Political Authority and Distributive Justice

by

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Many political theorists agree that an equal distribution of certain goods is a requirement of justice. However, they disagree about the types of agents that possess these distributive obligations, and about the range of agents who owe these obligations to each other. Are states primarily responsible for ensuring a just distribution of income? Or, is distributive justice also the responsibility of private individuals? Do agents – whether states or individuals – possess distributive obligations to foreigners? Or, is distributive justice only a requirement within national borders?

I argue that the primary subject of distributive justice is the state’s relation to its citizens. States, and not private individuals, possess distributive obligations; and states only possess these obligations to their citizens, not to foreigners. I argue first that the state possesses distinctive distributive obligations to its citizens because of the way in which it exercises political authority over them. To exercise its political authority legitimately, that is, in a way that is consistent with the free and equal nature of its citizens, I argue, the state must secure a just distribution of civil liberties, political rights, income, and opportunities.

I argue second that the subject of distributive justice does not extend beyond the state’s relation to its citizens. I argue first that principles of distributive justice do not apply to the
private choices of citizens on the grounds that justice demands that citizens be free to decide
what to do with their lives on the basis of their own conception of the good, and not on the basis
of what is best for others. I argue second that because international organizations do not exercise
political authority in the same way that states do, equality is not a demand of global justice.
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Introduction

Many political theorists agree that an equal, or relatively equal, distribution of certain goods – basic rights and liberties, opportunities, and income – is a requirement of justice. However, as well as disagreeing about the precise way in which these goods should be distributed, they disagree about the types of agents that possess these distributive obligations, and about the range of agents who owe these obligations to each other. Are states primarily responsible for ensuring a just distribution of income and opportunities? Or, is distributive justice also the responsibility of private individuals? Do agents – whether states or individuals – possess distributive obligations to foreigners? Or, is distributive justice only a requirement within national borders?

In *A Theory of Justice* and in *The Law of Peoples*, John Rawls answers both of these questions with the claim that the basic structure of a domestic society – “the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation” – is the primary subject of distributive justice.\(^1\) By this, Rawls means both that the domestic basic structure is the *site* of distributive justice – the point of application for principles of distributive justice – and that it defines the *scope* of distributive justice – the range of agents who owe distributive obligations to each other. The domestic basic structure is primary in this way, Rawls claims, because it has pervasive effects on the capacity of persons to set and pursue a conception of the good life, due to its coercive nature.\(^2\)

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Critics reject Rawls’s solution to the question of the subject of distributive justice on the grounds that it is not only the basic structure of a domestic society that has pervasive effects on the life prospects of persons. In *Rescuing Justice and Equality*, G.A. Cohen argues that the private choices of individuals, for example their choice of occupation or their demand for an above-average salary, also have such pervasive effects. With respect to the question of the site of distributive justice, Cohen therefore concludes that “principles of distributive justice, principles, that is, about the just distribution of benefits and burdens in society, apply, wherever else they do, to people’s legally unconstrained choices.” Similarly, with respect to the question of the scope of distributive justice, cosmopolitan theorists argue that the global order of trade is sufficiently analogous to the domestic basic structure, both in its makeup and effects, and so should also be subject to distributive principles.

My aim in this dissertation is to defend the claim that the domestic basic structure – by which I mean the state’s relation to its citizens – is the primary subject of distributive justice. On my view therefore, the state’s relation to its citizens is the site of distributive justice, such that principles of distributive justice apply to the state’s institutions, but not the private choices of individuals; and it defines the scope of distributive justice, such that the state possesses distributive obligations to those over whom it exercises political authority, but not to foreigners.

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6 Throughout this dissertation, I will use the term ‘citizen’ to refer to those persons who are subject to the state’s political authority. Although ‘subject’ is no doubt a more accurate term since it captures the category of foreign residents, I will use the term ‘citizen’ since it possesses certain active connotations that the term ‘subject’ lacks. I do not mean to imply however that the state only possesses distributive obligations to its citizens but not to others over whom it exercises its political authority.
However, although I will defend Rawls’s position on the question of the subject of distributive justice, I will do so on the basis of an alternative account of its normative significance. I will argue first that the domestic basic structure is the primary subject of distributive justice because of the way in which the state exercises political authority over its citizens and not because of its pervasive effects. On the basis of the claim that citizens are free and possess the equal authority to co-determine the terms of social interaction, I will argue that the state can only exercise its political authority legitimately if it does so in accordance with principles that are justifiable to its citizens. To exercise its legislative authority legitimately, I will argue, the state must secure equal civil liberties and political rights for its citizens. To legislatively enact and coercively enforce a system of social and economic interaction in a legitimate fashion, I will argue, the state must ensure that the basic needs of its citizens are met; secure fair equality of opportunity for contracts and positions of employment; and ensure that the system of economic cooperation is set up to maximize the expectations of the least advantaged.

Having provided an account of the distinctive normative significance of the domestic basic structure for distributive justice, I will then argue that the site and scope of distributive justice do not extend beyond the state’s relation to its citizens. Against Cohen’s claim that the site of distributive justice includes the private choices of individuals, I will argue that justice demands that persons be free to decide what to do with their lives on the basis of their own conception of the good. Principles of justice cannot therefore require persons to make decisions regarding their choice of occupation or salary on the basis of considerations of what would be best for others. The site of distributive justice is thus restricted to the state’s relation to its citizens. I will then argue that the scope of distributive justice is also limited to the state’s relation to its citizens. Focusing on the strongest arguments for the claim that the scope of distributive justice is global, I will argue that these accounts face a number of serious problems.
Although states may possess a duty to aid burdened societies, they only possess distributive obligations to those over whom they exercise their political authority.

In chapter 1, I will introduce and motivate the problem of the subject of distributive justice. Here, I will perform three clarificatory tasks. First, I will clarify the nature and relationship of the questions of the subject, site, and scope of distributive justice. Theorists participating in debates concerning these questions have not adequately performed the task of identifying the nature of these questions and their relationship to each other, and as a result, often pose them in unhelpful ways. I will argue that the questions of the site and scope of distributive justice are best understood as questions that are together constitutive of the question of the subject of distributive justice.

Second, I will formulate what I take to be the six most prominent positions on this question: consequentialist cosmopolitanism, deontological cosmopolitanism, individual practice-dependent, consequentialist state institutionalism, deontological state institutionalism, and conventionalism. Finally, I will conclude with an investigation of the implications of this wide-scale disagreement concerning the subject of distributive justice for substantive debates concerning distributive justice. I will argue that contemporary disagreements over the subject of distributive justice constitute a disagreement over the very concept of distributive justice. Insofar as theorists disagree on the question of the subject of justice, they therefore do not possess a shared concept of distributive justice. I will argue that this lack of a shared concept of distributive justice poses a number of problems for distributive theorists insofar as disagreements concerning the subject of distributive justice can be more basic than substantive disagreements concerning the content of principles of distributive justice.
In chapter 2, I will introduce my own theory of the subject of distributive justice: the political authority theory. According to this theory, the domestic basic structure is the primary subject of distributive justice because of the way in which the state exercises political authority over its citizens and not because of its pervasive effects. I will also introduce the argumentative strategy that I will employ to defend the political authority theory’s account of the normative significance of the domestic basic structure for the problem of distributive justice: the legitimacy strategy. The legitimacy strategy aims to show that the state can only exercise its political authority legitimately if it secures distributive justice for its citizens.

I will develop the political authority theory on the basis of the work of Michael Blake and Thomas Nagel. In “Distributive Justice, State Coercion, and Autonomy,” Blake argues that the domestic basic structure is the primary subject of distributive justice because it exercises coercion over its members. In “The Problem of Global Justice,” Nagel argues that the state possesses an obligation to its citizens to secure distributive justice because of the distinct way in which its citizens are both the authors and subjects of a coercively imposed system of norms. Although both Blake’s and Nagel’s accounts have received a great deal of criticism, I will argue that both possess the shared insight that the state’s exercise of its political authority over its citizens imposes a distinctive obligation on it to do so in a way that is justifiable to its citizens. I will argue that this insight can be developed in a way that avoids the criticism that these accounts have been subject to and that provides a promising account of the normative significance of the domestic basic structure for distributive justice.

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In chapter 3, I begin my defense of the political authority theory. Here, I present the normative foundations of the political authority theory: Rawls’s conception of the person as free and equal. According to this conception of the person, persons are free insofar as they possess a capacity for a conception of the good and a capacity for a sense of justice; persons are equal insofar as they possess the equal authority to exercise their sense of justice. On the basis of this conception of the person, I will construct a contractualist principle of justice: justifiability to free and equal persons. According to this principle, the correct principles of justice are those that are justifiable to persons considered as free and equal.

In chapter 4, I will carry out the legitimacy strategy. Here, I will rely on the principle of justifiability to free and equal persons to defend the legitimacy-distributive justice thesis. According to this thesis, the state must comply with principles of distributive justice if it is to exercise its political authority legitimately. Here, I will argue that the state can only exercise its political authority legitimately if it respects the equal authority of its citizens to co-determine the terms of social interaction. I will argue first that the state can only therefore exercise its legislative authority legitimately if it secures equal civil liberties and political rights for its citizens. I will argue second that the state can only legislatively enact and coercively enforce a system of social and economic interaction in a legitimate fashion if it ensures that the basic needs of its citizens are met; secures fair equality of opportunity for contracts and positions of employment; and ensures that the system of economic cooperation is set up to maximize the expectations of the least advantaged citizens.

Finally, in chapters 5 and 6, I will justify the basic structure thesis. According to this thesis, the state’s relation to its citizens is both the site and defines the scope, of distributive justice. In chapter 5, I will argue that it follows from chapter 4 that the domestic basic structure constitutes a distinctive site of distributive justice. I will then argue that Cohen is mistaken to
claim that the site of distributive justice also includes the private choices of citizens. Here, I will argue that justice demands that persons be free to decide questions concerning their occupation and salary on the basis of their own conception of the good. I will argue that on Cohen’s picture, persons must decide these questions on the basis of considerations of what would be best for others.

In chapter 6, I will turn my attention to the question of the scope of distributive justice. As in chapter 5, I will first argue that it follows from my argument in chapter 4 that the scope of distributive justice is, at least in part, defined by the state’s relation to its citizens. I will then consider three accounts of the scope of distributive justice that claim to show that the scope is global: global luck egalitarianism, global left-libertarianism, and Rawlsian cosmopolitanism. I will argue that each of these positions faces serious problems. I will therefore conclude that the scope of distributive justice is limited to the state’s relation to its citizens.
Chapter 1 The Subject of Distributive Justice

In this chapter, my aim is to introduce and motivate the question of the subject of distributive justice. More specifically, I will perform three clarificatory tasks concerning this question. First, I will clarify the nature and relationship of the questions of the subject, site, and scope of distributive justice. Theorists participating in debates concerning these questions have not done so adequately and as a result often pose these questions in unhelpful ways. I will argue that the question of the subject of distributive justice is best considered as a question concerning the primary subject matter of the problem of distributive justice. For example, is distributive justice primarily a matter of the states of affairs individuals and institutions should bring about? Or, is it primarily a question about the coercive actions of the state? I will argue that the questions of the site and scope of distributive justice are best understood as questions that are together constitutive of the question of the subject of distributive justice insofar as answers to this latter question presuppose answers to the former.

Second, I will formulate what I take to be the six most prominent positions on the question of the subject of distributive justice: consequentialist cosmopolitanism, deontological cosmopolitanism, individual practice-dependent, collective consequentialist institutionalism, collective deontological institutionalism, and conventionalism. Each of these positions formulates a distinct conception of what the problem of distributive justice is primarily concerned with.

Finally, and perhaps most importantly, I will conclude with an investigation of the implications of disagreements concerning the subject of distributive justice for substantive debates concerning the nature or content of distributive justice. I will argue that contemporary
disagreements over the subject of distributive justice constitute a disagreement over the very concept of distributive justice and so can be more basic than disagreements between different theories or conceptions of distributive justice.

1 The Site of Distributive Justice

The question of the site of distributive justice concerns the question of the point of application of principles of distributive justice. The site of distributive justice debate has revolved around the question of whether principles of distributive justice should apply only to the institutions of society, or also to the non-institutional or private choices of individuals. Theorists have characterized this central disagreement of the site of distributive justice debate in two distinct ways. In Rescuing Justice and Equality, G.A. Cohen formulates the issue in terms of the application of principles of distributive justice to different structural features of society.\(^9\) Here, Cohen argues that “principles of distributive justice, principles, that is, about the just distribution of benefits and burdens in society, apply, wherever else they do, to people’s legally unconstrained choices.”\(^10\) By contrast, in “Institutions and the Demands of Justice,” Liam Murphy argues that the debate concerns the question of whether the two practical problems of institutional design and personal conduct require one or two kinds of practical principles. “Dualists,” Murphy claims, argue that these two problems require two kinds of practical principles; “monists” by contrast, argue that these two problems only require one fundamental


\(^{10}\) Ibid.
principle of morality. Murphy takes a similar line to Cohen on this issue, arguing that “all fundamental normative principles that apply to the design of institutions apply also to the conduct of people.”

In what follows, I will attempt to clarify the nature of the question of the site of distributive justice. I will argue that Cohen and Murphy’s formulations of the problem of the site of distributive justice are misleading and fail to identify its structure. I then propose a different account of the question of the site of distributive justice and identify the key distinctions between the positions of Cohen and Murphy on the one hand, and Rawls on the other.

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11 Murphy, “Institutions and the Demands of Justice,” 254.
12 Ibid, 251. A number of theorists have responded to both Cohen and Murphy and have defended the Rawlsian position that the basic structure of society is the primary site of distributive justice. See Williams, “Incentives, Inequality, and Publicity;” Pogge, “On the Site of Distributive Justice: Reflections on Cohen and Murphy;” Julius, “Basic Structure and the Value of Equality;” Scheffler, “Is the Basic Structure Basic?” Tan, “Justice and Personal Pursuits;” Estlund, “Liberalism, Equality, and Fraternity in Cohen’s Critique of Rawls;” and Cohen, “Taking People as They Are?” These theorists have for the most part accepted the way in which Cohen and Murphy formulate the question of the site of distributive justice. However, Julius and Scheffler have taken themselves to be defending the Rawlsian claim that the basic structure is the primary subject of distributive justice, and not merely the site of distributive justice. A.J. Julius, “Basic Structure and the Value of Equality,” 322; Scheffler, “Is the Basic Structure Basic?” 102. The reason for this, I suggest, is twofold. First, although both Cohen and Murphy are careful to make clear that they are concerned with the question of the application of principles of distributive justice, they nonetheless formulate the Rawlsian position in terms of his claim that the basic structure is the primary subject of justice. Thus Cohen constructs the Rawlsian objection to his claim that principles of justice apply to the private or non-institutional choices as the “basic structure objection,” citing Rawls’s claim that “the primary subject of justice is the basic structure of society.” Rawls, A Theory of Justice, 6. Murphy formulates the Rawlsian position in similar terms as the claim that “institutions are what normative political theory is all about.” Murphy, “Institutions and the Demands of Justice,” 252. Second, the question of the scope of distributive justice does not really arise in discussions concerning domestic distributive justice. Most theorists accept as uncontroversial the claim that citizens possess distributive obligations to their fellow citizens. It is thus easy to see how the reasons both Julius and Scheffler identify to support the claim that the basic structure is the site of distributive justice also support the claim that it also defines the scope of distributive justice. However, it is important to recognize that these two claims are distinct. The question of the site of distributive justice, as Cohen and Murphy make clear, is a question concerning the application of principles of justice. The question of the subject of distributive justice includes the further question concerning the scope of distributive obligations. As Abizadeh makes clear in “Cooperation, Pervasive Impact, and Coercion: On the Scope (not Site) of Distributive Justice,” it is possible to hold that principles of distributive justice should apply to the major social institutions of society and hold that these principles impose upon the members of these institutions distributive obligations to non-members. Abizadeh, “Cooperation, Pervasive Impact, and Coercion: On the Scope (not Site) of Distributive Justice,” 323-324.
1.1 The Site of Distributive Justice Debate

Like Cohen, Murphy is concerned to refute Rawls’s claim that the basic structure of society is the primary site of distributive justice and instead defend the claim that “all fundamental normative principles that apply to the design of institutions apply also to the conduct of people.” As I make clear above, Murphy thus conceives of the ‘site of distributive justice’ debate as a debate between two positions: monism and dualism. Dualists defend the view that the two problems of institutional design and personal conduct require two different fundamental normative principles. According to Murphy, Rawls is a dualist insofar as his theory of domestic distributive justice, justice as fairness, includes two types of principles: principles to govern the basic structure, and principles to govern personal conduct. Monists defend the contrary view that the two practical problems of institutional design and personal conduct require only one fundamental normative principle or type of principle.

Murphy’s formulation of the core issue of the site of distributive justice debate is misleading for two reasons. First, although it is possible that some theorists defend a dualist theory in Murphy’s sense, Rawls’s theory of justice is not best characterized in this way. Murphy is right that Rawls constructs two different sets of principles of justice to answer the practical problems of institutional design and personal conduct. However, as Murphy makes clear, this is not sufficient for Rawls’s position to count as dualist. It must also be the case that these two sets

13 Murphy, “Institutions and the Demands of Justice,” 251.
14 Ibid, 254.
15 Ibid.
16 Rawls, A Theory of Justice, 93.
of principles are not grounded in a more fundamental normative principle.\textsuperscript{17} A fully dualist position thus formulates principles of justice to answer the practical problems of institutional design and individual conduct, and fails to unify these principles in a more fundamental normative principle. Thus, even though Millian utilitarians formulate the harm principle to govern society’s use of the criminal law, but not the private choices of individuals, Millian utilitarianism is still a classic monist position insofar as these two principles are grounded in the principle of utility.

The problem with Murphy’s portrayal of Rawls’s position as a classic dualist position is that Rawls does unify the two principles of justice and the principles for individuals in a more fundamental principle. In A Theory of Justice, Rawls formulates both sets of principles from the standpoint of the original position.\textsuperscript{18} Of course, Rawls does not formulate the original position in the form of a principle; however there is no reason to think that it couldn’t be so formulated. As Rawls makes clear, the original position models a conception of the person as free and equal.\textsuperscript{19} As I will show in chapter 3, it is thus possible to reconstruct the original position as a principle of justifiability amongst free and equal persons that is similar in structure to Thomas Scanlon’s contractualist principle of reasonable rejection.\textsuperscript{20} As well, Rawls’s original position functions as a criterion of rightness in a way that is similar to the principle of utility. Like the principle of utility, it is the ground of principles that apply to institutions, and principles that apply to individuals. It is thus misleading for Murphy to conceptualize the central disagreement of the site

\textsuperscript{17} Murphy, “Institutions and the Demands of Justice,” 254.
\textsuperscript{18} Rawls, A Theory of Justice, 95.
\textsuperscript{19} Rawls, Political Liberalism, 305.
\textsuperscript{20} Scanlon, What We Owe to Each Other, 4. In fact, in Political Liberalism, Rawls claims that his conception of the reasonable, which is a constitutive component of his conception of the original position, are “closely connected with T.M. Scanlon’s principle of moral motivation.” Rawls, Political Liberalism, 49n2.
of distributive justice debate in this way. It is not at all clear that the concepts of dualism and monism in fact identify what is distinctive about Rawls’s position on the site of distributive justice.

Murphy’s formulation of the central disagreement of the site of distributive debate is also misleading for a second reason. By conceptualizing this disagreement in terms of the question of whether the practical problems of institutional design and personal conduct require one or two principles of justice, Murphy fails to recognize the different ways in which he and Rawls construct these two practical problems in the first place. The problem of personal conduct can be formulated in two distinct ways; each of these ways corresponds to one of the two central questions of practical reason. First, individuals face the problem of the good, that is, the problem of which ends to set and pursue. With respect to the question of justice, this formulation of the question of personal conduct is thus the question of which ends or purposes justice demands individuals set and pursue. Second, individuals face the problem of the right. That is, persons face the problem of determining which actions are permissible, obligatory, and forbidden. This formulation of the question of personal conduct is thus the question of the specific duties individuals possess as a matter of justice.

Murphy is of course aware of this distinction; however, he fails to recognize that it constitutes a significant difference between his and Rawls’s positions on the question of the site of distributive justice. Rawls construes the problem of personal conduct according to the second formulation. He therefore formulates principles of justice for individuals that impose certain duties of justice on them.\(^{21}\) Rawls’s implicit claim here is that principles of justice can only

legitimately require persons to comply with rules that specify actions that are forbidden, permissible, and obligatory. Murphy misses this distinctive feature of Rawls’s position insofar as he interprets Rawls to be a consequentialist.  

By contrast, Murphy conceives of the problem of personal conduct in accordance with the first formulation of this problem. Thus, according to Murphy’s theory of weighted beneficence, persons possess an obligation to promote the end of aggregate weighted well-being over time by means of their private choices. As I hope to show below, this distinction in the conception of the problem of personal conduct constitutes an important difference with respect to the question of the site of distributive justice between the positions of Cohen and Murphy on the one hand, and Rawls on the other.

Murphy’s construction of the question of the site of distributive justice also fails to recognize an important difference in the way that he and Rawls understand the practical problem of institutional design. For Murphy, the problem of institutional design, that is, the problem of developing principles of justice to govern the shape of institutions, is a problem of instrumental rationality. Institutions, Murphy claims, are “means that people employ the better to achieve their collective political/moral goals.” The problem of institutional design is thus the problem of constructing institutions as instruments for effectively realizing moral goals that are specifiable apart from the institutions.

Rawls, however, understands the relationship of principles of justice to institutions in a different way. First, principles of justice, according to Rawls, are not specifiable apart from institutions. Rather, principles of justice must be constructed for the specific institutions that they

22 Murphy, “Institutions and the Demands of Justice,” 279.
23 Ibid, 263.
24 Ibid, 253.
are to govern. Rawls’s two principles of justice thus apply to the basic structure of society – the major social institutions of society. Second, the institutions of the basic structure are not means or instruments that individuals can employ to more effectively realize their moral goals; rather, the institutions of the basic structure constitute a collective agent – the state – and specify the nature and limits of the state’s political authority over its citizens. The basic structure of society thus includes the political constitution, which constitutes the political authority of the state and specifies the ways in which the state can exercise this authority over its citizens; and it includes the basic rules of social cooperation. Questions of distributive justice, for Rawls, are thus questions about the nature and limits of the state’s political authority over its citizens. Rawls’s first principle of justice, the principle of equal liberty, thus defines the democratic shape of the state’s exercise of political authority, and places constraints on the ways in which the state can force its citizens to act. Rawls’s second principle of justice, which governs the distribution of opportunities, the powers and prerogatives of office, income and wealth, and the social bases of self-respect, governs the state’s enforcement of a system of social cooperation. Thus whereas for Murphy, the problem of institutional design is a question of the construction of institutions to realize moral or political goals that are completely specifiable apart from the institutions in question, for Rawls, the question of institutional design is a question of the principles that should govern the state’s exercise of its political authority over its citizens.


26 This is of course a controversial interpretation of Rawls’s formulation of the basic structure of society. As Arash Abizadeh makes clear in “Cooperation, Pervasive Impact, and Coercion: On the Scope (not site) of Distributive Justice,” there are a number of ways to interpret Rawls’s notion of the basic structure. Abizadeh, “Cooperation, Pervasive Impact, and Coercion: On the Scope (not site) of Distributive Justice,” 319. For example, whereas I understand the basic structure to be those institutions that are constitutive of the state, it is also possible to interpret the basic structure as those institutions that constitute the fundamental rules of social cooperation or to be those institutions that have a pervasive impact on the life prospects of individuals. Ibid. In my discussion above, I interpret the basic structure as the institutions that are constitutive of the state for two reasons. First, as will become clear, this way of reading Rawls draws the sharpest possible contract between Rawls’s position on the question of the site of distributive justice, and the positions of Murphy and Cohen. Second, as I hope to show over the course of this thesis, I think that this interpretation of Rawls is the best one from a philosophical standpoint.
Murphy’s distinction between monism and dualism fails to recognize these distinctions in the understanding of personal conduct and institutional design because it says nothing about the way in which distributive principles are to relate either to institutions or to personal conduct. Moreover, as I will argue below, these distinctions are crucially important for the question of the site of distributive justice. However, before I discuss this issue in more detail, it is important to recognize that although Cohen formulates the problem of the site of distributive justice in a way that is different from Murphy, he too nonetheless fails to recognize the distinctive way in which institutions are the site of distributive justice for Rawls.

Cohen formulates the problem of the site of distributive justice as a question of the application of principles of distributive justice to the different structural features of society. Cohen’s formulation of the problem of the site of distributive justice is different from Murphy’s because Cohen sees the basic distinction between himself and Rawls not in terms of the way in which normative principles apply to institutional design and personal conduct, but rather in terms of whether principles of distributive justice apply to certain features of society or not. Cohen’s formulation of the problem is superior to Murphy’s insofar as it recognizes the difference between the way that he and Rawls construct the problem of personal conduct:

principles of distributive justice, principles, that is, about the just distribution of benefits and burdens in society, apply, wherever else they do, to people’s legally unconstrained choices. Those principles, so I claim, apply to the choices that people make within the legally coercive structures to which, so everyone would agree, principles of justice (also) apply. (In speaking of the choices that people make within coercive structures, I do not include the choice whether or not to comply with the rules of such structures [to which choice, once again, so everyone would agree, principles of justice (also) apply], but the choices left open by those rules because neither enjoined nor forbidden by them.)

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Cohen thus makes a distinction between principles that require persons to comply with a set of rules and those that require persons to set certain ends, and he clearly states that principles of distributive justice can legitimately require persons to set certain ends. However, Cohen, like Murphy, fails to recognize the distinctive way in which Rawls conceives of the problem of institutional design. This failure is implicit in Cohen’s way of setting up the problem of the site of distributive justice. By posing this problem as a question of the application of principles, Cohen accepts Murphy’s conception of the problem of institutional design – first we specify what our principles of justice are, then we decide which structural features of society to apply them to. For example, according to Cohen’s theory of distributive justice, the primary concern of distributive justice is the pattern of distribution of benefits and burdens within society.\(^{28}\) A pattern of distribution is just, according to Cohen, if and only if inequalities in distribution are the result of the voluntary choices of individuals rather than brute luck.\(^{29}\) Because the pattern of distribution within society is the causal upshot of not only its major social institutions, but also the private choices of individuals and the structure of informal institutions such as the family,\(^{30}\) Cohen thus concludes that the site of distributive justice is constituted by those structural features of society that causally affect the pattern of distribution within society. Principles of distributive justice not only apply to the major social institutions of society, but also to informal institutions and the private choices of individuals. Like Murphy, Cohen thus conceives of principles of justice as fully specifiable apart from our institutions; the problem of institutional design is thus a problem of designing institutions so that they will bring about a certain pattern of distribution within society.

\(^{28}\) Ibid, 126.
Although Cohen’s way of formulating the problem of the site of distributive justice as the question of the structural features of society to which distributive principles apply is superior to Murphy’s insofar as it correctly identifies the different ways in which personal conduct can be guided by distributive principles, it nonetheless fails because it does not identify the different ways in which distributive principles can apply to institutions. Once we introduce this further distinction, Murphy and Cohen on the one hand, and Rawls on the other, differ on the question of the site of distributive justice to an extent greater than previously thought. For Murphy and Cohen, the question of distributive justice primarily concerns the ends or states of affairs that individuals should bring about. For Murphy, the goal of distributive justice is to promote well-being; for Cohen, the goal of distributive justice is to bring about a certain pattern of distribution. Both theorists thus differ with Rawls on the question of the way in which personal conduct is a site of distributive justice. Whereas Rawls thinks it is only legitimate to demand of individuals that they comply with a public system of rules, Cohen and Murphy claim that it is legitimate for principles of distributive justice to obligate individuals to set and pursue specific ends – well-being, or a certain pattern of distribution. However, although Cohen and Murphy claim to agree with Rawls on the need to take institutions as the site of distributive justice, Murphy and Cohen only do so in a secondary sense. Because, for these thinkers, distributive justice primarily concerns the ends of individuals, institutions are only the site of distributive justice insofar as they are effective means that individuals can employ to pursue the goals of distributive justice. In effect, the primary site of distributive justice for Cohen and Murphy is the ends individuals should set and pursue; institutions are only the site of distributive justice in a

31 Murphy, “Institutions and the Demands of Justice,” 262-264.
derivative sense because institutions, as Murphy puts it, are “the means that people employ the better to achieve their collective political/moral goals.”

By contrast, as we saw above, for Rawls, the problem of institutional design is rather a problem of specifying the nature and limits of the state’s legitimate exercise of its political authority over its citizens. In contrast with Murphy and Cohen then, the question of distributive justice is thus primarily a question about the action of the state. The basic structure is the site of distributive justice not because of its possible or actual causal effects on the pattern of distribution of benefits and burdens within society, or the level and distribution of well-being, but rather because the institutions of the basic structure define the ways in which the state can and should legitimately exercise its authority over its citizens.

Cohen and Murphy are thus wrong to formulate the problem of the site of distributive justice either as a question about the ways in which a theory solves the two problems of institutional design and personal conduct, or as a question about the application of principles of justice to the different structural features of society. In the next section of this paper, I will formulate the question of the site of distributive justice in a way that resolves the failures of Murphy and Cohen’s approaches.

1.2 Clarifying the Question of the Site of Distributive Justice

I have argued thus far that the ongoing site of distributive justice debate is best characterized as a disagreement over whether distributive justice is primarily concerned with the

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32 Ibid, 253.
actions of the state, or the ends individuals should set themselves. I now want to provide a more theoretical account of the question of the site of distributive justice and the possible positions theorists might take on this question. I will argue that the different ways in which principles of justice make demands on either individual or collective agents constitutes the ground of the question of the site of distributive justice.

The account of the question of the site of distributive justice that I will provide here depends on more basic distinctions concerning the ways in which normative principles can make demands on agents and the types of agents that these principles make demands on. It is thus first necessary to introduce and define the concepts of agency and action. The nature of these concepts is of course controversial. In what follows, I will attempt to sidestep these debates by providing an account of agency and action that is presupposed by most theorists working in normative political philosophy. To do so, I will rely on Christine Korsgaard’s account of action and agency which she presents in her *Self-constitution: Agency, Identity, and Integrity*. My claim here is not that Korsgaard’s account of agency and action is true. Rather, my claim is that this account is widespread enough in normative political philosophy that it can perform some important classificatory work. Korsgaard’s account is particularly suitable for the task of reconstructing the normative account of agency and action presupposed by most political philosophers because she defines these concepts from a practical rather than theoretical standpoint. After presenting Korsgaard’s account, I will use it to re-formulate the question of the site of distributive justice.

1.2.1 Action and Agency

According to Korsgaard’s account of action, action is the self-determination of one’s own causality to realize an end. An agent acts, according to Korsgaard, when the agent determines itself to be the cause of some end. Actions thus possess two structural features: an act and an end. The act is the specific action that the agent performs; it describes the way in which the agent takes up certain means. The end, by contrast, is the goal or purpose the agent seeks to realize by means of his or her act. Actions are thus describable in the form of maxims: perform act x in order to achieve end y. Moreover, insofar as action is self-determination, action requires that the agent self-consciously choose its maxim of action. This involves the agent choosing its end and the means to realize its end on the basis of reasons, rather than its end and means being merely determined by its desires.

Agents are identifiable as those things that possess the capacity for action, that is, the capacity to self-consciously and rationally determine their causality to realize an end. Korsgaard thus claims that the two essential characteristics of an agent are autonomy and efficacy. On the one hand, agents are autonomous insofar as they are capable of self-consciously choosing a maxim of action on the basis of reasons. Autonomy thus involves the capacity for practical deliberation about the goodness of one’s ends or purposes, and the rightness of acts as means to

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35 Ibid., 11-12.
36 Ibid.
37 Ibid.
38 Ibid.
39 Ibid., 105.
40 Ibid.
41 Ibid, 82-83.
those ends, and the capacity to self-legislate, or choose a maxim of action on the basis of this deliberation. On the other hand, agents are efficacious insofar as they are capable of being the cause of the realization of their end. That is to say, as well as possessing the capacity for practical deliberation and self-legislation, agents also possess the executive capacity to carry out their maxim of action.

According to Korsgaard, agents can be both individual and collective. Individual agents are agents who possess the capacities for autonomy and efficacy as individuals. Collective agents, by contrast, are constituted by individual agents. The defining characteristics of collective agents, autonomy and efficacy, are constituted by institutions, or systems of rules that define offices and positions and specify their rights, duties, and powers. To constitute a collective agent, these rules must specify: (1) the membership of the collective agent, that is, the range of individual agents who constitute the collective agent; (2) the procedures of practical deliberation and legislation that constitute the autonomy of the collective agent; and (3) procedures for the execution of the maxims of action of the collective agent. The institutions constitutive of a collective agent make it possible to identify the movements of individual agents as the actions of the collective agent in question, and thus to attribute these actions to the collective agent.

42 Ibid, 83.
43 Ibid. 82-83.
44 Ibid, 142.
45 Ibid.
46 Ibid.
47 Ibid.
Korsgaard’s account of action and agency is controversial in a number of different respects. However, I nonetheless think that contemporary political philosophers and contemporary normative theorists more generally presuppose this account. First, normative theorists presuppose this account in the way in which they construct the normative problem of action, that is, the problem of how agents should act. On the one hand, the normative problem of action contains two problems that correspond to the structural features of action that Korsgaard’s account identifies. First, the problem of the good is the problem of ends or states of affairs agents should promote or bring about. Second, the problem of the right is the problem of the specific actions agents can or should perform, or the means agents can or should take up, in the pursuit of their ends. On the other hand, the normative problem of action is only a problem for agents if they possess the capacities of autonomy and efficacy. That is, it only arises for agents who possess the capacity to choose ends and means on the basis of reasons and to effectively bring them about. Second, although some normative theorists might question the very idea of a collective agent, I nonetheless think that this idea is a necessary presupposition for political philosophy. According to the most prominent understanding of political philosophy after all, political philosophy concerns the existence and actions of the state understood as a collective agent. In the following section of this chapter, I employ this understanding of action and agency to reformulate the site of distributive justice debate.

1.2.2 Reformulating the Ground of the Site of Distributive Justice Debate

On the basis of this account of action and agency, it is possible to specify the different ways in which normative principles can apply to the actions of agents. First, normative principles can apply in different ways to the structural features of action. Normative principles can demand
of agents that they set certain ends, perform or refrain from performing specific acts, or demand of agents that their maxim of action itself conform to certain criteria. Second, normative principles can apply either to the actions of individual agents, or to the actions of collective agents such as states or associations.

I want to argue here that the distinctions that follow from this account of action and agency constitute the ground of the question of the site of distributive justice. First, these distinctions resolve the failures of the approaches of Cohen and Murphy. On the one hand, it is possible to distinguish the ways in which normative principles can apply to personal conduct. Principles can demand of individuals that they set certain ends, or that they perform or refrain from performing certain acts. On the other hand, these distinctions make possible the distinction between two approaches to institutional design. Institutional design can concern the acts of collective agents, that is, the formulation of rules that define roles and positions and specify acts that are permissible, obligatory, and forbidden that together constitute a collective agent and direct its actions. Or, institutional design can be a matter of designing institutions as effective instruments to realize a goal that is specifiable apart from them.

Second, these distinctions allow us to make sense of the differences between the positions of Rawls on the one hand, and Cohen and Murphy on the other, with respect to the question of the site of distributive justice. For Rawls, the site of distributive justice is the acts of the state. The political constitution and the basic social and economic arrangements are the primary subject of justice for Rawls because it is these institutions that specify the permissible, obligatory, and forbidden acts of the state. Rawls’s two principles of justice thus place limits on the state’s capacity to interfere with the actions of its citizens, and obligate the state to maintain a certain pattern of distribution within society. For Cohen and Murphy by contrast, the site of
distributive justice is the ends of individual agents. For these theorists, distributive justice
demands that individuals set themselves the end of bringing about certain states of affairs, and
set up institutions to more effectively realize these states of affairs.

However, these distinctions also allow us to formulate the different possible sites of
distributive justice, and this allows us to formulate other possible positions on the question of the
site of distributive justice. Four basic sites of distributive justice are possible:

![Figure 1. Sites of Distributive Justice](image)

<table>
<thead>
<tr>
<th></th>
<th>Ends</th>
<th>Acts</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Individual</strong></td>
<td>IE</td>
<td>IA</td>
</tr>
<tr>
<td><strong>Collective</strong></td>
<td>CE</td>
<td>CA</td>
</tr>
</tbody>
</table>

Different positions on the question of the site of distributive justice need not only pick out one of
these possibilities, but can also claim that two or more sites constitute the site of distributive
justice.

Although a plurality of positions is logically possible, there are four prominent positions
amongst theories of distributive justice. The ground of each of these positions is a certain way of
understanding the good and the right. It is thus helpful to employ the distinction between
consequentialism and deontology to classify them. By consequentialism here, I mean the position
that the right consists in maximizing the good, that is, in promoting the best or most valuable
state of affairs.\textsuperscript{48} By deontological theories, I mean nonconsequentialist theories that deny the claim that the right consists in maximizing the good. Instead, deontological theories are committed to the claim that there are moral constraints on the means agents can rightfully take up to promote the good.

Within debates in distributive justice, four positions are prominent: individual agent consequentialism (IAC), individual agent deontology (IAD), collective agent deontology (CAD), and collective agent consequentialism (CAC). IAC is the position that the site of distributive justice is the ends and acts of individual agents. This position is grounded in a consequentialist conception of the right according to which the right consists in the promotion of the good. Theories committed to IAC thus direct individual agents to promote the best state of affairs. However, theories committed to IAC can nonetheless justify an important role for rules and institutions as decision procedures.\textsuperscript{49} Such indirect forms of consequentialism accept consequentialism as a criterion of rightness, but argue that valuable states of affairs will be more effectively promoted if individuals follow certain rules or comply with certain institutions when they decide what to do. Prominent examples of IAC include Cohen’s luck egalitarianism and Murphy’s beneficence based conception of distributive justice.\textsuperscript{50}

IAD is the position that the site of distributive justice is the acts of individual agents. IAD is grounded in a deontological conception of the right, according to which there are constraints on the means agents can employ to pursue their good. According to IAD then, distributive justice

\textsuperscript{48} Note that this definition of consequentialism does not specify what is to be evaluated, for example acts, rules, or motivations. Note also that this definition of consequentialism is consistent with both sub-maximizing and maximizing consequentialism insofar as both are committed to the claim that it is always right, that is permissible though not necessarily obligatory, to perform the act that brings about the best state of affairs.

\textsuperscript{49} Mulgan, \textit{The Demands of Consequentialism}, 40.

\textsuperscript{50} See Cohen, \textit{Rescuing Justice and Equality}; Murphy, \textit{Moral Demands in Nonideal Theory}; and Murphy, “Institutions and the Demands of Justice.”
fundamentally concerns the rules individual agents should follow in their interactions with each other. Theories of distributive justice committed to IAD thus formulate principles of distributive justice to govern the formulation of rules that specify the acts of individual agents that are permissible, obligatory, and forbidden. The most prominent examples of IAD are those positions derived from Locke, including left and right libertarianism,\textsuperscript{51} certain cosmopolitan theories of distributive justice,\textsuperscript{52} and deontological forms of liberal nationalism.\textsuperscript{53}

CAD is the position that the site of distributive justice is the acts of the state. Distributive justice, according to CAD, is thus a condition of the rightful exercise of the state’s coercive authority over its citizens. Theorists committed to this position thus formulate principles to govern the institutions that constitute the state as a collective agent. Theories committed to CAD might also formulate obligations for citizens as well; however, such obligations are secondary to those possessed by the state. Prominent examples of CAD are Rawls’s justice as fairness, Ronald Dworkin’s liberal egalitarianism – according to which the starting point for thinking about distributive justice is the claim that “no government is legitimate that does not show equal concern for the fate of all those citizens over whom it claims dominion and from whom it claims allegiance”\textsuperscript{54} – as well as positions derived from Kant’s political thought.\textsuperscript{55}

\textsuperscript{51} See Nozick, \textit{Anarchy, State, and Utopia}; and Otsuka, \textit{Libertarianism Without Inequality}.
\textsuperscript{53} See Tamir, \textit{Liberal Nationalism}.
\textsuperscript{55} See Ripstein, \textit{Force and Freedom: Kant’s Political Thought}. 
Finally, CAC is the position that the site of distributive justice is the ends and acts of the state.\textsuperscript{56} According to CAC, the subject of distributive justice is the states of affairs that states ought to promote. Principles of distributive justice thus direct states to set and pursue certain ends. Prominent examples of positions committed to CAC include Philip Pettit’s republicanism, according to which the state possesses the duty to promote freedom as non-domination.\textsuperscript{57}

These four prominent positions on the question of the site of distributive justice can be represented in the following way:\textsuperscript{58}

\begin{center}
\begin{tabular}{|l|l|l|}
\hline
 & Ends & Acts \\
\hline
Individual & IAC & IAD \\
Collective & CAC & CAD \\
\hline
\end{tabular}
\end{center}

In the following part of this chapter, I will perform a similar clarificatory task with respect to the question of the scope of distributive justice.

\textsuperscript{56} Thanks to Patrick Turmel for pointing out the possibility of such a position.


\textsuperscript{58} As I note above, IAC and CAC also take the acts of individual agents to be the site of distributive justice. As consequentialist positions, they direct agents to choose the act that will best promote the good. The chart does not represent this; however, I will use it nonetheless here and below as it is a helpful way to emphasize the distinction between consequentialist and deontological positions.
2 The Scope of Distributive Justice

Whereas the question of the site of distributive justice concerns the type of agents and structural features of actions to which principles of distributive justice apply, the question of the scope of distributive justice concerns the range of agents who possess distributive obligations to each other. This question has received a great deal of attention in debates concerning the question of whether agents possess distributive obligations to foreigners. For this reason, I will seek to clarify the question of the scope of distributive justice by first examining the approaches of global justice theorists.

2.1 The Scope of Distributive Justice Debate

Global justice theorists have formulated the question of the scope of distributive justice in a much clearer way than Cohen and Murphy have understood and formulated the question of the site of distributive justice. In *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*, Onora O’Neill formulates the question of the scope of distributive justice as the question of “who falls within the domain of universal principles.”59 In “Cooperation, Pervasive Impact, and Coercion: On the Scope (not Site) of Distributive Justice,” Abizadeh poses the question of the scope of distributive justice in similar terms. According to Abizadeh, the question of the scope of distributive justice concerns the question of the “range of persons who have claims upon and responsibilities to each other arising from considerations of justice.”60

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However, although some theorists have formulated the *question* of the scope of distributive justice in a clear fashion, there is no agreement on the way in which different *positions* on this question should be conceptualized. Theorists working on the question of the existence of a global principle of distributive justice have approached the question of the scope of distributive justice, broadly conceived, in three distinct ways. First, in *World Poverty and Human Rights*, Pogge distinguishes between institutional and interactional conceptions of cosmopolitanism. Institutional conceptions formulate principles of *justice* for existing institutions, where these institutions constitute existence conditions for distributive obligations. Interactional conceptions, by contrast, formulate principles of *ethics* that apply to the actions of individuals and groups irrespective of the existence of institutional interaction.

