fundamental Principles and Rights at Work, the ILO announced that all 177 member states are obligated, as part of implicit ILO constitutional principles and regardless of whether they have ratified specific ILO conventions, to promote freedom of expression and collective bargaining, eliminate forced labor, abolish child labor, and end discrimination.<sup>33</sup> Suppose that the ILO now publishes a report announcing that this new regulatory strategy has had a desirable impact on wages and working conditions, except in the informal sector, where workers have been hurt by the new regime. Suppose it announces, too, that the injury to workers in the informal sector is insufficient to trigger humanitarian concern and therefore a matter of moral indifference: that outside the state the only morality is humanitarian, and the ILO has no obligation to attend to the interests of workers in the informal sector. This would rightly be condemned as an entirely arbitrary distinction. The fact that the ILO is not a state does not mean that it can, as a matter of political morality, permissibly make whatever collective decisions it wishes to, so long as those decisions respect the humanitarian minimum. Its concern needs to be more inclusive. It cannot say that workers in the informal sector do not matter, so that the ILO’s own policies need not take them into account, except when those policies raise humanitarian concern.

This point might seem special to the ILO because of its distinctive history and self-conceived mission,<sup>34</sup> as someone might say that, having announced a concern for the human impact of Bank-sponsored dam projects, or the role of gender in development, the World Bank should carry through on those announced concerns, particularly when a set of expectations builds up around them, even if it is assumed that the concerns were initially optional.<sup>35</sup> But the way in which the WTO directly

33. For debate about the merits of the new ILO direction, see Philip Alston, “Core Labor Standards and the Transformation of the International Labour Rights Regime,” *European Journal of International Law* 15 (2004): 457–521; Brian Langille, “Core Labour Rights: The True Story,” *European Journal of International Law* 16 (2005): 409–37.

34. As stated in the Preamble to the ILO constitution: (<http://www.ilo.org/public/english/about/iloconst.htm#pre>).

35. We are not here endorsing the claim that the concerns were initially normatively discretionary.

and through decisions by the Appellate Body (AB), its highest judicial instance, fixes the rules of international trade strengthens this claim about the normative implications of consequential rule making by bodies with distinct responsibilities. The WTO's chief purpose is, of course, to foment world trade by (de-)regulatory reform of barriers to it. Many supporters of the WTO desire that it pursue this goal to the exclusion of all others; many of its opponents are convinced that this is precisely what it does. Are such bodies, as Nagel supposes, morally unencumbered? "International treaties or conventions, such as those that set up the rules of trade," he writes, "have a quite different moral character from contracts between self-interested parties within a sovereign state." Whereas the "latter may be part of a just socioeconomic system because of the background of collectively imposed property and tax law in which they are embedded," trade agreements among sovereign states, lacking this background, are "'pure' contracts, and nothing guarantees the justice of their results."<sup>36</sup>

But in fact the WTO anticipates that trade rules will frequently conflict with, and need to be modified to accommodate, a wide range of normative concerns embodied in the domestic laws and regulations of those trading in world markets. These conflicts are chiefly regulated in the WTO Technical Barriers to Trade (TBT) Agreement, which applies to a broad class of domestic regulations, excepting those concerning agricultural health and safety regulation, which fall under the WTO Agreement on Sanitary and Phytosanitary Measures (SPS).<sup>37</sup> Both agreements permit member states to make domestic rules regarding products and production processes, animated, say, by a concern for public health or product safety, that have the effect of inhibiting trade on condition that the inhibiting rules conform to the agreements. With TBT, such conformity

36. "Nothing guarantees the justice of their results" is an odd way of expressing skepticism about the applicability of norms of justice to the procedures or outputs of the organization. After all, nothing guarantees the justice of anything.

37. The TBT (along with SPS) "represents as big a paradigm shift to international economic law as, say, the prohibition on the use of force and the introduction of the Security Council with binding resolution and police powers represented within the classical world of international law." These agreements produce "an internationally determined normativity." Henrik Horn and Joseph H. H. Weiler, "European Communities—Trade Description of Sardines: Textualism and its Discontent," *The WTO Case Law of 2002: The American Law Institute Reporters' Studies*, ed. Henrik Horn and Petros C. Mavroidis (Cambridge: Cambridge University Press, 2005), p. 250.

requires that the rules have a “basis” in international standards (where such standards exist), which means, roughly, that states must either use those standards or show through an acceptable rule-making process that the domestic rules are a reasonable departure from those standards, motivated, for example, by an assessment of health risks. To be sure, central aspects of these agreements are still indeterminate, in flux, and subject to conflicting interpretation, above all, the idea of having a basis in international standards. Still, at the limit, the WTO could conceivably make continuing approximation of domestic rules to international standards a condition of participation in world trade, while at the same time recognizing as valid only those global standards that make reasonable accommodations for national or region particularities as determined through broad engagement of concerned parties. The system of deregulation could become a forum for global re-regulation, with a requirement that global standards be attentive to the local diversity that partly defines the conditions of global politics, while also disciplining rule making in those diverse settings by evolving international standards.