Second, Michael Blake, in “Distributive Justice, State Coercion, and Autonomy,” formulates differing approaches to the question of the scope of distributive justice in terms of institutional and non-institutional theorizing. Non-institutional theorizing abstracts away from the types of institutions that exist and asks what types of institutions ought to exist. Institutional theorizing, by contrast, takes existing institutions as given and asks what these institutions must be like if they are to be just. In “Rawls on Global Distributive Justice: A Defense,” Joseph Heath approaches the question of the existence of a global principle of distributive justice in a very similar way. Here, he opposites Rawls’s institutional approach to justice, which, according to Heath, starts with an existing institution and asks “how should this institution be organized, in order to qualify as just?” with an instrumental approach to institutions, according to which the

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64 Ibid, 262.
role of institutions is simply to implement a conception of justice defined in abstraction from any institutional arrangement.\textsuperscript{65}

Finally, Andrea Sangiovanni has developed an approach to the question of the scope of distributive justice that in some sense combines the different approaches of Pogge on the one hand, and Heath and Blake on the other. First, in “Global Justice, Reciprocity, and the State,” Sangiovanni introduces a distinction between relational and non-relational conceptions of distributive justice that roughly corresponds to Pogge’s distinction between institutional theories of justice and interactional theories of ethics.\textsuperscript{66} According to relational conceptions of distributive justice, the content, scope, and justification of principles of distributive justice depend on the practice-mediated relations in which individuals stand. Practice-mediated relations are thus an existence condition of distributive obligations, and the content and justification of principles of distributive justice, must refer to the nature of these practice-mediated relations.\textsuperscript{67} According to non-relational theories of distributive justice, by contrast, practice-mediated relations are not existence conditions of distributive obligations, and the content and justification of principles of distributive justice need not refer to the practice-mediated relations in which individuals stand.\textsuperscript{68}

In “Justice and the Priority of Politics to Morality” by contrast, Sangiovanni articulates the distinction between relational and non-relational conceptions of justice as a methodological distinction that mirrors Blake and Heath’s distinction. Here, Sangiovanni distinguishes approaches to questions of justice that are committed to what he calls the “practice-dependent

\textsuperscript{65} Heath, “Rawls on Global Distributive Justice: A Defense,” 199-201.
\textsuperscript{66} Sangiovanni, “Global Justice, Reciprocity, and the State,” 5-8.
\textsuperscript{67} Ibid.
\textsuperscript{68} Ibid, 6-8.
thesis,” from approaches to questions of justice that are not.\textsuperscript{69} According to the practice-dependent thesis, “The content, scope, and justification of a conception of justice depends on the structure and form of the practices that the conception is intended to govern.”\textsuperscript{70} Sangiovanni’s practice-dependent methodology is thus similar to Blake and Heath’s conceptions of institutional theorizing, however it is also different in three significant ways. First, by a practice, Sangiovanni includes not only institutions, but also cultural practices that do not take an institutional form. Thus, Sangiovanni claims that Michael Walzer, who defends a “particularist” approach to justice, according to which the rightful distribution of social goods depends on the cultural meanings they possess, is committed to the practice-dependent thesis.\textsuperscript{71}

Second, unlike Blake and Heath’s conception of institutional theorizing, Sangiovanni’s practice-dependent methodology explicitly restricts the scope of principles of justice to the practices themselves and their participants. That is, institutional theorizing claims that we must start from existing institutions and determine the principles these institutions must satisfy if they are to be just. It does not however claim that the scope of these principles must be restricted to members of these institutions.

Finally, Sangiovanni’s practice-dependent methodology also claims that the principles of justice for a particular practice must also be justified by reference to that practice. In “Justice and the Priority of Politics to Morality” moreover, Sangiovanni goes on to provide a method of

\textsuperscript{69} Sangiovanni, “Justice and the Priority of Politics to Morality,” 137-138.

\textsuperscript{70} Ibid, 138. In “Constructing Justice for Existing Practice,” Aaron James formulates a way of thinking about institutions that is very similar to Sangiovanni’s. Here, James argues that theorists committed to an institutionalist methodology are committed to what he calls the “existence condition,” according to which “any (fundamental, ideal theory) principle of social justice has as a condition of its application the existence of some social practice.” James, “Constructing Justice for Existing Practice,” 295.

\textsuperscript{71} Walzer, Spheres of Justice: A Defense of Pluralism and Equality, xiv.
justification that can perform this task. However, Blake’s and Heath’s conception of institutional theorizing is not committed to the claim that the justification of principles of justice for a particular institution must necessarily make reference to the nature of the institution in question.

Global justice theorists have therefore approached the question of the scope of distributive justice in a number of distinct ways. In the following section of this chapter, I will attempt to introduce some systematicity into this discussion.

2.2 Clarifying the Scope of Distributive Justice Debate

My aim here is to formulate a more precise conception of the possible positions theorists can take on the question of the scope of distributive justice. I will do so by working through the different approaches to the question of the scope of distributive justice sketched in the previous section.

First, Pogge’s distinction between interactional and institutional conceptions of cosmopolitanism captures something essential about differing approaches to the question of the scope of distributive justice. A central distinction between differing approaches to the problem of the existence of a global principle of distributive justice rests on the question of whether institutional interaction is an existence condition of distributive obligations, as institutional cosmopolitanism claims, or whether it is not, as interactional cosmopolitanism claims. However, Pogge’s distinction is also problematic because it fails to recognize that this distinction between

interactional and institutional cosmopolitanism need not correspond to the distinction between justice and ethics. Onora O’Neill, for example, argues in *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*, that institutional interaction is not an existence condition of obligations of justice. The problem with Pogge’s distinction therefore, is that it corresponds to the distinction between justice and ethics.

Blake and Heath’s distinction between institutional and non-institutional theorizing correctly identifies two differing approaches to institutions in contemporary political philosophy and to the question of the scope of distributive justice; however with respect to the question of the scope of distributive justice, it does not so much formulate different positions on the question of the scope of principles of distributive justice as much as it formulates two different methodologies. It thus fails to recognize the way in which possible positions on the question of the scope of distributive justice might not be grounded in either an institutional or non-institutional methodological approach to justice. Because Blake and Heath’s distinction is a methodological one, existing institutions are either the starting point of thinking about justice, or they are considered to be mere instruments for realizing ideals of distributive justice identifiable apart from existing institutions. There is thus no sense for Blake or Heath in which institutional interaction might also be an existence condition for distributive obligations amongst persons as Pogge’s conception of institutional cosmopolitanism suggests. That is, there is no sense in which the question of whether distributive obligations obtain between two agents might depend on the normative significance of their relationship where this significance is independent of the methodology that we adopt as theorists. My claim here is not that one should not have

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74 This is not to say that Blake’s and Heath’s institutional methodology is not methodologically interesting.
methodological reasons to limit the scope of distributive justice in one way or another; rather it is that we must articulate the possible positions on the question of the scope of distributive justice in a way that is independent of the reasons why theorists might adopt one position over another.

Finally, as I make clear above, Sangiovanni’s approach to the question of the scope of distributive justice combines both approaches. On the one hand, Sangiovanni formulates a distinction between relational and non-relational conceptions of justice; on the other hand, Sangiovanni formulates a distinction between practice-dependent and practice-independent methodologies. However, Sangiovanni’s approach also suffers from problems. First, although Sangiovanni’s idea of a practice-dependent methodology is methodologically interesting, like Blake and Heath’s conception of institutional theorizing, it does not help us conceptualize the different positions theorists might take on the question of the scope of principles of distributive justice where these positions do not depend on a particular methodology. That is, I think we must first articulate the possible positions on the question of the scope of distributive justice, without prejudging the issue to be a methodological one.

Second, Sangiovanni’s distinction between relational and non-relational conceptions of distributive justice is promising insofar as it grasps the differing ways in which theories of distributive justice can identify the existence conditions of distributive obligations. However, by also specifying how principles should be formulated and justified, Sangiovanni confuses the sharpness of this distinction. More specifically, because Sangiovanni’s distinction between relational and non-relational conceptions specifies the way in which principles of justice must be

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75 My claim here is not that Sangiovanni does this, but only that his distinction between practice-dependent and practice-independent methodologies makes this possible. In fact, In “Global Justice, Reciprocity, and the State,” Sangiovanni provides a reciprocity-based justification for a relational conception of distributive justice. Sangiovanni, “Global Justice, Reciprocity, and the State,” 19-20.
justified, it includes differences in the structure of normative theories. To see this, consider that a consequentialist conception of justice could not also be a relational conception of justice. That is to say, insofar as consequentialists claim that the right consists in maximizing the good, they cannot also be committed to the position that higher-order normative principles must be formulated and justified with reference to the nature of institutional interaction. Rather, for consequentialists, institutions must be set up so as to maximize the good, a normative principle that is specifiable and justifiable apart from consideration of institutions. Sangiovanni’s distinction between relational and nonrelational theorizing thus builds into itself aspects of the non-consequentialist / consequentialist distinction. To avoid this unnecessary complexity, it is helpful to formulate the distinction between relational and non-relational theories of distributive justice in a way that does not make reference to how principles of justice should be justified.

With respect to these three approaches to the question of the scope of distributive justice, it is therefore necessary to conceptualize possible positions in a way that captures the distinction between theorists who claim that institutional or practice-mediated interaction is an existence condition of distributive justice, and those who deny this claim. As well, it is necessary to formulate this distinction in a way that does not prejudge these positions in favour either of non-consequentialist or consequentialist normative theories and that does not presuppose any controversial understanding of the nature of justice and ethics. I therefore propose the following conceptualization of the basic positions on the question of the scope of distributive justice: 76

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76 As O’Neill makes clear in *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*, the question of the scope of distributive justice can also be understood to include the question of what types of beings, apart from their participation or non-participation in social practice, possess ethical standing as a subject of justice. O’Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*, 91. This is an important aspect of the question of the scope of distributive justice and theories of distributive justice must provide an answer to it. However, because the prominent theories of distributive justice considered in this paper seem to converge, for the most part, on an answer to this question, whereas they diverge greatly on the question of the existence conditions
Practice-Dependent

Practice-Independent

Practice-dependent (PD) theories claim that participation in a shared practice is an existence condition of distributive obligations. With respect to the global justice debate, prominent PD positions include Rawls’s law of peoples, Blake’s coercion-based account of the normative significance of the basic structure, the cooperation-based accounts of Pogge, Beitz, Tan, and Daniel Moellendorf, and Tamir’s liberal nationalism. Practice-independent (PI) theories deny this claim. Prominent PI positions include O’Neill’s constructivism but also the global luck egalitarianism defended by Simon Caney and Ayelet Shachar. In the next section of this paper, I will discuss the ways in which prominent theories of distributive justice answer the questions of the site and scope of distributive justice and thus provide an account of the subject of distributive justice.

of distributive obligations, I will structure the question of the scope of distributive justice around the latter distinction, but not around the former.

77 See Rawls, The Law of Peoples.

78 See Blake, “Distributive Justice, State Coercion, and Autonomy.”

79 See Pogge, Realizing Rawls; Beitz, Political Theory and International Relations; Tan, Justice Without Borders; and Moellendorf, Cosmopolitan Justice.

80 See Tamir, Liberal Nationalism.

3 The Subject of Distributive Justice

I now want to specify what I take to be the six most prominent positions on the question of the subject of distributive justice, that is, the question of what distributive justice is fundamentally about. Each of these positions is constituted by the way that it answers the questions of the site and scope of distributive justice. To determine the positions that are logically possible, it is helpful to combine the figures used to map the different positions on the site and scope of distributive justice:

Figure 4. The Subject of Distributive Justice

<table>
<thead>
<tr>
<th>Site</th>
<th>Scope</th>
<th>PI</th>
<th>PD</th>
</tr>
</thead>
<tbody>
<tr>
<td>IAC</td>
<td>PIIAC</td>
<td>PDIAC</td>
<td></td>
</tr>
<tr>
<td>IAD</td>
<td>PIIAD</td>
<td>PDIAD</td>
<td></td>
</tr>
<tr>
<td>CAD</td>
<td>PICAD</td>
<td>PDCAD</td>
<td></td>
</tr>
<tr>
<td>CAC</td>
<td>PICAC</td>
<td>PDCAC</td>
<td></td>
</tr>
</tbody>
</table>

Figure 4 lists eight possible conceptions of the subject of justice. Moreover, as I will argue shortly, it is also possible to combine these conceptions in a variety of ways. However, although there are a number of positions that are logically possible, I want to focus here on conceptions of the subject of distributive that are held by prominent theories of distributive justice.
PIIAC – Consequentialist Cosmopolitanism

According to consequentialist cosmopolitanism (CC), distributive justice concerns the promotion of valuable states of affairs. The site of distributive justice, according to this position, is the ends and acts of individual agents; CC is thus committed to IAC. The scope of distributive justice is practice-independent. Theories of distributive justice committed to consequentialist cosmopolitanism thus direct individual agents to act so as to promote the most valuable state of affairs, however this is defined.

Theories committed to CC accept a consequentialist conception of the right, according to which the right consists in the maximization of the good; however, theories committed to CC can nonetheless justify an important role for rules and institutions as decision procedures. Such indirect forms of CC argue that valuable states of affairs will be more effectively promoted if individuals follow certain rules or comply with certain institutions when they decide what to do. The most prominent contemporary examples of CC are Murphy’s beneficence-based theory of distributive justice and the global versions of luck egalitarianism defended by Caney and Shachar.82

PIIAD – Deontological Cosmopolitanism

Deontological Cosmopolitanism (DC) is the view that distributive justice concerns the rules individual agents should follow in their interactions with each other. The site of distributive justice, according to this position, is the acts of individual agents; DC is thus committed to IAD.

82 See Murphy, “Institutions and the Demands of Justice;” Murphy, Moral Demands in Nonideal Theory; Caney, “Cosmopolitan Justice and Equalizing Opportunities;” and Shachar, The Birthright Lottery.
The scope of distributive justice, according to DC, is practice-independent. Theories of distributive justice committed to DC thus formulate principles of distributive justice to govern the formulation of rules that specify the acts of individual agents that are permissible, obligatory, and forbidden. These principles apply to individual agents whether they participate in the same institutional scheme or not. The most prominent examples of DC are forms of libertarianism and O’Neill’s constructivism.  

PDIAD – Individual Practice-Dependent

*Individual Practice-Dependent* (IPD) is the view that distributive justice concerns the shape of the institutions that individual agents participate in. The site of distributive justice is the acts of individual agents. However, according to IPD, individuals only possess distributive obligations to each other if they participate in a shared set of practices possessing certain characteristics. Participation in a shared set of practices is thus an existence condition of distributive obligations and thus defines the scope of distributive justice; however, forms of IPD depend on the types of practices that they specify to be constitutive of distributive obligations. Principles of distributive justice govern the practices that individual agents participate in. The most prominent examples of IPD include certain cooperation-based accounts, according to which participation in a scheme of social and economic cooperation is an existence condition of

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distributive justice, and liberal nationalism, according to which membership in a shared cultural community is an existence condition of distributive justice.\footnote{See Pogge, \textit{Realizing Rawls}; Beitz, \textit{Political Theory and International Relations}; Tan, \textit{Justice Without Borders}; Moellendorf, \textit{Cosmopolitan Justice}; and Sangiovanni, “Global Justice, Reciprocity, and the State.”}  

\textit{PDCAD – Deontological State Institutionalism}\footnote{See Tamir, \textit{Liberal Nationalism}.}  

Deontological State Institutionalism is the position that the subject of distributive justice is the relation of the state to its citizens. The site of distributive justice, according to DSI, is the acts of the state. Principles of distributive justice thus apply to the institutions that constitute and define the state. The scope of distributive justice, according to DSI, is defined by the institutions of the state. Prominent positions committed to DSI include Rawls’s justice as fairness,\footnote{See Rawls, \textit{A Theory of Justice}; and Rawls, \textit{The Law of Peoples}.} Dworkin’s liberal egalitarianism,\footnote{See Dworkin, \textit{Sovereign Virtue}.} Blake’s coercion-based account of the basic structure,\footnote{Blake, “Distributive Justice, State Coercion, and Autonomy.”} and Thomas Nagel’s authorial-based account of the basic structure.\footnote{Nagel, “The Problem of Global Justice.”}  

\textit{PDCAC – Consequentialist State Institutionalism}\footnote{Blake, “Distributive Justice, State Coercion, and Autonomy.”}  

Consequentialist State Institutionalism (CSI) agrees with DSI that distributive justice is about the actions of the state towards its citizens. However, according to CSI, the site of
distributive justice is the ends and acts of the state. The most prominent form of CSI is Philip Pettit’s republicanism.

**PD – Conventionalism**

Conventionalism is the view that the subject of distributive justice is the existing practices that agents engage in, whether these agents are individual agents or collective agents. With respect to the above classification of the different possible subjects of distributive justice, conventionalists claim that the subject of distributive justice could be one or more of PDIAC, PDIAD, PDCAD, or PDCAC. Sangiovanni’s conception of a practice-mediated methodology provides a good formulation of the general shape that conventionalist theories take insofar as such theories are committed to what Sangiovanni calls the practice-dependent thesis, according to which the “content, scope, and justification of a conception of justice depends on the structure and form of the practices that the conception is intended to govern.” The most prominent example of conventionalism is Michael Walzer’s *cultural conventionalism*. In *Spheres of Justice*, Walzer argues that distributive criteria for the central social goods of his social world – for example: membership, security and welfare, money and commodities, office, work, free time, education, and political power – can be derived from the social meanings these social goods possess. However, other forms of conventionalism are also possible. In “Justice and the Priority of Politics to Morality,” Sangiovanni defines a conception of institutional conventionalism.

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according to which the subject of distributive justice is not cultural practices but rather institutions.  

4 The Concept of Distributive Justice

Thus far, I have clarified the nature of the questions of the site and scope of distributive justice and have argued that together these questions are constitutive of the question of the subject of distributive justice. I have also identified what I take to be the six most prominent positions on this question. I now want to motivate this focus on the question of the subject of distributive justice. I will argue first that a conception of the subject of distributive justice is a necessary component of the idea of the concept of distributive justice. I will argue second that certain types of disagreements concerning the question of the subject of distributive justice are more basic than, and take priority over, substantive disagreements between theories of distributive justice. In these cases, differing conceptions or theories of distributive justice possess no shared concept of distributive justice because of their differing understandings of the subject of distributive justice. Consequently, in these cases, the most basic disagreement concerns the way in which the very question of distributive justice is formulated.

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4.1 The Concept and Subject of Distributive Justice

The basic concepts of practical philosophy not only identify questions or problems, but also contain an understanding of their subject matter. Thus, the concepts of the good and the right identify the basic questions of ethics, but also contain a certain conception of agency and action as the subject matter of these questions. The question of the good concerns the ends or states of affairs agents should promote or bring about; the question of the right concerns the specific acts agents can or should perform, or the means agents can or should take up, in the pursuit of their ends. These questions only make sense insofar as they presuppose a certain conception of action according to which agents take up means to set and pursue ends and a certain conception of agents as free and rational.

The concept of distributive justice is no different in this respect. Although the question of distributive justice is widely understood to concern the nature and distribution of basic rights and duties and the distribution of the benefits and burdens of social cooperation, theorists necessarily give this question more content by specifying its subject matter in order for it to be workable as a practical problem. For example, in order to specify which basic rights persons possess as a matter of distributive justice, it is first necessary to introduce a conception of the nature of these rights, that is, whether they are legal or moral rights, and it is necessary to introduce a conception of the range of persons who possess these rights and against which agents they possess them. Both of these questions bring into play the question of the subject of distributive justice. The question of the nature of these rights presupposes an answer to the question of the site of distributive justice, that is, whether distributive justice is primarily about the actions of individual or state actors; the question of the range of persons who possess these rights and
against which agents they possess them also raises questions concerning the site of distributive justice as well as the question of the scope of distributive justice.

A workable formulation of the concept or problem of distributive justice thus requires a specification of its subject. In order to make the problem of the nature and distribution of basic rights and duties and the distribution of the benefits and burdens of social cooperation workable, distributive theorists need to specify central aspects of the site and scope of distributive justice for which principles are to be developed.

4.2 Disagreements Concerning the Subject of Distributive Justice

This intimate relation of the ideas of the concept and subject of distributive justice also introduces the possibility of disagreements between theories of distributive justice that are not merely disagreements concerning the content of distributive principles. Because a theorist’s understanding of the concept of distributive justice includes a specification of its subject, disagreements concerning the subject of distributive justice constitute disagreements concerning the very concept or problem of distributive justice. Such disagreements are worrying because they are much more basic than substantive disagreements between differing conceptions of distributive justice insofar as they concern the very way in which the problem of distributive justice is posed. As disagreements concerning the very question of distributive justice, these

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93 As well as disagreeing about the subject of distributive justice, theorists might also disagree about the object of distributive justice, that is, the types of benefits and burdens that should be the concern of a theory of distributive justice. Although I cannot explore this question here, I suspect that disagreements concerning the object of distributive might also be more fundamental than disagreements between conceptions or theories of distributive justice. For an excellent discussion of the issue of the object of distributive justice, see Heath, “The Scope of Egalitarian Justice.”
disagreements take priority over substantive differences amongst the answers to this question, that is, particular theories of distributive justice.

The question of the subject of distributive justice makes possible three types of disagreements: disagreements concerning the structural features of action to which distributive principles apply, that is, acts, ends, or both; disagreements concerning the types of agents who possess distributive obligations; and disagreements concerning the scope of distributive justice. I want to suggest here that only the latter two types of disagreements constitute substantial disagreements concerning the concept of distributive justice. Disagreements concerning the structural features of action to which principles apply, that is, whether principles of justice direct agents to set certain ends or perform certain acts, do not therefore constitute substantial disagreements concerning the concept of distributive justice. The reason for this is that these disagreements concern the question of the content of principles of distributive justice and thus are best characterized as substantive disagreements between particular theories of distributive justice. As I make clear above, the differences in positions on the question of the structural features of action to which principles of distributive justice apply is very much a function of positions on the deontology/consequentialism distinction. Consequentialists take the ends and acts of agents to be the site of distributive justice whereas deontologists take the acts of agents to be the site of distributive justice. This distinction in turn depends on the way in which the ideas of the good and the right are interpreted. Thus, consequentialists hold that principles of distributive justice apply to the acts and ends of agents because they are committed to the idea that the right consists in the promotion of the good. Deontologists focus on the acts of agents because of their commitment to the idea that persons are ends in themselves. Provided that theorists agree on the types of agents to whom distributive principles apply and the scope of these obligations, disagreements concerning the structural features of action to which principles
of distributive justice apply are thus substantive disagreements over the nature of the good and the right. Moreover, it is these disagreements that will inform substantive differences between principles of distributive justice. Disagreements amongst theories of distributive justice concerning the structural features to which distributive principles should apply are thus best characterized as substantive disagreements between these theories concerning the content of distributive principles. For example, in *A Theory of Justice*, Rawls has no problem discussing the merits of his two principles of justice and the classical principle of utilitarianism from a substantive point of view even though these sets of principles differ on the question of the structural features of action to which distributive principles should apply.

So long as theories of distributive justice share a conception of the types of agents to whom principles apply and the scope of distributive principles, they can be said to possess a shared idea of the concept of distributive justice. Thus theories committed to CC and DC despite differences in their conceptions of the structural features of action to which principles of distributive justice apply, can be said to share an idea of the concept or problem of distributive justice: with respect to the content and distribution of basic rights and duties and the benefits and burdens of social cooperation, which principles should govern the interactions of all individuals? This is not an empty question and distributive theorists, whether they agree on the structural features of action to which principles of distributive justice apply or not, can intelligently debate different answers to it.

However, disagreements concerning the types of agents to whom distributive obligations apply and the scope of distributive principles, constitute substantial disagreements concerning the very concept or problem of distributive justice. These disagreements do not only concern the content of principles of distributive justice, but also concern the more basic questions of who
possesses distributive obligations and to whom these obligations are owed. Each of these types of disagreements thus has substantial implications for how the concept or problem of distributive justice is formulated. For example, for theorists who hold that institutional interaction is an existence condition of distributive obligations, the problem of distributive justice concerns the way in which these institutions should assign basic rights and duties and distribute the benefits and burdens of social cooperation. For theorists who deny that institutional interaction is an existence condition of distributive justice, the problem of distributive justice is rather the question posed above: with respect to the content and distribution of basic rights and duties and the benefits and burdens of social cooperation, which principles should govern the interactions of all individuals? The basic disagreement here for theorists who disagree on the scope of distributive justice is not primarily a disagreement about the substantive content of principles of distributive justice, but rather a disagreement about the existence conditions for distributive obligations. Similarly, theorists who disagree on the question of whether individuals or the state are the primary bearers of distributive obligations disagree greatly with respect to their ideas of the concept or problem of distributive justice. Theorists committed to CC, DC, or IPD hold that distributive justice is primarily a question about individual interaction; theorists committed to DSI or CSI by contrast hold that distributive justice primarily concerns the actions of the state. Again, this disagreement does not so much concern the substantive content of principles of distributive justice, but rather which types of agents possess distributive obligations. These theorists differ sharply on the formulation of the concept or problem of distributive justice insofar as they differ on the question of whether distributive justice is fundamentally about the actions of individuals or the actions of the state.

With respect to the six positions on the subject of justice outlined above, it is therefore possible to identify the sets of positions for which disagreements concerning the scope of
distributive obligations or the types of agents who possess distributive obligations are more basic than disagreements concerning the substantive content of principles of distributive justice. First, prominent conceptions of DSI and CSI differ from prominent conceptions of CC, DC, and IPD insofar as they identify the state rather than individuals as the primary agent that possesses distributive obligations. Second, with respect to the question of the scope of distributive justice, CC and DC on the one hand and CSI, DSI, and IPD on the other, take opposing positions on the question of the existence conditions of distributive obligations. These two types of disagreements concerning the subject of distributive justice are more basic than disagreements concerning the content of distributive principles because they concern the very way in which the concept or problem of distributive justice is formulated.

To illustrate the way in which disagreements concerning these aspects of the question of the subject of distributive justice are more basic than disagreements concerning the substantive content of principles of distributive justice, it is helpful to examine current debates in global distributive justice. The two most prominent positions in global justice debates are Rawls’s conception of the law of peoples, and various cosmopolitan alternatives. Rawls’s law of peoples consists of principles to govern the interactions of peoples, that is, citizens of reasonably just states conceived of as collective agents. Importantly, Rawls’s conception of the law of peoples contain no principles analogous to the two principles of justice of Rawls’s theory of domestic distributive justice, justice as fairness. The reason for this is that Rawls’s approach to the question of global justice follows from his approach to domestic distributive justice. Distributive justice, according to Rawls, concerns the way in which the state exercises its coercive authority over its citizens and the obligations citizens possess in turn towards the state. The primary site of distributive justice, according to Rawls, is thus the acts of the state; the scope of distributive justice is limited to membership in a domestic basic structure. Consequently, global justice, for
Rawls, concerns the actions of peoples towards other peoples and thus contains no global principles of distributive justice that are analogous to the two principles found in justice as fairness. Citizens possess no obligations of distributive justice towards foreigners, Rawls claims, because they are not members of the same domestic basic structure.

Cosmopolitan theorists, by contrast, argue that global justice requires global principles of distributive justice, analogous to the principles constitutive of Rawls’s justice as fairness, to govern the global interaction of individuals.94 The approach of cosmopolitan theorists similarly follows from their conception of the subject of distributive justice. Although cosmopolitan theorists differ on the question of the scope of distributive justice, they nonetheless agree that distributive justice is primarily about the ways in which individual agents interact with each other. Individuals, regardless of citizenship according to cosmopolitan theorists, thus possess global distributive obligations towards each other.

The interesting point about the global justice debate for the purposes of this chapter is that global justice theorists have spent a great deal of time focusing not on the substantive content of proposed principles of global justice but rather on the way in which Rawlsians and cosmopolitans answer the question of the subject of distributive justice. The reason for this, as I argue above, is that the disagreements between these positions on aspects of the question of the subject of distributive justice are more basic than disagreements concerning the substantive content of principles of global justice. Global justice theorists recognize that the most

94 See Pogge, Realizing Rawls; Beitz, Political Theory and International Relations; Tan, Justice Without Borders; and Moellendorf, Cosmopolitan Justice.
fundamental difference between Rawlsian and cosmopolitan theories of global justice lies in the differing ways that each formulates the concept or problem of global distributive justice.\(^{95}\)

Conclusion

In this chapter, I have identified what I take to be the most prominent positions on the question of the subject of distributive justice. As well, I have attempted to motivate my focus on this question by arguing that different specifications of it constitute different formulations of the very concept or problem of distributive justice.

In the following chapter, I will begin my defense of DSI. Here, I will introduce my own account of the subject of distributive justice: the political authority theory. According to this theory, the domestic basic structure is the primary subject of distributive justice because of the way in which the state exercises political authority over its citizens and not because of its pervasive effects. I will also introduce the argumentative strategy that I will employ to show why the state’s exercise of its political authority is significant for the problem of distributive justice: the legitimacy strategy. The legitimacy strategy aims to show that the state can only exercise its political authority legitimately if it secures distributive justice for its citizens.

\(^{95}\) In a sense, the problem of the subject of distributive justice and the way in which different specifications of it constitute different interpretations of the concept or problem of distributive justice could only be identified with the move to discussions of global justice. The reason for this is that most work on the question of domestic distributive justice presupposed that domestic distributive justice concerned the actions of the state and that citizenship in the state delimited the scope of distributive justice.
Chapter 2 The Political Authority Theory and the Legitimacy Strategy

In chapter 1, I performed three clarificatory tasks. First, I clarified the nature and relationship of the questions of the site, scope, and subject of distributive justice, arguing that the two former questions are together constitutive of the latter. Second, I suggested that there are six prominent positions on the question of the subject of distributive justice: consequentialist cosmopolitanism (CC), deontological cosmopolitanism (DC), individual practice-dependent (IPD), consequentialist state institutionalism (CSI), deontological state institutionalism (DSI), and conventionalism (C).

Finally, I made clear the importance of the question of the subject of distributive justice, arguing that disagreements concerning this question can be more basic than disagreements concerning the content of distributive principles. Here, I argued that the central cleavages amongst these positions concern the questions of the scope of distributive justice and the types of agents to whom distributive obligations apply. Whereas CC, DC, and IPD claim that distributive justice fundamentally concerns the actions of individuals, CSI and DSI hold that distributive justice is about the actions of the state towards its citizens. Similarly, whereas CC and DC claim that distributive obligations are practice independent, IPD, CSI, DSI, and C claim that they are not.

In this chapter, I begin my defense of DSI. DSI is defined by the thesis that the state’s relation to its citizens is the primary subject of distributive justice. According to DSI then, the state’s relation to its citizens is the site and defines the scope of distributive justice. The two most prominent theories of distributive justice that are committed to DSI are John Rawls’s *justice as*
fairness and Ronald Dworkin’s liberal egalitarianism. However, as a number of critics have shown, neither theorist provides a compelling justification for it. The central charge of these critics is that there is nothing that is distinctive or normatively significant about the state’s relation to its citizens.

Michael Blake and Thomas Nagel have recently attempted to justify DSI. Both theorists construe their defense of DSI as a defense of Rawls’s claim that the basic structure is the primary subject of distributive justice. For this reason, I will refer to their positions as different theories of the basic structure. First, in “Distributive Justice, State Coercion, and Autonomy,” Blake formulates what Arash Abizadeh calls the “coercion theory” of the basic structure. By the basic structure, Blake means the political and legal institutions of the liberal state: the three public authorities constitutive of the liberal state – the legislative, executive, and judiciary – and the criminal law and the civil law – property law, contract law, and torts. The basic structure of a domestic society is the primary subject of distributive justice, Blake argues, because it exercises

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96 For Rawls, the primary subject of distributive justice is the basic structure of society, that is, the “way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation.” Rawls, A Theory of Justice, 6. For Rawls then, the problem of distributive justice is the problem of the assignment of basic rights and duties in the institutions of society and the distribution of the benefits and burdens of social cooperation. Ibid, 4. Dworkin formulates the problem of distributive justice slightly differently; however, for Dworkin too the problem of distributive justice also concerns the relation of the state to its citizens. Dworkin’s theory of distributive justice starts from the claim that “No government is legitimate that does not show equal concern for the face of all those citizens over whom it claims dominion and from whom it claims allegiance.” Dworkin, Sovereign Virtue, 1. For Dworkin, the fundamental question of distributive justice is thus the question of what it means for the state to show equal concern for the lives of its citizens. This question, Dworkin claims, includes the question of “distributional equality,” that is, the question of the equal distribution of resources; and it includes the question of “political equality,” that is, the question of the equal distribution of political power and individual rights. Ibid, 11-12.


98 Ibid.


coercion over its members.\textsuperscript{101} In “The Problem of Global Justice,” by contrast, Nagel presents what I will call the “authorial theory” of the basic structure.\textsuperscript{102} By the basic structure here, Nagel follows Blake in meaning the political and legal institutions of the sovereign state.\textsuperscript{103} Nagel argues that the state possesses an obligation to its citizens to secure distributive justice because of the distinct way in which its citizens are both the authors and subjects of a coercively imposed system of norms.\textsuperscript{104} Because the state asks its citizens to take responsibility for its acts and obey its laws and support its institutions, and thus actively cooperate in the operation of the state, Nagel claims the state must exercise its political authority in a way that is justifiable to its citizens, which includes securing material equality.\textsuperscript{105}

Blake’s coercion theory and Nagel’s authorial theory have been subjected to a great deal of criticism.\textsuperscript{106} However, in this chapter, I aim to show that both theories possess a shared insight concerning the normative significance of the institutions of the state for distributive justice. Although neither Blake nor Nagel develop this insight to the extent necessary to justify DSI, I will suggest that this shared insight can be worked up into a successful theory of the basic structure: the \textit{political authority theory}. In short, Blake’s coercion theory and Nagel’s authorial theory share the central insight that the state’s exercise of its political authority over its citizens imposes a distinctive obligation on it to do so in a way that is justifiable to its citizens. This

\textsuperscript{101} Ibid, 258.

\textsuperscript{102} Abizadeh claims that Nagel’s theory of the basic structure is also a coercion theory of the basic structure. Abizadeh, “Cooperation, Pervasive Impact, and Coercion: On the Scope (not Site) of Distributive Justice,” 321. However, for Nagel, it is not simply the coercive nature of the state that makes it the subject of distributive justice, but also the way in which the state claims to exercise its authority in the name of its citizens. Nagel, “The Problem of Global Justice,” 128.

\textsuperscript{103} Ibid, 120.

\textsuperscript{104} Ibid, 128-129.

\textsuperscript{105} Ibid, 129.

insight is important for the project of justifying DSI for two reasons. First, as Blake and Nagel make clear, to justify its exercise of political authority to its citizens, the state must secure distributive justice amongst its citizens. According to these theorists then, the problem of distributive justice is a component part of the general problem of the legitimacy of the state’s political authority, making the site of distributive justice the state’s relation to its citizens.

Second, because the state only exercises its political authority over its own citizens, it only possesses obligations of distributive justice to its citizens and not to other states or their citizens. On this view then, the state’s relation to its citizens also defines the scope of distributive justice.

This shared insight has, for the most part, gone unnoticed in the literature. The reason for this is that critics have construed Blake and Nagel’s argumentative strategy in a different way. Critics, including A.J. Julius, Andrea Sangiovanni, and Abizadeh have interpreted Blake’s coercion theory and Nagel’s authorial theory to be committed to what I will call the *existence conditions* argumentative strategy. According to these theorists, Blake and Nagel are engaged in the project of identifying the conditions that are necessary and together sufficient for the existence of distributive justice. On this reading of Blake’s coercion theory, it is the state’s use of coercion that is both a necessary and sufficient condition of distributive justice. According to this reading of Nagel’s authorial theory, it is the state’s authorial relation to certain persons that is a necessary and sufficient condition of distributive justice. As these critics point out, as examples of the existence conditions strategy, Blake’s coercion theory and Nagel’s authorial theory are open to the charge that it is not merely the state’s relation to its citizens that satisfies the existence conditions of distributive justice. As Abizadeh points out, the state exercises coercion
over foreigners at its borders;\textsuperscript{107} as Sangiovanni makes clear, there is a sense in which the state stands in an authorial relation to foreigners through its participation in international institutions like the WTO.\textsuperscript{108}

Against this predominant reading of Blake’s coercion theory and Nagel’s authorial theory, I argue that these theories are best understood as examples of what I will call the \textit{legitimacy strategy}. As examples of the legitimacy strategy, the aim of Blake’s coercion theory and Nagel’s authorial theory is not to identify the necessary and sufficient conditions for the existence of distributive justice, but rather to argue that the state’s exercise of its political authority over its citizens raises the problem of its legitimacy in doing so and that this problem of legitimacy includes the problem of distributive justice. The idea here is that the state’s exercise of its political authority is legitimate only if it secures distributive justice. Understanding Blake’s political theory and Nagel’s authorial theory as examples of the legitimacy strategy, I argue, preserves the shared insight of these two theories, namely, that the state’s exercise of its political authority over its citizens imposes a distinctive obligation on the state to exercise its authority in a way that is justifiable to its citizens.

I will call the theory of the basic structure that develops this shared insight the \textit{political authority theory}. According to the political authority theory, the state’s relation to its citizens is the primary subject of distributive justice because of the way in which the state exercises political authority over its citizens. By political authority here, I mean that the state exercises legislative, executive, and adjudicative authority over its citizens, puts them under an obligation

\textsuperscript{107} Abizadeh, “Cooperation, Pervasive Impact, and Coercion: On the Scope (not Site) of Distributive Justice,” 348-349.

\textsuperscript{108} Sangiovanni, “Global Justice, Reciprocity, and the State,” 18-19.
to obey, and claims to be entitled to do so. The state’s exercise of political authority over its citizens is significant for the problem of distributive justice, according to this theory, because the state’s exercise of its political authority is legitimate only if it secures distributive justice for its citizens.

In the following four chapters, I will develop and defend the political authority theory as a justificatory account of DSI. However, here, my aim is merely to present and motivate this theory and to situate it in the context of the literature dealing with the question of the subject of distributive justice. What follows is therefore more of a sketch of the political authority than a defense. In part 1, I briefly present Blake’s coercion theory and Nagel’s authorial theory. In part 2, I discuss the existence conditions strategy and show how the critiques of Julius, Sangiovanni, and Abizadeh presuppose that these theories are committed to it. In part 3, I introduce the legitimacy strategy and argue that Blake’s coercion theory and Nagel’s authorial theory can be plausibly reconstructed as examples of it. In part 4, I introduce and motivate the political authority theory as a theory that is committed to the legitimacy strategy and that develops the central shared insight of Blake’s coercion theory and Nagel’s authorial theory. Finally, I conclude by identifying the problems that the political authority theory faces as a justificatory account of DSI. In the following chapters of my dissertation I provide solutions to these problems.

1 Blake’s Coercion Theory and Nagel’s Authorial Theory

As theories of the basic structure, Blake’s coercion theory and Nagel’s authorial theory each provide a definition of the basic structure, and an account of why it is the site, and defines
the scope, of distributive justice. For both theories, the central institution of the basic structure is the state. However, each theory identifies a different feature of the state that is significant for distributive justice. For Blake, it is the way in which the state exercises coercion over its citizens; for Nagel, it is the way in which citizens are both subject to, and authors of, the state’s coercive authority.

In this part of the chapter, I present Blake’s coercion theory and Nagel’s authorial theory. In parts 2 and 3 I will suggest that these two theories can be understood as examples of at least two different argumentative strategies. However, I think that it is possible to present an account of these theories that is neutral between these two theories, and I attempt to do so here.

1.1 Blake’s Coercion Theory

In “Distributive Justice, State Coercion, and Autonomy,” Michael Blake argues that the political and legal institutions constitutive of the liberal state require a distinct form of justification because of the way in which they exercise coercion over their members.109 These institutions not only include the three public authorities constitutive of the liberal state – the legislative, executive, and judiciary – but also the criminal law and the civil law – property law, contract law, and torts.110 The coercive features of the domestic basic structure are normatively significant in this way, Blake argues, because coercion is incompatible with autonomy. By autonomy here, Blake follows Joseph Raz in meaning the capacity of persons “to develop and

110 Ibid, 279-282.
pursue self-chosen goals and relationships.” Following Raz and Alan Wertheimer, Blake defines coercion as “an intentional action, designed to replace the chosen option with the choice of another.” Coercion is incompatible with autonomy, Blake claims, because coercion always involves the subjection of the will of one person to the will of another.

Blake expresses his fundamental commitment to autonomy in the form of a principle of autonomy: “all human beings have the moral entitlement to exist as autonomous agents, and therefore have entitlements to those circumstances and conditions under which this is possible.” He argues that because coercion is inconsistent with autonomy, it follows from this principle that coercive acts are prima facie prohibited. However, Blake argues that coercion is nonetheless sometimes morally permissible. More specifically, coercion is morally permissible when it is justifiable to those persons whose autonomy is violated, that is, when persons could hypothetically consent to the coercion in question as autonomous persons under certain well-defined conditions.

On the basis of this account of autonomy and coercion, Blake argues that the political and legal institutions of the liberal state raise a distinctive problem of justification insofar as they are coercive. With respect to the criminal law, Blake argues that the state must justify its system of enforceable norms and punishments by reference to what autonomous persons could

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111 Ibid, 267. Although Blake notes that this conception of autonomy is derived from Raz, he also makes clear that this conception of autonomy is consistent with Rawls’s conception of rational autonomy. Ibid, 270-271.
112 Ibid, 272.
113 Ibid, 268.
114 Ibid, 267.
115 Ibid, 271.
116 Ibid, 273-274.
hypothetically consent to.\textsuperscript{117} With respect to the civil law, that is, the law of contract, property, and torts, Blake argues that this principle of justification implies that the state possesses an obligation to be concerned with the distribution of private resources amongst its own citizens.\textsuperscript{118} The reason for this is that it is through its enforcement of the civil law that the state coercively enforces a pattern of private entitlements.\textsuperscript{119} If, in accordance with the rules of this scheme, I own land, the state is entitled to coerce others to stay off of my property and refrain from making use of it without my consent. For this institution to be justifiable to all citizens, Blake claims, the state must define and enforce the institution of the civil law in accordance with principles concerned to secure a just distribution of private entitlements.\textsuperscript{120}

This pattern of laws, then, defines how we may hold, transfer, and enjoy our property and our entitlements. In so doing, I think, these laws create a pattern of entitlements; the state, through the non-criminal aspect of its legal system, defines how property will be understood and held, and what sorts of activities will produce what sorts of economic holding. Consent can be, I think, partially based upon these consequences of various ways of allocating and protecting entitlements. The principles we seek will mandate or constrain certain ways of allocating entitlements, and the consequences these principles have for holdings of property seem a relevant criterion on which consent might be given or withheld.\textsuperscript{121}

In short, Blake argues that for the state’s enforcement of civil law to be justifiable to its citizens, the state must concern itself with the material equality of its citizens. States thus possess distributive obligations to their citizens because of the way in which they exercise coercion over their citizens.

\textsuperscript{117} Ibid, 274.
\textsuperscript{118} Ibid, 276-277.
\textsuperscript{119} Ibid, 281.
\textsuperscript{120} Ibid, 282-284.
\textsuperscript{121} Ibid, 281.
Blake does not deny that there is a coercive network of law at the international level or that states exercise coercion against other states, for example, through the use of military force or in exploitative trade relationships.\(^{122}\) However, Blake argues that the forms of coercion that require justification at the international level do not target individuals, but rather states.\(^{123}\) The terms under which these forms of coercion are justifiable will therefore differ greatly from the terms under which the state’s enforcement of the civil law is justifiable.\(^ {124}\) States do not therefore possess distributive obligations to foreigners because they do not directly coerce them in the same way that they coerce their own citizens.

1.2 Nagel’s Authorial Theory

In “The Problem of Global Justice,” Nagel defends what he calls the “political conception” of justice. According to the political conception, justice is fundamentally concerned with the actions of the sovereign state towards its citizens.\(^ {125}\) Justice is not therefore a pre-institutional value that only requires institutions to function as instruments for its realization; rather, justice is fundamentally about institutions: “their existence is precisely what gives the value of justice its application.”\(^ {126}\) According to the political conception of justice then, the site of justice is the institutions of the state. With respect to distributive or socioeconomic justice

\(^ {122}\) Ibid, 265, 280.
\(^ {123}\) Ibid.
\(^ {124}\) Ibid, 280.
\(^ {125}\) Nagel, “The Problem of Global Justice,” 120. However, it is important to note that Nagel does not deny that individuals and states do possess some duties of justice to agents who are not members of a shared institutional scheme. Ibid, 126-127.
\(^ {126}\) Ibid, 120.
moreover, Nagel claims that its scope is limited to citizens of the state. As Nagel puts it, “Justice is something we owe through our shared institutions only to those with whom we stand in a strong political relation.”\textsuperscript{127}

To motivate the political conception, Nagel appeals to Rawls’s theory of distributive justice, which, Nagel claims, is a prime example of the political conception.\textsuperscript{128} For Nagel, the central idea of Rawls’s theory of distributive justice is the need to eliminate morally arbitrary sources of inequality from the life prospects of persons.\textsuperscript{129} Nagel admits that this principle might be understood to apply universally, apart from membership in any particular institutional scheme.\textsuperscript{130} However, Nagel rightly points out that Rawls thinks that this principle only applies to the institutions of the state, that is, to the basic structure of society. The reason for the limitation of this principle to the basic structure, Nagel claims, comes from the “special involvement of agency or the will that is inseparable from membership in a political society.”\textsuperscript{131} On the one hand, members of the basic structure are the authors of the laws of the political society as a collective enterprise that exercises its authority in their name.\textsuperscript{132} On the other hand, members of the basic structure are the subjects of the law of the political society and possess an obligation to comply with it.\textsuperscript{133} Because membership in a political society is inseparable from this involvement of the will, for the actions of the political society to be legitimate, rather than cases of pure coercion, the state must justify its actions to its citizens. It is for this reason that Rawls’s

\begin{flushleft}
\textsuperscript{127} Ibid, 121.
\textsuperscript{128} Ibid, 120-126.
\textsuperscript{129} Ibid, 127.
\textsuperscript{130} Ibid, 128.
\textsuperscript{131} Ibid.
\textsuperscript{132} Ibid.
\textsuperscript{133} Ibid, 128-129.
\end{flushleft}
presumption against arbitrary inequalities applies solely to the political society. Insofar as members are the authors and subjects of the laws of the state through which advantages and disadvantages are created and distributed, the laws of the state must be justified to them. And, Nagel claims, if the laws of the state are to be justifiable to their members, they must not discriminate against members with respect to the distribution of benefits and burdens on the basis of factors that are arbitrary from the moral point of view. Nagel puts this point in the following way:

the state makes unique demands on the will of its members—or the members make unique demands on one another through the institutions of the state—and those exceptional demands bring with them exceptional obligations, the positive obligations of justice. Those obligations reach no farther than the demands do and that explains the special character of the political conception. ¹³⁴

As Nagel makes clear in this passage moreover, because the state makes these demands only of its citizens, it only owes distributive obligations to its citizens, and not therefore to foreigners. ¹³⁵ The basic structure is therefore not only the site of distributive justice, but also defines the scope of distributive justice.

Blake and Nagel’s theories of the basic structure therefore each identify features of the state’s relation to its citizens that are normatively significant for the problem of distributive justice and so suggest promising arguments in support of DSI. In the following parts of this chapter, I will suggest that both Blake’s coercion theory and Nagel’s authorial theory can be reasonably construed to be examples of two different argumentative strategies: the existence conditions strategy and the legitimacy strategy. Although both theories are subject to strong

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¹³⁴ Ibid, 130.
¹³⁵ Ibid.
objections if they are understood as examples of the former strategy, I will argue that they can avoid these objections if they are understood as examples of the latter.

2 The Existence Conditions Strategy

As theories of the basic structure, Blake’s coercion theory and Nagel’s authorial theory aim to provide an account of the normative significance of the state’s relation to its citizens for the problem of distributive justice. Both theories carry out this task by identifying those features of the state’s relation to its citizens that are both distinctive and normatively significant. For Blake, it is the way in which the state exercises coercion over its citizens. For Nagel, it is the way in which the state’s citizens are both the authors and subjects of the state’s laws.

Critics of Blake’s coercion theory and Nagel’s authorial theory have understood this argumentative strategy to be part of a broader argumentative strategy: the existence conditions strategy. As examples of the existence conditions strategy, Blake’s coercion theory and Nagel’s authorial theory do not merely claim to identify the normatively significant and distinctive ways in which the state relates to its own citizens, but also claim to identify the necessary and sufficient existence conditions for distributive justice. On this reading, Blake’s coercion theory claims that state coercion is a necessary and sufficient condition of distributive justice; Nagel’s authorial theory claims that subjection to the state’s authority is a necessary and sufficient condition of distributive justice.
In this part of the chapter, I examine the most prominent critiques of Blake’s coercion theory and Nagel’s authorial theory. Here, I focus on those critics who take issue with these theories as attempts to justify DSI. First, I argue that these critics interpret Blake’s coercion theory and Nagel’s authorial theory as examples of the existence conditions strategy. Second, I argue that the force of their critique depends on this interpretation. In short, all three critics aim to show that the conditions Blake and Nagel identify as necessary and together sufficient existence conditions for distributive justice are satisfied not only by the state’s relation to its citizens, but also by the state’s relation to foreigners.

In “Global Justice, Reciprocity, and the State,” Sangiovanni characterizes both Blake’s coercion theory and Nagel’s authorial theory as “coercion-based accounts of internationalism.” Coercion-based accounts of internationalism, Sangiovanni claims, are committed to the claim that “state coercion is a necessary condition for equality as a demand of justice to apply.” Sangiovanni’s characterization of Blake’s coercion theory and Nagel’s authorial theory as coercion-based accounts does not therefore presuppose that these theories are examples of the existence conditions strategy. However, Sangiovanni’s critique of Nagel’s

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136 See Abizadeh, “Cooperation, Pervasive Impact, and Coercion: On the Scope (not Site) of Distributive Justice;” Sangiovanni, “Global Justice, Reciprocity, and the State;” and Julius, “Nagel’s Atlas.” Joshua Cohen and Charles Sabel have also criticized Nagel’s authorial theory. See Cohen and Sabel, “Extra Republlicam Nulla Justitia?” However, I will not discuss their critique here. Cohen and Sabel criticize Nagel’s support of “strong statism” – the position that the “existence of a state is necessary and sufficient to trigger any norms beyond humanitarianism’s moral minimum.” Ibid, 150. However, Cohen and Sabel are not concerned to reject what they call “weak statism” which is consistent with DSI and is consistent with the political authority theory. According to weak statism, the state is a necessary and sufficient condition of distributive justice; however, the state nonetheless possesses obligations of justice to other states and foreigners. Ibid.

137 Sangiovanni, “Global Justice, Reciprocity, and the State,” 8.

138 Ibid.

139 In fact, Sangiovanni rejects Blake’s coercion theory on the grounds that Blake’s claim that state coercion is a necessary condition of distributive justice is false. Ibid, 10-13.
authorial theory does demonstrate that he conceives of it as an example of the existence conditions strategy.

Sangiovanni claims that Nagel’s authorial theory outlines two necessary existence conditions that are together sufficient of distributive justice. First, Sangiovanni claims that according to Nagel’s authorial theory, a necessary condition of distributive justice is that persons be subject to a system of societal rules that is nonvoluntary for them. Second, Sangiovanni claims that it is also a necessary existence condition of distributive justice according to Nagel’s authorial theory, that the persons subject to this system of societal rules are the authors of these rules and are responsible for them. For persons to be the authors of a system of societal rules and to be responsible for them, Sangiovanni points out, it is not necessary that the legislative institution take a certain attitude towards its subjects, but only that it imposes norms on its subjects that it expects its subjects to follow.

Sangiovanni recognizes that this second necessary condition of distributive justice is not a sufficient condition for distributive justice given that there are a number of private associations that satisfy it. However, Sangiovanni does think that for Nagel, these two conditions are together sufficient for the existence of distributive justice. He thus rejects Nagel’s authorial theory on the grounds that certain international institutional orders, as well as the nation state, satisfy these two conditions for distributive justice. Here, Sangiovanni relies on Joshua Cohen

140 Ibid, 15.
141 Ibid, 16.
142 Ibid. As Sangiovanni points out, this interpretation of Nagel’s claim that the state claims to speak in the name of its citizens is derived from Julius. See A.J. Julius, “Nagel’s Atlas,” 181.
143 Sangiovanni, “Global Justice, Reciprocity, and the State,” 16-17.
144 Ibid, 17.
and Charles Sabel’s argument in “Extra Rempublicam Nulla Justitia?” According to Cohen and Sabel, an IMF decision to provide structural adjustment loans to a country facing economic chaos on the condition that the state in question reduces barriers to trade and reforms its legal and political institutions implicates the will of its citizens in the same way that the state’s exercise of its coercive authority does. On the one hand, the decisions of the IMF are made to serve the interests of the citizens of the state in question and the IMF expects these citizens to comply with the stated reforms. On the other hand, the imposition of the IMF’s will is nonvoluntary insofar as the state faces economic chaos. Sangiovanni thus claims that certain international institutional orders, for example the WTO and IMF, claim to speak for the citizens of states and that subjection to these international institutional orders is nonvoluntary:

noncompliance or exit from most major international organizations, let alone the global institutional order as a whole, carries significant costs for states subject to them, especially smaller and less powerful ones. It stretches credibility to argue that these costs are small enough to make membership voluntary in the relevant sense, and hence to suspend a concern with distributive justice.

According to Sangiovanni then, the two conditions that Nagel claims are necessary and together sufficient for distributive justice are not only satisfied by the state, but also by certain international institutions. For our purposes however, the important point to recognize is that Sangiovanni’s critique of Nagel’s authorial theory depends on Sangiovanni’s interpretation of it as an example of the existence conditions strategy. That is, Nagel can only fail to show that only the state satisfies the conditions that are necessary and together sufficient for the existence of distributive justice if he is engaged in the project of identifying the conditions that are necessary and together sufficient for the existence of distributive justice.

146 Sangiovanni, “Global Justice, Reciprocity, and the State,” 18.
In “Cooperation, Pervasive Impact, and Coercion: On Scope (not Site) of Distributive Justice,” Abizadeh, like Sangiovanni, construes both Blake’s coercion theory and Nagel’s authorial theory as coercion theories of the basic structure. According to both theories, Abizadeh claims, it is “the fact of state coercion” that “grounds the requirement and scope of distributive justice.” For both Blake and Nagel, Abizadeh claims, state coercion is a necessary and sufficient condition for the existence of distributive justice. First, Abizadeh claims, Blake is committed to the following two claims:

A3: “If \( x \) is ongoing state coercion against an individual, then \( x \) requires concern by the state for the relative deprivation of that individual.”

N1: “If \( x \) requires concern by the state for the relative deprivation of an individual, then \( x \) is ongoing state coercion against that individual (requiring justification).”

According to the first claim, state coercion is a sufficient condition of distributive justice; according to the second claim, state coercion is a necessary condition of distributive justice. Nagel, Abizadeh claims, is committed to a similar set of claims. According to Abizadeh, Nagel is committed to the claim that “demands of justice arise if and only if two existence conditions are met: persons are (1) subject to ongoing coercion (2) that is carried out in their name.” For our purposes, the important point to recognize is that by attributing these claims to Blake and Nagel, Abizadeh presupposes that both Blake’s coercion theory and Nagel’s authorial theory are examples of the existence conditions strategy.

\[\text{Abizadeh}, \text{“Cooperation, Pervasive Impact, and Coercion: On Scope (not Site) of Distributive Justice,” 345.}\]

\[\text{Ibid.}\]

\[\text{Ibid, 347.}\]

\[\text{Ibid.}\]

\[\text{Ibid, 348.}\]

\[\text{Ibid, 351.}\]
Abizadeh rejects Blake’s coercion theory and Nagel’s authorial theory for similar reasons as Sangiovanni. First, with respect to Blake’s coercion theory, Abizadeh rejects Blake’s claim that the state does not directly coerce foreigners. As Abizadeh puts it:

it is one of the most salient features of the contemporary Westphalian interstate system that individuals are subject to a vast network of ongoing coercion by foreign states that restrict their movement across state borders. States today, including self-proclaimed liberal states, use coercion against foreigners on a massive and ongoing basis to prevent them from entering their territory at will. \(^{153}\)

As Abizadeh makes clear, Blake explicitly considers this objection in “Distributive Justice, State Coercion, and Autonomy.” Here, Blake argues that although the state directly coerces foreigners at its borders, each form of coercion requires its own form of justification, and the form of justification the state’s coercion of would-be immigrants requires is different from the form of justification the state must give to its citizens. \(^{154}\) However, Abizadeh rejects this argument. Instead, he argues that there is no significant difference between these two forms of coercion. First, Abizadeh considers the claim that only the state’s coercion of its citizens profoundly and pervasively impacts the life prospects of individuals. However, Abizadeh argues, this is false: “the reason why a tremendous number of human beings sell every possession they have and risk life and limb to cross state boundaries is because the Westphalian system of state borders and the policing of those borders do “profoundly and pervasively” affect human beings’ life chances in our world.” \(^{155}\) Second, Abizadeh considers the claim that the difference between the state’s coercion of its citizens and the state’s coercion of would-be immigrants at its borders lies in the distinction between law-governed state coercion and lawless-state coercion. \(^{156}\) Whereas the state

\(^{153}\) Ibid, 348-349.


\(^{156}\) Ibid, 350.
coerces its citizens in accordance with a legal system, it coerces foreigners by executive decree and thus in a lawless fashion.\textsuperscript{157} However, Abizadeh claims, if Blake relies on this distinction to show why the state only possesses distributive obligations to its citizens, this would make Blake’s coercion theory perverse: “The perversity of the argument is clear: on this interpretation, Blake is suggesting that the fact that states mistreat foreigners by coercing them lawlessly, without tempering coercion with the rule of law, is what justifies denying them concern for relative deprivation and constricts the scope of distributive justice.”\textsuperscript{158}

Abizadeh argues that Nagel’s authorial theory is perverse in the same way that Blake’s coercion theory is. Recall that according to Abizadeh’s reading of Nagel’s authorial theory, demands of justice arise if and only if two existence conditions are met. First, persons must be subject to a basic structure whose norms are coercively enforced; second, the norms of the basic structure must be carried out in the name of its members.\textsuperscript{159} Abizadeh argues that this basic feature of Nagel’s authorial theory is perverse insofar as it implies that the state only owes distributive obligations to those persons who it claims to speak for, but not those persons who it simply coerces directly. As Abizadeh puts it, Nagel’s authorial theory “implies that a state can exempt itself from the demands of justice simply by ensuring that the coercion to which it subjects persons is \textit{pure} coercion without any pretense of accountability, i.e., by denying to those whom it coerces any standing as putative authors of the system of coercion.”\textsuperscript{160}

In “Nagel’s Atlas,” Julius focuses on Nagel’s authorial theory and rejects it for reasons that are similar to those of Sangiovanni and Abizadeh. Here, Julius seeks to determine the

\textsuperscript{157} Ibid.
\textsuperscript{158} Ibid, 351.
\textsuperscript{159} Ibid.
\textsuperscript{160} Ibid, 352.
ground of what he calls the “justice relation.”\textsuperscript{161} By the ‘justice relation,’ Julius means the relation persons stand in such that they possess obligations of justice to each other.\textsuperscript{162} Julius agrees with Nagel that interaction is a necessary condition of the justice relation; however, Julius disagrees with Nagel insofar as he claims that “members of different states are in the justice relation if their interaction links them densely enough.”\textsuperscript{163}

Julius structures his discussion of Nagel’s authorial theory with the concept of protolegitimacy. According to Julius, “a group of people is protolegitimate if the people who set terms for these people’s interaction have a duty to make certain that every member can accept them.”\textsuperscript{164} Julius thus construes the project of determining the ground of the justice relation as the project of determining the necessary and sufficient conditions of protolegitimacy. By structuring his discussion of Nagel in this way, moreover, Julius makes clear that he understands Nagel to be engaged in the project of determining the conditions that are necessary and together sufficient for the existence of distributive justice.

Julius claims that two ‘maps’ of protolegitimacy are consistent with Nagel’s claim that members of a state possess obligations of justice to each other because of the way in which they are both the authors and subjects of the state’s laws. First, Julius claims that Nagel might mean that a group of people is protolegitimate if people in the society regard its terms of interaction as having moral force.\textsuperscript{165} On this account of protolegitimacy, people regarding their terms of interaction as having moral force is a sufficient condition of protolegitimacy. Or, Julius claims,

\textsuperscript{161} Julius, “Nagel’s Atlas,” 176.
\textsuperscript{162} Ibid.
\textsuperscript{163} Ibid, 178.
\textsuperscript{164} Ibid, 181.
\textsuperscript{165} Ibid.
Nagel might mean that a group of people is protolegitimate if the terms of interaction are coercively imposed, regardless of the peoples’ belief concerning the moral force of the terms in question. On this account of protolegitimacy, the coercive imposition of rules on a group of people is a sufficient condition of protolegitimacy.

However, Julius argues that whether Nagel adopts the first conception of protolegitimacy or the second, he fails to internalize protolegitimacy to the state. If Nagel adopts the first reading of protolegitimacy, Julius claims, Nagel makes the state’s obligation to justify its imposition of certain terms of interaction dependent on the moral beliefs of its citizens. Thus, Julius argues, in the case of a naked tyranny, where people only comply with the tyrant’s command out of fear, protolegitimacy does not hold and so Nagel lacks the resources to identify the situation as one of injustice. The problem here is thus similar to the problem of perversity that Abizadeh identifies. The only difference is that whereas for Abizadeh, the problem arises if the state does not claim to speak for its citizens, for Julius, it arises if the citizens of the state do not take themselves to have an obligation to comply with the laws and commands of the state.

If Nagel adopts the normatively attractive second reading of protolegitimacy however, Julius claims that he nonetheless fails to internalize protolegitimacy to the state. According to the second reading, a group of people is protolegitimate if the rules to which they are subject are coercively imposed. According to this second reading of protolegitimacy, if persons coercively impose rules of interaction on others, they stand in a relation of protolegitimacy and so possess a duty to ensure that these rules are acceptable to those who are subject to them. As Julius points

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166 Ibid.
168 Ibid, 184.
out however, if Nagel adopts this second map of protolegitimacy, he also fails to internalize protolegitimacy to the state:

If you try to enter the United States without the right papers, you will be seized and returned to where you lived before. If you plan to distribute anti-retroviral drugs to HIV carriers in your country, you will be deterred by liability in U.S. courts from using formulas patented by U.S. manufacturers. If you want to nationalize your country’s foreign-owned productive assets, the long list of occasions on which the United States reversed such assertions of sovereignty by mining the harbors and arming the opponents of states that attempted them will dissuade you from risking similar disruptions now.  

On either conception of the sufficient conditions of the justice relation then, Julius argues that Nagel fails to internalize protolegitimacy to the state. Again, for our purposes, the important point to recognize lies in Julius’s characterization of Nagel’s authorial theory. Julius’s claim that the authorial theory fails to identify the necessary and sufficient conditions of protolegitimacy only makes sense insofar as he understands Nagel’s authorial theory to be committed to the existence conditions strategy.

Julius, Sangiovanni, and Abizadeh thus understand Blake’s coercion theory and Nagel’s authorial theory as examples of the existence conditions strategy. Moreover, these theorists convincingly show that insofar as these theories are understood as attempts to specify the conditions that are necessary and together sufficient for the existence of distributive justice they are subject to a powerful form of criticism. That is, as Sangiovanni, Abizadeh, and Julius make clear, insofar as Blake and Nagel are committed to the existence conditions strategy, it is extremely difficult to identify existence conditions of distributive justice that are satisfied by the state’s relation to its citizens, but not by the state’s relation to foreigners.

169 Ibid.
However, Blake’s coercion theory and Nagel’s authorial theory need not be interpreted as examples of the existence conditions strategy but can also be plausibly reconstructed as examples of the legitimacy strategy. In the next part of the chapter, I show how this is possible.

3 The Legitimacy Strategy

In this part of the chapter, I aim to show that Blake’s coercion theory and Nagel’s authorial theory can be plausibly reconstructed as examples of the legitimacy strategy. As examples of this strategy, the aim of Blake’s coercion theory and Nagel’s authorial theory is not to identify the existence conditions of distributive justice, but rather to argue that the state’s exercise of its political authority over its citizens raises a distinctive problem of justification, namely, the problem of legitimacy, and that this problem includes the problem of distributive justice. My claim here is not that this reading of Blake’s coercion theory and Nagel’s authorial theory is more textually accurate than the readings of Julius, Sangiovanni, and Abizadeh. Rather, my claim is that my interpretation of Blake’s coercion theory and Nagel’s authorial theory is consistent with their respective texts and reconstructs these theories in the strongest way possible.

The legitimacy strategy aims to justify DSI by showing that the problem of distributive justice is a component part of the problem of state legitimacy. This is a promising strategy for justifying DSI, I will suggest, because the problem of state legitimacy is first, a problem that solely concerns the actions of the state, and second, a problem that solely concerns the state’s relation to its citizens. To put this point another way, the site of the problem of state legitimacy is the state’s actions; the scope of the problem of state legitimacy is limited to the state’s citizens.
To understand the legitimacy strategy, it is helpful to recall John Simmons’s distinction between justification, legitimacy, and justice as distinct ways in which political theorists can evaluate the state and its actions. First, theorists can question whether the state is justified.\textsuperscript{170} The project of justifying the state, Simmons argues, involves showing that some realizable type of state is morally defensible.\textsuperscript{171} Minimally, this requires showing that this realizable type of state is morally permissible, and that it is rationally preferable to all feasible non-state alternatives.\textsuperscript{172} Justifying the state might also involve, however, showing that a certain realizable type of state is not merely morally permissible, but also morally required.

Second, theorists can question whether a particular state is legitimate.\textsuperscript{173} That is, theorists can question whether a particular state is entitled to tell its citizens what to do, to force them to do it, and to impose political obligations on them.\textsuperscript{174} More generally, theorists need not focus on the legitimacy of a particular state, but can seek to determine the conditions states must satisfy if their exercise of political authority over their citizens is to be legitimate. Finally, theorists can question the morality or justice of the state’s actions.\textsuperscript{175} That is, theorists can evaluate the actions of the state from the standpoint of morality or justice.

Theorists committed to the legitimacy strategy seek to motivate DSI by arguing that the problem of distributive justice is a component part of the problem of state legitimacy. That is to say, they seek to motivate DSI by arguing that distributive justice is a condition of the state’s

\textsuperscript{170} Simmons, “Justification and Legitimacy,” 125.
\textsuperscript{171} Ibid.
\textsuperscript{172} Ibid, 126.
\textsuperscript{173} Ibid, 128.
\textsuperscript{174} Ibid, 129, 137.
\textsuperscript{175} Ibid, 155-157.
legitimate exercise of its political authority and that the problem of distributive justice is best understood as a component part of the problem of the legitimacy of the state’s exercise of its political authority. The reason that the legitimacy strategy is a promising one for motivating DSI is because the problem of state legitimacy is a problem that solely concerns the actions of the state, and it is a problem that solely concerns the state’s relation to its citizens. That is, the state’s legitimacy right to exercise its political authority over its citizens is a right against its citizens and not against foreigners. To show that what theorists have identified as the problem of distributive justice is a component part of the problem of the state’s legitimacy, according to the legitimacy strategy, is thus to show that the state possesses distinctive distributive obligations to its citizens.

It is important to recognize here however that the legitimacy strategy is not committed to the claim that a state must be fully just if it is to be entitled to exercise its political authority. The concepts of legitimacy and justice are continuous variables such that states can be more or less legitimate or more or less just. Thus, although the legitimacy strategy is committed to the claim that the state must secure distributive justice for its citizens if its exercise of its political authority is to be legitimate, it does not follow from this that the state must be fully just if it is to be entitled to exercise its political authority. Instead, it only follows from the legitimacy strategy that the state must be minimally just if its exercise of political authority is to be minimally legitimate.

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177 Leslie Green defends such a justice-based account of political legitimacy in *The Authority of the State*. Green, *The Authority of the State*, 4-5. Allen Buchanan discusses a similar view in *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*. According to this account, “A wielder of political power (the supremacist making, application, and enforcement of laws in a territory) is legitimate (i.e., is morally justified in wielding political power) if and only if it (1) does a credible job of protecting at least the most basic human rights of
It is also important to recognize, moreover, the way in which the legitimacy strategy is different from the existence conditions strategy. As I make clear in part 2, the existence conditions strategy aims to identify the conditions that are necessary and together sufficient for distributive justice. Although proponents of the existence conditions strategy claim that only the state satisfies these conditions, there is no reason, in principle, for this to be so. In other words, for proponents of the existence conditions strategy, there is nothing that is particularly normatively significant about the state, except that it satisfies these conditions. The legitimacy strategy, by contrast, moves in the opposite direction. The legitimacy strategy starts with the state as a distinctive type of institution and claims that the state faces certain problems because of the type of institution that it is. As Simmons makes clear, the state faces the problem of legitimacy because it exercises political authority over its citizens, that is, it tells its citizens what to do, forces them to do it, imposes political obligations on them, and claims to be entitled to do so. The key move of the legitimacy strategy is to claim that the problem of distributive justice is a component part of this problem. That is, according to the legitimacy strategy, the state faces the problem of distributive justice, because it is a distinctive type of institution that exercises a distinctive form of authority over its citizens. It is, of course, possible to specify the necessary and sufficient conditions that are definitive of the state. However, these conditions are likely to be multiple and complex, and there is no reason to engage in this type of project insofar as the distinctiveness of the state as a type of institution and the problems that it faces are well

all those over whom it wields power and (2) provides this protection through processes, policies, and actions that themselves respect the most basic human rights.” Buchanan, Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law, 247.
understood. After all, for many political theorists, the problem of the state’s legitimacy is the starting point of political philosophy.

Neither Blake nor Nagel claim that they are committed to the claim that distributive justice is a condition of the legitimacy of the state. Instead, these theorists identify features of the state’s relation to its citizens that impose a distinctive obligation on the state to justify different aspects of its political authority over its citizens. For Blake, it is the coercive nature of the state that imposes this distinctive obligation on the state, and it is this coercive nature of the state’s political authority that must be justified to its citizens. For Nagel, it is the way in which the state claims to speak in the name of its citizens and claims to be entitled to put its citizens under an obligation to obey its laws that imposes a distinctive obligation of justification on the state to justify its political authority over its citizens.¹⁷⁸

However, although neither Blake nor Nagel appeal to the concept of legitimacy or claim that the problem of legitimacy includes the problem of distributive justice, I want to argue here that their theories of the basic structure can be plausibly reconstructed as examples of the legitimacy strategy. My argument for this claim has three steps. First, I argue that for both theorists, the distinctive problem of justification that states face is the same as, or similar to, what Simmons calls the problem of legitimacy. Second, I argue that since both Blake and Nagel subsume the problem of distributive justice under the state’s obligation to justify aspects of its political authority to its citizens, their argumentative strategy can be construed to be, at least in part, an example of the legitimacy strategy. Third, I argue that there is textual evidence in both

Blake and Nagel’s texts to suggest that both theorists would not object to the claim that their argumentative strategies are examples of the legitimacy strategy.

First, I think that it is clear that what Blake identifies as the problem of justification that is raised by the state’s use of coercion is a component part of the problem of the state’s legitimacy. As Simmons makes clear, the problem of legitimacy concerns the legitimacy of the state’s exercise of its political authority over its citizens. The state claims to be entitled to tell its citizens what to do, to force them to do it, and to put its citizens under an obligation to obey. The problem of legitimacy concerns the legitimacy of the state’s right to do so. Blake’s coercion theory identifies an aspect of the state’s political authority, namely, the state’s use of coercion, and claims that this aspect of the state’s political authority raises a particular problem of justification for its citizens. This problem of justification is a component part of the problem of the state’s legitimacy insofar as the problem of legitimacy concerns the state’s use of coercion.

The distinctive problem of justification that, according to Blake, the coercive nature of the state’s use of coercion raises, can thus be plausibly construed as a component part of the problem of the state’s legitimate use of its political authority. It is thus one aspect of the problem of legitimacy. However, Blake also claims that this distinctive problem of justification includes the problem of distributive justice, and it is for this reason that I think that Blake’s argumentative strategy can be plausibly reconstructed as an example of the legitimacy strategy. As I make clear above, for Blake, it is because the state coercively enforces a system of civil law that the state must concern itself with the material equality of its citizens.\(^{179}\) As Blake puts it, “coercion, not cooperation, is the sine qua non of distributive justice.”\(^{180}\) Blake’s strategy is thus to show that


\(^{180}\) Ibid, 289.
the state’s distributive obligations are part of its obligations to justify its use of coercion to its citizens. As I make clear above, this strategy is the basic feature of the legitimacy strategy.

Finally, although Blake does not explicitly use the concept of legitimacy to articulate his argumentative strategy, there is nonetheless evidence in his text that suggests that he would not object to his coercion theory being understood in this way. Blake makes this clear in two ways. First, he makes this clear when he discusses the conception of domestic political philosophy that underlies the coercion theory. According to this conception, the “task of domestic political philosophy [is] to justify the commands of [the] legal system as a whole to those who live within its coercive grasp.” Although Blake does not use the concept of legitimacy here, it is nonetheless clear that Blake’s conception of the basic problem of domestic political philosophy concerns what Simmons calls the problem of legitimacy: the right of the state of tell its citizens what to do and force them to do it. Second, Blake also makes this clear when he claims that the coercion theory provides a reconstruction of Rawls’s concern with the basic structure. Here, Blake focuses on Rawls’s later writings where Rawls focuses on the problem of the *legitimacy* of the state’s use of its political authority over its citizens and appeals to “the liberal principle of legitimacy” as an organizing idea. According to Blake, the fundamental problem for Rawls in *Political Liberalism* is that of the conditions under which the state’s use of its political authority is justifiable to its citizens, or, as Rawls puts it, *legitimate*. Thus, although Blake does not use the concept of legitimacy to characterize the distinctive problem of justification that the coercion theory identifies, he identifies with a theorist who does.

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181 Ibid, 279.
182 Ibid, 286.
183 Ibid.
Nagel’s authorial theory can also be reconstructed as an example of the legitimacy strategy. First, the distinctive problem of justification that Nagel claims the state faces, has the same content as the problem of legitimacy:

A sovereign state is not just a cooperative enterprise for mutual advantage. The societal rules determining its basic structure are coercively imposed: it is not a voluntary association. I submit that it is this complex fact—that we are both putative joint authors of the coercively imposed system, and subject to its norms, i.e., expected to accept their authority even when the collective decision diverges from our personal preferences—that creates the special presumption against arbitrary inequalities in our treatment by the system.\footnote{184}

For Nagel, the state possesses a distinct obligation to its citizens to justify the exercise of its political authority because of the way in which the state claims to be entitled to tell its citizens what to do, force them to do it, and to put them under obligation to comply.

Second, Nagel subsumes the problem of distributive justice under this distinctive problem of justification. As I make clear above, Nagel claims that the state possesses a distinct obligation to its citizens to reduce arbitrary inequalities in their life prospects because it exercises its political authority over its citizens. As Nagel puts it, “What is objectionable [about arbitrary inequalities in the life prospects of fellow citizens] is that we should be fellow participants in a collective enterprise of coercively imposed legal and political institutions that generates such arbitrary inequalities.”\footnote{185}

Nagel’s argumentative strategy in “The Problem of Global Justice” can thus be plausibly reconstructed to accord with the legitimacy strategy. However, I also think that there is reason to believe that Nagel, like Blake, would not object to this construal of his argumentative strategy.

\footnote{184} Ibid, 128-129.  
\footnote{185} Ibid, 128.
First, in his discussion of the political conception of justice, according to which justice is fundamentally concerned with the actions of the sovereign state towards its citizens, Nagel repeatedly identifies the problem of justice with the problem of legitimacy. For example, in the following passage, Nagel claims that according to the political conception of justice, justice applies to the actions of the state and suggests that the problem of justice is tightly connected to the problem of legitimacy: “Justice applies, in other words, only to a form of organization that claims political legitimacy and the right to impose decisions by force, and not to a voluntary association or contract among independent parties concerned to advance their common interests.” Although Nagel does not – in “The Problem of Global Justice” – formulate a comprehensive position on the relation of justice to legitimacy, it is clear that these concepts are intimately connected. Second, in *Equality and Partiality*, Nagel identifies the distinctive problem of justification that the state faces to be the problem of legitimacy:

The pure ideal of political legitimacy is that the use of state power should be capable of being *authorized* by each citizen – not in direct detail but through acceptance of the principles, institutions, and procedures which determine how that power will be used. This requires the possibility of unanimous agreement at some sufficiently high level, for if there are citizens who can legitimately object to the way state power is used against them or in their name, the state is not legitimate.

Here, Nagel claims explicitly that what he identifies as the problem of justification is the problem of legitimacy. For these reasons, although Nagel does not explicitly commit to the legitimacy strategy, I nonetheless think that he would not object to this construal of his argumentative strategy.

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186 Ibid, 120. However, it is important to note that Nagel does not deny that individuals and states do possess some duties of justice to agents who are not members of a shared institutional scheme. Ibid, 126-127.

187 Ibid, 140.

Blake’s coercion theory and Nagel’s authorial theory can thus be plausibly reconstructed as examples of the legitimacy strategy. In the following part of this chapter, I will introduce the political authority theory as a theory of the basic structure that is fully committed to the legitimacy strategy and that develops what I take to be the central insight of Blake’s coercion theory and Nagel’s authorial theory.

4 The Political Authority Theory

The political authority theory develops what I take to be the central insight of Blake’s coercion theory and Nagel’s authorial theory, namely that the state’s exercise of its political authority over its citizens imposes a distinctive obligation on it to do so in a way that is justifiable to its citizens. According to the political authority then, the state’s relation to its citizens is the subject of distributive justice because of the way in which the state exercises political authority over them.

In this part of the chapter, I develop the political authority theory and show why it provides a promising justification for DSI. My aim here is not to fully defend the political authority theory – this is the task of the next four chapters – but rather to simply sketch out and motivate the basic features of this theory. First, I will motivate the claim that the state’s exercise of its political authority is legitimate only if it secures distributive justice for its citizens. To do so, I will rely on Rawls’s *Political Liberalism*, where, in contrast to *A Theory of Justice*, Rawls explicitly poses the problem of distributive justice as a component part of the broader question of the legitimacy of political authority. Second, I will show that the political authority theory
possesses the resources to respond to the objections to which Blake’s coercion theory and Nagel’s authorial theory are subject.

4.1 Political Authority and Distributive Justice

In Political Liberalism, Rawls addresses two fundamental questions. The first question is the question of political justice: “what is the most appropriate conception of justice for specifying the fair terms of social cooperation between citizens regarded as free and equal, and as fully cooperating members of society over a complete life, from one generation to the next?”

The second question, the question of toleration, concerns the stability of a society that is characterized by the fact of reasonable pluralism: “what are the grounds of toleration so understood and given the fact of reasonable pluralism as the inevitable outcome of free institutions?”

The first fundamental question of Political Liberalism, the question of justice, is similar to the question that Rawls addresses in A Theory of Justice. However, there is nonetheless a crucial difference. In Political Liberalism, Rawls emphasizes that this question of justice is a political question, that is, a question that concerns the fair terms of social cooperation for persons who stand in the political relation of citizenship: a “relation of free and equal citizens who exercise ultimate political power as a collective body.”

Rawls’s aim in Political Liberalism is thus to answer this first fundamental question of justice by formulating a political conception of justice, that is, a conception of justice that concerns the political relationship of

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189 Rawls, Political Liberalism, 4.
190 Ibid, 5.
191 Ibid, xliii.
citizens. This relationship, Rawls claims, is characterized by two features. First, it is a relationship of persons within the basic structure of society.\textsuperscript{192} By the basic structure here, Rawls means “a society’s main political, social, and economic institutions, and how they fit together into one unified system of social cooperation from one generation to the next.”\textsuperscript{193} Second, the political relationship is a relationship between citizens who exercise political power over each other as a collective body.\textsuperscript{194} The problem of distributive justice, for Rawls, is thus the problem of the terms of social cooperation that the state should enforce. As in \textit{A Theory of Justice}, this question concerns both the assignment of “basic rights and duties in the basic institutions of society” and the determination of the “appropriate distribution of the benefits and burdens of social cooperation.”\textsuperscript{195}

Rawls recognizes in \textit{Political Liberalism} that by framing the problem of distributive justice as a political problem, the problem of distributive justice is a component part of the broader question of the legitimacy of the state’s exercise of its political authority.\textsuperscript{196} In short, the problem of legitimacy \textit{raises} the problem of distributive justice. To see why this is so, consider first that according to Rawls, the problem of legitimacy concerns the appropriate exercise of the state’s political power, where the state is understood as the citizens considered as a collective body. Rawls formulates this problem in the following way – I quote extensively as the passage is instructive in a number of ways:

\begin{quote}

\textsuperscript{192} Ibid, 11, 135-136.
\textsuperscript{193} Ibid, 11.
\textsuperscript{194} Ibid, 136.
\textsuperscript{195} Rawls, \textit{A Theory of Justice}, 4.
\textsuperscript{196} Rawls, \textit{Political Liberalism}, 136-137.
\end{quote}
...political power is always coercive power backed by the government’s use of sanctions, for government alone has the authority to use force in upholding its laws. In a constitutional regime the special feature of the political relation is that political power is ultimately the power of the public, that is, the power of free and equal citizens as a collective body. This power is regularly imposed on citizens as individuals and as members of associations, some of whom may not accept the reasons widely said to justify the general structure of political authority – the constitution – or when they do accept that the structure, they may not regard as justified many of the statutes enacted by the legislature to which they are subject.

This raises the question of the legitimacy of the general structure of authority with which the idea of public reason is intimately connected. The background of this question is that, as always, we view citizens as reasonable and rational, as well as free and equal, and we also view the diversity of reasonable religious, philosophical, and moral doctrines found in democratic societies as a permanent feature of their public culture. Granting this, and seeing political power as the power of citizens as a collective body, we ask: when is that power appropriately exercised? That is, in light of what principles and ideals must we, as free and equal citizens, be able to view ourselves as exercising that power if our exercise of it is to be justifiable to other citizens and to respect their being reasonable and rational?

To this political liberalism says: our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason. This is the liberal principle of legitimacy. To this it adds that all questions arising in the legislature that concern or border on constitutional essentials, or basic questions of justice, should also be settled, so far as possible, by principles and ideals that can be similarly endorsed. Only a political conception of justice that all citizens might be reasonably expected to endorse can serve as a basis of public reason and justification.\(^{197}\)

There are two things to take note of in this passage. First, the problem of legitimacy has two dimensions. On the one hand, it concerns the constitutional structure in accordance with which the state must exercise its coercive authority. This problem concerns not only the particular institutional make-up of the legislative, executive, and adjudicative authorities, but also the relationship amongst these authorities. On the other hand, the problem of legitimacy concerns the problem of the principles in accordance with which the state ought to act, including the question of the limits to its action. Because the state acts by means of, and in accordance with law, this

\(^{197}\) Ibid.
problem of the state’s action thus consists of the problem of the statutes it ought to legislate and enforce and the limits to its legislative and executive authority that it ought to respect.

Second it is important to note the way in which Rawls both explains the ground of the problem of legitimacy, and proposes his solution to it. First, Rawls claims that the problem of legitimacy arises in the first place because citizens, understood as free and equal, might not accept the reasons that are cited to justify both the constitution and specific statutes that govern their lives. The normative idea here is thus that citizens are entitled to demand of the state that it justify its actions to them. Although Rawls doesn’t make this clear in the passage cited above, this idea follows directly from his conception of citizens as free and equal.

According to Rawls, citizens are free insofar as they possess two moral powers and are moved by a highest-order interest to develop and exercise these powers. The first moral power is a capacity to be rational, that is, a capacity to form, revise, and rationally pursue a conception of the good. The second moral power is a capacity for a sense of justice, or what Rawls calls a capacity to be reasonable. Citizens possess this capacity insofar as they possess the capacity to propose, to understand, and to apply fair terms of social cooperation, and to willingly comply with them given the assurance that others will do so as well. In short, citizens are reasonable insofar as they possess a capacity to determine the terms on the basis of which they will interact with others.

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198 Ibid, 19.
199 Ibid, 302.
200 Ibid, 302.
201 Ibid, 49, 302.
Citizens are equal, Rawls claims, not only insofar as they possess the two moral powers to a requisite minimum degree, but also insofar as they possess the equal authority to exercise their capacity to be reasonable. That is, citizens are equal insofar as each possesses the authority to propose principles of social cooperation, to decide which principles of social cooperation are fair, and to apply the fair principles of social cooperation. This authority is equal insofar as no one citizen is entitled to determine for another citizen what the fair terms of social cooperation are, or to determine for another citizen how the terms of social cooperation are to be applied. The conception of authority here is thus a relational one: citizens possess the authority to exercise their capacity to be reasonable insofar as they possess a right against others to do so.

It is this idea of the equal authority of citizens that underlies the central normative idea that I discuss above. Citizens are entitled to demand of the state that it justify its actions to them because citizens possess the equal authority to co-determine the terms of social interaction. In short, if the state’s exercise of its political authority is to be legitimate, that is, if it is to respect the equal authority of its citizens, it must comply with principles that its citizens can be reasonably expected to endorse. Rawls’s solution to the problem of legitimacy is thus the “liberal principle of legitimacy,” according to which the state’s exercise of political power is legitimate only if it complies with principles that are justifiable to its citizens considered as free and equal. The state can thus only tell its citizens what to do, force them to do it, and put them under an obligation to obey if it respects the equal authority of its citizens to co-determine the terms of social interaction. For Rawls, and, by extension, the political authority theory, therefore, the state’s exercise of its political authority raises a distinctive problem of justification not merely because it is coercive or engages the will of its subjects in a certain way, but rather because free

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202 Rawls, A Theory of Justice, 442-443; Rawls, Political Liberalism, 19, 302.
and equal citizens possess the equal authority to co-determine the terms on the basis of which they will interact with others.

The problem of legitimacy raises the problem of distributive justice insofar as the problem of distributive justice concerns those aspects of the problem of legitimacy that are of particular normative significance for free and equal persons. To see this, recall that for Rawls, the problem of distributive justice concerns the problem of “assigning rights and duties in the basic institutions of society,” and distributing “the benefits and burdens of social cooperation.”\textsuperscript{203} By rights and duties here, Rawls means both political rights, such as the right to vote and hold office, as well as civil liberties, such as freedom of speech, freedom of thought, and liberty of conscience.\textsuperscript{204} By the benefits and burdens of social cooperation, Rawls means income and wealth, as well as opportunities to occupy positions of authority and responsibility.\textsuperscript{205} On the one hand, insofar as the problem of distributive justice concerns the assignment of political rights, the problem of distributive justice concerns the first aspect of the problem of legitimacy: the institutional make-up of the legislative institutions of the state. This problem is particularly important for free and equal persons insofar as they possess the equal authority to exercise their capacity to be reasonable. On the other hand, insofar as the problem of distributive justice concerns both the assignment of civil liberties and the distribution of benefits and burdens of social cooperation, the problem of distributive justice concerns the actions of the state. The question of the assignment of civil liberties concerns the limits to the state’s coercive authority, that is, the spheres of action within which citizens are free to exercise their capacity for a conception of the good. The question of the distribution of the benefits and burdens of social

\textsuperscript{203} Rawls, \textit{A Theory of Justice}, 4.
\textsuperscript{204} Ibid, 53.
\textsuperscript{205} Ibid, 53-54.
cooperation concerns the state’s enforcement of rules of social cooperation. This question is also of particular normative significance for free and equal citizens insofar as it concerns the rules on the basis of which they may cooperate with others to produce all-purpose means that they can use to set and pursue a conception of the good. It is this latter component of the problem of distributive justice moreover that Blake and Nagel focus on. According to Blake’s coercion theory, the state possesses distributive obligations to its citizens because it coercively enforces the civil law.\textsuperscript{206} In so doing, Blake argues, the state coercively enforces a pattern of private holdings and so must justify this exercise of its coercive authority to its citizens.\textsuperscript{207} Similarly, for Nagel, the state possesses distributive obligations because it enforces institutions that create and distributive advantages and disadvantages.\textsuperscript{208}

Rawls’s two principles of justice thus concern themselves with the assignment of political rights and civil liberties as well as the distribution of the benefits and burdens of social cooperation:

1. Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.\textsuperscript{209}

2. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society.\textsuperscript{210}

\textsuperscript{206} Blake, “Distributive Justice, State Coercion, and Autonomy,” 284.
\textsuperscript{207} Ibid, 281.
\textsuperscript{208} Nagel, “The Problem of Global Justice,” 129.
\textsuperscript{209} Rawls, Political Liberalism, 5.
\textsuperscript{210} Ibid.
As Rawls makes clear in his discussion of the four-stage sequence for the application of these principles of justice, the first principle applies to the political constitution whereas the second principle of justice applies to the public legislative authority. Rawls’s two principles of justice thus apply to the same subject as Rawls’s liberal principle of legitimacy. As Rawls puts it:

The first principle of equal liberty is the primary standard for the constitutional convention. Its main requirements are that the fundamental liberties of the person and liberty of conscience and freedom of thought be protected and that the political process as a whole be a just procedure. Thus the constitution establishes a secure common status of equal citizenship and realizes political justice. The second principle comes into play at the stage of the legislature. It dictates that social and economic policies be aimed at maximizing the long-term expectations of the least advantaged under conditions of fair equality of opportunity, subject to the equal liberties being maintained.²¹¹

For Rawls then, the problem of distributive justice is a component part of the broader question of legitimacy. For the state to exercise its political authority in a legitimate way, it must do so in a way that is justifiable to its citizens considered as free and equal. As the above discussion of Rawls’s formulation of the problem of legitimacy indicates, the state must exercise its political authority in accordance with a constitutional structure that respects the equal authority of free and equal persons to co-determine the terms of social interaction. On the one hand, the state must therefore concern itself with the distribution of political rights amongst its citizens and guarantee for all fair and equal access to the legislative process. On the other hand, with respect to the particular statutes that it legislates and enforces, the state must observe limits set by the interests of persons in exercising their capacity to be rational. The state must therefore concern itself with the distribution of civil rights and, with respect to its enforcement of a system of social cooperation through the laws of property and contract, the state must ensure that the system of economic cooperation benefits everyone.