What matters for our argument, however, is not the eventual jurisprudence of the AB or the outcome of the many debates surrounding the TBT and SPS Agreements, but that these controversies are occurring at all. Disputes about how much, and in what way, to modify trade rules or permit deviations from them in order to accommodate other values important to those who will eventually be subject to those rules take for granted that the rule makers consider themselves obligated to give some weight to the reasonable concerns of the rule takers (who are themselves assumed to have a responsibility to show concern for the interests of their own citizens), that the rule takers, who are subject to global rules, see themselves as entitled to a say in establishing what the rules will be (although the precise form of that say, and the agents entitled to provide it, are contested). We take this combination of obligation and entitlement in the formulation of global trade rules to be expressing a norm of inclusion: In joining the WTO in order to participate as fully as possible in the global economy, member states are not agreeing to substitute the domestic rules that they have settled on with the universal laws of efficient commerce. Rather, they are agreeing to remake their rules, in domain after domain, in light of the efforts, recorded in international standards regimes, of all the others to reconcile distinctive domestic regulations with general standards that are also attentive to the interests of others elsewhere. Of course, the practice of intergovernmental and transnational bodies is not

normatively authoritative, but the fact that they (and their critics) do not take themselves to be operating in a normative vacuum, or in a world of pure humanitarian morality, is at least suggestive.

What is true for governance and distribution is also true for human rights. The thesis that humanitarianism exhausts the normative terrain outside the state suggests the idea that human rights are confined to the pre-institutional, negative rights that individuals could legitimately claim against each other even in a world with no social or political relations. On this view, claims for more institutionally dependent human rights, civil and political as well as social and economic, for example, rights to participation, education, or access to basic health care, are expressions of interest disguised as assertions of rights. If this account of human rights is correct, then much of the debate about and since Universal Declaration about the nature and content of human rights has been badly misguided, since that debate has often assumed a wide range of institutionally dependent human rights, even as disagreement persists about the precise content of that set.

An alternative account of human rights is that they are, inter alia, claims for inclusion in a political society that operates on the terrain of global politics and that can be held accountable by others operating on that terrain for ensuring the conditions of inclusion. On this view, human rights are not as such confined to negative rights that can be specified apart from institutions, but may include claims for institutionally defined goods and opportunities required for inclusion or membership in an organized political society. Here, membership is a normative idea, and a person is treated as a member if only if the person's good is given due consideration in law and policy.<sup>38</sup> In turn, debates about the content and scope of human rights can be understood as disagreements about the requirements of inclusion: about what it takes for a political society to treat people as members, about what consideration is due, and about which agents are best positioned to ensure that those rights are secured.<sup>39</sup>

38. Giving equal respect and concern is a special case of giving due consideration, which is what inclusion requires.

39. See Joshua Cohen, "Minimalism About Human Rights: The Most We Can Hope For?" *Journal of Political Philosophy* 12 (2004): 190–213; and "A Human Right to Democracy?" *The Egalitarian Conscience: Essays in Honour of G. A. Cohen*, ed. Christine Sypnowich (Oxford: Oxford University Press, 2006).

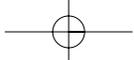
We cannot resolve here the disagreement between these accounts of human rights. Suffice it to say that the latter seems more faithful to the debate about the content and implementation of human rights. Moreover, the theory that human rights are claims to inclusion in the world of global politics—by, in the first instance, being treated as a member of one of the political societies operating on that terrain—does not exclude the thesis that human rights are confined to pre-institutional rights against interference. But it requires that that thesis be defended as the best account of the conditions of inclusion, not as an immediate consequence of the claim that justice presupposes a state.

These concerns about inclusion point in a second and complementary direction as well. In addition to suggesting more determinate norms—of mutual regard and the requirements for openness and reason giving that this entails—the idea of inclusion, in both its procedural and substantive aspects, calls attention to a process: the reflective exploration, by a variety of actors in the setting of global politics, of the character of the moral norms, both procedural and substantive, that are suited to the forms of association that already connect them. If Nagel's dualistic political conception is right, this will be a short discussion: until we have a state, there is nothing to talk about, and the role of reflective moral thought will be to police the boundaries between the authentic normative demands that emerge with co-citizenship and the “bawling upon paper” (and in the streets) that now passes for reflection on global justice.<sup>40</sup>

If the pluralist version of nonmonism is right, however, the spread of new relations and novel forms of association should trigger such further exploration of a range of demanding questions of political morality. Who is to be included in the concerns of rule-making bodies: everyone in the world, or only citizens of member states of intergovernmental or transnational organizations? What are the implications of inclusion: to what kind of concern does it entitle people (individually or in groups), both procedurally and substantively? And who, in the world of global politics, bears responsibility for ensuring inclusion?

In addressing these questions, the conventional points of reference are absent: there is neither a *demos* nor any other solidary group reflect-

40. “Bawling upon paper” was Bentham's phrase for declarations claiming natural and inalienable rights. See Jeremy Bentham, “Anarchical Fallacies,” *The Works of Jeremy Bentham* vol. 2, ed. John Bowring (Edinburg: Tait; London: Simpkin, Marshall, 1843), p. 494.



ing on how to keep faith with its identity, nor a state claiming a legitimate monopoly on the achievement of justice in a territory. Yet the questions are of commanding importance, and political philosophy has a role to play in addressing them. In times of transformation of fundamental human relations, political philosophy can tell us where, in the space ranging from humanitarian obligation to egalitarian justice, to look for answers, and can suggest what we might find. But, as ever, its first task is to respond to the skeptics.