Rawls’s work in *Political Liberalism* provides an account of why the state’s exercise of its political authority is legitimate only if it secures distributive justice for its citizens. The state possesses these distinctive distributive obligations to its citizens, according to Rawls, because its citizens possess the equal authority to co-determine the terms of social interaction. In the following chapters, I will rely on Rawls’s central ideas to develop the political authority theory further and justify DSI. Before doing so however, I first want to show that the political authority theory possesses the resources necessary to respond to the objections of Julius, Sangiovanni, and Abizadeh.

### 4.2 Political Authority and the Site and Scope of Distributive Justice

Thus far, I have motivated the claim that the state possesses distinctive obligations to its citizens insofar as it exercises political authority over them. Because the state exercises legislative authority over its citizens, it must secure civil liberties and political rights for them if it is to do so legitimately. Similarly, because the state legislatively enacts and coercively enforces a system of economic cooperation, it must also ensure fair equality of opportunity and comply with the difference principle. According to the political authority theory then, distributive justice is a necessary condition of the legitimacy of these exercises of political authority.

By motivating this claim, I have provided a response to critics of DSI who argue that there is nothing distinctive or normatively significant about the state’s relation to its citizens. However, critics might argue that the political authority theory is not sufficient to motivate DSI.

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First, they might argue that it is not only states but also international organizations that exercise the relevant form of political authority over agents, or that states not only exercise political authority over their own citizens but also over foreigners. On the basis of this argument, they could thus conclude that it follows from the political authority theory that the site and scope of distributive justice are not exclusive to the state’s relation to its citizens. Second, critics might argue that even if the state possesses distinctive distributive obligations to its citizens because of the way in which it exercises political authority over them, it doesn’t follow from this that the site of distributive justice is restricted to the state or that the scope of distributive justice does not include the relation of the state or its citizens to foreigners. After all, there might be other grounds for distributive obligations that have nothing to do with the state’s exercise of political authority.

I will deal with the second objection in chapters 5 and 6. In this section of the chapter, I want to respond to the first of these objections by considering Abizadeh, Sangiovanni, and Julius’s objections to Blake’s coercion theory and Nagel’s authorial theory. By doing so, I hope to motivate the claims that it is primarily the state that exercises political authority and that the state only exercises such authority over its own citizens. And I hope to show that the political authority theory possesses the resources to respond to the objections to which Blake’s coercion theory and Nagel’s authorial theory are subject.

Abizadeh, Sangiovanni, and Julius aim to show that it follows from Blake’s coercion theory and Nagel’s authorial theory that the site and scope of distributive justice is not limited to the state’s relation to its citizens. Their strategy is to show that it is not only the state that satisfies the conditions that are necessary and sufficient for the existence of distributive justice.
A central premise of their critique is thus that Blake and Nagel are committed to what I identify above as the existence conditions strategy.

The political authority theory presents these critics with a different target. First, the political authority theory is committed to the legitimacy strategy. It does not aim to identify the conditions that are necessary and sufficient for the existence of distributive justice, but simply asserts that the state’s exercise of its political authority over its citizens raises the problem of legitimacy, and that this problem includes the problem of distributive justice. Second, for the political authority theory, it is not merely the coercive or the authorial nature of the state’s relation to its citizens that is normatively significant for distributive justice, but rather the particular way in which the state exercises political authority over its citizens. In what follows, I aim to show that these important differences provide the political authority theory with the extra resources necessary to fend off the critiques of Abizadeh, Sangiovanni, and Julius.

First, recall from above that Abizadeh argues that Blake and Nagel cannot justifiably limit the scope of distributive justice to the state’s relation to its citizens. First, against Blake’s coercion theory, Abizadeh argues that since the state directly coerces foreigners at its borders, the state also possesses distributive obligations to foreigners. Abizadeh admits that Blake can avoid this objection if he draws a distinction between law governed and lawless state coercion. However, he argues that if Blake appeals to this distinction, his theory is subject to “the problem of perversity” insofar as it is committed to the claim that the state only possesses distributive obligations to those persons over whom it exercises law governed coercion, and not to those whom it exercises lawless coercion. Abizadeh argues that Nagel’s authorial theory is also

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213 Ibid, 348-349.
214 Ibid, 351.
subject to this problem of perversity insofar as Nagel too relies on a similar distinction between pure and accountable coercion.\textsuperscript{215}

Julius rejects Nagel’s authorial theory for reasons that are similar to Abizadeh’s. According to Julius, if Nagel’s authorial theory is understood in terms of the claim that a group of people are protolegitimate if the people in the society regard its terms of interaction as having moral force, then Nagel faces the problem of perversity. Since protolegitimacy depends on the people’s beliefs that the terms of interaction have moral force, Nagel does not have the resources to condemn tyrannical regimes where people obey out of fear.\textsuperscript{216} If, by contrast, Nagel’s claim is that a group is protolegitimate if the terms of interaction are simply coercively imposed, then Nagel cannot limit the scope of distributive justice to the state’s relation to its citizens.\textsuperscript{217} As Julius points out, states directly coerce foreigners at their borders as well as in a variety of different ways beyond their borders.\textsuperscript{218}

The political authority theory is subject to neither Abizadeh’s nor Julius’s objections. First, the political authority theory has no trouble drawing a distinction between the state’s relation to its own citizens, and the state’s relation to foreigners at its borders. Abizadeh and Julius are certainly correct that states employ coercion to prevent foreigners from entering their territory; however, this exercise of coercion is distinct from an exercise of political authority. The aim of such coercion is precisely to exclude foreigners from the territory over which the state has jurisdiction, that is, over which the state is entitled to exercise its political authority. To

\textsuperscript{215} Ibid, 351-352.
\textsuperscript{216} Julius, “Nagel’s Atlas,” 183-184.
\textsuperscript{217} Ibid, 184
\textsuperscript{218} Ibid.
use Abizadeh’s own distinction, in contrast with the state’s law-governed coercion over its own citizens, the state’s coercion of foreigners at its borders is relatively lawless.\textsuperscript{219}

Second, the political authority theory is not subject to Julius’s objection that states exercise coercion – and, to some extent, political authority – over foreigners not only at their borders but also within the jurisdictions of other states. Julius puts the point this way:

If you plan to distribute anti-retroviral drugs to HIV carriers in your country, you will be deterred by liability in U.S. courts from using formulas patented by U.S. manufacturers. If you want to nationalize your country’s foreign-owned productive assets, the long list of occasions on which the United States reversed such assertions of sovereignty by mining the harbors and arming the opponents of states that attempted them will dissuade you from risking similar disruptions now. The fact that people born in Brazil continue to interact with residents of the United States as participants in the Brazilian labor market and not the U.S. one, the fact that African doctors interact with U.S. drugmakers in ignorance of the latest medical technology, and the fact that U.S. consumers pay rents to multinational firms that they might have paid to asset-owning – these are complicated facts with complicated explanations, but each explanation involves a program of coercion by which U.S. policymakers have tried to change or preserve the terms on which U.S. citizens do business with people in other countries.\textsuperscript{220}

The reason that the political authority theory is not subject to this objection is that the political authority theory does not attempt to identify all of the conditions that are necessary and sufficient for the existence of distributive justice. The political authority theory does not claim that an exercise of political authority is sufficient for distributive justice, nor does it claim that the exercise of political authority is a necessary condition of justice. Instead, it only claims that distributive justice is a necessary condition of the state’s legitimate exercise of its political authority. The political authority theory can thus reject the idea that the exercises of political authority that Julius identifies above imply that states possess distributive obligations to

\textsuperscript{219} I use the phrase “relatively lawless” and not “lawless” to indicate that I do not reject the idea that there are international legal norms governing the state’s relation to foreigners.

\textsuperscript{220} Julius, “Nagel’s Atlas,” 184-185.
foreigners. As well, the political authority theory is not committed to the claim that there is no justice beyond the state’s exercise of political authority. Thus, there is no reason to think that the political authority is not compatible with a theory of international justice that would condemn the violations of the independence of states that Julius discusses above.

Finally, the political authority theory is not subject to the problem of perversity. It is true that it is committed to the claim that the state’s duties to its own citizens are different from its duties to foreigners. However, it is difficult to see what is necessarily perverse here. After all, the political authority theory does not preclude the possibility that the state possesses fairly robust duties of international justice, for example, duties to take in political refugees or to provide aid to burdened societies. All that the political authority theory claims is that the state possesses distinctive distributive obligations to its own citizens because it stands in a distinctive relation to them.

Sangiovanni objects to Nagel’s authorial theory on the grounds that it is not only states that satisfy Nagel’s existence conditions for distributive justice, but also international organizations. Recall that according to Sangiovanni, Nagel’s authorial theory is committed to the claim that authorship of, and subjection to, a system of nonvoluntary societal rules are both necessary and together sufficient for the existence of distributive obligations. Relying on Cohen and Sabel’s work in “Extra Rempublicam Nulla Justitia?” Sangiovanni argues that international institutional orders, such as the WTO and IMF, satisfy these two conditions insofar as they claim to speak in the name of the people who are subject to their stated reforms, and insofar as these reforms are nonvoluntary.

221 Sangiovanni, “Global Justice, Reciprocity, and the State,” 15-17.
The political authority theory, however, is not committed to Nagel’s conditions. More importantly, the relation of the state to its citizens is different from the relation of international organizations to their member states. First, although some international organizations exercise political authority over their member states, many do not. Second, most international organizations that do exercise political authority over their member states can do so legitimately without securing distributive justice.

First, the question of which international organizations exercise political authority and which do not is a difficult one. However, in his *International Organizations and Their Exercise of Sovereign Powers*, Dan Sarooshi provides the resources necessary for drawing this distinction. Here, Sarooshi provides a typology of the different ways in which states can confer sovereign powers on international organizations. First, states can establish an *agency relationship* with an international organization by means of dual consent.\(^{222}\) In an agency relationship, a state empowers an international organization to act on its behalf to change certain of its rights and duties.\(^{223}\) The agent is thus entitled to change the legal relations of the state with third parties and the state is responsible for the acts of the agent that are within the scope of the conferred powers.\(^{224}\) However, the agent also possesses an obligation to act in the interests of the state.\(^{225}\) Moreover, agency relationships are revocable by the state at any time, regardless of the treaty or agreement that established the agency relationship.\(^{226}\)

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\(^{223}\) Ibid.

\(^{224}\) Ibid, 50-51.

\(^{225}\) Ibid, 51-52.

\(^{226}\) Ibid, 41-42.
Second, states can delegate sovereign powers to international organizations. With a delegation, a state confers sovereign powers on an international organization such that the state does not have direct control over how the organization exercises the delegated power as it does in an agency relationship.\textsuperscript{227} However, as in the agency relationship, delegations of power are revocable by the state at its own discretion; and the state retains for itself the right to “exercise the powers concurrent with, and independent of, the organization’s exercise of powers.”\textsuperscript{228} The primary consequence of this type of conferral of powers for our purposes is that states are not bound by the organization’s exercise of delegated powers.\textsuperscript{229}

Finally, states can transfer sovereign powers to international organizations. Transfers are like delegations in that with a transfer, a state confers sovereign powers on an international organization such that the state does not have direct control over how the organization exercises the transferred power.\textsuperscript{230} However, unlike delegations, most transfers are irrevocable.\textsuperscript{231} As well, unlike delegations, with a transfer of powers, although states retain the power in question, they nonetheless consent to exercise their powers in accordance with the decisions of the international organization.\textsuperscript{232} In such cases, “the organization is the sole place for the lawful exercise of transferred powers.”\textsuperscript{233} In ‘partial transfers,’ the state agrees to be bound by the decisions of the organization’s exercise of powers.\textsuperscript{234} In ‘full transfers,’ the state also agrees to give direct effect

\textsuperscript{227} Ibid, 54.
\textsuperscript{228} Ibid.
\textsuperscript{229} Ibid, 62-63.
\textsuperscript{230} Ibid, 65.
\textsuperscript{231} Ibid, 66-67.
\textsuperscript{232} Ibid, 69.
\textsuperscript{233} Ibid.
\textsuperscript{234} Ibid, 70.
to these decisions within its own legal system, that is, without the need for separate domestic legislation. The primary consequence of transfers for our purposes is that member states possess an obligation to respect and comply with the organization’s exercise of its transferred powers.

International institutions do not exercise political authority over states and their members in cases of agency relationships and delegations. In agency relationships, the state still has direct control over how the conferred sovereign power is to be exercised; in the case of delegations of sovereign power, the state is entitled to unilaterally exercise the power it has conferred on the international organization. However, in the case of transfers, there is a sense in which international organizations exercise political authority over its member states and their citizens. Insofar as states transfer their sovereign powers to international organizations, these organizations possess the right to exercise these powers in a way that binds its member states.

On Sarooshi’s typology, some international organizations do exercise political authority over states. First, although the UN General Assembly is largely a deliberative body, only having the authority to make recommendations to states, member states have transferred powers to the UN Security Council. According to the UN Charter, the Security Council possesses the “primary responsibility for the maintenance of international peace and security” and member states “agree to accept and carry out the decisions of the Security Council.” Member states have thus

\[\text{\textsuperscript{235}}\text{Ibid.}\]
\[\text{\textsuperscript{236}}\text{Ibid, 100-101.}\]
\[\text{\textsuperscript{237}}\text{United Nations, Charter of the United Nations, Art. 2(7), Art. 10; Sands and Klein, Bowett’s Law of International Institutions, 27; Hurd, International Organizations: Politics, Law, Practice, 104. The General Assembly does have a quasi-legislative role with respect to international law however insofar as resolutions can embody a consensus about what the law is on a matter. Sands and Klein, Bowett’s Law of International Institutions 27; Hurd, International Organizations, 105-106.}\]
\[\text{\textsuperscript{238}}\text{United Nations, Charter of the United Nations, Art. 24(1), Art. 25.}\]
conferred powers concerning the use of force and nonmilitary means to ensure international
peace and security. First, with the exception of individual and collective self-defense, member
states have transferred the power to use force to the Security Council insofar as they have
consented to obey the decisions of the Security Council.\textsuperscript{239} The Security Council is thus the only
place where these powers can be lawfully exercised.\textsuperscript{240} Second, member states have also
transferred the power to use nonmilitary means for the purposes of securing international peace
and security to the Security Council. The Security Council can thus also put member states under
a binding obligation to employ nonmilitary means to give effect to its decisions.\textsuperscript{241} Both of these
transfers are partial insofar as member states must still take the necessary governmental steps to
comply with these decisions.

Like the UN Security Council, the World Trade Organization (WTO) also exercises a
form of political authority over its members. However, it is important to note that the WTO does
not exercise legislative authority over its members. The WTO is simply a forum within which its
members can negotiate and agree to trade rules and so doesn’t tell states what trade rules to
comply with.\textsuperscript{242} Instead, the WTO exercises adjudicative authority over its members by means of
its dispute settlement system. That is, the WTO possesses the authority to decide disputes arising
out of the WTO agreements, and these decisions are binding on the parties to the dispute.\textsuperscript{243}

The International Court of Justice (ICJ) and the International Criminal Court (ICC) also
exercise adjudicative authority in the international context. The ICJ possesses the authority to

\textsuperscript{239} Ibid, Art. 42, Art. 51
\textsuperscript{240} Hurd, \textit{International Organizations}, 107-108, 111.
\textsuperscript{242} Matsushita, Schoenbaum, and Mavroidis, \textit{The World Trade Organization}, 9.
\textsuperscript{243} Ibid, 111.
decide legal disputes between states, provided that they consent to the Court’s jurisdiction over the case, and the decisions of the Court are binding on the parties to the dispute. The ICC possesses the authority to prosecute certain international crimes provided that the crime was committed on the territory of a state party or by citizens of a state party, and provided that the courts of the domestic jurisdiction fail to investigate or prosecute the crime.

The European Union also exercises political authority over its member states. Member states have thus transferred numerous sovereign powers to the EU. First, the EU possesses the legislative authority to adopt regulations, which are legally binding and directly applicable in all member states, and to issue directives, which, though legally binding, are not directly applicable. The EU also possesses the executive authority over its member states to issue legally binding decisions. Finally, the Court of Justice of the European Union possesses the adjudicative authority to make binding rulings on the legality of the Union actions of member states and the EU institutions.

Many international organizations, however, do not exercise political authority over states. First, the International Labor Organization (ILO) only possesses the power to adopt proposals in the form of either International Conventions or Recommendations. Member states possess the

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248 Ibid, 34.
249 Ibid, 125-126.
duty to bring these proposals before the relevant authority or authorities;\textsuperscript{251} however, these authorities are not bound to give effect to the Convention, either through executive action or legislation.\textsuperscript{252} Similarly, member states of the United Nations Education, Scientific and Cultural Organization (UNESCO) only have the obligation to submit International Conventions or Recommendations adopted by UNESCO’s General Conference to their competent authorities.\textsuperscript{253}

The International Monetary Fund (IMF) and the World Bank also do not exercise political authority over their member states. The IMF possesses the authority to exercise “firm surveillance over the exchange rate policies of members,” to adopt principles to guide the actions of members with respect to these policies, and to loan its members’ capital contributions to member states to enable them to correct maladjustments in their balance of payments.\textsuperscript{254} Like the IMF, the World Bank also loans money to states; however, it does so with the aim of financing reconstruction and development projects and, in contrast to the IMF, does not loan out its members’ capital contributions, but uses these contributions as collateral to borrow from international financial markets.\textsuperscript{255}

However, neither the IMF nor the World Bank possesses the authority to direct a member state to borrow funds or change its social and economic policies. In becoming members of either organization, member states transfer no sovereign powers. Of course, as Sangiovanni points out, there are certainly cases where states are forced by circumstance to accept an IMF or World

\textsuperscript{251} Ibid, Art. 19(5a), Art. 19 (6b).
\textsuperscript{252} Ibid, Art. 19(5e), 19(6d).
\textsuperscript{253} United Nations Educational, Scientific, and Cultural Organization, Constitution, Art. IV (A4).
\textsuperscript{254} International Monetary Fund, Articles of Agreement, Art. IV(3); Hurd, International Organizations, 71-72.
\textsuperscript{255} Hurd, International Organizations, 78-81.
Bank loan and the conditions that go along with it. However, this doesn’t change the fact that such loans constitute agreements between either the IMF or World Bank and a member state, and not an exercise of legislative or executive authority by an international organization.

Second, although some international organizations do exercise political authority over member states, it doesn’t follow from this that they possess distributive obligations. The reasons for this are twofold. First, the political authority theory is not committed to the claim that the exercise of political authority is a sufficient condition of distributive justice. Second, and more importantly for our purposes here, as I make clear in section 4.1 above, the state possesses distributive obligations to its citizens because of the types of authority it exercises over them, namely, because it legislatively enacts and coercively enforces a system of economic cooperation. According to the political authority theory, to show that an international organization possesses distributive obligations to its member states, one must show that the organization’s exercise of its powers is legitimate only if it secures an egalitarian distribution of the benefits and burdens of economic cooperation. Although I can’t establish the point here, it seems reasonable to think such a distribution is not a necessary condition of the UN Security Council’s legitimate exercise of its executive authority or the WTO, ICJ, or ICC’s legitimate exercise of their adjudicative authority.

The one exception to this is of course the EU. The EU does legislatively enact and coercively enforce central aspects of a system of economic cooperation. The EU possesses exclusive legislative authority with respect to the Customs Union, competition policy, euro monetary policy, and the common commercial policy; and it possesses shared legislative

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256 Sangiovanni, “Global Justice, Reciprocity, and the State,” 18-19;
257 Hurd, International Organizations, 73-75, 82.
authority with respect to the internal market, social policy, and economic, social, and territorial cohesion. Although the question of the legitimacy conditions of the EU’s exercise of these powers is a complex and difficult one, it is possible these conditions include some form of distributive justice.

However, even if the EU does possess distributive obligations to its member states and their citizens, the EU need not constitute a serious problem for either the political authority theory or DSI. First, although the political authority theory claims to provide a justificatory account of DSI – the claim that the state’s relation to its citizens is the subject of distributive justice – neither DSI nor the political authority theory is committed to understanding ‘the state’ as the nation-state. This is important, since there is good reason to think that the EU is not strictly speaking an international organization, but is in fact a federal state. Second, even if it is the case – unlikely though it seems – that the EU is not a federal state but nonetheless exercises a form of political authority whose legitimacy conditions include distributive justice, the political authority theory is still able to provide an account of why the state’s relation to its citizens, and the relation of state-like institutions to their subjects, are normatively significant for the problem of distributive justice.

The political authority theory is not therefore subject to Sangiovanni’s objection that international organizations exercise a form of authority that is similar to that of the state. Some international organizations do exercise forms of political authority, however, these forms of political authority are drastically different from those forms of the state’s political authority that

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259 See Annett, “The Case of the EU: Implications for Federalism.” For an in depth discussion of this question, see Menon and Schain, eds., *Comparative Federalism: The European Union and the United in Comparative Perspective*. 
give rise to distributive obligations. As well, because the political authority theory is not committed to the existence conditions strategy, it is not subject to the objections of Abizadeh or Julius.

Conclusion: The Political Authority Theory and DSI: Problems and Prospects

The political authority theory thus claims that the state’s relation to its citizens is the primary subject of distributive justice because of the way in which the state exercises political authority over its citizens. The state’s exercise of political authority is significant for distributive justice in this way because the state’s exercise of its political authority raises the problem of legitimacy, a component part of which, I argue, is the problem of distributive justice. In this concluding part of the chapter, I want to identify the features of the political authority theory that require further justification if it is to provide a successful justificatory account of DSI. Although I have attempted to motivate the political authority theory as a justificatory account of DSI, I do not take myself to have fully defended it.

The first feature of the political authority theory that requires further justification is the claim that the problem of the state’s legitimacy includes the problem of distributive justice. In section 4.1, I appealed to Rawls’s work in Political Liberalism to motivate the claim that the problem of distributive justice is a component part of the problem of legitimacy insofar as the state’s exercise of its political authority raises the problems of the assignment of political and civil rights, and the distribution of income and opportunities. However, I have not provided an argument for this claim. I will refer to this claim, namely that the principles of legitimacy include
principles of distributive justice as the *legitimacy-distributive justice thesis*. I will defend it in chapter 4.

Second, even if I justify the legitimacy-distributive justice thesis, the political authority theory will still fail to justify DSI. The reason for this is that it would still be possible to argue that there are grounds for distributive obligations that are different from the state’s exercise of political authority. Thus although it follows from the legitimacy-distributive justice thesis that the site and scope of distributive justice include the state’s relation to its citizens, it does not follow that the site and scope of distributive justice are restricted to the state’s relation to its citizens. In chapters 5 and 6 therefore, I will defend the *basic structure thesis*, according to which the state’s relation to its citizens, is both the site, and defines the scope, of distributive justice.

Before defending the legitimacy-distributive justice thesis and the basic structure thesis however, I must first establish the groundwork necessary to do so. I turn to this task in the following chapter.
Chapter 3 Political Contractualism: The Normative Foundations of the Political Authority Theory

In chapter 2, I introduced and motivated the political authority theory of the basic structure. According to this theory, the state’s relation to its citizens is the primary subject of distributive justice because of the way in which the state exercises political authority over its citizens. To exercise its political authority legitimately, the state must secure for its citizens a just distribution of civil liberties and political rights, and a just distribution of the benefits and burdens of economic cooperation.

However, I also identified two features of the political authority theory that require further support if it is to serve as a justificatory account of DSI. First, I must defend the legitimacy-distributive justice thesis, the claim that the state can only exercise its political authority legitimately if it secures distributive justice for its citizens. In chapter 2, I appealed to Rawls’s work in *Political Liberalism* to motivate the claim that the state’s exercise of its political authority raises the problems of the assignment of political and civil rights and the distribution of the benefits and burdens of economic cooperation. However, I did not provide an argument to support it.

Second, I must show that the principles of distributive justice that apply to the state’s relation to its citizens are in some sense unique to this relationship and so do not apply to the legally unconstrained choices of individuals or the state’s relation to foreigners. That is, I must defend the basic structure thesis, according to which the state’s relation to its citizens is both the site, and defines the scope, of distributive justice.
I defend these two theses in the three chapters that follow. In this chapter however, I will lay the groundwork necessary to do so. Here, I will first present the normative foundations of the political authority theory: Rawls’s conception of the person as free and equal. On the basis of this conception of the person, I will construct a contractualist principle of justice: justifiability to free and equal persons. In chapter 4, I will rely on both of these ideas to justify the legitimacy-distributive justice thesis. Here, I will argue that the state’s exercise of its political authority is only consistent with the freedom and equality of its citizens if it complies with principles of distributive justice. In chapters 5 and 6, I will rely on these ideas to show that the state’s relation to its citizens is the primary subject of distributive justice.

In part 1 of this chapter, I present Rawls’s conception of the person as free and equal. According to this conception of the person, persons are free insofar as they possess a capacity for a conception of the good and a capacity for a sense of justice. Persons are equal insofar as they possess the equal authority to exercise these capacities. In part 3 of this chapter, on the basis of this conception of the person, I will construct a contractualist principle of justice: justifiability to free and equal persons. According to this principle, the right principles of justice are those that are justifiable to persons considered as free and equal.

However, because Rawls’s own contractualist principle – the original position – also takes his conception of the person as its basis, before constructing the principle of justifiability to free and equal persons, I will first explain why I reject Rawls’s original position as a contractualist framework, opting instead for the principle of justifiability to free and equal persons. More specifically, in part 2, I will argue that Rawls is wrong to think that the original

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position accurately models his conception of the person as free and equal. Finally, in part 4 of this chapter, I will defend the principle of justifiability to free and equal persons against an influential objection.

1 The Normative Foundation of the Political Authority Theory: Free and Equal Persons

The normative foundation of the political authority theory is Rawls’s conception of the person as free and equal. As a normative conception of the person, Rawls’s conception does not aim to provide a metaphysical account of personhood. Rather, it is a conception of how we ought to understand both ourselves and others as practical agents facing the problem of the principles of justice that should guide our action. As I will show in chapter 4, Rawls’s conception of the person, as a normative conception, provides the resources necessary for specifying the types of claims that persons are entitled to make on each other as citizens of a state.

Rawls’s conception of the person aims to bring together the liberal values of freedom and equality in a coherent fashion. According to Rawls, persons are free insofar as they possess two moral powers and are moved by highest-order interests to develop and exercise these powers. The first moral power is a capacity for a conception of the good; or, alternatively, what Rawls calls a capacity to be rational. Persons possess this moral power insofar as they possess the capacity to form, revise, and rationally pursue a conception of the good, that is, to deliberate

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261 Ibid, 29.
262 Ibid, 19.
263 Ibid, 302.
about their ends and projects, set themselves a plan of life, and pursue it in an instrumentally rational manner.\textsuperscript{264} Included in this capacity for a conception of the good, Rawls argues, is the capacity to assume responsibility for one’s ends.\textsuperscript{265} Persons are thus not merely the “passive carriers of desires” but possess the capacity to take responsibility for the ends that they set for themselves.\textsuperscript{266}

The second moral power is a capacity for a sense of justice, or what Rawls calls a capacity to be reasonable.\textsuperscript{267} There are two aspects of this capacity. First, persons possess a capacity for a sense of justice insofar as they possess the capacity to propose, understand, and apply fair terms of social cooperation, and to willingly comply with them given the assurance that others will do so as well.\textsuperscript{268} In short, persons are reasonable insofar as they possess a capacity to determine the terms on the basis of which they will interact with others.

Second, persons are reasonable insofar as they are willing to recognize what Rawls calls the “burdens of judgment” concerning the determination of the principles and rules that are to govern their cooperation with others.\textsuperscript{269} The burdens of judgment are those factors that cause reasonable disagreements amongst persons, including conflicting and complex evidence and the vagueness of concepts.\textsuperscript{270} Persons are thus reasonable in this second sense insofar as they

\textsuperscript{264} Ibid, 50-51, 302.
\textsuperscript{266} Ibid, 369; Political Liberalism, 33-34.
\textsuperscript{267} Rawls, Political Liberalism, 302.
\textsuperscript{268} Ibid, 49, 302.
\textsuperscript{269} Ibid, 54.
\textsuperscript{270} Ibid, 56-57.
recognize that with respect to certain practical questions, including the determination of the fair terms of social cooperation, reasonable disagreement is possible.

As well as possessing these two moral powers as capacities, persons are also free insofar as they possess highest-order interests in developing and exercising these powers. These interests are ‘highest-order’ insofar as they are “supremely regulative as well as effective.”271 These interests therefore govern the practical deliberation of free and equal persons, and free and equal persons are moved to realize these highest-order interests.272

According to Rawls, persons are also equal in two important respects. First, persons are equal insofar as they possess the two moral powers to a requisite minimum degree, where these powers are understood as potentialities that are ordinarily realized in due course.273 Insofar as they possess the two moral powers to a requisite degree then, persons are equally moral persons.274

Second, persons are also equal insofar as they possess the equal authority to exercise their capacity to be reasonable. That is, persons are equal insofar as each possesses the authority to propose principles of social cooperation, to decide which principles of social cooperation are fair, and to apply the fair principles of social cooperation. This authority is equal insofar as no one person is entitled to determine for another person what the fair terms of social cooperation are, or to determine for another person how the terms of social cooperation are to be applied. The

272 Ibid.
273 Rawls, A Theory of Justice, 442-443; Political Liberalism, 19, 302.
274 Rawls, A Theory of Justice, 441-442.
conception of authority here is thus a relational one: persons possess the authority to exercise their capacity to be reasonable insofar as they possess a right against others to do so.

Rawls’s commitment to the equal authority of persons is evident from his idea of the original position which, Rawls claims, models his conception of the person as free and equal. On the one hand, the original position models the freedom of persons insofar as it models the two moral powers. The nature of the parties models Rawls’s conception of the capacity to be rational; the veil of ignorance models the capacity to be reasonable. On the other hand however, the original position also models the equal authority of persons to co-determine the principles of justice. The equal authority of persons is modeled in the original position by both the need for the consensual agreement of the parties on the principles of justice and by the symmetrical situation of the parties such that “all have the same rights in the procedure for choosing principles; each can make proposals, submit reasons for their acceptance, and so on.” The idea here is that for the principles to be binding on all, they must be agreed to by all, that is, they must be acceptable to all those who possess the authority to co-determine their content: no party is entitled to decide for another what the principles of justice are to be.

Rawls’s concept of the reasonable includes both legislative and adjudicative components. In chapter 4, I will make reference to these components when I discuss the different powers of the liberal state. It will thus be helpful for this later discussion to discuss the concept of the reasonable in light of this distinction. First, insofar as persons possess the equal authority to

\[275\] Rawls, *Political Liberalism*, 305.
\[276\] Ibid.
\[278\] Ibid, 17.
propose fair terms of social cooperation and insofar as the principles of social cooperation must be the subject of a consensus, persons possess equal legislative authority, that is, the equal authority to co-determine what the fair terms of social cooperation are. Second, insofar as persons possess the equal authority to apply principles of social cooperation, persons possess equal adjudicative authority. That is, persons possess the equal authority to apply principles of social cooperation to particular cases, both to co-determine what the principles require and to co-determine whether a certain action is consistent with the principles.

According to Rawls’s conception of the person then, persons are free insofar as they possess the capacity to be rational and the capacity to be reasonable; they are equal insofar as they possess these capacities to a minimum requisite degree and possess the equal authority to exercise their capacity to be reasonable. In the following part of this chapter, I will argue that Rawls’s original position does not in fact accurately model this conception of the person. In part 3, I will therefore introduce a new contractualist principle: justifiability to free and equal persons.

2 Political Contractualism 1: The Original Position

Rawls’s conception of the person constitutes the normative foundation of the political authority theory in two senses. First, in the following chapters, I will rely on Rawls’s conception of the person to identify the normatively significant problems that persons face as citizens of the state. Here, I will specify the different constitutional and legislative problems that citizens of the state face because of their highest-order interests in exercising their moral powers. Second, I will rely on Rawls’s conception of the person as free and equal to construct solutions to these problems; in doing so moreover, I will show that the state must comply with certain principles of
distributive justice if it is to solve these problems in a way that is consistent with the idea of citizens as free and equal persons.

To perform this second function however, Rawls’s conception of person must be worked up into a criterion of justice, that is, a basic principle of justice. For this reason, in part 3 of this chapter, I will rely on Rawls’s conception of the person to construct such a principle: justifiability to free and equal persons. According to this principle, principles of justice are justified if and only if they are justifiable to persons considered as free and equal.

However, Rawls also claims to rely on his conception of the person to construct a contractualist standpoint to justify principles of justice. In “Kantian Constructivism and Moral Theory” and Political Liberalism for example, Rawls claims that the original position models his conception of the person as free and equal.279 Here, Rawls claims that the nature of the parties to the original position as instrumentally rational as well as their interest in securing a larger rather than a smaller share of social primary goods models the capacity of persons for a conception of the good and their highest-order interest in developing and exercising this capacity.280 As well, Rawls claims that the veil of ignorance as well as the symmetrical situation of the parties to the original position models the capacity of persons to be reasonable and their highest-order interest in developing and exercising this capacity.281

Since the normative foundation of the political authority theory is Rawls’s conception of the person, I need to provide an account of why I do not adopt the original position. In this part

279 Rawls, “Kantian Constructivism in Moral Theory,” 312-317; Political Liberalism, 304.
280 Rawls, A Theory of Justice, 123-124; Political Liberalism, 305.
281 Rawls, A Theory of Justice, 118-123; Political Liberalism, 305.
of the chapter, I provide this account. Here, I will argue that the original position does not accurately model Rawls’s conception of the person as free and equal. First, I will argue that the original position does not accurately model the highest-order interest of persons in exercising their capacity to be reasonable. Second, I will argue that the original position does not accurately model the highest-order interest of persons in exercising their capacity for a conception of the good.

2.1 The Original Position and the Capacity to be Reasonable

Rawls’s claim that the veil of ignorance and the symmetrical situation of the parties accurately model the capacity to be reasonable is not totally erroneous. These two features of the original position do in fact capture certain features of the capacity to be reasonable. However, I want to argue here that Rawls is wrong to think that these features of the original position fully model the highest-order interest of persons in developing and exercising their capacity to be reasonable.

To see why this is so, recall first that the veil of ignorance prevents the parties to the original position from knowing certain facts about themselves that are morally arbitrary. These include the parties’ class position, fortune in the distribution of natural assets and abilities, conception of the good, psychology, and societal circumstances.282 The justification for the veil of ignorance, insofar as it models the capacity of persons to be reasonable, is that reasonable persons could not agree to principles of justice that advantage or disadvantage persons on the

basis of these morally arbitrary grounds.\textsuperscript{283} The veil of ignorance thus ensures that the parties choose principles of justice that reflect the capacity of persons to be reasonable, that is, principles that do not advantage or disadvantage persons on the basis of morally arbitrary differences. However, although the original position models the capacity of persons to be reasonable in these important ways, I want to argue here that the original position does not fully model the highest-order interest of persons in exercising this capacity. More specifically, I will argue that the original position does not model the interest that persons have in determining the terms on the basis of which they will interact with others.

Consider first Rawls’s discussion of the justification for the first principle of justice – the principle of equal liberty – in \textit{Political Liberalism}. Here, in response to H.L.A. Hart’s concerns about the nature and justification of this principle, Rawls aims to show that the principle of equal liberty is grounded in a conception of citizens as free and equal.\textsuperscript{284} To do so, Rawls argues that the original position models this conception of citizens as free and equal, and that the parties in the original position would choose the principle of equal liberty and assign it the priority that it possesses.\textsuperscript{285}

The principle of equal liberty states that “each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.”\textsuperscript{286} This scheme of equal basic rights and liberties, Rawls claims,

\begin{flushright}
\textsuperscript{283} Ibid, 11, 118.
\textsuperscript{284} Rawls, \textit{Political Liberalism}, 289-290.
\textsuperscript{285} Ibid, 310-324.
\textsuperscript{286} Ibid, 5.
\end{flushright}
includes liberty of conscience, freedom of association, political rights such as the right to vote and the right to hold public office, freedom of speech, rights to the security of the person, the right to personal private property, and the freedoms and rights defined by the ideal of the rule of law.²⁸⁷ As Rawls makes clear in Political Liberalism, the parties have good reasons to accept the principle of equal liberty insofar as it secures those rights and liberties – for example, liberty of conscience and freedom of association – that are necessary if they are to develop and exercise their capacity for a conception of the good.²⁸⁸ However, to justify the principle of equal liberty’s inclusion of political rights as well as the securing of their fair value, Rawls cannot appeal directly to the highest-order interest of persons in developing and exercising their capacity to be reasonable, but must instead appeal to the highest-order interest of persons in developing and exercising their capacity for a conception of the good. As Rawls puts it:

The parties in the original position arerationally autonomous representatives and as such are moved solely by considerations relating to what furthers the determinate conceptions of the good of persons they represent, either as a means or as a part of these conceptions. Thus, any grounds that prompt the parties to adopt principles that secure the development and exercise of the capacity for a sense of justice must accord with this restriction.²⁸⁹

As Rawls makes clear in this passage, the reason that he cannot appeal to the highest-order interest of persons in exercising their capacity to be reasonable is that the parties to the original position are not moved by this highest-order interest.

As a result of the structure of the original position, Rawls can only provide an instrumental justification of the political rights that the principle of equal liberty includes. First, Rawls argues that parties to the original position have reason to agree to the principle of equal

²⁸⁷ Rawls, A Theory of Justice, 53.
²⁸⁸ Rawls, Political Liberalism, 310-315.
²⁸⁹ Ibid, 315.
liberty because a society committed to this principle is the most stable one, and stability is a great advantage to everyone’s conception of the good. Second, Rawls argues that parties to the original position have reason to agree to the principle of equal liberty because a society committed to this principle will most effectively encourage and support the self-respect of its citizens, which, Rawls argues, is necessary if persons are to conceive of their projects as having value and possess the will to realize them. Finally, Rawls argues that a society committed to the principle of equal liberty constitutes a “‘social union of social unions’” that “can be for each citizen a far more comprehensive good than the determinate good of individuals when left to their own devices or limited to smaller associations.” Rawls’s argument here is that a society committed to the principle of equal liberty is the most effective in coordinating and combining the many social unions within society, that is, the many communities organized around shared conceptions of the good, into an overarching social union.

To justify those aspects of the principle of equal liberty that do not directly secure the capacity of persons to exercise their capacity for a conception of the good then, Rawls must provide an instrumental justification. Thus to justify granting all citizens political rights to hold office and vote and to justify guaranteeing the fair value of these rights, Rawls cannot appeal to each person’s highest-order interest in exercising their capacity to be reasonable, but must instead appeal to considerations of stability, self-respect, and the comprehensive good of a social union of social unions.

290 Ibid, 316.
291 Ibid, 318.
292 Ibid, 320.
293 Ibid, 321-322.
The problems with this strategy are twofold. First, this strategy leaves the justification of the principle of equal liberty subject to empirical considerations in a questionable way. Whether a society that secures equal political rights and guarantees their fair value will be the most stable or will most effectively encourage and support feelings of self-respect is an empirical question. Moreover, as Rawls himself makes clear in his critique of Mill’s utilitarianism, a justification for basic rights and liberties that depends on empirical considerations in this way is not really a justification at all.\(^{294}\) With respect to Mill’s utilitarian justification for basic rights and liberties, Rawls puts the point in the following way:

> The striking feature of the utilitarian view of justice is that it does not matter, except indirectly, how this sum of satisfactions is distributed among individuals any more than it matters, except indirectly, how one man distributes his satisfactions over time. The correct distribution in either case is that which yields the maximum fulfillment. Society must allocate its means of satisfaction whatever these are, rights and duties, opportunities and privileges, and various forms of wealth, so as to achieve this maximum if it can. But in itself no distribution of satisfaction is better than another except that the more equal distribution is to be preferred to break ties. It is true that certain common sense precepts of justice, particularly those which concern the protection of liberties and rights, or which express the claims of desert, seem to contradict this contention. But from a utilitarian standpoint the explanation of these precepts and of their seemingly stringent character is that they are those precepts which experience shows should be strictly respected and departed from only under exceptional circumstances if the sum of advantages is to be maximized. Yet, as with all other precepts, those of justice are derivative from the one end of attaining the greatest balance of satisfaction. Thus there is no reason in principle why the greater gains of some should not compensate for the lesser losses of others; or more importantly, why the violation of the liberty of a few might not be made right by the greater good shared by many. It simply happens that under most conditions, at least in a reasonably advanced stage of civilization, the greatest sum of advantages is not attained in this way.\(^{295}\)

Rawls’s point here is not that empirical questions are irrelevant to the justification of principles of justice. In fact, Rawls’s own procedure of justification – the original position – permits the consideration of empirical questions. After all, although the parties to the original position know


\(^{295}\) Ibid, 23.
very little about themselves, their choice of principles is nonetheless informed by knowledge of sociology, economics, and human psychology. Rather, Rawls’s point here is that a theory of justice whose argument for basic rights and liberties is almost entirely dependent on “precarious calculations as well as controversial and uncertain premises” is really no justification at all.\footnote{Ibid, 185.}

Moreover, Rawls introduces the original position as an alternative non-consequentialist model of justification to avoid this problem.\footnote{Ibid, 3-4} In contrast to the principle of utility, the original position, Rawls claims, provides a much more principled and direct justification of equal rights and liberties.

However, by subjecting the justification of political rights to the empirical questions of stability and the promotion of feelings of self-respect, Rawls fails to provide a procedure of justification that avoids the problem he diagnoses with utilitarian justifications of basic rights and liberties. Because the original position fails to fully model persons’ highest-order interest in exercising their capacity to be reasonable, the original position fails to provide a principled and direct justification of equal political rights.

Second, this strategy fails to present the more important reasons Rawls has to justify the principle of equal liberty. Given Rawls’s conception of the person, the primary reason why the state possesses an obligation to secure equal political rights for its citizens and guarantee their fair value is because persons possess a highest-order interest in exercising their capacity to be reasonable. That is to say, free and equal persons possess a highest-order interest in determining the terms on the basis of which they will interact with each other by being full participants in the legislative process.
The original position thus fails to model Rawls’s conception of the person insofar as it fails to fully represent the highest-order interest of persons in exercising their capacity to be reasonable. Although Rawls wants to justify the principle of equal liberty on the grounds that it constitutes the “essential social conditions for the adequate development and full exercise of the two powers of moral personality over a complete life,” his use of the original position to model his conception of the person prevents him from doing so. In the following section of this chapter, I will provide a further reason to reject the original position as a standpoint for justifying principles of justice.

2.2 The Original Position and the Capacity to be Rational

As I make clear above, the original position not only claims to model the highest-order interest of persons to exercise their capacity to be reasonable, but also the highest-order interest of persons in exercising their capacity to be rational. This interest, Rawls claims, is modeled by the nature of the parties to the original position as instrumentally rational, and their interest in securing more rather than less social primary goods. However, I want to argue here that although the original position accurately models this highest-order interest for the purposes of choosing principles of justice to govern a system of social cooperation, it cannot be said to accurately model this highest-order interest in other contexts, that is, with respect to other problems of justice. This is a problem for the political authority theory since, as will become clear in the following chapters, to justify the legitimacy-distributive justice thesis and the basic structure thesis, I must deal with problems of justice that are not limited to the problem of the principles that should govern a system of social cooperation.
To see why this is so, notice first that the original position’s modeling of the highest-order interest of persons in exercising their capacity for a conception of the good is suitable for the purposes of determining which principles should govern the way in which a system of social cooperation distributes benefits and burdens. The reason for this is that with respect to the design of such a system, it is rational for free and equal persons to prefer principles that provide them with more, as opposed to less, social primary goods.

However, although this construal of the highest-order interest of persons in exercising their capacity to be rational is suitable for determining the principles that should govern a system of social cooperation, it is still nonetheless a construal. That is, an interest in maximizing one’s share of social primary goods is simply not equivalent to the interest in setting and pursuing a conception of the good. This is important, because, as I will show in the chapters that follow, problems of justice can arise in which such a construal fails to accurately model this highest-order interest. For example, in chapter 4, I will not only deal with the problem of the principles of justice that should govern a system of social cooperation, but also the problem of property. In chapter 5, I will also deal with the problem of the principles that should govern an individual’s choice of occupation. As will become evident, for both problems, appealing to the idea that persons have an interest in maximizing their share of social primary goods will simply not be helpful.

Thus, Rawls’s original position not only fails to accurately model the highest-order interests of persons in exercising their capacity to be reasonable, but also fails to provide a model of the highest-order interest of persons in exercising their capacity to be rational that can be used in all contexts. For these reasons, I will not employ Rawls’s original position as a contractualist framework that models his conception of the person. Instead, in the following part of this
chapter, I will develop a contractualist principle – justifiability to free and equal persons – that avoids these problems.

3 Political Contractualism 2: Justifiability to Free and Equal Persons

In this part of the chapter, I will derive a contractualist principle of justice – justifiability to free and equal persons – from Rawls’s conception of the person. The basic idea of this principle is that the right principles of justice, for a particular sphere of interaction, are those that are justifiable to persons considered as free and equal; actions are right if and only if they are consistent with these principles. I will first argue that it follows from Rawls’s conception of the person that persons possess two basic duties, a duty to respect our own free and equal nature and a duty to respect the free and equal nature of others. Second, I will argue that it follows from these duties that the right principles of justice are those that are justifiable to free and equal persons. I will then spell out the implications of the principle of justifiability to free and equal persons for the nature of political argumentation.

3.1 Two Basic Duties

As I make clear in part 1, Rawls’s conception of the person is a normative conception. That is, it is a conception of how we ought to understand ourselves and others as practical agents facing the problem of the principles of justice that should guide our action. However, Rawls’s conception of the person is not only normative in the sense that it is a conception of ourselves and others that we ought to adopt, but is also normative in the sense that once we adopt it, certain
obligations follow. More specifically, I want to argue here that Rawls’s conception of the person provides the basis for two duties of justice, and that these duties in turn provide the basis for a contractualist criterion of justice.

To see how Rawls’s conception of the person provides the basis for two duties of justice, consider first that Rawls’s conception of the person is what Christine Korsgaard calls a “practical identity.” A ‘practical identity,’ according to Korsgaard, is “a description under which you value yourself, a description under which you find your life to be worth living and your actions to be worth undertaking.” To say that Rawls’s conception of the person is a practical identity for us is thus to say that we understand ourselves to be free and equal in Rawls’s sense and value ourselves under this description. To say that we understand others to possess this identity is thus to understand others to be free and equal and to value them under this description in a similar way.

The reason that Rawls’s conception of the person provides the basis for duties of justice is that, as Korsgaard makes clear, practical identities provide us with reasons for action and give rise to obligations. If I adopt the practical identity of a Christian or Muslim, I will possess reasons for action that stem from this identity, for example, to comply with the obligations that my religion mandates. Similarly, if I adopt the practical identity of a teacher and understand you to be my student, I possess obligations to act towards you in certain ways. It is the same with Rawls’s conception of the person. Insofar as we understand ourselves to be free and equal persons, we possess a reason to act in a way that recognizes the value we possess under this

\[\text{298 Korsgaard, The Sources of Normativity, 101.}\]
\[\text{299 Ibid, 101.}\]
\[\text{300 Ibid.}\]
description. Similarly, insofar as we ascribe this identity to others, we possess a reason to act in a way that recognizes the value that others possess under this description.

One might think that to recognize the value that persons possess under Rawls’s conception of the person as free and equal, one must promote the freedom and equality of oneself and others. However, as T.M. Scanlon makes clear in What We Owe to Each Other, this is not the best way to understand the value that persons possess as rational agents. Here, Scanlon claims that the appropriate way to recognize the value that rational agents possess is “primarily a matter of seeing human lives as something to be respected.”301 To demonstrate this, Scanlon points out that although we have reasons to preserve and protect human life, these reasons “do not flow from the thought that it is a good thing for there to be more human life than less.”302 If they did, Scanlon claims, we would have equally strong reasons to create new life when we are in a position do so.303 However, Scanlon points out, our reasons to create life “are different from, and weaker than, our reasons not to destroy it.”304

Insofar as we adopt Rawls’s conception of the person as both a practical identity for ourselves and as an identity that we ascribe to others then, we possess reasons to respect both our own free and equal nature and the free and equal nature of others. With respect to our own free and equal nature, we thus possess a duty to ourselves to exercise our moral powers in a way that respects our free and equal nature. On the one hand, this involves exercising our capacity for a conception of the good in a way that respects our nature as free and equal persons. According to

301 Scanlon, 104.
302 Ibid.
303 Ibid.
304 Ibid.
Rawls, this involves complying with what he calls “the principle of responsibility to self.” This principle requires us to set and pursue that conception of the good that we take ourselves to have the strongest reasons to pursue, that is, the conception of the good that we would choose with “deliberative rationality.” As Rawls puts it:

> a rational individual is always to act so that he need never blame himself no matter how his plans finally work out. Viewing himself as one continuing being over time, he can say that at each moment of his life he has done what the balance of reasons required, or at least permitted…Acting with deliberative rationality can only insure that our conduct is above reproach, and that we are responsible to ourselves as one person over time.  

On the other hand, because free and equal persons possess the equal authority to exercise their capacity to be reasonable and possess a highest-order interest in doing so, this duty to act in a way that respects one’s own free and equal nature also involves asserting one’s own equal authority in one’s interactions with others. Complying with this aspect of one’s duty to oneself involves ensuring that one asserts both one’s legislative authority, that is, one’s authority to co-determine the terms on the basis of which one will interact with others, and one’s adjudicative authority, that is, one’s authority to apply the terms of interaction to particular cases.

> Insofar as we also understand others to be free and equal and value them as such, we possess a duty to others to act towards them in a way that respects their free and equal nature. Because persons possess the equal authority to exercise their capacity to be reasonable, that is, to determine and apply the terms on the basis of which they will interact with others, respecting the free and equal nature of others involves interacting with them on the basis of terms that are justifiable to them considered as free and equal persons.

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In this way, Rawls’s conception of the person as free and equal, understood as a practical identity, gives rise to two duties: a duty to respect one’s own free and equal nature, and a duty to respect the free and equal nature of others. However, these two duties also provide the basis for the derivation of a contractualist criterion of justice. Insofar as persons possess a duty to assert their own equal authority in their interactions with others, and insofar as persons possess a duty to interact with others on the basis of terms that are justifiable to them considered as free and equal persons, the right principles of justice to govern the interaction of free and equal persons are those that are justifiable to them considered as free and equal.

Rawls’s conception of the person thus provides the foundation for a contractualist criterion of justice: the principle of justifiability to free and equal persons. First, Rawls’s conception of the person imposes both duties to oneself and duties to others on those who adopt it. Second, these duties provide the ground for the principle of justifiability to free and equal persons. In the following sections of this chapter, I will specify this principle further and spell out its implications for political argumentation.

3.2 Justifiability to Free and Equal Persons

In contrast to the original position, the principle of justifiability to free and equal persons does not model Rawls’s conception of the person. Rather, the principle of justifiability to free and equal persons is a criterion of justice that follows from Rawls’s conception of the person as free and equal. Although it lacks the deductive structure of Rawls’s original position, I nonetheless think that it is a truer expression of the idea that the right principles of justice are
those that are justifiable to free and equal persons. The principle of justifiability to free and equal persons is as follows:

Justifiability to Free and Equal Persons: The right principles of justice, for a particular sphere of interaction, are those that are justifiable to persons considered as free and equal; actions are just if and only if they are consistent with these principles.

The central idea of the principle of justifiability to free and equal persons is thus that the right principles of justice are those that are rationally acceptable to free and equal persons, moved by a highest-order interest to develop and exercise their capacities to be rational and reasonable. Actions that are consistent with principles of justice that are justifiable to persons considered as free and equal are thus permissible and rightful. Actions that violate principles of justice that are justifiable to free and equal persons are thus forbidden and unjust.

The idea of justifiability to free and equal persons is both similar to, and different from, T.M. Scanlon’s contractualism. Scanlon’s contractualist project has two chief aims. First, it aims to formulate a contractualist criterion of wrongness, or to identify the wrong-making property, for the domain of morality that Scanlon calls “‘what we owe to each other.’”\(^\text{307}\) According to this contractualist criterion of wrongness, “an act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behavior that no one could reasonably reject as a basis for informed, unforced general agreement.”\(^\text{308}\) Second, Scanlon’s contractualism aims to provide an account of the ground or normative authority of wrongness for the domain of ‘what we owe to each other.’\(^\text{309}\) Scanlon thus argues that judgments about right and wrong, at their most fundamental level, are judgments “about what would be

\(^{307}\) Scanlon, *What We Owe to Each Other*, 5-11.

\(^{308}\) Ibid, 153.

\(^{309}\) Ibid, 5.
permitted by principles that could not reasonably be rejected, by people who were moved to find principles for the general regulation of behavior that others, similarly motivated, could not reasonably reject.\textsuperscript{310} Given these two aims, Scanlon’s contractualism takes the idea of justifiability to others to be basic in two ways. First, it takes the idea of justifiability to others to provide the “most general characterization of [the] content” of the moral domain of ‘what we owe to each other.’\textsuperscript{311} Second, Scanlon’s contractualism takes the idea of justifiability to others to provide the “normative basis” of this domain of morality.\textsuperscript{312}

The idea of justifiability to free and equal persons is similar to Scanlon’s contractualism in two important respects. First, both accounts take the idea of justifiability to be basic to their criterion of justice or wrongness. That is, for both accounts, the idea of justifiability provides a general characterization of the content of principles of right and wrong: the right principles are those that would be the subject of an unforced agreement.\textsuperscript{313} Second, like Scanlon’s formula, the idea of justifiability to free and equal persons, is a strictly non-consequentialist interpretation of the contractualist idea. As Scanlon points out, the mode of justification that his conception of contractualism employs is not the aggregative and maximizing one that consequentialist normative theories are committed to.\textsuperscript{314} That is, according to both Scanlon’s formula and the idea of justifiability to free and equal persons, a principle is justified not because it maximizes the sum of some important value; but rather because it is justifiable to each particular person. As Scanlon puts it:

\textsuperscript{310} Ibid, 4.
\textsuperscript{311} Ibid, 189.
\textsuperscript{312} Ibid.
\textsuperscript{313} Ibid.
\textsuperscript{314} Ibid, 230.
A contractualist theory, in which all objections to a principle must be raised by individuals, blocks [consequentialist] justifications in an intuitively appealing way. It allows the intuitively compelling complaints of those who are severely burdened to be heard, while, on the other side, the sum of the smaller benefits to others has no justificatory weight, since there is no individual who enjoys these benefits and would have to forgo them if the policy were disallowed.\textsuperscript{315}

However, Scanlon’s contractualism and the principle of justifiability to free and equal persons are also different in three important respects. First, whereas Scanlon’s contractualism concerns the moral domain of ‘what we owe to each other,’ the idea of justifiability to free and equal persons concerns the problem of justice. That is to say, the idea of justifiability to free and equal citizens is a contractualist principle with which to approach the problem of what the state owes to its citizens. Second, while the idea of justifiability to free and equal persons, insofar as it takes the idea of justifiability to be basic, is a contractualist criterion of justice, it does not provide an account of the ground or normative authority of principles of justice. The idea of justifiability to free and equal persons thus claims to match and provide reasons for our considered judgments of justice; but it does not claim to explain the ground or normative authority of principles of justice.

Finally, the idea of justifiability to free and equal persons is also different from Scanlon’s formula insofar as it specifies the interests of persons that are normatively significant and that therefore provide the ground for the acceptance or rejection of principles of justice. The idea of justifiability to free and equal persons is thus what Scanlon calls a “tightening” of contractualism.\textsuperscript{316} The reason for this is that the principle of justifiability to free and equal persons combines the idea of justifiability or reasonable rejection with the idea of persons as free, or possessing highest-order interests in exercising their capacities to be rational and

\textsuperscript{315} Ibid.
\textsuperscript{316} Ibid, 218.
reasonable. According to the idea of justifiability to free and equal persons then, a necessary condition of the justifiability of a principle of justice is that it secures the capacity of persons to exercise and develop their capacities for a conception of the good and for a sense of justice. In turn, persons have reason to reject principles of justice if they fail to advance the highest-order interests of persons in developing and exercising their moral powers.

3.3 Political Argumentation: The Complaint Model of Justification

The principle of justifiability to free and equal persons thus claims that the right principles of justice to govern a sphere of interaction are those that are justifiable to free and equal persons. In this section of the chapter, I want to spell out an implication of this principle that will turn out to be important for the chapters that follow. More specifically, I will argue here that justifiability to free and equal persons is committed to what Derek Parfit calls the “complaint model” of justification. According to this model of justification, a particular person has reason to reject a principle of justice if there is some alternative principle to which no person has a complaint that is as strong. I will argue further that this implication of justifiability to free and equal persons has important implications for the structure that principles of justice must take if they are to be justifiable to free and equal persons.

To see why the principle of justifiability to free and equal persons is committed to the complaint model of justification, consider first that free and equal persons, insofar as they

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317 Parfit, *Equality or Priority?*
318 Scanlon, *What We Owe to Each Other*, 229.
possess a highest-order interest in exercising their capacity to be reasonable, are motivated to recognize each other’s equal authority and equal moral worth as free persons. Free and equal persons, therefore, are motivated to accept principles of interaction that best advance their highest-order interest in exercising their two moral powers; however, they are not willing to do so at the expense of exploiting others. Consider second that to be justifiable to free and equal persons, a particular principle of justice must be justifiable to all those persons who are participants within a certain sphere of interaction.

Now, because persons are motivated to recognize each other’s equal authority and equal moral worth as free persons, and because principles of justice must be justifiable to all, it follows from this that if a particular principle of justice is to be justifiable to free and equal persons, there must not be some alternative principle against which no one has a complaint that is as strong. If there is such a principle, then because persons are motivated to recognize each other’s equal authority and equal moral worth, and because principles must be justifiable to all, it follows that this alternative principle is the principle that is uniquely justifiable to free and equal persons to govern the sphere of interaction in question. Thus, it follows from this that a particular person has reason to reject a particular principle of justice if he or she has an agent-relative complaint against it and there is an alternative principle against which no one has a complaint that is as strong.

Justifiability to free and equal persons’ commitment to the complaint model is important for two reasons. First, this commitment expresses a non-consequentialist model of justification. To be justifiable to free and equal persons, a principle of justice must be acceptable to all
persons; principles cannot therefore be justified by appeal to their aggregative benefits.\textsuperscript{319}

Second, it follows from this feature of justifiability to free and equal persons that a principle must either secure or advance the ability of persons to exercise their moral powers equally, distribute benefits and burdens equally, or, in cases where an unequal distribution of benefit and burdens will make everyone better off in comparison with the benchmark of equality, maximize the expectations of the parties who are the least advantaged by the principle in question. That is, because persons have reason to reject a principle of justice if there is some alternative principle to which no person has a complaint that is as strong, to be justifiable to free and equal persons, a principle of justice must maximize the expectations of those persons who stand to gain the least from the principle in question.

In the chapters that follow, I will employ the complaint model of justification to show that certain principles of justice are justifiable to free and equal persons. However, before doing so, it is first necessary to say something about how the strength of complaints is to be measured. My aim in doing so however is not to provide a criterion of measurement that can deal with all possible cases; instead, my aim here is simply to make the complaint model workable for the chapters that follow. I will therefore limit myself to making two points.

First, because persons have highest-order interests in developing and exercising their two moral powers, for something to count as a complaint in the first place, it must make reference to these interests and not, for example, to ideas of well-being or welfare. That is, because the reasons persons have to accept a principle of justice are grounded in their highest-order interests, complaints, or reasons to reject a principle of justice, must likewise be so grounded.

\textsuperscript{319} Ibid, 230.
Second, complaints must be evaluated on both qualitative and quantitative scales. With respect to certain questions of justice, it will be easy to identify whether one complaint is stronger than other simply by making a quantitative judgment. For example, if persons must decide on principles of justice to govern the way in which a system of economic cooperation distributes income, one can determine whether person A’s complaint against principle C is stronger or weaker than person B’s complaint against principle D simply by looking at the levels of income – understood here as all-purpose means – that A and B can expect under each principle. If A complains that under C she will only earn $30000/year while B complains that under D, he will only earn $35000/year, all else being equal, A’s complaint against C is stronger than B’s complaint against D.

However, in many cases, complaints will not be amenable to quantitative comparison. In such cases, the complaints will not concern the distribution of a certain single type of good such as income or opportunities, but will instead be qualitatively different. For example, such complaints might concern different types of goods. To evaluate the strength of such complaints, it is necessary to employ a qualitative rather than a quantitative scale. Such a scale must evaluate the strength of such complaints by reference to the highest-order interest of persons in exercising their two moral powers.

The formulation of such a qualitative scale is beyond the scope of this chapter; as well, although such a scale is necessary to formulate a comprehensive theory of distributive justice, as will become clear in the chapters that follow, it will not be necessary for the purposes of justifying the legitimacy-distributive justice thesis or the basic structure thesis. However, to justify these two theses, it is necessary to outline the basic shape that such a scale must take.
First, such a scale must distinguish between the types of goods that persons require to exercise their two moral powers. To this end, it is necessary to distinguish between those goods that persons require to exercise their moral powers at all, and those goods that persons require to exercise their moral powers in particular ways. The former category includes those basic rights and liberties that persons require if they are to do anything at all but also those goods that are necessary to satisfy one’s basic needs. The latter category includes, for example, particular types of goods and services that persons require to set and pursue a particular conception of the good.

Second, such a scale must provide a ranking of these types of goods by reference to the highest-order interest of persons in exercising their two moral powers. Thus, with respect to the distinction outlined above, complaints concerning those goods that are necessary if persons are to exercise their two moral powers at all are more important than complaints that concern those goods that are necessary if persons are to exercise their two moral powers in particular ways.

These first steps toward the formulation of quantitative and qualitative scales for evaluating the strength of complaints against principles of justice is of course not nearly as comprehensive nor as specific as it needs to be for the purposes of justifying principles of justice to govern complex spheres of social and political life. However, it is nonetheless workable enough for the purposes of justifying the legitimacy-distributive justice thesis and the basic structure thesis. In the following three chapters, I will turn my attention to these two tasks. Before I do so however, I will first consider an objection to the principle of justifiability to free and equal persons.
4 The Redundancy Objection

In this final part of the chapter, I want to consider an objection to the principle of justifiability to free and equal persons. This objection – the redundancy objection – has been directed at Scanlon’s contractualism and is widely cited as a serious problem for his position. Although the principle of justifiability to free and equal persons is different from Scanlon’s contractualism in important ways, it is nonetheless a contractualist principle and so subject to this same criticism.

According to the redundancy objection, the basic contractualist idea of reasonable rejection or justifiability is redundant insofar as the rightness or wrongness of a principle is grounded more fundamentally in the reasons persons have for rejecting or accepting the principle in question. Michael Ridge formulates this objection in a particularly clear way: “The basic idea [of the redundancy objection] is that whenever principles allowing an action are reasonably rejectable because such actions have feature F, such actions are wrong simply in virtue of having F and not because their having F makes principles allowing them reasonably rejectable.”

Theorists have directed the redundancy objection at both of the central aims of Scanlon’s contractualist project. First, theorists have argued that the contractualist machinery of reasonable rejection, considered as a criterion of rightness, is redundant insofar as it presupposes certain moral intuitions to operate in the first place. For Scanlon’s contractualism, these intuitions

concern what it would be reasonable for persons to reject. In “Reasons to Reject Allowing,”
Allan Gibbard puts the point in the following way:

Scanlon uses his characterization of wrongness to argue that certain kinds of acts are
wrong. To the extent that his conclusions agree with our considered judgments, these
arguments can be seen as confirming his diagnosis of the morality of what we owe to
each other. But Scanlon’s derivations do not pretend to be algorithmic; he enjoys great
freedom in the morally charged considerations he can draw on. Much rests on appeals to
intuitive judgments of reasonableness. As Scanlon well realizes, then, a reader must
worry about whether the derivations are fudged, whether considerations about reasonable
rejection of principles lets us derive conclusions about right and wrong just by drawing
their plausibility from what we already think about right and wrong.\(^{322}\)

Gibbard’s worry here is that Scanlon’s extensive reliance on intuitive judgments of
reasonableness to determine the rightness or wrongness of principles prevents the contractualist
machinery of reasonable rejection from doing any real work. Brad Hooker articulates the same
objection in “Contractualism, Spare Wheel, Aggregation.” Here, Hooker argues that Scanlon’s
contractualism operates as a “spare-wheel,” that is, a wheel that spins but bears no weight.\(^{323}\)
Like Gibbard, Hooker argues that Scanlon’s contractualism does no real work insofar as it
employs moral convictions to generate principles that match our moral convictions.\(^{324}\)

Theorists have also employed the redundancy objection to attack the second aim of
Scanlon’s contractualism. They argue that Scanlon’s contractualism does not actually identify
the ground of the wrongness of actions insofar it requires intuitive judgments of reasonableness
to function.\(^{325}\) Some theorists go further and argue that the more sensible view is that certain
actions are wrong not because they are consistent with principles that persons could reasonably

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323 Hooker, “Contractualism, Spare Wheel, Aggregation,” 57.
324 Ibid.
325 See Adams, “Scanlon’s Contractualism: Critical Notice of T.M. Scanlon, What We Owe to Each Other.”
reject, but rather because of the reasons persons have for rejecting the principles in question in the first place. Judith Jarvis Thomson puts the point this way:

For my own part, I cannot bring myself to believe that what makes it wrong to torture babies to death for fun (for example) is that doing this ‘would be disallowed by any system of rules for the general regulation of behavior which no one could reasonably reject as a basis for informed, unforced general agreement.’ My impression is that explanation goes in the opposite direction – that is the patent wrongfulness of the conduct that explains why there would be general agreement to disallow it. With respect to the identification of the ground of wrongness then, these theorists conclude, Scanlon’s contractualism is redundant.

As I make clear above, the principle of justifiability to free and equal persons does not claim to identify the ground of rightness or wrongness. It is not, therefore, subject to the second form of the redundancy objection. However, the principle of justifiability to free and equal persons does claim to be a criterion of justice and so is subject to the first form of the redundancy objection. With respect to this principle, one might worry that the contractualist idea does no real work, that the reasons free and equal persons have for accepting or rejecting a principle of justice are just the moral reasons we would consider as political theorists aiming to determine the principles that match and provide reasons for our considered judgments of justice. In this sense, one might think that the principle of justifiability to free and equal persons is redundant.

In “Saving Scanlon: Contractualism and Agent-Relativity,” Michael Ridge provides what I take to be a successful response to the redundancy objection, at least insofar as this objection is directed at the principle of justifiability to free and equal persons. Here, Ridge argues that the

327 Thomson, The Realm of Rights, 30 n19.
redundancy objection “rests on a pervasive misunderstanding of Scanlon’s account.” According to Ridge, for Scanlon, the reasons persons have to accept or reject a principle must be agent-relative or personal reasons. That is, they must be reasons that stem from the way in which a proposed principle would affect the agent in question. The reasons for rejecting a principle cannot therefore be agent-neutral or impersonal reasons, that is, reasons that are not tied to the way in which a principle would affect a particular agent. The redundancy objection fails to recognize this, Ridge argues, insofar as it assumes that the reasons persons have to reject a principle must be agent-neutral.

With respect to moral philosophy’s project of formulating a criterion of rightness or wrongness to match and provide reasons for our considered judgements, Ridge concludes that Scanlon’s contractualism is not a redundant spare-wheel but does important work. Scanlon’s contractualism, Ridge claims, advances the claim that the fundamental basis of our moral knowledge concerning the domain of what we owe to each other is the idea that “we must make room for the reasonable agent-relative concerns of others.” Scanlon’s contractualism is not redundant insofar as it expresses this idea in a systematic way.

My aim in discussing Ridge’s defense of Scanlon’s contractualism is not to claim that Scanlon’s contractualism avoids the redundancy objection. As Ridge himself admits, Scanlon interprets the idea of agent-relative reasons in a very ecumenical way. It seems to me that if

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329 Ibid, 475.
331 Ibid, 481.
332 Ibid, 475-476.
Scanlon interprets this idea too broadly such that the agent-relative/agent-neutral distinction fails to do any real work, his contractualism will be subject to some form of the redundancy objection. However, it is important to recognize that the principle of justifiability to free and equal persons is not subject to this worry. As I make clear above, according to this principle, the reasons persons have for rejecting or accepting a principle of justice stem from their status as free and equal persons. According to the idea of justifiability to free and equal persons then, a necessary condition of the justifiability of a principle of justice is that it secures the capacity of persons to exercise their capacities for a conception of the good and for a sense of justice. In turn, persons have reason to reject principles of justice if they fail to advance their own highest-order interests in developing and exercising their moral powers. The principle of justifiability to free and equal persons, as a tightening of Scanlon’s basic contractualist idea, clearly delineates the agent-relative reasons that constitute grounds for accepting or rejecting a principle of justice.

The principle of justifiability to free and equal persons is thus not a redundant spare-wheel. Instead, like Scanlon’s contractualism, it advances the claim that the core idea of our knowledge about justice is the idea that principles to govern the interaction of persons must be justifiable to them considered as free and equal. Like Rawls’s original position, the principle of justifiability to free and equal persons aims to function as an expository device; that is, a device to help us articulate the principles that match and provide reasons for our considered judgments of justice. Of course, it is possible that this principle will fail in this task; however, insofar as it presents a clearly defined, systematic thesis regarding the nature of our knowledge of justice, it is not redundant.
Conclusion

In this chapter, I have established the normative foundations of the political authority theory. In the following chapter, I will rely on these foundations to justify the legitimacy-distributive justice thesis. Here, I will argue that the state’s exercise of its political authority is only consistent with the freedom and equality of citizens if it complies with principles of distributive justice. In short, to exercise its political authority legitimately, the liberal state must secure for its citizens a just distribution of political rights and civil liberties, and a just distribution of income and opportunities. In chapters 5 and 6, I will rely on these ideas to show that the state’s relation to its citizens is the primary subject of distributive justice.
Chapter 4 Legitimacy and Distributive Justice

In chapter 3, I presented the normative foundations of the political authority theory. Here, I introduced Rawls’s conception of the person as free and equal, and, on the basis of this, I constructed a contractualist principle of justice: justifiability to free and equal persons. In this chapter, I will rely on these two ideas to carry out the legitimacy strategy, that is, to defend the legitimacy-distributive justice thesis. According to this thesis, the state must comply with principles of distributive justice if it is to exercise its political authority legitimately.

To defend this thesis, I will first argue that the state can only exercise its political authority legitimately if it complies with principles of justice. Here, I will argue that because the state’s claim to legitimacy is a claim to be entitled to exercise political authority over its citizens, and because persons possess the equal authority to exercise their capacity to be reasonable, the state can only be entitled to exercise its authority over them if it does so in a way that respects their equal authority. Because the state can only respect the equal authority of its citizens if it exercises its political authority over them in accordance with the principle of justifiability to free and equal persons, it thus follows from this that the state must comply with principles of justice if it is to exercise its political authority legitimately. I will refer to this claim as the legitimacy-justice thesis and I will defend it in part 1 of this chapter.

333 Recall from the chapter 2 however that the claim here is not that the state must be fully just if it is to be entitled to exercise political authority over its citizens. Rather, because the concepts of legitimacy and justice are continuous variables such that states can be more or less legitimate or more or less just, the claim here is only that the state must be minimally just if its exercise of political authority is to be minimally legitimate.
On the basis of this argument, I then will defend the legitimacy-distributive justice thesis. First, I will argue that the state’s exercise of its political authority is only consistent with the equal authority of its citizens if it secures equal civil liberties and political rights for its citizens. Here, I will argue that to exercise its legislative authority in a way that is justifiable to its citizens considered as free and equal, the state must secure for its citizens a sphere of action in which they are free to exercise their two moral powers, and also ensure that its legislative institutions are truly public by securing for its citizens robust political rights.

Second, I will argue that to exercise its political authority legitimately, the state must secure a just distribution of private property, employment and contractual opportunities, and educational opportunities. More specifically, I will argue that the state must satisfy the basic needs of its citizens, secure fair equality of opportunity, and design its system of economic cooperation to maximize the expectations of the least advantaged. I will defend the legitimacy-distributive justice thesis in part 2.

1 The Legitimacy-Justice Thesis

The state exercises political authority over its citizens insofar as it exercises legislative, executive, and adjudicative authority over them, puts them under an obligation to obey, and claims to be entitled to do so. The state exercises legislative authority over its citizens insofar as it specifies the laws citizens must follow in their interactions with each other and with the state; it exercises adjudicative authority over its citizens insofar as it applies the law to particular cases in order to decide disputes; and it exercises executive authority over its citizens insofar as it forces its citizens to comply with its legislation and its adjudicative decisions.
However, because the state exercises political authority over its citizens in this way, the state must comply with principles of justice to be entitled to do so, that is, to do so legitimately. To see why this is so, recall first from chapter 3 that free and equal persons are equal precisely insofar as they possess the equal authority to exercise their capacity to be reasonable. That is, persons are equal insofar as each possesses the equal authority to propose principles of social interaction, to decide which principles of social interaction are fair, and to apply the fair principles of social interaction. This authority is equal insofar as no one person is entitled to determine for another person what the fair terms of social interaction are, or to determine for another person how the terms of social interaction are to be applied. The conception of authority here is thus a relational one: persons possess the authority to exercise their capacity to be reasonable insofar as they possess a right against others to do so.

Recall second that because Rawls’s conception of the reasonable has both legislative and adjudicative components, it follows from this that persons possess both equal legislative authority and equal adjudicative authority. First, because persons possess the equal authority to propose and decide on fair terms of social cooperation, persons possess equal legislative authority, that is, the equal authority to determine what the fair terms of social interaction are. Second, because persons possess the equal authority to apply the principles of social interaction, persons possess equal adjudicative authority, that is, the equal authority to apply principles of social interaction to particular cases, both to determine what the principles require and to determine whether a certain action is consistent with the principles.

Recall third from chapter 3 that the equal authority of persons provides the basis for a contractualist principle of justice: justifiability to free and equal persons. In short, because persons possess a right against others to exercise their capacity to be reasonable, agents possess a
duty of justice to interact with persons on the basis of terms that are justifiable to them considered as free and equal. The right principles to govern an agent’s interaction with free and equal persons are thus those that are justifiable to persons considered as free and equal.

Two claims follow from these premises. First, it follows from this that to be entitled to exercise legislative, executive, and adjudicative authority over its citizens, the liberal state must do so in a way that is justifiable to its citizens considered as free and equal persons. The reason for this is that free and equal persons possess a right against others to exercise their capacity to be reasonable. To respect this right, the liberal state must exercise its legislative, executive, and adjudicative authority in a way that respects the equal authority of its citizens, that is, in accordance with principles that are justifiable to its citizens considered as free and equal persons. In *Political Liberalism*, Rawls expresses this idea with his liberal principle of legitimacy: “our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason.”

Second, it also follows from these premises that to exercise its political authority legitimately, the state must comply with principles of justice. The reason for this is simply that Rawls’s liberal principle of legitimacy is just the principle of justifiability to free and equal persons applied to the state’s exercise of its political power. Because the state must exercise its political authority in a way that respects the equal authority of its citizens, and because this involves complying with the principle of justifiability to free and equal persons, the state can only exercise its political authority legitimately if it does so in accordance with principles of justice.

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justice. Justice is thus a necessary condition of the state’s legitimate exercise of its political authority.  

It is important to note here, moreover, that this conclusion allows us to glimpse why, according to the political authority theory, the institutions of the state are important for justice. Recall from chapter 2 that theorists such as Liam Murphy and G.A. Cohen argue that the institutions of the state are only significant because of their effects on well-being or on the pattern of distribution of benefits and burdens in society. Cohen and Murphy think this because they hold an instrumental conception of the institutions of the state. According to this picture, institutions are only instruments or tools for bringing about some good state of affairs. As Murphy puts it, “we should not think of legal, political, and other social institutions as together constituting a separate normative realm, requiring separate normative first principles, but rather primarily as the means that people employ the better to achieve their collective political/moral goals.”

The position that I am developing here, however, is a different one. The institutions of the state are not instruments for realizing justice, but instead constitute an important and distinctive subject matter of justice. The reason for this is that for persons who possess the equal authority to govern their interactions with each other, the state’s exercise of political authority over them raises a distinctive problem of justice: under what conditions can the state be entitled to exercise its political authority? The solution to this problem is that the state can only exercise its political

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335 Though again, the claim here is not that a state must be fully just if it is to be entitled to do anything. Because the concepts of legitimacy and justice are continuous variables, it only follows from this that the state must be minimally just if it is to be minimally legitimate.  


337 Murphy, “Institutions and the Demands of Justice,” 253.
authority in a way that respects the equal authority of its citizens. From the standpoint of free and equal persons therefore, the state is not normatively significant because of its effects on their life prospects, but rather because the state claims to be entitled to tell them what to do and to force them to do it.

Arthur Ripstein draws this distinction between instrumental and non-instrumental approaches to the institutions of the state in a particularly clear way in his Force and Freedom: Kant’s Legal and Political Philosophy. Here, Ripstein contrasts the instrumentalist conception of institutions, according to which the purpose of legal and political institutions is to “approximate a moral result... which could in principle be specified without any reference to institutions or rules” with Kant’s conception of institutions. According to Kant, Ripstein claims, because each person is entitled to be his or her own master, the state’s use of coercion raises a distinctive problem of justice, “making the legitimate use of force a self-contained issue.”

I will develop this point regarding the non-instrumental significance of the institutions of the state in the following chapters. Here, I will argue that because of the way in which the state exercises political authority, the state’s relation to its citizens is both the site, and defines the scope, of distributive justice. However, I must first show that the state can only exercise its political authority legitimately if it secures distributive justice for its citizens. I do this in the following part of this chapter.

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338 Ripstein, Force and Freedom: Kant’s Legal and Political Philosophy, 7-11.
339 Ibid, 7-8.
340 Ibid, 10.
2 The Legitimacy-Distributive Justice Thesis

The legitimacy-distributive justice thesis claims that to exercise its political authority over its citizens legitimately, that is, in a way that respects their equal authority, the state must comply with principles of distributive justice. In this part of the chapter, I defend this thesis.

By distributive justice here, I follow Rawls in meaning the problem of the assignment of “rights and duties in the basic institutions of society,” including political rights and civil liberties, and the distribution of goods such as private personal property, employment and contractual opportunities, and educational opportunities.\(^{341}\) However, although I share Rawls’s basic understanding of the problem of distributive justice, I will formulate and approach it in a different way. According to the political authority theory, the problem of distributive justice is not primarily concerned with the distribution of the benefits and burdens of social cooperation; rather, the problem of distributive justice is primarily concerned with the way in which the state exercises its political authority over its citizens.

To see the nature and importance of this distinction, recall first the way in which Rawls formulates the problem of distributive justice in *A Theory of Justice*:

Let us assume, to fix ideas, that a society is a more or less self-sufficient association of persons who in their relations to one another recognize certain rules of conduct as binding and who for the most part act in accordance with them. Suppose further that these rules specify a system of cooperation designed to advance the good of those taking part in it. Then, although a society is a cooperative venture for mutual advantage, it is typically marked by a conflict as well as by an identity of interests. There is an identity of interests since social cooperation makes possible a better life for all than any would have if each were to live solely by his own efforts. There is a conflict of interests since persons are not indifferent as to how the greater benefits produced by their collaboration are distributed, for in order to pursue their ends they each prefer a larger to a lesser share. A set of

principles is required for choosing among the various social arrangements which
determine this division of advantages and for underwriting an agreement on the proper
distributive shares. These principles are the principles of social justice: they provide a
way of assigning rights and duties in the basic institutions of society and they define the
appropriate distribution of the benefits and burdens of social cooperation.\footnote{Ibid.}

The question of distributive justice, according to Rawls, thus concerns the problem of the
distribution of the benefits and burdens of social cooperation. The subject of distributive justice,
Rawls claims, is the basic structure of society, that is, “the way in which the major social
institutions distribute fundamental rights and duties and determine the division of advantages
from social cooperation.”\footnote{Ibid, 6.} These institutions include the political constitution as well as the
legally defined principal economic and social arrangements, including laws governing property
and the exchange of goods and services.\footnote{Ibid.} The basic structure of society is the primary subject
of distributive justice in this way, Rawls tells us, because of its “profound effects” on the life
prospects of its members.\footnote{Ibid, 7.}

Rawls’s formulation of the problem of distributive justice faces two problems. First, as I
discuss in chapters 1 and 2, Rawls’s stated reason for claiming that the basic structure of society
is the primary subject of distributive justice, namely its profound effects on the life prospects of
its members, doesn’t do the work that it needs to. In \textit{Rescuing Justice and Equality}, Cohen
rejects the claim that only the basic structure has profound effects on the life prospects of
individuals.\footnote{Cohen, \textit{Rescuing Justice and Equality}, 136.} The family, as well as the legally unconstrained choices of individuals, Cohen
claims, also has such effects on individuals.\textsuperscript{347} Similarly, in “Cooperation, Pervasive Impact, and Coercion: On the Scope (not Site) of Distributive Justice,” Arash Abizadeh argues that whether the basic structure is understood as the institutions that “determine and regulate the fundamental terms of social cooperation” or “that have profound and pervasive impact upon persons’ life chances,” Rawls cannot successfully limit the scope of distributive justice to the state’s relation to its citizens.\textsuperscript{348}

Second, as Nozick makes clear in \textit{Anarchy, State, and Utopia}, by formulating the problem of distributive justice as the problem of the distribution of the benefits and burdens of social cooperation, Rawls presupposes that a certain account of the central institutions of private right is false. According to this account, which Nozick calls the “entitlement theory,” persons possess strict property rights to those holdings that they have justly acquired from a state of non-ownership or acquired through voluntary exchange.\textsuperscript{349} More specifically, according to this account, persons are fully entitled to the benefits that they derive from their property and from their consensual interactions with others. If this account is true, Nozick claims, it is difficult to see how the fact of social cooperation gives rise to the problem of distributive justice as Rawls formulates it.\textsuperscript{350} In cases of social cooperation, Nozick claims, it is easy to determine what each person is entitled to. As Nozick puts it:

People are choosing to make exchanges with other people and to transfer entitlements, with no restrictions on their freedom to trade with any other party at any mutually acceptable ratio. Why does such sequential social cooperation, linked together by

\textsuperscript{347} Ibid.


\textsuperscript{349} Nozick, \textit{Anarchy, State, and Utopia}, 150-151.

\textsuperscript{350} Ibid, 185.
people’s voluntary exchanges, raise any special problems about how things are to be
distributed? Why isn’t the appropriate (a not inappropriate) set of holdings just the one
which actually occurs via this process of mutually-agreed-to exchanges whereby people
choose to give to others what they are entitled to give or hold? 351

By presupposing the falsity of the entitlement theory in this way, Rawls fails to fully motivate
the problem of distributive justice.

As I hope to show, the political authority theory avoids both of these problems.

According to the political authority theory, the state’s relation to its citizens is the primary
subject of distributive justice not because the state’s exercise of political authority has profound
effects on the life prospects of its citizens, but rather because the state exercises legislative,
executive, and adjudicative authority over its citizens and must do so in a way that respects the
equal authority of its citizens. As well, rather than simply assume the falsity of Nozick’s
conception of the institutions of private right, I will instead provide an alternative account of the
ways in which free and equal citizens can interact with each other and the claims of justice that
arise from this interaction. To do so, I will first provide an account of the problems of interaction
that free and equal private citizens face. Second, I will specify the shape that legislative solutions
to these problems must take if they are to be justifiable to free and equal citizens. More
specifically, I will argue that the state’s legislative enactment of rules of property, contract, and
employment, is legitimate only if the state secures distributive justice for its citizens. Although
my account does not constitute a comprehensive response to Nozick, it does show why free and
equal persons have reason to reject the central features of Nozick’s entitlement theory and why
the state possesses distributive obligations to its citizens.

In what follows, I will discuss each of the two dimensions of the problem of distributive justice that Rawls identifies. First, I will argue that to exercise its political authority legitimately, the state must secure a just distribution of civil liberties and political rights. Second, I will argue that the state must also secure a just distribution of private property and opportunities. However, in making these arguments, I will not aim to show that the state must comply with specific principles of distributive justice, that is, I will not specify comprehensive principles that the state must comply with if its exercise of its political authority is to be legitimate. Instead, working from the principle of justifiability to free and equal persons and the complaint model of justification, I will limit myself to the more modest aim of identifying certain substantive conditions that terms of interaction must satisfy if they are to be justifiable to citizens considered as free and equal persons.

2.1 Legitimacy and Distributive Justice I: Civil Liberties and Political Rights

The state exercises legislative authority over its citizens. The state makes law, puts its citizens under an obligation to obey, and claims to be entitled to do so. In part 1, I argued that to exercise its legislative authority legitimately, the state must do so in a way that respects the equal authority of its citizens. I want to argue here that to do so, the state must exercise its legislative authority in accordance with two substantive conditions. First, the state must limit the exercise of its legislative authority by securing civil liberties and basic rights for its citizens. Second, the state must constitute its legislative authority so as to ensure that the laws that it passes are
justifiable to its citizens. Meeting this latter requirement, I will argue, involves granting its citizens robust political rights.

First, to see why the state must respect certain legislative limits if it is to exercise its legislative authority legitimately, recall that free and equal citizens not only possess the equal legislative authority to determine the terms on the basis of which they will interact with each other, but also possess a highest-order interest in exercising their capacity for a conception of the good and their capacity for a sense of justice. That is, citizens possess a highest-order interest in setting, revising, and pursuing a rational plan of life and in determining the terms on the basis of which they will interact with others. However, in order to exercise their moral powers, citizens require a sphere of action within which they are free to do so. To exercise their capacity for a conception of the good, citizens must possess a sphere of action in which they are free not only to realize their conception of the good, for example, by taking up means, but also to formulate and revise their conception of the good, for example through conversation, reading texts, or participating in certain types of private associations. Similarly, to exercise their capacity to be reasonable, citizens must be free to make public their positions on questions of public policy and to associate with others. To exercise their moral powers then, citizens must possess a sphere of action in which they, and not the state, are sovereign.

For this reason, free and equal citizens have reason to reject any principle of justice that would permit the state to pass laws that would restrict the capacity of persons to exercise their moral powers in a way that is consistent with others doing the same. To exercise its legislative authority legitimately then, that is, in accordance with principles that are justifiable to its citizens considered as free and equal, the state must secure for its citizens an equal sphere of action in which they are sovereign. To do so, the state must respect certain legislative limits by granting its
citizens equal civil liberties and basic rights. To be free to formulate and revise their conception of the good, citizens require freedom of conscience and religion, freedom of thought and expression, and freedom of association. Similarly, to be free to pursue their conception of the good, citizens require these same freedoms as well as rights to the liberty and security of the person, including those legal rights that are defined by the ideal of the rule of law. Finally, to be free to exercise their capacity to be reasonable, citizens require freedom of expression and freedom of association. The precise scope of these rights and liberties must of course be specified further. However, this is a task for the citizens of particular liberal states.

Rawls comes to similar conclusions in *Political Liberalism*, though his argument proceeds from the original position and not from the idea of justifiability to free and equal persons. Here, he argues that free and equal citizens require civil liberties and basic rights, if they are to exercise their capacity for a conception of the good.\(^{352}\) For this reason, Rawls’s first principle of justice guarantees for all citizens “an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all.”\(^{353}\) As Rawls makes clear, a fully adequate scheme includes freedom of thought, freedom of speech, freedom of association, liberty of conscience, liberty of the person, and the rights and liberties covered by the idea of the rule of law.\(^{354}\)

To exercise its legislative authority in a way that is justifiable to free and equal citizens, the liberal state must therefore observe certain legislative limits and so secure equal civil liberties

\(^{352}\) Rawls, *Political Liberalism*, 310-315. As I point out in chapter 3, due to the structure of the original position, Rawls cannot argue for civil liberties and basic rights on the grounds that they are necessary if persons are to exercise their capacity for a sense of justice. Ibid, 315.

\(^{353}\) Ibid, 5.

\(^{354}\) Ibid, 334-335.
and basic rights for its citizens. However, I also want to argue here that to exercise its legislative authority legitimately, the state must also do so in a way that respects the equal legislative authority of its citizens. More specifically, I want to argue that the state possesses a duty of justice to grant robust political rights to its citizens.

To see why this is so, consider first that for the state to exercise its legislative authority in a way that respects the equal legislative authority of its citizens, the state must constitute its legislative authority as a public authority. By a public legislative authority here, I mean a legislative body that is constituted by the public, that is, free and equal citizens considered as a collective body. The reason that the legislative authority of the state must be a public legislative authority in this way is that any unilateral exercise of legislative authority by one citizen fails to respect the equal legislative authority of all citizens. In the case of such a unilateral exercise of legislative authority, one citizen decides legislative questions for all.

This point is important, moreover, because reasonable disagreement is possible concerning the question of the laws that are justifiable to all citizens. That is, even if one citizen is able to determine what each citizen’s reasons are with respect to a legislative question, there is no reason to think that there will be a unique answer to the question of which law is justifiable to all citizens considered as free and equal persons. Instead, citizens might reasonably disagree on this question.

By reasonable disagreement here, I mean disagreement by two or more persons in which each person’s position is nonetheless reasonable. That is, it is a disagreement that is not the result of errors in reasoning, bias, or stupidity, but that is consistent with each person exercising his or her rational and reasonable capacities in a conscientious way. As Rawls points out in *Political Liberalism*, the sources of such reasonable disagreements are simply the “many hazards involved
in the correct (and conscientious) exercise of our powers of reason and judgment in the ordinary course of political life.” Rawls claims, are multiple. First, the empirical evidence bearing on a question may be conflicting and complex, thus making it difficult to evaluate and assess. Second, even if persons agree on the kinds of considerations that are relevant to a question, they may nonetheless disagree about the weight to assign each. Third, reasonable disagreements might arise because the abstract concepts that persons use are themselves vague and open to multiple interpretations. Fourth, the way in which persons assess evidence and weigh political values are, to some extent, shaped by their total experience, which is always unique to each. Finally, with respect to certain questions, there might be normative considerations of different weight on each side of an issue, making it difficult to come to a determinate judgment.

The possibility of reasonable disagreement is a problem for free and equal citizens because each possesses the equal authority to exercise their capacity to be reasonable. The problem here is not merely that citizens are likely to disagree on the question of which laws are justifiable to citizens considered as free and equal, but also that citizens are entitled to disagree: no one citizen is entitled to decide legislative questions for another.

355 Ibid, 56.
356 Ibid.
357 Ibid.
358 Ibid, 56-57.
359 Ibid, 56.
360 Ibid, 57.
361 Ibid.
Because free and equal citizens cannot respect each other’s equal legislative authority if they exercise their authority unilaterally, the solution is for citizens to exercise their legislative authority together, that is to say, publicly. Citizens do this by constituting the public legislative authority in such a way that it contains procedures to come to definitive conclusions on legislative questions. To constitute these procedures in a way that respects the equal legislative authority of all however, the state must also do two things. First, the state must ensure that all citizens have an opportunity to pass judgment on legislative questions. That is to say, citizens must have the political right to equal participation in the legislative process. As with the case of civil liberties, citizens themselves must determine the content of this political right. In representative democracies, this right to equal participation will take the form of an equal right to vote for members of the public legislative authority and an equal right to run for membership of the public legislative authority.

However, second, the state must also secure for its citizens an equal right to participate in the process of deliberation that is prior to legislative enactment. That is to say, the state must secure for its citizens the opportunity to participate in public processes of deliberation concerning questions of public policy. The reason for this is that free and equal citizens do not only exercise their capacity to be reasonable by passing judgment on legislative questions, but also by proposing and deliberating about possible terms of interaction. To respect the equal authority of its citizens to exercise their capacity to be reasonable, and therefore to exercise its legislative authority legitimately, the state must ensure that all citizens have the opportunity to participate in public processes of legislative deliberation.

As well as granting these political rights however, the state must also guarantee their fair value. That is, the state must not only grant these rights to its citizens in a formal sense, but must
also secure for all citizens the specific-purpose means necessary to exercise them. The reason for this is that only if persons have a fair opportunity to exercise their political rights, that is, to participate in the legislative process and public policy deliberations, can the state exercise its legislative authority in a way that is consistent with the equal authority of its citizens. If great wealth is a precondition of either making one’s voice heard or running for political office, it is very unlikely that the resulting legislation will be justifiable to all citizens.

To exercise its legislative authority legitimately then, the state must ensure that citizens have a fair opportunity to participate in a public process of legislative deliberation and the state must ensure that all citizens have a fair opportunity to pass judgment on legislative questions. Moreover, given the contractualist basis of my argument here, it is not surprising that both Rawls and Jürgen Habermas come to the same conclusion, though by means of different lines of reasoning. As with the political authority theory, for both thinkers, the basic idea is that citizens must possess robust political rights if the legislative authority is to enact legislation that is legitimate, that is to say, justifiable to all.  

First, proceeding constructively, in *A Theory of Justice*, Rawls expresses both of these requirements for a modern constitutional democracy in the form of a principle of equal participation. As Rawls puts it, this principle requires that all citizens possess a “fair opportunity to take part in and to influence the political process.” Persons possess such a ‘fair opportunity’ when conditions are such that “those similarly endowed and motivated should have roughly the same chance of attaining positions of political authority irrespective of their economic and social

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class." To comply with this principle, the state must grant its citizens equal rights to vote and run for political office and secure for its citizens the fair value of these rights. And, the state must ensure that all its citizens possess the means to be informed about political issues and possess a fair chance to participate in public policy discussions in the public sphere. For example, the state must provide all with the means necessary to access newspapers, books, and journals and provide all with the opportunity to acquire a level of education adequate to participate in public policy discussions. As well, the state must ensure that the wealthy are not permitted to use their monetary advantages to control the agenda and direction of public policy debates.

Similarly, proceeding reconstructively, in *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, Habermas provides a rational reconstruction of the political rights persons must possess as citizens of modern constitutional democracies if they are to legitimately regulate their common life by means of positive law. Here, Habermas argues that for legal norms to be legitimate, laws must satisfy what he calls the principle of democracy, according to which “only those statutes may claim legitimacy that can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted.” For citizens to legitimately regulate their common life by means of positive law therefore, Habermas

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364 Ibid.
365 Ibid, 198.
366 Ibid.
367 Ibid.
368 Habermas, *Between Facts and Norms*, 82. The principle of democracy results from the interpenetration of the discourse principle D with the idea of a legal system. Ibid, 121. Recall from chapter 3 that this principle states that: “Just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses.” Ibid, 107.
369 Ibid, 110.
claims that citizens must possess those legal rights that are necessary if they are to exercise their political autonomy within a legally constituted discursive process of legislation. Most importantly for our purposes, these rights include the political rights that I identify above: “Basic rights to equal opportunities to participate in processes of opinion-and will-formation in which citizens exercise their political autonomy and through which they generate legitimate law.”

To exercise its legislative authority legitimately then, the state must grant equal political rights to its citizens. As well, as I argue above, the state must also secure civil liberties and basic rights for its citizens. In the following section of this chapter, I turn to the second dimension of the problem of distributive justice: the distribution of private property, contractual and employment opportunities, and educational opportunities. I will argue that to exercise its political authority legitimately, the state must satisfy the basic needs of its citizens, secure fair equality of opportunity, and design its system of economic cooperation to maximize the expectations of the least advantaged.

2.2 Legitimacy and Distributive Justice II: Private Property, Contractual and Employment Opportunities, and Educational Opportunities

The second dimension of the problem of distributive justice concerns the distribution of property, employment and contractual opportunities, and educational opportunities. In this part of the chapter, I will argue that to exercise its political authority legitimately, the state must

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370 Ibid, 123.
secure a just distribution of these goods. To do so, I will not start from the Rawlsian premise that society is a system of social cooperation and that, as a result, citizens necessarily face the problem of the distribution of the benefits and burdens of social cooperation. As I argue above, Rawls’s approach to the problem of distributive justice presupposes that Nozick’s persuasive account of private right is false. Instead, I will first specify the problems of private interaction that free and equal citizens face. Here, starting from an account of action, I will specify the different ways in which free and equal citizens can interact with each other. I will then argue that the state’s legislative solution to these problems of interaction can only be justifiable to its citizens considered as free and equal persons if the state secures distributive justice for them. More specifically, I will argue that to exercise its political authority legitimately, the state must satisfy the basic needs of its citizens, secure fair equality of opportunity, and design its system of economic cooperation to maximize the expectations of the least advantaged. By proceeding in this way, I will provide an alternative account of the central institutions of private right and so show why free and equal citizens have reason to reject the basic features of Nozick’s entitlement theory.

2.2.1 Action and Interaction

In this section of the chapter, I provide an account of the different ways in which free and equal persons can interact with each other. To do so, I will start from the ground up as it were. First, I will provide a brief account of the nature of action and specify the two different types of ends that persons can set and pursue. Then, on the basis of this account of action, I will specify the different ways in which free and equal citizens can interact. On the basis of this account of interaction, I will finally formulate an account of the different legislative problems that the
public legislative authority faces. In the following sections of this chapter, I will argue that the public legislative authority can only solve these legislative problems in a way that is justifiable to its citizens considered as free and equal persons if it secures distributive justice for them.

The question of the nature of action is, of course, the subject of a live philosophical debate. However, this dissertation is not the place to engage in it. As in chapter 1 therefore, I will rely on Korsgaard’s account of action and will employ it to flesh out the way in which free and equal persons can interact. Korsgaard’s account of action is suitable for our purposes both because it is formulated from the practical, as opposed to the theoretical, point of view, and because it is presupposed by most theorists working in normative political philosophy. As well, I will suggest below that Rawls’s conception of the person presupposes Korsgaard’s account of the nature of action.

According to Korsgaard, action is the self-determination of one’s own causality to realize an end.\(^\text{372}\) An agent acts, according to Korsgaard, when the agent determines itself to be the cause of some end. Actions thus possess two structural features: an act and an end.\(^\text{373}\) The act is the specific action that the agent performs and so describes the way in which the agent takes up means.\(^\text{374}\) The end is the goal or purpose the agent seeks to realize by means of his or her act.\(^\text{375}\) Actions can thus be described in the form of maxims: perform act x in order to achieve end y.\(^\text{376}\) Moreover, insofar as action is self-determination, action requires that the agent self-consciously


\(^{373}\) Ibid, 11-12.

\(^{374}\) Ibid.

\(^{375}\) Ibid.

\(^{376}\) Ibid.
choose its maxim of action.\textsuperscript{377} This involves the agent choosing its end and the means to realize its end on the basis of reasons, rather than its end and means being merely determined by its desires.\textsuperscript{378}

Rawls’s distinction between the two moral powers presupposes and is informed by this account of action. First, the capacity for a conception of the good, that is, the capacity to set and pursue a conception of the good, presupposes that persons face the problem of which ends to set and presupposes that a rational solution is possible to this problem. As well, because the capacity for a conception of the good explicitly involves the capacity to take up effective means to realize one’s conception of the good, the capacity for a conception of the good presupposes that action has an act-end structure.\textsuperscript{379} The capacity for a sense of justice also presupposes that action has an act-end structure insofar as it presupposes that persons face the problem of the means that it is permissible for them to take up in the pursuit of their ends. As well, the capacity for a sense of justice presupposes that a reasonable, and not merely a rational, solution is possible to this problem.

Action thus involves taking up means to realize an end on the basis of reasons. For the purposes of constructing an account of interaction that is useful for formulating an account of distributive justice however, it is also necessary to introduce a distinction that concerns the types of ends that persons can set. Recall that free and equal persons have a highest-order interest not merely in acting, but rather in developing and exercising their capacity for a conception of the good. A conception of the good, in its most basic form, is a conception of the final ends that are

\textsuperscript{377} Ibid, 105.
\textsuperscript{378} Ibid.
good or worth pursuing.\textsuperscript{380} Persons therefore set and pursue a conception of the good when they take up means in order to realize those final ends that they have reason to pursue.

However, as well as setting and pursuing final ends, persons can also act in another way. That is, free and equal persons can also take up means in order to produce further means that they can then employ to set and pursue a conception of the good. Persons can thus also act productively to produce goods and services that they can use as means to set and realize their final ends. Productive action thus takes as its immediate goal the realization of a productive end, that is, the production of goods and services.

This distinction between final ends and productive ends is implicit in Rawls’s justice as fairness. First, Rawls is clearly committed to the concept of final ends insofar as he understands persons to have a highest-order interest in setting and pursuing a conception of the good. However, Rawls is also committed to the concept of productive ends insofar as he requires it to make sense of the idea of society as a system of social cooperation. To see this, recall that for Rawls, society is a system of social cooperation insofar as it is a system of rules that its members follow in order to advance their good.\textsuperscript{381} Social cooperation advances the good of its members insofar as it is through such activity that persons produce means that they can use to set and pursue a conception of the good.\textsuperscript{382} Rawls calls the products of social cooperation “social primary goods” insofar as they are all-purpose means, that is, things that persons want no matter what their conception of the good is.\textsuperscript{383} However, because social cooperation has the purpose of

\textsuperscript{380} Rawls, \textit{A Theory of Justice}, 358.
\textsuperscript{381} Ibid, 4.
\textsuperscript{382} Ibid.
\textsuperscript{383} Ibid, 54.
producing social primary goods, persons engaged in social cooperation are not setting and
pursuing a conception of the good, but are instead producing those goods that persons can
employ as means to set and pursue a conception of the good. To make sense of this type of action
therefore, Rawls must employ something like the idea of a productive end. As participants in
social cooperation, persons are not setting and pursuing final ends, but are instead, at least in
part, setting and pursuing productive ends.

Korsgaard’s account of action, together with the distinction between final ends and
productive ends, provides us with the resources that are necessary to formulate an account of the
different ways in which free and equal persons can interact with each other. The ground of the
distinctions between different forms of interaction lies in the distinction between final ends and
productive ends, and the distinctions between the different types of means that persons can take
up to realize their ends. On the one hand, persons can set and pursue either productive ends or
final ends; on the other hand, persons can use a variety of means to set and pursue their ends:
their own bodily powers, external objects, or the acts of others. These distinctions produce the
following forms of interaction:³⁸⁴

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³⁸⁴ Ripstein provides a similar account of the way in which free persons can interact in his Force and Freedom. Ripstein, Force and Freedom, 20-22. Ripstein’s typology takes as its basis Kant’s conception of action and Kant’s distinction between persons and things. Because Kant’s conception of action, for the purposes of his political thought, is purely formal, Ripstein’s account does not distinguish between final ends and productive ends, Despite these important differences, my account is nonetheless indebted to Ripstein’s way of spelling out the way in which free persons can interact with each other.
Free persons can thus interact in six basic ways. The first forms of interaction – rows 1 and 2 and columns 1 and 2 – are independent forms of interaction. In this form of interaction, free persons use either their own bodily powers or external objects to pursue their separate ends separately. Laws to govern these forms of interaction thus govern the way in which persons can employ their person and external objects to set and pursue either final ends or productive ends. The final two forms of interaction – row 3 and columns 1 and 2 – are interdependent forms of interaction. In this type of interaction, persons employ the acts of others as means in the pursuit of their separate ends. Laws to govern these forms of interaction thus govern the way in which persons can employ the acts of others as a means to set and pursue ends.

Because free persons can interact in these six ways, citizens, acting together through the public legislative authority, must legislatively enact and coercively enforce laws to govern these different forms of interaction. In what follows, I will argue that to do so legitimately, that is, in a way that is justifiable to its citizens considered as free and equal persons, the state must secure

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385 I take this example from Michael Otsuka’s *Libertarianism Without Inequality*. Otsuka, *Libertarianism Without Inequality*, 17.
distributive justice for its citizens. I will focus on the four types of interaction that are of particular importance to the problem of distributive justice: the use of external objects to set and pursue final ends; the use of external objects to set and pursue productive ends; the use of the acts of others to set and pursue final ends; and the use of the acts of others to set and pursue productive ends. I will discuss each of these forms of interaction in turn.

2.2.2 Distributive Justice and Objects of Personal Use

Free and equal persons can use external objects to both set and pursue a conception of the good and to set and pursue productive ends. By external objects here, I mean things that are external to persons, but that can also be used as means to set and pursue ends. In *The Idea of Property in Law*, J.E. Penner helpfully articulates the idea of external objects with his “separability thesis:” “Only those ‘things’ in the world which are contingently associated with any particular owner may be objects of property.”[^386^] External objects thus include land, natural resources, and the objects that can be fashioned from them, as well as certain types of intellectual objects.

The distinction between final ends and productive ends, moreover, provides the ground for a distinction between different types of external objects. Objects of personal use are those external objects that persons can employ as means to develop, maintain, or exercise their capacity for a conception of the good. Such objects include books, food, furniture, sailboats, computers, clothing, waterfront land, housing, and so on. Productive assets, by contrast, are those

external objects that persons can employ for the purposes of realizing productive ends. Productive assets thus include natural resources and the means of production.

The categories of objects of personal use and productive assets are, of course, not mutually exclusive. I can employ my house both to realize my end of living in a minimalist space and as a bed and breakfast. However, as I hope to show below, the distinction between these two types of external objects is an important one. In short, the question of the uses to which different external objects can be put is relevant to the question of the system of property that is justifiable to citizens considered as free and equal persons.

Because external objects are useful to persons as means with which to set and pursue ends, and because such objects are scarce, citizens face what Jeremy Waldron calls the “problem of allocation.” Because external objects are scarce, citizens face the problem of access: who is to have access to a particular external object for use as a means to set and pursue some end? Because external objects can be used as means for a variety of ends, citizens face the problem of use: who is to decide to which ends external objects are to be put? As Waldron puts it, the problem of allocation is the problem of “determining peacefully and reasonably predictably who is to have access to which resources for what purposes and when.”

To solve the problem of allocation, citizens, acting together through the public legislative authority, must construct a system of laws to govern their access to, and use of, external objects that is justifiable to them considered as free and equal persons. Because these two questions of access and use can be answered in two basic ways, citizens have a number of options available to them. First, regarding the question of their access to a particular external object, either an

387 Waldron, The Right to Private Property, 32.
individual private citizen (or group of private citizens) can have an exclusive right of access to a particular external object, or all citizens can have an inclusive right of access. Similarly, regarding the question of their use of a particular external object, either an individual private citizen (or group of private citizens) can possess an exclusive right to decide what is to be done with a particular external object, or everyone can possess an inclusive right to determine the uses to which a particular object can be put. There are thus four possible ideal types of systems of rules to govern access and use. These systems are represented in the following figure:

Figure 6. Systems of Allocation

<table>
<thead>
<tr>
<th>Access</th>
<th>Use</th>
<th>Private Citizen(s)</th>
<th>Public</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private Citizen(s)</td>
<td>Private Property</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public</td>
<td>Common Property</td>
<td>Collective Property</td>
<td></td>
</tr>
</tbody>
</table>

These systems of governance are systems of property insofar as they attempt to solve the problems of access and use by granting property rights to agents. By a property right here, I mean a right, against others, to the exclusive possession and use of an external object.\(^{388}\) A system of private property grants particular individual or corporate persons an exclusive right to the possession and use of particular discrete external objects.\(^{389}\) In a system of collective property, a collection of persons possesses a property right in external objects such that the collective possesses a right against other collective agents or individuals who are not members of

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the collective to the exclusive possession and use of the external objects in question. In a system of collective property therefore, it is up to the collective to determine how the external objects it owns are to be used. In a system of common property, the property right to the exclusive possession and use of external objects is split. A collection of persons possesses a right to the exclusive possession of external objects; however, the rules of the property system are designed to secure for each member of the collective the right to determine the uses to which the external objects are to be put. The final possibility grants individuals a right to the exclusive possession of external objects but grants the public a right to determine the uses to which these external objects are to be put. To my knowledge this system of governance does not have a name.

These systems of property are ideal types; it is thus possible to define a system of property that includes features of all four. The problem for citizens of the state is to determine which system, or mix of systems, is justifiable to all considered as free and equal persons. Moreover, citizens of particular states must decide this question for both objects of personal use and productive assets.

In this section of the chapter, my aim is not to propose a solution to this problem. Instead, focusing here on the question of citizens’ access to and use of objects of personal use, I aim to show that the state’s legislative enactment of a system of property is legitimate only if it secures distributive justice for its citizens. To do so, I will first argue that free and equal citizens have good reason to support a system of private property to govern their access to and use of objects of personal use. I will then argue that citizens can only legislatively enact such a system.

390 Ibid, 40.
391 Ibid, 41.
legitimately if they first establish background institutions to provide each other with the means necessary to satisfy their basic needs.

With respect to objects of personal use, citizens, considered as free and equal persons, have three normatively significant interests. First, because citizens possess a highest-order interest in setting and pursuing a conception of the good, and because many (if not most) conceptions of the good require the use of external objects, citizens have an interest in deciding for themselves how to use particular objects of personal use. In short, objects of personal use are only useful to me as means with which to set and pursue a conception of the good if it is up to me to determine how to employ the objects that I have access to.

Second, citizens possess an interest in the exclusive possession of objects of personal use. The reason for this is that they must have secure access to a particular object if they are to use it to set and pursue an end. To see why this is so, consider that to set an end for myself, I must first entertain some state of affairs as the outcome of my own actions. To set the end of traveling to Vancouver therefore, I must first entertain that end as a possible goal that I could realize. However, to set an end for myself, it is not sufficient that I simply entertain some possible end in this way. If this were the case, I could set an end for myself without first determining whether I possess the means to realize that end. To set an end, I would only need to take myself to have reasons to set and pursue the end in question and to conceive of it as a possible project to pursue. However, as Ripstein makes clear in “Authority and Coercion,” this way of thinking about what it means to set an end elides the distinction between choice and mere wish. Here, Ripstein argues that the ability to set an end and the ability to realize an end, though distinct, are not entirely
To set an end, Ripstein argues, I must take myself to be able to take steps to realize it. If I do not, I merely wish for an end, but do not actually set it for myself, that is to say, choose it. I might entertain the end of traveling to Vancouver, however, unless I take myself to possess the means to take steps towards realizing this end, I do not set it for myself, but only wish for it.

To put this point in Rawlsian language, to exercise my capacity for a conception of the good, and therefore exercise my freedom, it is not enough that I merely wish for an end. I might wish that I could travel back in time; however, in making such a wish, I do not exercise my freedom because I don’t have the necessary means at my disposal. By contrast, when I decide to spend the day in the park, assuming I am able bodied and there are no obstructions blocking my way, I exercise my capacity to set and pursue ends, that is, I exercise my freedom.

Because free and equal citizens have a highest-order interest in setting and pursuing a conception of the good, and because citizens require secure access to an object in order to do so, citizens therefore have reason to support a system of property that secures for them the exclusive possession of objects of personal use. With respect to the choice of a system of property to govern objects of personal use, citizens not only possess an interest in deciding for themselves how to use particular objects of personal use, but also in possessing these objects exclusively.

These two interests provide citizens with reasons to support a private property system to govern objects of personal use. Such a system secures for individual citizens exclusive rights of

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393 Ibid, 9.
394 Ibid.
possession to particular objects of personal use; and it secures for individual citizens the right to
decide how to employ the objects that they have a right of possession to. However, with respect
to the question of objects of personal use, free and equal citizens possess a third normatively
significant interest. Citizens not only possess an interest in employing objects of personal use to
set and pursue a conception of the good, but also possess an interest in using such objects to
satisfy certain of their basic needs.

By a basic need here, I mean those needs persons must satisfy if they are to exercise their
capacity for a conception of the good and their capacity to be reasonable. Following David Copp,
basic needs are thus those “things what we need in order to be, or sustain ourselves as,
autonomous agents.” First, because persons must sustain their lives if they are to sustain
themselves as free persons, basic needs include the necessities of life: food, water, air, shelter,
health care, and clothing. However, second, basic needs also include education. The reason for
this is that persons do not emerge from the womb as fully free persons. Instead, the moral powers
of persons must be developed.

To see why this is so, consider first that exercising one’s moral powers so as to comply
with one’s duties to both oneself and others is itself a difficult and demanding activity. First, as
Rawls points out in *A Theory of Justice*, to exercise one’s capacity for a conception of the good,
that is, to set and pursue a rational plan of life, one must engage in certain forms of high-level
deliberation. On the one hand, one must engage in a process of deliberative rationality to
determine which plan of life or conception of the good one has reason to pursue. This involves

396 Ibid.
careful reflection on possible plans of life in light of all the relevant facts. On the other hand, one must engage in certain forms of instrumental reasoning and long-term planning. That is, to set and pursue a rational plan of life, one must order one’s ends in a rational manner and take up effective means to realize these ends. Second to exercise one’s capacity to be reasonable, one must determine which terms of social cooperation are justifiable to both oneself and others considered as free and equal persons. This also requires a rather high-level exercise of one’s deliberative capacities.

The idea of basic needs is important to the question of the legal regulation of objects of personal use because citizens can use such objects to both set and pursue a conception of the good and satisfy their basic needs. For example, I can use certain foodstuffs to realize my final end of enjoying Italian cuisine. However, by doing so, I also use these same foodstuffs to maintain my bodily powers. Similarly, I can use my apartment to host dinner parties but also to provide myself with shelter. As well, since, as I will argue below, it is permissible for persons to use objects of personal property to acquire rights to personal services, I can use objects of personal use to purchase a movie ticket or to purchase basic health care services or education for my dependents.

This interest of persons in employing objects of personal use to satisfy their basic needs is important because it provides citizens with a reason to reject a system of private property to govern objects of personal use. To see why this is so, consider first that such a system of

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398 Ibid.
399 Ibid, 358-365.
400 There is of course the further question of what justice demands for citizens who, for a variety of reasons, might be unable to be fully autonomous. Since my aim in this chapter is simply to show that the state can only exercise its political authority legitimately if it secures distributive justice and not to formulate a comprehensive theory of distributive justice, I will not propose a solution to this problem here.
property secures for citizens what Ripstein calls a right to exclude others. If I have a legal right to my personal property, you are not entitled to use it, even if you require it to satisfy your basic needs.

Recall second from chapter 3, that the principle of justifiability to free and equal persons is committed to the complaint model of justification. According to this model, a particular person has reason to reject a principle of justice if there is some alternative principle to which no person has a complaint that is as strong.

Consider third that citizens who cannot satisfy their basic needs have grounds for a strong complaint against a system of private property governing objects of personal use. In short, because such a system secures for citizens a right to exclude others, citizens may not be able to access and use such objects to satisfy their basic needs.

Finally, consider that this complaint against a system of private property is stronger than complaints against a system of common or collective property designed to satisfy the basic needs of all – for example, that such a system does not provide citizens with secure access to objects of personal use. The reason for this is that the former complaint concerns an interest of free and equal citizens that is different in kind from, and qualitatively more important than, the interest that is the subject of the latter complaint. Whereas the former complaint concerns the interest of citizens in exercising their moral powers, the latter complaint concerns the interest of citizens in setting and pursuing conceptions of the good that require secure access to objects of personal use. Thus, although I might require secure access to a certain type of object of personal use to set

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402 Scanlon, What We Owe to Each Other, 229.
and pursue a particular conception of the good, I cannot set and pursue any conception of the good if my basic needs are not satisfied. The complaint against a system of private property is stronger because free and equal persons have a highest-order interest in exercising their moral powers, and not simply in exercising their moral powers in a particular way.

It follows from this that free and equal citizens possess a reason to reject a system of private property to govern objects of personal use. Because such a system secures for citizens the right to exclude, it is consistent with a situation in which citizens cannot permissibly use objects of personal use to satisfy their basic needs due to contingencies that are arbitrary from the moral point of view. For example, citizens might not be able to satisfy their basic needs because they cannot find employment, or because they fall sick and require medical treatment. Because citizens have a qualitatively more important interest in using objects of personal use to satisfy their basic needs, citizens occupying such a standpoint of exclusion have reason to reject a system of private property on the grounds that an alternative system is available that allows all to satisfy their basic needs, that is, a system to which no one else has as strong a complaint.

Free and equal citizens thus possess reasons to support a system of private property to govern objects of personal use on the grounds that such a system enables them to set and pursue a conception of the good. However, they also possess a reason to reject such a system insofar as it is consistent with a situation in which citizens are not able to satisfy their basic needs and so maintain themselves as free persons. To legislatively enact a system of private property to govern their access to and use of objects of personal use in a legitimate way therefore, citizens must first establish institutions to ensure for all citizens the means necessary to satisfy their basic needs and so maintain themselves as free and equal persons. In short, citizens can only disarm
the reason to reject a system of private property if they first ensure that everyone’s basic needs are met.

The questions of what counts as a basic need and how institutions are to meet these needs – for example, through the provision of all-purpose means or through the provision of specific-purpose means such as food, clothing, housing, and healthcare – are questions that citizens must decide for themselves through the public legislative authority. However, the important point to notice for our purposes is that the state can only legislatively enact a system of laws to govern objects of personal use in a way that is justifiable to its citizens considered as free and equal if it ensures that all citizens possess the means necessary to maintain themselves as free persons, that is, to satisfy their basic needs. With respect to the question of citizens’ access to and use of objects of personal use therefore, the state can only exercise its political authority legitimately if it secures distributive justice for its citizens.

Rawls comes to similar conclusions in *Political Liberalism*, though his argument proceeds from his idea of the original position and his conception of society as a system of social cooperation and not from consideration of citizens’ access to and use of objects of personal use. Here, Rawls argues that the principle of equal liberty must be preceded by a lexically prior principle requiring that citizens’ basic needs – “a certain level of material and social well-being and of training and education” – be met. The reason for this, Rawls claims, is that the satisfaction of basic needs “is necessary for citizens to understand and to be able fruitfully to exercise those rights and liberties.”

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403 Rawls, *Political Liberalism*, 7, 166.
404 Ibid, 7.
To legitimately enact and coercively enforce a system of laws governing citizens’ access to and use of objects of personal use therefore, the state must first satisfy the basic needs of its citizens. Below, I will discuss the question of citizens’ access to and use of productive assets; however, before doing so, I will first argue that it is permissible for free and equal citizens to acquire contract rights and employment rights to the performances of others for the purposes of setting and pursuing a conception of the good.

2.2.3 The Acts of Others and Final Ends

Free and equal persons cannot only use external objects as means to set and pursue a conception of the good, but can also use the acts of others. Persons do this, for example, through contractual or employment agreements. In this section of the chapter, I will argue that it must be permissible for free and equal citizens to acquire contract rights and employment rights to the acts of others for the purposes of setting and pursuing a conception of the good. I will conclude that to be justifiable to citizens considered as free and equal, a system of laws governing citizens’ use of the acts of others to realize final ends must permit the free exchange of objects of personal use and personal services. This point is not so important for the question of distributive justice. However, it is important for clarifying the general shape of the system of private interaction that the political authority theory supports.

Free and equal citizens can employ the acts of others as means to set and pursue a conception of the good. By the acts of others here, I mean both the services of others as well as the transfer of rights to external objects. For example, I can employ the services of a basketball coach to help me realize my goal of becoming a skilled basketball player; or I can employ the
services of a chef to realize my end of eating fine foods; or I can purchase a car in order to realize my aim of driving across the country.

I want to argue here that a system of laws governing the interdependent interaction of persons pursuing final ends must satisfy two conditions if it is to be justifiable to citizens considered as free and equal persons. First, such principles must permit citizens to acquire contract rights and employment rights for the purposes of setting and pursuing a conception of the good. By a contract right here, I mean a claim right against a particular person or group of persons, to the performance of a service or the transfer of a right. A contract right thus imposes an obligation on the person against whom the contract right is held, to complete the performance or transfer the right in question. By an employment right, I mean a claim right against a particular person or group of persons to the performance of services. An employment right thus imposes an obligation on the person against whom the employment right is held to perform the services in question. Second, such a system of laws must specify that contract rights and employment rights may only be acquired through free and informed consent.

Free and equal citizens have reason to permit the acquisition of contract rights and employment rights for much the same reason that they have reason to support a system of private property to govern their access to and use of objects of personal property. To exercise their capacity for a conception of the good, persons require secure access to the means necessary to take steps toward realizing ends. The permission to acquire contract rights and employment rights provides persons with secure access to the acts of others insofar as it permits persons to acquire claim rights to the acts of others that they can use to set and pursue their ends.

However, although a system of laws governing this form of interdependent must permit the acquisition of contract rights and employment rights, to be justifiable to free and equal
persons, such a system must also ensure that contract rights and employment rights may only be acquired through free and informed consent. The reason for this is that insofar as free and equal citizens possess a highest-order interest in exercising their capacity for a conception of the good, they could not agree to a principle that entitled others to tell them what to do with their bodily powers. If citizens were permitted to acquire the performances of others non-voluntarily, they would not be free to decide for themselves how to use their own bodily powers.

Such a system of laws must therefore permit citizens to acquire contract and employment rights by means of free and informed consent. It must therefore permit private citizens to enter consensually into binding agreements to exchange objects of personal use and personal services for the purposes of setting and pursuing a conception of the good.

2.2.4 Distributive Justice and Economic Cooperation

As I make clear above, free persons cannot only use external objects to set and pursue a conception of the good, but also to realize productive ends. In this type of action, persons employ productive assets such as natural resources and means of production to produce goods and services. For example, I can use wood from a forest to build myself a house, use a field to grow crops, or use a sewing machine to make myself a suit. As well, persons need not only employ productive assets to realize productive ends, but can also employ the acts of others. For example, I can hire you to help me bring in my harvest.

Because persons can interact in this way to realize productive ends, citizens face the problem of enacting laws to govern their access to and use of productive assets as well as the terms of their interdependent interaction. To do so legitimately moreover, citizens must enact a
system of laws that is justifiable to all citizens considered as free and equal persons. Citizens thus face the problem of legislatively enacting the rules of a system of economic cooperation that is, a system of publicly recognized rules and procedures designed to produce all-purpose means.\(^{405}\) I want to argue here that the state must comply with two conditions if its legislative enactment and enforcement of a system of economic cooperation is to be legitimate. First, the state must design its system of economic cooperation so as to maximize the expectations of the least advantaged. Second, the state must secure fair equality of opportunity.\(^{406}\) In what follows, I will first discuss the problem of citizens’ access to and use of productive assets. I will then turn to the question of citizens’ use of each other’s acts to set and pursue productive ends.

### 2.2.4.1 Distributive Justice and Productive Assets

Productive assets are those external objects that persons can employ to realize productive ends. Objects of personal use, by contrast, are those external objects that persons can use to set and pursue a conception of the good. As I make clear above, some external objects fall into both of these categories. However, it is important to recognize that qua productive asset, free and equal persons do not employ productive assets to set and pursue a conception of the good, but only to realize productive ends.

\(^{405}\) Ibid, 16.

\(^{406}\) One might argue here that it follows from my position that because no state satisfies these conditions, no state is legitimate. However, recall from chapter 2 that my claim not that the state must be fully just if it is to be entitled to exercise political authority over its citizens. Rather, because the concepts of legitimacy and justice are continuous variables such that states can be more or less legitimate or more or less just, my claim is only that the state must be minimally just if its exercise of political authority is to be minimally legitimate.
Free and equal persons do not therefore require private property rights to productive assets – qua productive assets – to exercise their capacity for a conception of the good in the same way that they require private property rights to objects of personal use to do so. It is for this reason that Rawls claims that neither the capitalist private property right to natural resources and the means of production, nor the socialist collective property right to natural resources and the means of production is uniquely justifiable to free and equal persons. The reason for this is that neither is necessary for the development and exercise of persons’ capacity for a conception of the good and persons’ capacity to be reasonable.\footnote{Ibid, 298.}

With respect to the question of the system of laws that should govern their access to and use of productive assets, citizens’ primary interest lies in the capacity of different systems to respond to their preferences for objects of personal use. The question of which system of property – whether capitalist, socialist, or mixed – can most effectively realize this goal is an empirical one. Thus, no answer to this question can be derived simply from the idea of persons as free and equal. Citizens must therefore decide this question together through the public legislative authority.

However, because citizens must decide this question in a way that is justifiable to all considered as free and equal, it is nonetheless possible to specify the conditions that possible solutions must satisfy. I want to argue here that because the principle of justifiability to free and equal persons is committed to the complaint model, to be justifiable to citizens considered as free and equal persons, a system of property to govern productive assets must satisfy a version of
Rawls’s difference principle. That is to say, citizens must legislatively enact that system of property that maximizes the expectations of the least advantaged.

Rawls’s difference principle states that social and economic inequalities, that is, inequalities in the distribution of the primary goods of income, wealth, and the powers and prerogatives of office, are just if and only if they are to the greatest benefit of the least advantaged members of society. Rawls’s difference principle thus not only governs citizens’ choice of a property system for productive assets, but rather citizens’ legislative enactment of the basis rules of a system of social cooperation. Subject to the principles of equal liberty and fair equality of opportunity, the difference principle directs legislators to enact laws and policies to maximize “the long-term expectations of the least advantaged.”

The least-advantaged, according to Rawls, are those citizens who have the lowest expectations of these primary social goods because they are least favoured by certain contingencies that are arbitrary from the moral point of view.

For our purposes, the important point to note about Rawls’s difference principle is the way in which its content follows from the structure of contractualism. Like the principle of justifiability to free and equal persons, the original position, as a contractualist principle of justice, is committed to the complaint model of justification. According to this model, a contractor has reason to reject a principle of justice if there is some alternative principle to which no other contractor has a complaint that is as strong. It follows from this feature of

408 Ibid, 6.
409 Rawls, A Theory of Justice, 175.
410 Ibid.
411 Ibid, 82-83.
contractualism that a principle of justice must distribute benefits and burdens in a way that maximizes the expectations of those contractors who are least advantaged by the principle in question. That is, because contractors have reason to reject a principle of justice if there is some alternative principle to which no other has a complaint that is as strong, a principle of justice must maximize the expectations of those contractors who stand to gain the least from the principle in question. To be justifiable to all of the contracting parties therefore, a principle must either distribute benefits and burdens equally, or, in cases where an unequal distribution of benefit and burdens will make everyone better off in comparison with the benchmark of equality, maximize the expectations of the parties who gain the least. It is for this reason that Rawls claims that parties to the original position would accept the difference principle. As Rawls puts it:

Thus the basic structure should allow these inequalities so long as these improve everyone’s situation, including that of the least advantaged, provided that they are consistent with equal liberty and fair opportunity. Because the parties start from an equal division of all social primary goods, those who benefit least have, so to speak, a veto. Thus we arrive at the difference principle. Taking equality as the basis of comparison, those who have gained more must do so on terms that are justifiable to those who have gained the least.

The point that I want to take here from Rawls’s difference principle and the complaint model of justification from which it follows is that with respect to the question of the design of a system of laws governing the distribution of certain benefits and burdens, to be justifiable to free and equal persons, a principle must maximize the expectations of the those persons who benefit the least. Following Rawls, I understand the least advantaged to be those persons who stand to gain the least from a principle of justice due to contingencies or circumstances that are arbitrary given their status as free and equal persons. With respect to the question of citizens’ access to

412 Benefits and burdens must be understood with reference to persons’ interest in developing and exercising their two moral powers.
413 Ibid, 131.
and use of productive assets, although it is not possible to derive a unique solution to this question from the idea of persons as free and equal, it is possible to specify a substantive condition that any solution must satisfy. That is, citizens must legislatively enact a system of property to govern productive assets that maximizes the least-advantaged citizen’s expectations of goods and services. Because, with respect to the choice of a system of property to productive assets, citizens’ primary interest lies in the capacity of different systems to respond to their preferences for objects of personal use, the expectations of citizens must be measured along this criterion. To be justifiable to free and equal persons therefore, a system of property to govern productive assets must not merely produce more goods and services than less, but must also be capable of responding to the diverse preferences of citizens given their differing conceptions of the good.

2.2.4.2 Distributive Justice and Contract and Employment

The second question relating to the design of a system of economic cooperation concerns the rules that citizens must follow in their interdependent interaction with each other. Citizens cannot only employ productive assets to realize productive ends, but can also use the acts of others. In this type of interaction, one agent – whether a private citizen, corporate person, or agent of the state – possesses a claim-right to the act of another agent. This act can consist in the performance of a service or in the transfer of a right to an external object as in a contractual relationship; or, it can consist in the performance of services as in an employment relationship. Such claim-rights impose an obligation on the agent against whom the right is held, to perform the act that is the subject of the right.
I want to argue here that a system of laws to govern this form of interaction must satisfy three conditions if it is to be justifiable to all citizens considered as free and equal persons. First, contract and employment rights must be acquired by means of free and informed consent. Second, the state must secure fair equality of opportunity. Finally, the state must design the system of interdependent interaction so as to maximize the expectations of the least advantaged.

I claim above that a system of laws governing the interdependent interaction of citizens pursuing final ends must ensure that contract rights and employment rights may only be acquired through free and informed consent. With respect to the question of citizens’ interdependent pursuit of productive ends, my position is the same: claim-rights to the act of an agent must be acquired by means of free and informed consent. The reason for this is that free and equal citizens couldn’t agree to a principle that didn’t leave it up to citizens to decide, on the basis of their own conception of the good, whether to enter into a contractual or employment agreement or not and to determine the terms on the basis of which they will interact in this way with others. If a system of laws permitted agents to acquire the acts of others non-voluntarily, they would not be free to do so.

Second, a system of laws to govern the interdependent interaction of agents pursuing productive ends must also secure fair equality of opportunity for all its citizens. The principle of fair equality of opportunity has two requirements. First, it requires that contractual and employment positions are open to all citizens in a formal sense. The principle of fair equality of opportunity thus includes the principle of formal equality of opportunity. This principle states that all citizens possess a right to equal treatment with respect to positions of employment and

414 Ibid, 63.
with respect to the formation of contracts. The principle of formal opportunity thus prohibits contractors and employers from intentionally or unintentionally discriminating against persons. According to this principle, grounds of discrimination are those features of persons that are irrelevant to the performance of the service or services in question. Second, the principle of fair equality of opportunity requires that all citizens have a fair chance to obtain such contractual and employment positions.\(^{415}\) The idea here is that those persons who possess the same abilities and aspirations should not be limited by the social class into which they are born:

More specifically, assuming that there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system. In all sectors of society there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed. The expectations of those with the same abilities and aspirations should not be affected by their social class.\(^{416}\)

The principle of fair equality of opportunity, as a principle to govern the interdependent interaction of persons pursuing productive ends follows directly from the complaint model of justification. To see this, recall first that it follows from the complaint model that to be justifiable to all, principles of justice must maximize the expectations of the least advantaged person where the least advantaged is understood to be that person who stands to gain the least from a principle of justice because of contingencies or circumstances that are arbitrary given his or her status as a free and equal person.

Consider second that the acquisition of a particular contractual or employment position constitutes a benefit for free and equal citizens in two ways. First, the acquisition of such a position is a material benefit. Because contract rights and employment rights must be acquired

\(^{415}\) Ibid.

\(^{416}\) Ibid.
by means of free and informed consent, private citizens and firms must offer incentives to potential contractors or employees. A central way that citizens benefit from participating in a system of social cooperation is thus from earning an income from the performance of a service or services. An income is a benefit insofar as it constitutes all-purpose means that citizens can employ to set and pursue a conception of the good. Second, the acquisition of a particular contractual or employment position is also a benefit insofar as private citizens might have other reasons to prefer one position to another. For example, depending on my conception of the good, I might prefer one line of work to another, or, I may prefer one position to another because of its location.

It follows from these premises that a system of laws governing the interdependent interaction of persons pursuing productive ends must comply with the principle of fair equality of opportunity if it is to be justifiable to all considered as free and equal. First, because the acquisition of particular contractual or employment positions confers a benefit in these two ways, and because the system of laws governing this sphere of interaction must be justifiable to the least advantaged, such a system must comply with the principle of formal equality of opportunity. Free and equal citizens subject to, or potentially subject to, discrimination could argue that a system of laws that permits discrimination in the awarding of contracts and employment positions does not permit them to benefit to the same degree as those not subject to such discrimination. As well, there is an alternative, non-discriminatory system that is available against which no one has as strong a reason to reject.

Second, for the same reason, such a system of laws must ensure that all persons, no matter the social class into which they are born, have an equal fair opportunity to acquire such positions. Those citizens born into a disadvantaged social class could reject a system of laws
governing this sphere of interaction that did not secure fair equality of opportunity on the same
grounds: such a system does not allow them to benefit to the degree that they could under an
alternative system that is committed to fair equality of opportunity and against which no one has
as strong a complaint.

One might argue here that citizens have reason to reject a non-discriminatory system on
the grounds that such a system is not strictly voluntary: if I as an employer must not discriminate
against persons, it is not up to me to decide with whom to interact. However, I don’t think that
this objection provides citizens with a reason to reject the principle of formal equality of
opportunity. First, it is important to notice that although a non-discriminatory system is not
strictly voluntary in this way, persons still have the choice to cooperate or not. A non-
discriminatory system of economic cooperation does not therefore force persons to interact with
others. Second, it is difficult to see what normatively significant interest a strictly voluntary
system of economic cooperation would protect. Persons could not have reason to support a
strictly voluntary system of economic cooperation on the grounds that it better secures their
capacity to set and pursue productive ends since a non-discriminatory system fully secures the
capacity of persons to do so insofar as it identifies the grounds of discrimination to be those
features of persons that are irrelevant to the performance of the service or services in question.
Neither could persons have reason to support a strictly voluntary system of economic
cooperation on the grounds that it better secures their freedom to set and pursue a conception of
the good. After all, by definition the sole purpose of a system of social cooperation is the
realization of productive goals. As well, the principle of formal equality of opportunity is
restricted to the system of economic cooperation. Private citizens and associations are thus free
to use the performances of others to set and pursue a conception of the good and are not bound
by the principle of formal equality of opportunity. Not for profit private associations are thus free
to acquire contract and employment rights in a way that is consistent with the comprehensive doctrines that they aim to realize and promote. If I want to help members of my faith acquire certain skills by hiring them to perform certain tasks, I can set up a non-profit private association to do so.

Finally, as with the choice of property systems to govern citizens’ access to and use of productive assets, a system of laws to govern the interdependent interaction of agents pursuing productive ends must, subject to the two conditions identified above, maximize the expectations of the least advantaged. That is to say, because such a system of laws must be justifiable to citizens considered as free and equal persons, it must be designed so as to maximize the least-advantaged citizen’s expectations of all-purpose means. Of course, as with the question of the design of a system of property to govern citizens’ access to and use of productive assets, the question of which specific laws and policies will be most effective at maximizing the position of the least-advantaged citizen is an empirical one. For example, given the material conditions and social and political traditions of a country, it might be more effective for the state to maximize the position of the least-advantaged citizen by tightly regulating the labour market. Or, it might be more effective for the state to permit a free market in labour and then redistribute income and wealth by means of transfers. The citizens of particular liberal states must therefore decide this question through the public legislative authority.

A system of economic cooperation, that is, a system of laws governing citizens’ access to and use of productive assets as well citizens’ pursuit of productive ends through interdependent interaction, must therefore satisfy three conditions if it is to be justifiable to citizens considered as free and equal persons. First, a system of economic cooperation must ensure that contract rights and employment rights are acquired by means of free and informed consent. Second, a
system of economic cooperation must secure fair equality of opportunity. Finally, in accordance with these two conditions, a system of social cooperation must be designed so as to maximize the expectations of the least advantaged citizen.

2.3 The Political Authority Theory and Distributive Justice

To exercise its political authority legitimately the state must secure distributive justice for its citizens. First, to exercise its legislative authority in a way that is justifiable to its citizens considered as free and equal persons, the state must secure equal civil liberties and political rights for its citizens. Second, to legislatively enact and coercively enforce a system of interaction in a way that is justifiable to its citizens considered as free and equal, the state must satisfy three further conditions. First, the state must ensure that the basic needs of its citizens are met, including food, water, clothing, shelter, health care, and education. Second, with respect to its legislative enactment of a system of economic cooperation, the state must secure fair equality of opportunity for contracts and positions of employment. Finally, the state must ensure that the system of social cooperation is set up to maximize the expectations of the least advantaged citizens.

Although the political authority theory does not formulate the problem of distributive justice in the same way as Rawls or employ the original position as a device for constructing principles of distributive justice, the political authority theory is nonetheless similar to Rawls’s justice as fairness in four basic respects. First, like justice as fairness, the political authority theory claims that the state has a duty to grant its citizens equal civil liberties and equal political
rights and ensure the fair value of the latter.\textsuperscript{417} Second, like justice as fairness, the political authority theory also specifies that the state must satisfy the basic needs of its citizens.\textsuperscript{418} Third, the political authority theory, like justice as fairness, is committed to a principle of fair equality of opportunity.\textsuperscript{419} Finally, with respect to the design of a system of economic cooperation, the political authority theory, like justice as fairness, is committed to maximizing the expectations of the least advantaged.\textsuperscript{420}

However, unlike Rawls’s justice as fairness, the political authority theory is able to solve the two problems that I discuss above. First, the political authority theory is able to provide an account of why the state’s relation to its citizens is the primary subject of distributive justice. The state’s relation to its citizens is important in this way not because of its effects on the life prospects of its citizens as Rawls claims, but rather because the state exercises political authority over its citizens, that is, the state claims to be entitled to tell its citizens what to do and to force them to do it. As I make clear above, the state’s exercise of its political authority raises a distinctive problem of justice insofar as its citizens are understood to be free and equal.

Second, unlike, Rawls’s justice as fairness, the political authority theory does not presuppose the falsity of Nozick’s theory of private right. Instead, by providing an alternative freedom-based account of private interaction and the problems of justice that such interaction

\textsuperscript{417} Rawls, \textit{Political Liberalism}, 5.
\textsuperscript{418} Recall that in \textit{Political Liberalism}, Rawls specifies that the first principle of justice must be preceded by a lexically prior principle securing for all citizens the satisfaction of their basic needs. Ibid, 7, 166, 228-229.
\textsuperscript{419} Ibid, 6.
\textsuperscript{420} Ibid. The only real difference between the political authority theory and justice as fairness regarding the question of distributive justice is that the political authority theory does not aim to formulate \textit{principles} of justice, but only to formulate \textit{substantive conditions} that laws of interaction must satisfy if they are to be justifiable to free and equal persons. The political authority theory does not therefore claim to outline the sufficient conditions the state must satisfy to secure distributive justice for its citizens, but only outlines certain necessary conditions that it must satisfy if it is to do so.
raises, I have shown that free and equal persons have reason to reject the basic features of
Nozick’s entitlement theory.

On the one hand, Nozick is correct that the institutions of private property and contract
are necessary if persons are to exercise their freedom. As I show above, the institutions of
contract and private property are necessary if citizens are to set and pursue a conception of the
good. As well, citizens must be free to determine the terms on the basis of which they will enter
contractual or employment agreements for the purposes of realizing productive ends.

On the other hand however, citizens, considered as free and equal persons, have reason to
reject three central features of Nozick’s entitlement theory. First, persons have reason to reject a
system of property right that secures for individuals absolute rights to natural resources and the
means of production. The reason for this is that they do not require such property rights to set
and pursue a conception of the good. Instead, as I show above, with respect to the question of
their access to and use of productive assets, citizens have reason to set up a system of property
that provides all participants with a fair share of the cooperative surplus with which to set and
pursue a conception of the good.

Second, free and equal citizens have reason to reject a system of contract and
employment right that fully entitles them to the income that they derive from such agreements.
Contract and employment rights must, of course, be acquired by means of free and informed
consent. However, because such a system must be justifiable to all, it must be designed to
maximize the expectations of the least advantaged.

Finally, free and equal persons have reason to reject a system of property right that
secures for individuals absolute rights to objects of personal use. Again, because such a system is
consistent with a situation in which persons are unable to satisfy their basic needs and so maintain themselves as autonomous persons, free and equal citizens have reason to reject it. Instead, the state can only legitimately secure a system of private property rights to objects of personal use if it first sets up background institutions to ensure that the basic needs of its citizens are satisfied.

The political authority theory does not therefore presuppose that Nozick’s conception of private right is false, but instead provides a freedom-based alternative account of private interaction. Of course, I do not claim to have provided a full response to Nozick’s libertarianism here. After all, whereas the political authority theory is committed to the claim that free and equal citizens, acting together through the public legislative authority, must determine the nature and scope of their political rights and duties; Nozick claims that persons possess certain natural rights to person and property. However, by providing an account of private interaction, I do think that I have shown that free and equal citizens have reason to reject the central features of Nozick’s entitlement theory.

Conclusion

In this chapter, I have defended the legitimacy-distributive justice thesis, according to which the state can only exercise its political authority legitimately if it secures distributive justice for its citizens. By doing so, I have provided a distinctive account of the way in which the state’s relation to its citizens is significant for the problem of distributive justice. According to this account, the state’s relation to its citizens is important for distributive justice not because the state’s laws and policies have profound effects on the life prospects of its citizens, but rather
because the state can only be entitled to exercise its political authority over its citizens if it does so in accordance with principles that are justifiable to them considered as free and equal persons. In the following two chapters, I will defend the claim that the state’s relation to its citizens is not only normatively significant in this way, but in fact is the site, and defines the scope, of distributive justice.
Chapter 5 The Basic Structure Thesis 1: The Site of Distributive Justice

In chapter 4, I argued for the legitimacy-distributive justice thesis. According to this thesis, the state must comply with principles of distributive justice if it is to exercise its political authority legitimately. More specifically, I argued that the state can only exercise its political authority legitimately if it secures equal civil liberties and political rights for its citizens, ensures that the basic needs of its citizens are met, secures fair equality of opportunity for contracts and positions of employment, and ensures that the system of economic cooperation is set up to maximize the expectations of the least advantaged citizens.

In this chapter and the following chapter, I will argue for the basic structure thesis. According to this thesis, the basic structure, that is, the state’s relation to its citizens, is both the site, and defines the scope, of distributive justice. The basic structure is the site of distributive justice, according to this thesis, insofar as principles of distributive justice only apply to the actions of the state, and not to the actions of individuals. The basic structure defines the scope of distributive justice, according to this thesis, insofar as the state only possesses these distributive obligations to its citizens, and not to foreigners. According to the basic structure thesis then, the basic structure of a domestic society is the primary or sole subject of distributive justice. In this chapter, I will argue for the site-component of the basic structure thesis; in the following chapter, I will focus on the scope-component.

The question of the site of distributive justice concerns the question of the point or site of application of distributive principles. In chapter 1, I argued that there are four prominent
positions on this question: individual agent consequentialism (IAC), individual agent deontology (IAD), collective agent deontology (CAD), and collective agent consequentialism (CAC).

IAC is the position that the site of distributive justice is the ends of individual agents. This position is grounded in a consequentialist conception of the right according to which the right consists in the promotion of the good. Theories committed to IAC thus direct individual agents to promote the best state of affairs; however, such theories can nonetheless justify an important role for rules and institutions as decision procedures. Such indirect forms of consequentialism accept the consequentialist conception of the right, but argue that valuable states of affairs will be more effectively promoted if individuals follow certain rules or comply with certain institutions when they decide what to do. Prominent examples of IAC include G.A. Cohen’s luck egalitarianism and Liam Murphy’s beneficence based conception of distributive justice.

IAD is the position that the site of distributive justice is the acts of individual agents. IAD is grounded in a deontological conception of the right, according to which there are constraints on the means agents can employ to pursue their good. According to IAD then, distributive justice fundamentally concerns the rules individual agents should follow in their interactions with each other. Theories of distributive justice committed to IAD thus formulate principles of distributive justice to govern the formulation of rules that specify the acts of individual agents that are permissible, obligatory, and forbidden. The most prominent example of IAD is libertarianism, in both its right and left formulations.

CAD is the position that the site of distributive justice is the acts of the state. Distributive justice, according to CAD, is thus a condition of the rightful exercise of the state’s coercive authority over its citizens. Theorists committed to this position thus formulate principles to
govern the institutions that constitute the state as a collective agent. Theories committed to CAD might also formulate obligations for citizens as well; however, such obligations are secondary to those possessed by the state. Prominent examples of CAD are of course John Rawls’s justice as fairness, but also Ronald Dworkin’s liberal egalitarianism.

Finally, CAC is the position that the site of distributive justice is the ends of the state. According to CAC, the subject of distributive justice is the states of affairs that states ought to promote. Principles of distributive justice thus direct states to set and pursue certain ends. The most prominent example of a position committed to CAC is Philip Pettit’s republicanism, according to which the state possesses the duty to promote freedom as non-domination.421

To show that the state’s relation to its citizens is the primary site of distributive justice, I will first argue that it follows from my argument in chapter 4 that the state’s relation to its citizens constitutes a distinctive site of distributive justice. Because the state exercises political authority over its citizens, the state faces the problem of legitimacy, which as I argued in chapter 4, includes the problem of distributive justice. Here, I will introduce this point in the form of a response to G.A. Cohen’s claim that Rawls cannot justifiably limit the site of distributive justice to the basic structure.422 By justifying the claim that the state’s relation to its citizens is a distinctive site of distributive justice, I show that CAD is, at least in part, true: whatever the site or sites of distributive justice are, they include the state’s relation to its citizens.

However, it doesn’t follow from this argument that the state’s relation to its citizens is the primary or sole site of distributive justice. After all, it is possible that the site of distributive justice

422 See Cohen, Rescuing Justice and Equality, chapter 3.
justice not only includes the state’s relation to its citizens, but also the ends or acts of individual agents. To show that the state’s relation to its citizens is the sole or primary site of distributive justice therefore, I would need to show that IAC, IAD, and CAC are mistaken. However, because, as I show in chapter 1, each of these positions is grounded in a certain conception of the right, doing so would require addressing the central problems of moral and political philosophy, for example, the debate between deontology and consequentialism. Instead, starting from the idea that persons are free and equal, I will show that the most compelling alternative to CAD, namely G.A. Cohen’s luck egalitarian version of IAC, faces serious problems. By doing so, I will accomplish two tasks. First, I will show that the fundamental premises of the political authority theory, namely the idea of persons as free and equal, not only imply that the state’s relation to its citizens is a distinctive site of distributive justice, but also that it is the primary or sole site of distributive justice. Second, I will show that theories of distributive justice that are committed to IAC face a serious problem insofar as they are incompatible with the compelling idea that persons are free and equal.

I will carry out these tasks by considering Cohen’s discussion of what he calls the “incentives argument” for inequality. Here, Cohen critiques Rawls’s reliance on this argument to show that the difference principle does not apply to the private choices of citizens. Cohen claims to show not only that the site of distributive justice includes the private choices of individuals, but also that Rawls is in fact committed to this position. I will argue that Cohen’s argument is committed to a premise that is objectionable for free and equal persons. More specifically, I will argue that Cohen’s argument, and forms of IAC in general, are committed to the claim that persons are entitled to demand of each other that they govern important aspects of

423 Ibid, 27.
their life not on the basis of their own conception of the good, but rather on the basis of considerations of what would be best for others. I will argue that this presupposition is objectionable not only for free and equal persons, who possess a highest-order interest in setting and pursuing a conception of the good, but for any theory of justice that claims to be liberal. I will conclude that theories of distributive justice can avoid this objectionable premise only if they limit the site of distributive justice to the actions of the state.

1 The Basic Structure as a Distinctive Site of Distributive Justice

In *Rescuing Justice and Equality*, Cohen argues that Rawls cannot justifiably limit the application of his difference principle to the basic structure. More specifically, Cohen argues that Rawls has no reason to think that the basic structure is somehow of special normative significance for the problem of distributive justice.

To support this claim, Cohen argues that Rawls faces a dilemma concerning the specification of the basic structure that is fatal for his claim that the basic structure is the primary site of distributive justice. Although it is clear, Cohen claims, that major social institutions constitute the basic structure; it is unclear what these institutions are.\(^\text{424}\) At times, Rawls seems to think that the basic structure only includes the legally coercive institutions within society such that it is the “*broad coercive outline* of society.”\(^\text{425}\) At other times however, Rawls seems to think that the basic structure also includes institutions and social practices that are not constituted

\(^{424}\) Ibid, 132-133.
\(^{425}\) Ibid.
by law, but rather by convention and usage. A principal example of such a conventional institution, Cohen argues, is the family.

However, according to Cohen, this ambiguity concerning the basic structure is not merely academic but has important implications for Rawls’s claim that the basic structure is the primary site of distributive justice. If Rawls understands the basic structure to include coercive and non-coercive institutions, Cohen claims, then it follows that Rawls’s difference principle not only applies to coercive institutions but also to the legally unconstrained choices of individuals. The reason for this is that non-coercive institutions, insofar as they are constituted by convention and usage, are dependent for their existence on the private choices that persons make. However, if Rawls understands the basic structure to be the major legal institutions of society, that is, the “broad coercive outline of society,” then, Cohen claims, Rawls cannot motivate the claim that the basic structure is the primary site of distributive justice. The reason for this, according to Cohen, is that Rawls’s primary justification for focusing on the basic structure is that its effects on the life prospects of individuals are so profound. However, Cohen argues, it is false that only the coercive institutions of society have such profound effects since non-coercive institutions, such as the family, also have such effects on the life prospects of individuals. According to Cohen then, Rawls faces an inescapable dilemma:

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426 Ibid, 133-134.
427 Ibid, 134.
429 Ibid, 135.
430 Ibid, 136.
431 Ibid.
Given, then, his stated rationale for exclusive focus on the basic structure – and what other rationale could there be for calling it the primary subject of justice? – Rawls is in a dilemma. For he must either admit application of the principles of justice to (legally optional) social practices, and, indeed, to patterns of personal choice that are not legally prescribed, both because they are the substance of those practices, and because they are similarly profound in effect, in which case the restriction of justice to structure, in any sense, collapses; or, if he restricts his concern to the coercive structure only, then he saddles himself with a purely arbitrary delineation of his subject matter. 432

Cohen thus concludes that Rawls cannot justifiably limit the application of the difference principle to the basic structure of society, where the basic structure is understood to be the coercive outline of society.

Cohen is correct that given Rawls’s stated rationale for his focus on the basic structure, he cannot justifiably limit the application of his difference principle to coercive institutions. However, the political authority theory provides an alternative rationale for the claim that the state constitutes a distinctive site of distributive justice. According to the political authority theory, the state constitutes a distinctive site of distributive justice not because of its effects on the life prospects of its citizens, but rather because the state stands in a distinctive relation to its citizens that is normatively significant for the problem of distributive justice.

The state stands in a distinctive relation to its citizens because of the way in which the state exercises political authority over them. That is, the state, unlike any other agent, legislatively enacts and coercively enforces a system of economic cooperation, puts its citizens under an obligation to obey, and claims to be entitled to do so. The state’s exercise of its political authority over its citizens is normatively significant moreover, because free and equal persons possess the equal authority to govern their interactions with each other. Because its citizens are

432 Ibid, 137.
free and equal in this way, the state thus faces the problem of legitimacy: under what conditions is the state entitled to tell its citizens what to do and to force them to do it?

As well, the state’s exercise of its political authority is normatively significant for the problem of distributive justice because, as I argue in chapter 4, the problem of legitimacy includes the problem of distributive justice. That is, the state can only exercise its political authority legitimately if it secures a just distribution of political rights and civil liberties on the one hand, and income and opportunities on the other. The political authority theory thus provides an alternative justification for the claim that the basic structure – understood as the coercive outline of society – constitutes a distinctive site of distributive justice. The basic structure is important in this way not because of the way in which it has profound effects on the life prospects of its citizens, but rather because the state possesses a duty to exercise its political authority in a way that respects the equal authority of its citizens.

However, although the state constitutes a distinctive site of distributive justice in this way, one might still argue that principles of distributive justice also apply to the legally unconstrained choices of individuals. One might therefore concede that the state constitutes a distinctive site of distributive justice, but not concede that the state constitutes the primary or sole site of distributive justice. In the following section of this chapter, I address this worry. Starting from the principle of justifiability to free and equal persons, I will show that the most compelling alternative to CAD, namely G.A. Cohen’s luck egalitarian version of IAC, faces a serious problem. By doing so, I will show first that the fundamental premises of the political authority theory, namely the idea of persons as free and equal, not only imply that the state’s relation to its citizens is a distinctive site of distributive justice, but also that it is the primary or sole site of distributive justice. I will show second that Cohen’s luck egalitarian version of IAC,
as well as other any other form of IAC, is incompatible with a compelling formulation of the values of freedom and equality.

2 The Basic Structure as the Primary Site of Distributive Justice

In *Rescuing Justice and Equality*, Cohen not only argues that Rawls faces an inescapable dilemma regarding his characterization of the basic structure, but also argues that a proper understanding of the difference principle implies that citizens should apply it to their legally unconstrained choices.\(^ {433}\) Rawls, Cohen argues, interprets the difference principle in a “lax” way.\(^ {434}\) According to this lax interpretation, inequalities in income and wealth are just if and only if they are necessary to improve the position of the worst off where ‘necessity’ is understood in an “intention-relative” way.\(^ {435}\) However, Cohen argues that the difference principle must be interpreted in a “strict” way, according to which ‘necessity’ is understood in an “intention-independent” way.\(^ {436}\) According to this reading of the difference principle then, “[the difference principle] counts inequalities as necessary only when they are, strictly, necessary, necessary, that is, apart from people’s chosen intentions.”\(^ {437}\) This argument is important for our purposes because it follows from this, Cohen claims, that the difference principle applies not only to the basic structure, but also to the legally unconstrained choices of citizens.\(^ {438}\)

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\(^ {433}\) Ibid, 118-124.
\(^ {434}\) Ibid, 69.
\(^ {435}\) Ibid, 68.
\(^ {436}\) Ibid, 68-69.
\(^ {437}\) Ibid, 69.
\(^ {438}\) Ibid, 72-73.
Cohen rejects the lax interpretation of the difference principle on the grounds that it depends on a fatally flawed argument: the “incentives argument” for inequality. According to this argument, inequalities in wealth and income are just if they act as incentives to render the badly-off in society as well-off as they can possibly be. Cohen formalizes the incentives argument for inequality in the following way:

Major Premise: Inequalities are just if they are necessary to improve the expectations of the worst-off.

Minor Premise: Incentives, in the form of higher salaries, are necessary if citizens are to work as productively as they can and thus, through the generation of greater wealth, improve the expectations of the worst-off.

Conclusion: Inequalities stemming from the provision of incentives to citizens in order to improve the expectations of the worst-off are just.

Cohen rejects the incentives argument for inequality on the grounds that individuals cannot appeal to it to justify above average incomes for themselves and at the same time claim to stand in a relation of community with their fellow citizens. By a relation of community here, Cohen means a relation in which citizens can justify their actions to each other. Jan Narveson illustrates the problem nicely with the following hypothetical dialogue:

Well-off: “Look here, fellow citizen, I’ll work hard and make both you and me better off, provided I get a bigger share than you.”

Worse-off: “Well, that’s rather good; but I thought you were agreeing that justice requires equality?”

Well-off: “Yes, but that’s only as a benchmark, you see. To do still better, both of us, you understand, may require differential incentive payments to people like me.”

Worse-off: “Oh. Well, what makes them necessary?”

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439 Ibid, 27.
440 Ibid, 28.
441 Ibid, 32, 43-44.
Well-off: “What makes them necessary is that I won’t work as hard if I don’t get more than you.”

Worse-off: “Well, why not?”

Well-off: “I dunno… I guess that’s just the way I’m built.”

Worse-off: “Meaning, you don’t really care all that much about justice, eh?”

Well-off: “Er, no, I guess not.”

The inability of Well-off to justify her behavior to Worse-off in this way is a problem for Rawls, Cohen argues, insofar as he too is committed to the idea that a just society is one that is committed to the idea of community.

This second argument thus constitutes an independent argument for the claim that “principles of distributive justice, principles, that is, about the just distribution of benefits and burdens in society, apply, wherever else they do, to people’s legally unconstrained choices.”

Because the political authority theory is also committed to the lax interpretation of the difference principle, it too is subject to Cohen’s critique. In this part of the chapter, I want to respond to Cohen’s argument and defend the claim that the state is the primary site of distributive justice. In response to Cohen, I will reformulate the incentives argument for inequality such that individuals can appeal to it to justify demands for a higher salary and stand in a relation of community with their fellow citizens. To do so, I will add an additional premise to the argument: the principle of freedom of occupational choice. According to this principle of justice, citizens are entitled to decide for themselves, on the basis of their own conception of the good, what occupation to

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pursue and what post-tax income to demand to perform the occupation in question.\textsuperscript{445} I will argue that such a principle is justifiable to free and equal persons on the grounds that it protects an important exercise of their freedom: the freedom to make decisions about their participation in a system of economic cooperation on the basis of their conception of the good. The reformulated argument looks like this:

1. Inequalities are just if they are necessary to improve the expectations of the worst-off.

2. Citizens are entitled to decide for themselves, on the basis of their own conception of the good, what occupation to pursue and what post-tax income to demand to perform the occupation in question.

3. Incentives, in the form of higher post-tax incomes, may be necessary if citizens are to work as productively as they can and thus, through the generation of greater wealth, improve the expectations of the worst-off.

Conclusion: Inequalities stemming from the provision of incentives to citizens in order to improve the expectations of the worst-off are just.

Once this additional premise is added to the incentives argument for inequality, individuals can justify their demands for a higher post-tax income on the grounds that they are entitled to decide for themselves what occupation to work at, and what level of salary to demand.

My argument is different in important ways from similar responses to Cohen’s critique of Rawls. First, my argument is not what Andrew Williams refers to as the “liberty objection.”\textsuperscript{446} The strategy of the liberty objection is to argue that freedom of occupational choice is protected by Rawls’s first principle of justice and so it follows that persons are entitled to decide for themselves what occupation to work at and what level of salary to demand.\textsuperscript{447} The problem with

\textsuperscript{445} I use the term post-tax income here to indicate that the difference principle still governs the system of economic cooperation and that citizens recognize this. That is, well-off citizens recognize that a defined portion of their income will be taxed by the state and redistributed to those who are less well-off.

\textsuperscript{446} Williams, “Incentives, Inequality, and Publicity,” 228.

\textsuperscript{447} Ibid.
this objection, as Williams points out, is that it only secures freedom of occupational choice as a legal right, and not a principle of justice. As I discuss below in part 3, the legal right to freedom of occupational choice is consistent with Cohen’s claim that the provision of certain types of incentives is unjust. To derive the conclusion that inequalities stemming from the provision of incentives to citizens in order to improve the expectations of the worst-off are just, one must instead argue that freedom of occupational choice is a principle of justice.

Similarly, my response to Cohen is different from that of David Estlund and Kok-Chor Tan, who claim that Rawls’s incentives argument for inequality can be defended on the grounds that persons possess certain personal prerogatives that impose limits on the demands of justice. Cohen himself, of course, agrees that persons possess a personal prerogative within which they can pursue their self-interest to a reasonable extent. However, these theorists argue for a personal prerogative that is wider in scope than Cohen intends. According to this line of argument then, Well-off can justifiably demand an above-average salary on the grounds that a personal prerogative permits her to pursue her own self-interest to a reasonable extent. The problem with this response, from the standpoint of both Rawls’s theory of justice and the political authority theory, is that it is adhoc and unmotivated. The distinction between justice and personal pursuits, and the idea of a personal prerogative that imposes limits on the demands of

\[\text{\textsuperscript{448}}\text{Ibid.}\]

\[\text{\textsuperscript{449}}\text{David Estlund makes this argument in his “Liberalism, Equality, and Fraternity in Cohen’s Critique of Rawls.” Estlund, “Liberalism, Equality, and Fraternity in Cohen’s Critique of Rawls,” 101, 112. Here, Estlund argues that the Rawlsian can defend the incentives argument for inequality on the grounds that citizens of a just Rawlsian society possess certain personal prerogatives – including a prerogative to pursue self-interest, a prerogative to pursue the good of certain others, a prerogative to comply with one’s moral requirements, and a prerogative to pursue morally significant purposes – that impose limits on the demands of justice. Ibid, 101-103, 112. Kok-Chor Tan makes a very similar argument in “Justice and Personal Pursuits.” Tan, “Justice and Personal Pursuits,” 347-348. Here, Tan argues that much of the behavior described by the minor premise can be justified on the grounds that the demands of justice must be balanced against the value of personal pursuits. Ibid, 347-352.}\]

\[\text{\textsuperscript{450}}\text{Cohen, Rescuing Justice and Equality, 10-11.}\]
justice, cannot simply be tacked on to these accounts of distributive justice in this way. Rather, as liberal theories of distributive justice that aims to identify the principles that are justifiable to persons concerned to set and pursue a conception of the good, both accounts must be able to specify the nature and limits of the claims of justice that persons can make on each other. More specifically, both accounts must be able to provide an account of the spheres within which persons are free to set and pursue a conception of the good, free from the interference or demands of others.

Finally, Michael Otsuka defends a principle that is similar to freedom of occupational choice in his “Freedom of Occupational Choice.”\textsuperscript{451} However, my argument for this principle is different. A central premise of Otsuka’s argument is that individuals have a right to self-ownership. My argument for the principle of freedom of occupational choice does not depend on this premise but instead appeals to the Rawlsian conception of persons as free and equal.

In section 2.1, I will outline Cohen’s critique of Rawls’s understanding of the difference principle. In section 2.2, I will show that the political authority theory possesses the resources to respond to Cohen’s critique. Finally, in section 2.3, I will consider two objections to my response.

\textsuperscript{451} Otsuka, “Freedom of Occupational Choice.”
2.1 Cohen and the Incentives Argument for Inequality

Rawls’s difference principle states that social and economic inequalities are just if and only if they are necessary to maximize the expectations of the least advantaged.\textsuperscript{452} This principle, Rawls claims, follows deductively from the original position and certain assumptions regarding the circumstances of justice and the principles of rational choice that rational actors would employ to decide the question of the principles of their social organization.\textsuperscript{453} However, Rawls also presents a more intuitive argument for the two principles. This argument is more useful for our purposes, both because it shows why the parties would opt for the difference principle as opposed to an egalitarian distribution of social primary goods and because, as Rawls makes clear, the original position is just an “expository device.”\textsuperscript{454} According to this argument, the parties to the original position would opt for the difference principle, as opposed to a principle of strict equality, on the grounds that inequalities in expectations will result in greater economic efficiency, which will result in greater economic growth and thus greater wealth for redistribution.\textsuperscript{455} Rawls puts the point this way:

Society should take into account economic efficiency and the requirements of organization and technology. If there are inequalities in income and wealth, and differences in authority and degrees of responsibility, that work to make everyone better off in comparison with the benchmark of equality, why not permit them...Because the parties start from an equal division of all social primary goods, those who benefit least have, so to speak, a veto. Thus we arrive at the difference principle. Taking equality as

\textsuperscript{452} Rawls, \textit{A Theory of Justice}, 67-68. While the difference principle governs the distribution of a number of social primary goods, following Cohen, I will focus on its implications for the distribution of income from labour. With respect to this question, the difference principle implies that inequalities in salary or wages are just if and only if they are necessary to improve the expectations of the badly off.

\textsuperscript{453} Ibid, 103, 132-139.

\textsuperscript{454} Ibid, 19.

\textsuperscript{455} Ibid, 68.
the basis of comparison, those who have gained more must do so on terms that are justifiable to those who have gained the least.\textsuperscript{456}

Rawls’s point here is fairly straightforward. Since the parties to the original position prefer more social primary goods than less, and since certain inequalities in distribution will provide even the least well-off with more social primary goods than they would have had under a strictly equal distribution, it follows that the parties should choose the difference principle.

Cohen does not explicitly doubt the truth of the premises of the incentives argument but instead argues that citizens cannot appeal to it to demand above-average salaries and stand in a relation of community to their fellow citizens. By “community” here, Cohen means “justificatory community.”\textsuperscript{457} A justificatory community, Cohen claims, “is a set of people among whom there prevails a norm (which need not always be satisfied) of comprehensive justification.”\textsuperscript{458} An argument for a policy or principle can provide a comprehensive justification only if that argument passes what Cohen calls the “interpersonal test.” The interpersonal test:

asks whether the argument could serve as a justification of a mooted policy when uttered by any member of society to any other member. So, to carry out the test, we hypothesize an utterance of the argument by a specified individual, or, more commonly, by a member of a specified group, to another individual, or to a member of another, or, indeed, the same, group. If, because of who is presenting it, and/or to whom it is presented, the argument cannot serve as a justification of the policy, then whether or not it passes as such under other dialogical conditions, it fails (tout court) to provide a comprehensive justification of the policy.\textsuperscript{459}

\textsuperscript{456} Ibid, 130-131.
\textsuperscript{457} Cohen, \textit{Rescuing Justice and Equality}, 43.
\textsuperscript{458} Ibid, 43.
\textsuperscript{459} Ibid, 42.
If persons are to stand in relation of justificatory community to each other therefore, they must be capable of justifying their actions interpersonally.\textsuperscript{460}

The reason that productive citizens can’t make the incentives argument to demand higher salaries and, at the same time, stand in a relation of justificatory community to their fellow citizens, Cohen claims, is because they can’t justify the truth of the minor premise.\textsuperscript{461} That is, because it is within the control of productive citizens to make the minor premise either true or false, they cannot simply assume that it is true, for example, as a matter of sociological fact. As Cohen puts it, “[Talented persons] could not claim, in self-justification, at the bar of the difference principle, that their high rewards are necessary to enhance the position of the worst off, since, in the standard case, it is they themselves who make those rewards necessary, through their own unwillingness to work for ordinary rewards as productively as they do for exceptionally high ones, an unwillingness which ensures that the untalented get less than they otherwise would.”\textsuperscript{462} Cohen illustrates this point with the following example:

Suppose I am a doctor contemplating a hospital post that I know I could obtain at, say, £100,000 a year. I also believe that, if – and only if – I took something in the region of £50,000 for filling it, then any difference between my reward and what the less-well-paid get would be justified by what I strictly need to do the job, and/or by its special burdens, and/or by my legitimate personal prerogative. Then how can I say, with a straight face, that justice forbids inequalities that are detrimental to the badly off and be resolved to act justly in my own life, unless, should I indeed go for this particular job, I offer myself at £50,000 and thereby release £50,000 for socially beneficial use?\textsuperscript{463}

\textsuperscript{460} Ibid, 43-44.
\textsuperscript{461} Ibid, 47.
\textsuperscript{462} Ibid, 122.
\textsuperscript{463} Ibid, 70.
Cohen’s point here is that the doctor cannot – ‘with a straight face’ – appeal to the incentives argument to justify demanding a salary of £100,000 a year. Because the doctor is able to do the same job for £50,000 a year, he cannot claim that the higher salary is necessary.

The broader point that Cohen is making here is that in the normal case, individuals cannot justify their actions by adopting the third-person standpoint. By adopting the third-person standpoint, individuals see themselves not as autonomous agents, but rather as objects subject to certain sociological and psychological causes. However, in the normal case, to justify their actions to another, individuals cannot appeal to the causes of their behavior, but must instead appeal to reasons. This involves adopting the first- and second-person standpoints. I adopt the first-person standpoint when I understand myself as an autonomous agent, that is, an agent capable of acting on the basis of reasons. I adopt the second-person standpoint when I recognize that others are also autonomous and that we can make and acknowledge claims or demands on each other’s will. The second-person standpoint is thus a practical deliberative standpoint that includes the reference to a “you” on whom I make claims and demands, and whose claims and demands I acknowledge as binding on my will. In justifying my actions to others, I necessarily adopt these two standpoints simultaneously, understanding myself and others as autonomous agents. Productive citizens cannot appeal to the incentives argument for inequality to justify their demands for a higher salary since they can only endorse the minor premise by adopting the third-person standpoint on their own behavior instead of the first.

Cohen draws two important conclusions from his rejection of the incentives argument for inequality. First, Cohen claims that it follows that the difference principle must be reinterpreted.

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Insofar as Rawls is committed to the idea that a just society is one that satisfies the ideal of justificatory community, Rawls cannot also be committed to what Cohen refers to as the “lax reading” of the difference principle.\(^{466}\) According to this interpretation of the difference principle, the idea of necessity is understood to be “intention-relative” such that something is necessary relative to a person’s intentions.\(^{467}\) On this understanding of necessity, according to the difference principle, inequalities are necessary given that talented persons have certain chosen intentions or preferences regarding types of work and levels of pay. Instead, Cohen argues, Rawls is committed to the “strict reading” of the difference principle, according to which inequalities are necessary “only when they are strictly, necessary, necessary, that is, apart from people’s chosen intentions.”\(^{468}\)

Second, Cohen concludes that it follows from this that citizens must apply the difference principle to their legally unconstrained choices. Since the strict interpretation of the difference principle requires persons to ask themselves whether a higher income is strictly necessary to maximize the expectations of the least advantaged, the strict interpretation requires citizens to apply the difference principle to their occupational choices and salary demands. Cohen thus concludes that “the justice of a society is not exclusively a function of its legislative structure, of its legally imperative rules, but also of the choices people make within those rules.”\(^{469}\) More specifically, Cohen concludes that for a society to operate according to the difference principle, it must not only contain just legislation, but also an ethos or culture of justice.\(^{470}\)


\(^{467}\) Ibid, 68.

\(^{468}\) Ibid, 69.

\(^{469}\) Ibid, 123.

\(^{470}\) Ibid, 73.
To these two conclusions, we can also add a third that Cohen does not explicitly draw in his discussion of the incentives argument for inequality but that, nonetheless, is important for how Rawls carries out his contractualist project. A key point that Cohen makes is that – in the normal case – persons cannot justify their behavior by adopting the third-person standpoint. However, as I discuss above, the original position requires the parties to consider the social sciences when choosing principles of justice. This consideration is the source of the minor premise of the incentives argument for inequality. I want to argue here that this inclusion of the third-person standpoint is a problem for the original position because it follows from this that persons cannot appeal to the original position – either its argumentative structure or conclusions – to justify their actions. The problem here is that because the original position, considered as an argumentative structure, contains certain facts about human behavior as premises, persons who try to justify their actions by appeal to principles that would be justified in the original position must inevitably appeal to facts about their behavior.\textsuperscript{471} Appealing to such facts to justify one’s actions is of course permissible when these facts are intention-independent; however, one cannot appeal to facts that are intention-dependent and justify one’s actions to others. Cohen’s discussion of the incentives argument for inequality illustrates this. Productive citizens cannot justify their demands for a higher post-tax income – that is not strictly necessary – by appeal to the original position because it is the original position that presumes the truth of the minor premise.\textsuperscript{472}

\textsuperscript{471} Cohen makes a similar point later in Rescuing Justice and Equality where he argues that normative principles can only be grounded in a fact if the fact in question is also a response to a normative principle. Ibid, 229.

\textsuperscript{472} It is important to note here that this feature of the original position need not constitute a problem for it insofar as it is limited to constructing principles for institutions rather than the actions of individuals. The point I am making here is just that persons can’t appeal to it to justify their actions.
2.2 The Incentives Argument for Inequality and Freedom of Occupational Choice

Cohen’s critique of the incentives argument is an important and penetrating one. As well, it applies not only to Rawls’s theory of justice, but also to the political authority theory. First, as I make clear in chapter 4, the political authority theory is committed to the lax interpretation of the difference principle as a principle to govern the design of a system of economic cooperation. According to the political authority theory, inequalities that stem from the provision of incentives to citizens to work at productive occupations are just. Second, insofar as it is committed to the principle of justifiability to free and equal persons, the political authority theory is also committed to the ideal of justificatory community. That is, according to the political authority theory, a just society is one in which citizens can justify their actions to each other.

In this section of the chapter however, I want to argue that the political authority theory possesses the resources to defend the lax interpretation of the difference principle against Cohen’s critique and this avoid the conclusion that the difference principle applies to the legally unconstrained choices of individuals. I will argue that the incentives argument for inequality can be reformulated such that free and equal citizens can demand higher post-tax incomes to work at more productive occupations and at the same time stand in a relation of community with their fellow citizens. The reformulated version of the incentives argument is as follows:

1. Inequalities are just if they are necessary to improve the expectations of the worst-off.
2. Citizens are entitled to decide for themselves, on the basis of their own conception of the good, what occupation to pursue and what post-tax income to demand to perform the occupation in question.
3. Incentives, in the form of higher post-tax incomes, may be necessary if citizens are to work as productively as they can and thus, through the generation of greater wealth, improve the expectations of the worst-off.

Conclusion: Inequalities stemming from the provision of incentives to citizens in order to improve the expectations of the worst-off are just.

The changes to the original incentives argument are twofold. The first change is the introduction of premise 2, which I will refer to as the principle of freedom of occupational choice. The second change is a slight alteration of the minor premise, which is now premise 3 in the revised argument. This premise now states that inequalities may be necessary to get citizens to work as productively as they can. The reason for this alteration is simply that if citizens are entitled to decide for themselves, on the basis of their own conception of the good, what occupation to pursue and what post-tax income to demand to perform the occupation in question, whether or not incentives are necessary to get people to work as productively as they can will depend on the conceptions of the good that people happen to have.

The crucial thing to note for our purposes is that citizens can employ this argument to justify their demands for a higher post-tax income and, at the same time, stand in a relation of justificatory community to others. Because of the introduction of the principle of freedom of occupational choice, citizens need not show that they cannot, strictly speaking, perform a certain occupation without a certain level of post-tax income. Instead, citizens need only claim that they are entitled to decide for themselves whether to take a position at a certain post-tax income or not.

In what follows, I will justify the principle of freedom of occupational choice by showing that it is justifiable to free and equal citizens as a principle of justice. More specifically, I will argue that free and equal citizens have reason to accept this principle as a principle of justice for the simple reason that it secures the ability of citizens to decide questions regarding their
participation in a system of economic cooperation on the basis of their conception of the good. It is important to note here moreover that my argument is an exercise in ideal theory. In making this argument, I therefore assume that there is a just basic structure in place: the basis needs of citizens are met, equal civil liberties and political rights are secured, fair equality of opportunity for contracts and positions of employment is ensured, and the system of economic cooperation is set up to maximize the expectations of the least advantaged citizens.

The principle of justifiability to free and equal persons is suitable for justifying freedom of occupational choice because unlike the original position, this principle requires persons to adopt the first- and second-person standpoints, but not the third-person standpoint. That is to say, justifiability to free and equal persons requires persons to understand themselves and others as free and equal persons, and to determine which principles of justice are acceptable on the basis of this understanding. Persons adopt the first-person standpoint insofar as they understand themselves as free and equal; they adopt the second-person standpoint insofar as they understand others to be free and equal and thus to have claims on their actions. Because justifiability to free and equal persons has this implication, citizens can therefore justify their actions by appealing to principles of justice that are justified by means of this principle.

To see why freedom of occupational choice is justifiable to citizens considered as free and equal persons, it is important to consider first that the question of occupational choice concerns the sphere of social interaction that I refer to in chapter 4 as a system of economic cooperation. By a system of economic cooperation, I mean the legislatively enacted system of rules that governs the production of goods and services. These rules govern citizens’ access to and use of productive assets and natural resources as well as their interdependent interaction through the formation of contractual and employment relationships. For free and equal persons,
the purpose of a system of economic cooperation is the realization of productive ends, that is, the production of all-purpose means that they can employ to set and pursue a conception of the good. Citizens therefore have reason to legislatively enact, and participate in, a system of economic cooperation for the simple reason that they might require certain types of goods and services in order to set and pursue a conception of the good life.

However, although free and equal citizens have reason to participate within a system of economic cooperation, they also have an interest in doing so on their own terms. Since the purpose of a system of economic cooperation is the production of goods and services with which to set and pursue a conception of the good, individuals should be the ones to make choices about their economic life on the basis of this interest and on the basis of what their determinate conception of the good happens to be. The point here is that for free persons, participation in the labour market is a way to provide themselves with those all-purpose goods that they require to set and pursue their conception of the good life. Since the highest-order interest of citizens lies in exercising their capacity for a conception of the good, and since individuals realize this interest by setting and pursuing a determinate conception of the good, the question of how they should participate within a system of economic cooperation should depend on the nature of their determinate conception of the good and the nature of the means they require to effectively pursue it.

It is important to note here that my claim is not that individuals are entitled to demand of others that they act in ways to realize their own conception of the good life. By endorsing the difference principle, I reject the idea that citizens are entitled to require others or their institutions to act in ways most conducive to their determinate conception of the good. Citizens cannot therefore claim a greater share of the cooperative surplus because they possess a relatively
expensive conception of the good life. The problem with such claims is that they require citizens to make the ends of others their own, that is, to subsidize the conceptions of the good of others. Instead, my claim here is that because persons possess a highest order interest in setting and pursuing a conception of the good life, they are entitled to set the terms of their participation in a system of economic cooperation on the basis of their determinate conception. However, although they are entitled to set these terms, they make no claims on others, since no one possesses an obligation to meet them.

The principle of freedom of occupational choice secures the interest of free persons in deciding how to participate in a system of economic cooperation on the basis of their conception of the good life. First, freedom of occupational choice entitles citizens to decide for themselves, on the basis of their conception of the good, what level of post-tax income to demand to forego leisure and provide services for others. Because free and equal persons have a highest-order interest in setting and pursuing a conception of the good, citizens have reason to decide questions of post-tax income on the basis of their determinate conception of the good. If I value time with my friends and family but am also interested in pursuing an expensive project, I will only have reason to work long hours if I can secure a post-tax income that is high enough to fund my expensive project. If I cannot secure such an income, I should instead choose an occupation that leaves me with plenty of free time to spend with my friends and family.

Second, freedom of occupational choice entitles citizens to decide for themselves, again, on the basis of their determinate conception of the good, which occupation to pursue. Although the primary purpose of a system of economic cooperation is the realization of productive ends, depending on my conception of the good, I might have grounds to choose one line of work to another, either because of the nature of the work or location. For example, if my conception of
the good involves wood-working, fishing, and hunting, I should choose to work in the forestry industry in northern British Columbia rather than in an office in Vancouver. Again, because persons have a highest-order interest in exercising their conception of the good, they have reason to decide these questions on the basis of what their conception of the good happens to be.

Of course, some people might not be able to secure that occupation or post-tax income that is necessary to realize their conception of the good. However, I don’t think that this is a serious problem. First, the fact that some persons won’t be able to secure the position of employment or post-tax income that they want is an inevitable feature of any free society. Because economic cooperation has the purpose of producing those goods and services that persons require to set and pursue a conception of the good life, the availability of occupations, and their accompanying salaries, will always depend on the conceptions of the good that persons have. If no one’s conception of the good involves watching the films that I direct, I won’t be able to realize my goal of being a successful film director and I won’t be able to realize my expensive projects. Such an outcome might strike some as unjust since it seems to favour conceptions of the good that are market friendly. However, in this case at least, the market ensures that no one has to make the ends of others their own, that is, to subsidize the conceptions of the good of others.

Second, a key feature of Rawls’s conception of the person as free and equal is the idea that persons possess the capacity to take responsibility for their ends and projects, that is, to adjust them in light of the all-purpose means that they can reasonably expect in return for their


474 I will discuss a similar objection concerning basic needs below.
participation in the system of economic cooperation. The political authority theory thus supports Rawls’s idea of the “social division of responsibility:” “society, the citizens as a collective body, accepts the responsibility for maintaining the equal basic liberties and fair equality of opportunity, and for providing a fair share of the other primary goods for everyone within this framework, while citizens (as individuals) and associations accept the responsibility for revising and adjusting their ends and aspirations in view of the all-purpose means they can expect, given their present and foreseeable situation.”

Free and equal citizens therefore have reason to accept the principle of freedom of occupational choice. Because they possess a highest-order interest in setting and pursuing a conception of the good, and because participation in the labour market is only a means for exercising this capacity, persons have reason to be the ones to make decisions regarding their participation within the system of economic cooperation on the basis of considerations stemming from their own conception of the good. For this reason, free and equal citizens have reason to support the principle of freedom of occupational choice. It secures for citizens the right to decide for themselves, on the basis of their own conception of the good, what occupation to pursue and what post-tax income to demand to perform the occupation in question.

However, to show that a principle of justice is justifiable to free and equal persons, it is not enough to show that persons, considered as free and equal, have reason to accept it. The reason for this is that the principle of justifiability to free and equal persons is committed to the complaint model. To show that a principle of justice is justifiable to free and equal persons, one

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475 Rawls, Political Liberalism, 34.
must show that no one has a reason to reject it on the grounds that there is an alternative principle against which no one has a complaint that is as strong.

Cohen, in particular, might object to the principle of freedom of occupational choice on the grounds that if citizens are free to decide questions concerning their participation in a system of economic cooperation on the basis of their own conception of the good, some citizens will not have as many all-purpose means as they otherwise would have had. That is, if citizens were not entitled to decide productive questions for themselves, and instead had a duty to comply with a principle of equality, there would be much more material wealth to be redistributed. For example, in the case of the doctor discussed above, if the doctor complied with a principle of equality and so accepted the hospital post for £50,000 instead of £100,000, this would leave £50,000 to be redistributed to others.

I do not doubt that the principle of freedom of occupational choice will have this consequence. Those persons who would receive less under the lax difference principle, and more under a principle of equality therefore have a special complaint against it. However, I want to argue here that this complaint is not as strong as the complaint that persons have against the principle of equality, which prohibits them from deciding questions concerning their participation in a system of economic cooperation on the basis of their own conception of the good. To see this, consider first that Cohen’s line of reasoning relies on an objectionable premise, namely, that citizen A is entitled to demand of citizen B that citizen B decide questions regarding her participation in a system of economic cooperation on the basis of what would be best for citizen A. Cohen’s line of reasoning is committed to this premise since in the case of the doctor, Cohen’s claim is that the doctor should doctor at £50,000 rather than £100,000 because the lives of others will go better if they have more all-purpose means with which to set and
pursue a plan of life than less. From the standpoint of the principle of justifiability to free and equal persons, this premise is objectionable because persons could not agree to a principle of justice that subjected one person’s decisions regarding their life to considerations of what would be best for others. That is, because free and equal persons have a highest-order interest in setting and pursuing a conception of the good, they could not agree to a principle that required them to decide questions regarding their life on the basis of considerations of what would be best for others. Free and equal persons are each entitled to govern their own life on the basis of their own conception of the good, and not subject choices concerning their life to the interests of others. If I become a corporate lawyer instead of a stay-at-home-dad your life may go better; however, you can’t demand that I consider your preferences to be binding on me when I decide what to do with my life. Similarly, I might want to be a movie director and pursue expensive projects; however, I can’t demand that others watch my films in order to allow me to realize my determinate conception of the good life.

Consider second that this complaint against the principle of equality is stronger than the complaint against the principle of freedom of occupational choice. The reason for this is that whereas the latter complaint concerns a person’s interest in having more rather than less all purpose means, the former complaint concerns a person’s entitlement to make decisions regarding his or her participation in a system of economic cooperation on the basis of his or her own conception of the good. To employ language from chapter 3, for free and equal persons, the former complaint is both different in kind from, and qualitatively more important than, the latter, because it directly concerns the highest-order interest of persons in exercising their capacity to set and pursue a conception of the good. In short, if persons are to realize their highest-order interest in setting and pursuing a conception of the good – considered as a highest-order interest – they must be entitled to decide what to do with their lives – including deciding how to
participate in a system of economic cooperation – on the basis of their conception of the good and not on the basis of considerations of what would be best for others. By contrast, although persons might not be able to set and pursue a particular conception of the good if they have less as opposed to more all-purpose means, they are still free to govern their life on the basis of their own interest in exercising their capacity for a conception of the good as opposed to the interests of others (assuming, as I am, that the basic needs of citizens are satisfied).

It is important to note moreover, that all theories of distributive justice that are committed to IAC will also be committed to some version of what I identify above as the objectionable premise. The reason for this is that because such principles of justice require persons to realize some state of affairs, for example, an equal distribution of benefits and burdens, persons will be required, as a matter of justice, to decide important questions regarding their life not on the basis of their own conception of the good, but rather on the basis of what would be best overall. The reasons that free and equal persons have for rejecting the strict difference principle are thus reasons for rejecting any principle of distributive justice that applies to their private choices.

It is also important to recall here that the political authority theory’s rejection of IAC does not commit it to a form of right-libertarianism in which the state faces no duties to ensure, for example, that the basic needs of its citizens are met. The principle of freedom of occupational choice does entitle citizens to make decisions regarding their participation in a system of economic cooperation on the basis of their own conception of the good; however, it only does so against the background of just state institutions that secure equal civil liberties and political rights for its citizens, ensure that the basic needs of its citizens are met, secure fair equality of opportunity for contracts and positions of employment, and ensure that the system of economic cooperation is set up to maximize the expectations of the least advantaged citizens.
Free and equal citizens have reason to support the principle of freedom of occupational choice as a principle of justice insofar as it secures their ability to decide questions regarding their economic life on the basis of their own conception of the good. The principle of freedom of occupational choice thus expresses a central liberal idea, namely, that each person is entitled to govern his or her own life. Moreover, it is important to note that citizens can appeal to this principle to justify their demands for a higher post-tax income and still stand in a relation of community with each other. In the final section of this chapter, I consider two objections to this principle.

2.3 Two Objections

The first objection that I will consider is taken from G.A. Cohen’s discussion of freedom of occupational choice in *Rescuing Justice and Equality*. Here, Cohen argues that one need not give up freedom of occupational choice in order to secure equality. The second objection concerns Joshua Cohen’s claim in “Taking People as They Are” that the incentives argument for inequality implies that certain types of objectionable incentive inequalities are permissible.

2.3.1 G.A. Cohen on Freedom of Occupational Choice

G.A. Cohen is not unaware of the line of argument that I present in the above section of this chapter. In chapter 5 – “The Freedom Objection” – of *Rescuing Justice and Equality*, Cohen considers the claim that equality, freedom of occupational choice, and Pareto-optimality cannot be realized together. The principle of equality, according to Cohen, demands that people’s access
to desirable conditions of life must be equal, within the constraint of a reasonable personal prerogative.\textsuperscript{477} Cohen understands freedom of occupational choice in much the same way that I do above as the entitlement to decide “how much toil to apply…but also what line to work at, at the given rates of pay.”\textsuperscript{478} Cohen’s concern here is to allay worries that his commitment to equality is inconsistent with a commitment to freedom of occupational choice.\textsuperscript{479} With respect to my revised formulation of the incentives argument for inequality, Cohen’s claim here is that one can accept freedom of occupational choice and still be committed to the principle of equality or the strict difference principle.

To demonstrate the apparent inconsistency of these ideas, Cohen considers the case of the doctor-gardener. The doctor-gardener is capable of both doctoring and gardening, prefers gardening at £20,000 per year to doctoring at £20,000 per year, but prefers doctoring at £50,000 per year to both.\textsuperscript{480} If the egalitarian chooses equality and freedom of occupational choice, the doctor will choose gardening at £20,000 per year, thus violating Pareto-optimality.\textsuperscript{481} If the egalitarian chooses freedom of occupational choice and Pareto-optimality, the doctor will choose doctoring at £50,000 per year, thus violating equality.\textsuperscript{482} Finally, if the egalitarian chooses equality and Pareto-optimality, the doctor will be forced to doctor at £20,000 per year, thus violating freedom of occupational choice.\textsuperscript{483}

\textsuperscript{477} Cohen, \textit{Rescuing Justice and Equality}, 181.
\textsuperscript{478} Ibid, 182.
\textsuperscript{479} Ibid, 183.
\textsuperscript{480} Ibid, 184.
\textsuperscript{481} Ibid, 185.
\textsuperscript{482} Ibid.
\textsuperscript{483} Ibid.
Cohen’s solution to this trilemma is to suggest that the egalitarian can have all three if the doctor-gardener chooses to doctor at £20,000 per year. In this case, Pareto-optimality, equality, and freedom of occupational choice are realized. Cohen relies here on Joseph Carens’ argument in *Equality, Moral Incentives, and the Market* to show that such a solution is institutionally possible. In such a system, a standard capitalist market organizes economic activity and the tax system works to redistribute income to secure equality. As Cohen puts it:

In the proposal of Carens, everyone ends up with the same income, regardless of his or her labor contribution, but people nevertheless gravitate to investment opportunities and jobs that are socially useful. They know which opportunities and jobs are socially useful because of the money “reward” associated with them, which is market-set, according to what consumers are prepared to pay for goods and services from their posttax equal incomes. Pretax incomes are like Monopoly money, since they are all taxed away by the government, which then provides an identical stipend for everyone. People play this game because they believe in equality.

Cohen’s solution to the trilemma is thus to suppose that the doctor is committed to equality and so will exercise his or her freedom of occupational choice to choose doctoring at £20,000 per year. Cohen thus recognizes that freedom of occupational choice is valuable, but argues that it does not justify inequalities as I, following Rawls, argue above. In short, whereas I reject the strict reading of the difference principle on the grounds that it conflicts with freedom of occupational choice, Cohen denies that it conflicts with either this principle or the principle of equality.

Now, given that Cohen and I disagree on the question of whether the principle of equality or the strict reading of the difference principle conflicts with freedom of occupational choice, it

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484 Ibid.
487 Ibid.
is natural to think that we disagree on the content of the idea of freedom of occupational choice. However, I don’t think that this is where the disagreement lies. As I state above, Cohen understands freedom of occupational choice in much the same way that I do, as the entitlement to decide what position to take up and at what rate of pay. Instead, I think that the root of our disagreement lies in our different understandings of the status of freedom of occupational choice. According to my argument in section 2.2, freedom of occupational choice is a principle of justice, that is, a principle that spells out the claims that persons are entitled to make on each other. As a principle of justice, freedom of occupational choice entitles persons to decide for themselves, on the basis of their own conception of the good life, how to participate within a system of economic cooperation. Persons are therefore not entitled to make claims on others regarding their choice of occupation or post-tax income demands. As I make clear above, the root of this principle lies in persons’ highest-order interest in exercising their capacity for a conception of the good.

According to Cohen however, freedom of occupational choice is not a principle of justice, but is merely a legal right. It is not a principle of justice because, according to Cohen, justice demands that persons choose that occupation and salary that will most effectively promote equality. Persons are therefore entitled, as a matter of justice, to demand of others that they choose that occupation and salary that will do so. With respect to the case of the doctor-gardener therefore, I claim that it is up to the doctor-gardener to decide which profession to pursue and what salary to demand. For Cohen by contrast, although the doctor-gardener has the

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488 Ibid, 184.
489 Ibid, 193.
legal right to freedom of occupational choice, justice demands that he or she choose to be a doctor at £20,000 per year.

Insofar as Cohen rejects freedom of occupational choice as a principle of justice and so is committed to the idea that persons possess a duty of justice to decide questions regarding occupational choice and salary on the basis of considerations of equality, Cohen is also committed to what I identify above as the objectionable premise. That is, Cohen is committed to the claim that citizen A is entitled to demand of citizen B that citizen B decide questions regarding occupational choice and salary on the basis of what would be best for citizen A. Even though, on Cohen’s position, such demands are not legally enforceable, as I make clear above, this premise is clearly objectionable from the standpoint of the principle of justifiability to free and equal persons. However, it seems to me that such a premise should be objectionable for any political theory that takes itself to be evenly moderately liberal. The central principle of liberalism is that citizens should be free to decide for themselves what to do with their lives. The principle of freedom of occupational choice secures the capacity of citizens to exercise their freedom. Cohen’s egalitarianism, insofar as it rejects this principle, does not.

Cohen might respond here, as he does to a similar objection in *Rescuing Justice and Equality*, that his position is still liberal insofar as the duty to choose the more productive occupation doesn’t put constraints on people’s freedom.\(^\text{490}\) Cohen’s broader point here is that it doesn’t make sense to say that moral prohibitions, for example, the prohibition on murder, impose restrictions on the freedom of individuals.\(^\text{491}\)

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\(^{490}\) Ibid, 192.

\(^{491}\) Ibid.
However, by responding in this way, Cohen introduces a much weaker conception of freedom, according to which freedom is just freedom from internal causes and external coercion. I agree with Cohen that persons act freely, in this weaker sense, when they comply with moral prohibitions; however, the conception of freedom that underlies the principle of freedom of occupational choice and liberalism more broadly, is a much more robust conception of freedom. According to this more robust conception, persons exercise their freedom not merely when they are not constrained by psychological forces or legal prohibition, but rather when they set and pursue a plan of life on the basis of their conception of the good. Cohen’s position is therefore still insufficiently liberal insofar as it prohibits individuals from exercising this more robust conception of freedom over a central aspect of their lives: their participation in a system of economic cooperation.

2.3.2 Joshua Cohen and the Ultralax Difference Principle

The conclusion of the incentives argument for inequality is that inequalities that result from the provision of incentives to citizens in order to improve the expectations of the worst-off are just. However, even if one accepts freedom of occupational choice as a principle of justice, one might still reject this conclusion on the grounds that it permits incentive inequalities that are objectionable.

Joshua Cohen develops this idea in “Taking People as They Are.” Here, he introduces the idea of the “ultralax” difference principle.\textsuperscript{493} According to the ultralax reading of the difference principle, \textit{all} preferences or intentions are taken as given and are thus considered grounds for permissible inequalities.\textsuperscript{494} According to this reading of the difference principle then, inequalities are just if and only if they are necessary to maximize the expectations of the least-advantaged, given the preferences that citizens happen to have. It follows from this, Joshua Cohen argues, that it is just to give citizens incentives even in cases where they demand them in order to satisfy preferences that are objectionable.

Cohen outlines four types of cases in which the ultralax difference principle seems to permit incentive inequalities that are objectionable. In “Ascriptive Group Preferences,” racist or sexist individuals demand incentive inequalities as compensation for providing members of a certain identifiable groups with benefits.\textsuperscript{495} In “Class Preferences,” a classist land-owning class are only willing to work productively if a substantial gap is maintained between themselves and members of the lower classes.\textsuperscript{496} In “Greedy/Needy,” the “greedy” are only willing to work productively – as opposed to “tending their gardens” – if the rewards are substantially great, leaving little left over for the “needy” who living poorly.\textsuperscript{497} Finally, in “Large Dispersion,” a “greedy, advantaged group” is only willing to work productively if the rewards are substantially

\textsuperscript{493} Cohen, “Taking People as They Are?” 368.
\textsuperscript{494} Ibid.
\textsuperscript{495} Ibid, 369.
\textsuperscript{496} Ibid.
\textsuperscript{497} Ibid, 369-370.
great, leading to a large dispersion between the income levels of this group and the least advantaged.\textsuperscript{498}

Cohen argues that these inequalities are indeed objectionable and so concludes that the ultralax difference principle cannot be a requirement of justice.\textsuperscript{499} As well, although he thinks that Rawlsian justice does not condone the ultralax difference principle, he also notes that nothing in Rawls’s two principles of justice condemns these kinds of objectionable incentive inequalities that are consistent with it.\textsuperscript{500} Rawlsian justice is subject to this problem, Cohen thinks, because of the way in which Rawls tries to marry a political conception of justice, according to which institutions are the primary subject of justice, with egalitarianism.\textsuperscript{501} If principles of justice do not apply to the private choices of individuals, and the preferences of individuals are taken as given, then Rawlsian justice will be committed to endorsing certain types of objectionable inequalities.\textsuperscript{502}

Cohen’s solution to the problem of objectionable inequalities is to argue that such inequalities would not emerge in a Rawlsian just society.\textsuperscript{503} In short, Cohen argues that because institutions play an important role in shaping both economic and political outcomes and the preferences and aspirations of individuals, in a just Rawlsian society, where citizens are

\textsuperscript{498} Ibid, 370.
\textsuperscript{499} Ibid, 371.
\textsuperscript{500} Ibid, 371-372.
\textsuperscript{501} Ibid, 364-365.
\textsuperscript{502} Ibid, 384-385.
\textsuperscript{503} Ibid, 380.
committed to recognizing each other as equals and where the principles of equal liberty and fair equality of opportunity are satisfied, these objectionable cases will not arise.\textsuperscript{504}

Cohen’s solution is no doubt a reasonable one. However, it seems to me that it avoids the real issue. Rawls’s two principles of justice, as well as the political authority theory, seem to be committed to the ultralax difference principle. If the incentive inequalities that this principle permits are indeed objectionable, then regardless of the likelihood of these inequalities, there seems to be a problem with the principle, and, by extension, both the political authority theory and Rawls’s justice as fairness.

However, I don’t think that the political authority theory permits incentive inequalities that are truly objectionable. First, I think that the political authority theory can condemn as unjust or objectionable the incentive inequalities described in cases like Ascriptive Group Preferences and Class Preferences. The reason for this is that although the political authority theory rejects the idea that principles of distributive justice apply to the private choices of individuals, it does not reject the idea that individuals possess duties of justice. As I argue in chapter 3, persons possess a duty of justice to respect the free and equal nature of others. Because persons possess the equal authority to co-determine the terms of social interaction, to comply with this duty, citizens must not only recognize the free and equal nature of their fellow citizens, but must interact with them on the basis of terms that are justifiable to them considered as free and equal persons. It is thus this duty that underlies the contractualist principle of justifiability to free and equal persons.

\textsuperscript{504} Ibid, 380-384.
This point is important for our purposes because the duty to respect the free and equal nature of others imposes constraints on the types of comprehensive doctrines that individuals can hold and make claims on the basis of. Citizens can recognize the free and equal nature of their fellow citizens only if they do not at the same time hold comprehensive doctrines that deny that they are in fact free and equal. To comply with the duty to respect the free and equal nature of their fellow citizens therefore, citizens must hold what Rawls calls a “reasonable comprehensive doctrine.”\(^505\) Reasonable comprehensive doctrines, according to Rawls, are the comprehensive doctrines that reasonable persons hold, that is, persons who recognize the free and equal nature of their fellow citizens.\(^506\) Unreasonable comprehensive doctrines, by contrast, are those doctrines held by individuals who are unreasonable, that is, persons who deny the free and equal nature of their fellow citizens.

This duty to respect the free and equal nature of others is important moreover, because compliance with it is a necessary condition of a just, well-ordered society. That is, only if persons comply with this duty is it possible to have a society in which everyone accepts, and knows that everyone else accepts, the same public conception of justice.\(^507\) If some citizens hold unreasonable comprehensive doctrines and so are unwilling to accept principles of justice that are justifiable to all considered as free and equal, then all that is possible is a *modus vivendi*, that is, a fortunate convergence of opposing interests.\(^508\)

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\(^506\) Ibid, 61-62.
\(^507\) Ibid, 35.
\(^508\) Ibid, 147.
The problem with cases such as Ascriptive Group Preferences and Class Preferences then is that individuals fail to comply with their duty to respect the free and equal nature of their fellow citizens. In both cases, individuals demand incentive inequalities on the basis of a comprehensive doctrine that denies the equality of their fellow citizens. Such demands are objectionable precisely because no legitimate demand can be derived from a comprehensive doctrine that one is not entitled to hold. That is, because it is wrong to hold unreasonable comprehensive doctrines, such doctrines cannot provide the basis for any just demands on the actions of others.

According to the political authority theory then, the incentive inequalities of Ascriptive Group Preferences and Class Preferences are objectionable because of the way in which the demands for these incentive inequalities are grounded in unreasonable comprehensive doctrines. However, the political authority theory is also committed to the flip side of this claim. Provided that the demands of individuals are rooted in a reasonable comprehensive doctrine, incentive inequalities are permissible and therefore not objectionable. For the political authority theory then, certain types of incentive inequalities are permissible which Cohen finds – or might find – objectionable.

First, the political authority theory is committed to the permissibility of incentive inequalities whose demands are rooted in illiberal – but reasonable – comprehensive doctrines. This is an important point, since it is unclear what it is that Cohen finds objectionable in Ascriptive Group Preference and Class Preference – the fact that such comprehensive doctrines are unreasonable, or the fact that they are illiberal. An example will help illustrate what is at stake here. Suppose a member of an orthodox religion – a talented engineer – has reservations about working at an engineering firm because of the way in which she will have to interact with
non-believers. This person’s comprehensive doctrine is reasonable insofar as she respects the free and equal nature of her fellow citizens and so supports liberal political institutions; however, she finds it easier to adhere to her strict religious duties when she only interacts with members of her orthodox faith. For this reason, she decides that she will only work at the firm if she receives an above average post-tax income. Her reasoning here is that she will use the extra money to reaffirm her faith, for example by traveling to holy sites etc. Because of what her talents will bring to the firm, the firm offers to meet her demands. For the political authority theory, this incentive inequality is not objectionable. Despite the fact that her comprehensive doctrine is illiberal, since it is reasonable, she does not violate her duty to respect the free and equal nature of her fellow citizens. Her claim is only that she be entitled to decide questions concerning her participation in a system of economic cooperation on the basis of her reasonable comprehensive doctrine. Just as the doctor-gardener is entitled to demand an above-average salary to work as a doctor rather than as a gardener, so too is the talented engineer entitled to demand an above-average salary to take the position at the firm. The fact that one holds a non-liberal – but reasonable – comprehensive doctrine is irrelevant. Freedom of occupational choice not only entitles persons with liberal comprehensive doctrines to decide what occupation to pursue and what salary to demand to perform the occupation in question on the basis of their conception of the good, but also entitles persons with non-liberal comprehensive doctrines to do so.

Just as the political authority theory permits the incentive inequalities in the case of the talented engineer, it also permits the incentive inequalities in the case of Large Dispersion. Cohen’s claim regarding this case is that the dispersion between the well-off – the greedy – and the worse-off is too great. As Cohen puts it: “Paying the incentives that are necessary, given de facto preferences, to maximize the advantage of the least advantaged results in extreme income dispersion: a dispersion that we are inclined to find objectionable or excessive, either because of
the preferences that produce it or, more likely, just because it strikes us as objectionable that
some people live that much better than others." However, I don’t think that such incentive
inequalities are in fact objectionable. First, it is important to note that Cohen has in some sense
‗cooked‘ the thought experiment by describing those who are able to command a higher income
in the case as “greedy.” On the one hand, by describing the behavior of the talented in this
case as vicious, Cohen has prejudged the rightness or wrongness of their actions. On the other
hand, although Cohen is entitled to set up his thought experiment as he likes, by attributing the
motive of greed to the talented, there is a sense in which his description of the claims of the
talented are incomplete. Is it the case that the talented in this case are simply motivated by the
desire to have more? Or is it rather the case that they want a higher income so that they can do
something with it? One’s intuitions might be different if the case were described so as to include
the ends or projects of the talented. For example, suppose it is the case that the large dispersion is
necessary to maximize the expectations of the least advantaged because many of the talented
individuals in the society, as in the case of Greedy/Needy, “genuinely would prefer tending their
gardens to being captains of industry and finance unless the rewards are sufficiently great.” In
a case like this, where the talented are not simply greedy, but are instead weighing two sets of
projects against each other, are such incentive inequalities really unjust?

Second, even if one shares Cohen’s intuition that a particularly large dispersion, however
it is described, is unjust in some way, it is difficult to see how one could object to it on more
principled grounds. The reason for this is that Large Dispersion is simply the result of persons

509 Cohen, “Taking People as They Are?” 370.
510 Ibid.
511 Ibid, 369-370.
exercising their freedom of occupational choice. To claim that Large Dispersion is an unjust
distribution is thus also to claim that talented individuals possess a duty of justice to decide what
occupation to pursue and what post-tax income to demand not on the basis of their own
conception of the good, but rather on the basis of what would be best for others. In other words,
it is to commit oneself to what I identify above as the objectionable premise.

Cohen might object here that his position is not that the talented should have to decide
these questions on the basis of what would be best for others, but only that they should not be
allowed to demand incentive inequalities that are intuitively “excessive.”\textsuperscript{512} However, it is
difficult to see how such a response provides any kind of solution at all. The idea of an
‘excessive’ demand is too vague to do any work, and I see no way that Cohen can make
theoretical sense out of it within the Rawlsian framework that he is working with. As Rawls
himself makes clear, justice as fairness is an example of pure procedural justice.\textsuperscript{513} Unlike
utilitarianism or egalitarianism, which specifies an independent standard for judging the
rightness or wrongness of a particular distribution, for Rawls, the rightness of a distribution – for
example, whether a particular dispersion is too large – cannot be answered in the abstract.\textsuperscript{514}
Instead, Rawls’s two principles specify the claims that individuals are entitled to make on each
other. Because individuals are not entitled to demand of others that they decide questions
concerning their occupation and post-tax income so as to bring about a certain pattern of
distribution, it is not possible to specify in advance the shape that a just distribution will take.

\textsuperscript{512} Ibid, 370-371.
\textsuperscript{513} Rawls, \textit{A Theory of Justice}, 74-77.
\textsuperscript{514} Ibid, 76-77.
Cohen rejects this fundamental Rawlsian commitment when he claims that a certain pattern of distribution is unjust simply because the dispersion is too large.

Finally, although the political authority theory is committed to the permissibility of the incentive inequalities described in Large Dispersion, it is not necessarily committed to the permissibility of Greedy/Needy. The reason for this is that for the political authority theory, Greedy/Needy is an exercise in non-ideal theory. Recall from chapter 4 that according to the political authority theory, the state can only enact and enforce a system of personal property if it first ensures that the basic needs of its citizens are met. In Greedy/Needy, the state does not comply with this duty of justice, since some of its citizens are needy. The question for the political authority theory is thus whether the right to freedom of occupational choice takes precedence over the requirement of the state to ensure that the basic needs of its citizens are met. This question is beyond the scope of this chapter and so I will not discuss it here.

According to the political authority theory then, Cohen is right to find the incentive inequalities of Ascriptive Group Preferences and Class Preferences to be objectionable. However, Cohen is wrong to find the incentive inequalities of Large Dispersion to be objectionable. Instead, these latter incentive inequalities are simply the result of persons exercising their freedom of occupational choice. Cohen can thus only condemn these incentive inequalities as objectionable at the cost of claiming that some persons, because of their talents, possess a duty of justice to decide questions concerning their occupation and post-tax income not on the basis of their own conception of the good, but rather on the basis of what would be best for others.
Conclusion

In this chapter, I have argued for the claim that the state’s relation to its citizens is the primary or sole site of distributive justice. First, I have shown that the state, because of the way in which it exercises political authority over its citizens, constitutes a distinctive and normatively significant site of distributive justice. By doing so, I have shown that CAD, the position that the primary site of distributive justice is the state’s relation to its citizens, is in part correct.

Second, I have considered and rejected what I take to be the most compelling argument for an alternative to CAD: Cohen’s luck egalitarian version of IAC. Against Cohen, I have shown that free and equal citizens have reason to reject the idea that principles of distributive justice apply to the private choices of individuals. Instead, because free citizens have a highest-order interest in setting and pursuing a conception of the good, they have reason to support a principle of justice that entitles them to decide for themselves, on the basis of their own conception of the good, what post-tax income to demand and which occupation to perform. As well, I have shown that the reasons that free and equal citizens have for rejecting Cohen’s proposal are also reasons for rejecting any principle of distributive justice that applies to the private their private choices. For any theory of justice that claims to respect the values of freedom and equality therefore, the state’s relation to its citizens is not only a distinctive and normatively significant site of distributive justice, but is, in fact, the primary or sole site of distributive justice.
Chapter 6 The Basic Structure Thesis 2: The Scope of Distributive Justice

According to the basic structure thesis, the state’s relation to its citizens is both the site and defines the scope of distributive justice. The basic structure is the site of distributive justice, according to this thesis, insofar as principles of distributive justice only apply to the actions of the state, and not to the actions of individuals. The basic structure also defines the scope of distributive justice, according to this thesis, insofar as the state only possesses these distributive obligations to its citizens, and not to foreigners. In chapter 5 I argued for the site-component of this thesis. In this chapter, I turn my attention to the scope-component.

The question of the scope of distributive justice concerns the range of agents who possess distributive obligations to each other. As I make clear in chapter 1, two positions on this question are possible. Practice-dependent (PD) theories claim that participation in a shared practice is a necessary existence condition of distributive obligations. Practice–independent (PI) theories deny this claim. Whereas the question of the site of distributive justice largely concerns the question of the types of agents who possess distributive obligations, the question of the scope of distributive justice concerns the question of which agents are the objects of these obligations.

Within the category of PD theories, a number of positions are possible. The differences among these theories lie in the type of practices that they identify as necessary for the existence of distributive obligations. Within the global justice literature, two positions are prominent. First, statists, such as John Rawls, Michael Blake, and Thomas Nagel, argue that membership in the
same state is necessary for the existence of distributive obligations.\textsuperscript{515} Second, cooperativists, such as Charles Beitz, Thomas Pogge, Andrea Sangiovanni, and Joseph Heath argue that membership within the same cooperative scheme is necessary for the existence of distributive obligations.\textsuperscript{516}

In this chapter, I want to motivate the claim that the state’s relation to its citizens defines the scope of distributive justice. To do so, I will first argue that it follows from my argument in chapter 4 that the scope of distributive justice includes the practice-mediated relationship of the state to its citizens. In short, because the state must secure distributive justice for its citizens if its exercise of its political authority is to be legitimate, the scope of distributive justice is, at least in part, defined by this practice-mediated relationship. In part 1 of this chapter, I will introduce this point in the form of a response to anti-statist theorists who argue that the state’s relation to its citizens is neither distinctive nor normatively significant for the problem of distributive justice.

However, although this argument implies that the statist version of PD is in part correct, it doesn’t follow from this that agents do not possess distributive obligations to each other in the absence of such a relation. To justify the statist position and thus show that the state’s relation to its citizens defines the scope of distributive justice, I must therefore show that other positions on the scope of distributive justice are mistaken. Since proving a negative is a difficult task, I will limit myself to showing that free and equal persons have reason to reject the principles underlying the three strongest positions on the question of the scope of distributive justice. By doing so, I accomplish two tasks, First, I show that the fundamental premises of the political


\textsuperscript{516} See Beitz, Political Theory and International Relations; Pogge, Realizing Rawls; Heath, “Rawls on Global Distributive Justice: A Defense;” and Sangiovanni, “Global Justice, Reciprocity, and the State.”
authority theory, namely the idea of persons as free and equal, imply that the scope of
distributive justice is limited to the state’s relation to its citizens. Second, by appealing to the
important values of freedom and equality to reject alternatives to my statist position, I also show
that these positions face a number of serious problems.

The first position that I will consider is what I will call “global luck egalitarianism”
(GLE). GLE is a version of consequentialist cosmopolitanism (CC), according to which the site
of distributive justice is the ends of individual agents and the scope of distributive justice is
practice-independent. GLE is committed to the principle that inequalities in the distribution of
benefits and burdens are just if and only if they are due to choice and not circumstance. GLE
theorists thus argue that agents have a duty to redress inequalities in wealth and opportunity that
are due to unchosen circumstances – such as national citizenship – whether individuals share an
institutional scheme or not.

The second position that I will consider is a version of deontological cosmopolitanism
(DC). According to DC, the site of distributive justice is the acts of individuals, and the scope is
practice-independent. The version of DC that I will consider is global left-libertarianism (GLL).
Theorists committed to GLL argue that obligations of distributive justice are global on the
Lockean grounds that original acquisition is unjust unless agents leave enough for others to
acquire an equal share.

Finally, I will consider a position that I will call “Rawlsian cosmopolitanism” (RC).
Rawlsian cosmopolitans are committed to two central Rawlsian ideas: the idea that the basic
structure is the primary subject of justice, and the idea that principles of justice must be
justifiable to free and equal persons. However, unlike Rawls, these theorists argue that because
there is a global basic structure, principles of distributive justice must apply globally and not
merely domestically. Rawlsian cosmopolitans are thus committed to individual institutionalism (II), according to which the site of distributive justice is the acts of individuals, and the scope of distributive justice is defined by participation in an institutional scheme.

Before addressing these three positions however, I will first respond to anti-statist theorists who argue that the state’s relation to its citizens is neither distinctive nor normatively significant for the problem of distributive justice.

1 Political Authority and the Scope of Distributive Justice

Statism is the position that the scope of distributive justice is defined by the state’s relation to its citizens. As I discuss in chapter 2, the most prominent justifications for statism include Blake’s coercion theory of the basic structure and Nagel’s authorial theory of the basic structure. According to Blake, the basic structure, consisting of the political and legal institutions of the liberal state,\(^5\) defines the scope of distributive justice because of the distinctive way in which the state exercises coercion over its members.\(^5\) Nagel, by contrast, though he understands the basic structure in the same way as Blake, argues that the state possesses an obligation to its citizens to secure distributive justice because of the distinctive way in which its citizens are both the authors and subjects of a coercively imposed system of norms.\(^5\)

\(^5\) Ibid, 258.
As I discuss in chapter 2, Blake and Nagel are often understood by their critics to be committed to an argumentative strategy that I call the existence conditions strategy. The existence conditions strategy has two steps. The first step is to identify the conditions that are necessary and together sufficient for the existence of distributive obligations. The second step is to argue that only the state’s relation to its citizens satisfies these conditions. Critics of Blake’s coercion theory thus understand Blake to be committed to the claim that state coercion is a necessary and sufficient condition of distributive justice and to the claim that the state only coerces its own citizens.\(^{520}\) Similarly, critics of Nagel’s authorial theory understand Nagel to be committed to the claim that an authorial relation is a necessary and sufficient condition for distributive justice and that only the state’s relation to its citizens satisfies this condition of distributive justice.\(^{521}\) These critics of Blake and Nagel’s positions do not so much challenge the specific existence conditions that they claim Blake and Nagel are committed to, but instead simply argue that it is not only the state’s relation to its citizens that satisfies these existence conditions. For example, Arash Abizadeh rejects Blake’s coercion theory on the grounds that the state not only exercises coercion over its citizens but also over foreigners.\(^{522}\) Similarly, Andrea Sangiovanni rejects Nagel’s authorial theory on the grounds that international institutions, such as the IMF and WTO also stand in an authorial relation to the citizens of states.\(^{523}\)

However, the political authority theory is committed to a different argumentative strategy: the legitimacy strategy. The aim of the legitimacy strategy is not to identify the necessary and sufficient existence conditions for the existence of distributive justice, but rather to

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521 Sangiovanni, “Global Justice, Reciprocity, and the State,” 16-17.
argue that the state’s exercise of its political authority over its citizens raises the problem of its legitimacy in doing so, and that this problem of legitimacy includes the problem of distributive justice. In short, to exercise its political authority legitimately, the state must secure distributive justice for its citizens. The legitimacy strategy does not, therefore, attempt to identify the conditions that are necessary and together sufficient for the existence of distributive justice, and then argue that only the state satisfies these conditions. Instead, the legitimacy strategy starts with the state as an institution that exercises political authority over its citizens and argues that it faces the problem of legitimacy. The legitimacy strategy is a promising one for showing that the state possesses distinctive distributive obligations to its citizens since, as I argue in chapter 2, the state exercises political authority over its citizens in a distinctive way.

I have carried out the legitimacy strategy in chapter 4. First, I argued that because free and equal persons possess the equal authority to govern their interactions with each other, the state’s exercise of political authority over its citizens raises the problem of political legitimacy: under what conditions, is the state entitled to tell its citizens what to do and to force them to do it? Second, I argued that this problem of the state’s legitimate exercise of its political authority includes the problem of distributive justice on the grounds that the state can only exercise its political authority legitimately if it secures a just distribution of political rights and civil liberties on the one hand, and income and opportunities on the other.

With respect to the debate between statists and their critics then, the political authority theory makes an important intervention. It provides an account of why the state’s relation to its citizens is normatively significant for the problem of distributive justice. This is an important intervention because, as I discuss above, the primary argumentative strategy of critics of statism
has been to show that the state’s relation to its citizens is neither distinctive nor normatively significant for the problem of distributive justice.

However, although the political authority theory shows that the state stands in a distinctive relation to its citizens and that this relation is important for the problem of distributive justice, it doesn’t follow from this that the scope of distributive justice is limited to the state’s relation to its citizens. That is, one might argue, that agents possess distributive obligations to foreigners on the basis of a different account of the grounds of distributive justice. In parts 3-5 of this chapter therefore, I consider and reject the most prominent arguments supporting this position. Before doing so however, I first establish a framework for carrying out the discussion that follows.

2 The Scope of Distributive Justice: A Theoretical Framework

The questions constitutive of the field of global justice are wide-ranging: is a world state a requirement of justice? How should liberal peoples relate to non-liberal peoples? Under what conditions is international trade just? What are the limits to sovereignty? What are our duties to foreigners in a non-ideal world? What is the normative significance of national membership? What do liberal states owe to stateless persons? How should the burdens of dealing with climate change be distributed? However, in this chapter, I am only concerned with one question: does the scope of distributive justice extend beyond the state’s relation to its citizens? For the purposes of isolating the point of disagreement between my own statist position and the anti-statist positions that I will discuss below, I want to introduce a number of parameters to govern the discussion that follows.
First, my inquiry into the subject of distributive justice is an exercise in ideal theory. My aim is to determine what the subject of distributive justice is, under the assumption that agents – individuals and states – act justly. With respect to my discussion of anti-statist positions on this question therefore, I will seek to determine whether the scope of distributive justice extends beyond the state’s relation to its citizens in a world where states are internally just, and act justly towards other states.

Second, although the question of the rightful relation between liberal and non-liberal states is an important one, I will not consider it here. I will limit myself to determining what the scope of distributive justice is for states that are liberal.

Third, I will not address the problem of global poverty. That is, I will not discuss the question of what liberal states owe to what Rawls refers to as burdened societies: societies that “lack the political and cultural traditions, the human capital and know-how, and, often, the material and technological resources needed to be well-ordered.”524 The reason for this is that the problem of global poverty is different from the problem of global distributive justice. The former is the problem that some societies fall below a certain social, economic, and institutional threshold. Duties to address global poverty therefore take the form of duties to raise those societies to the requisite social, economic, and institutional threshold. Such duties therefore have a cut-off point. The problem of global distributive justice, by contrast, concerns the question of whether equality between states is a demand of justice. That is, it is the question of whether something like Rawls’s difference principle or G.A. Cohen’s luck egalitarian principle should govern the relation between states.

This distinction between the problem of global poverty and the problem of global distributive justice is important because it is necessary to isolate the point of disagreement between statist and anti-statist positions on the question of the scope of distributive justice. Statist and anti-statist positions need not disagree on the need to eradicate global poverty. For example, in *The Law of Peoples*, Rawls argues that well-ordered peoples possess a duty to assist burdened societies while at the same time rejecting the idea of global distributive justice. The point of disagreement between these positions does not therefore concern the duty to eliminate global poverty; rather, these positions disagree on the justice of the relative inequality of the citizens of different states.

Fourth, although, as I discuss in chapter 4, the problem of distributive justice includes both the distribution of rights and liberties and the distribution of opportunities and material wealth, I will focus on the latter component of this problem. My reasons for doing so are twofold. First, the debate on the scope of distributive justice has primarily focused on this aspect of distributive justice. Second, although a number of theorists argue for globalizing Rawls’s first principle of justice, it is difficult to understand what this means. Does it mean that states must observe this principle internally? Or, does it mean that states must establish international governance institutions? In any case, both options raise issues that are beyond the scope of this dissertation. The first alternative raises the question of the relation between liberal and non-liberal states; the second alternative raises the question of whether a world state or international governance institutions are a requirement of justice.

525 Ibid, 106, 113-120.
Fifth, for the purposes of discussing the question of scope of distributive justice, I will employ a thought experiment that observes these parameters. My hypothetical world consists of two states – A and B – that are internally just. Each state, therefore, has secured equal civil liberties and political rights for its citizens, ensured that the basic needs of its citizens are met, secured fair equality of opportunity for contracts and positions of employment, and ensured that its system of social cooperation is set up to maximize the expectations of the least advantaged citizens. However, A is wealthier than B. Its per capita income is $40000, while B’s per capita income is $25000. This difference in wealth is due to two factors. First, $7500 of the difference is due to the fact that A has greater natural resources than B. Second, $7500 of the difference is due to the fact that most citizens of A have each, individually, decided on a conception of the good that requires many all-purpose means. For this reason, citizens of A are willing to work longer hours than citizens of B at productive occupations.

Finally, my aim in this chapter is to show that free and equal persons have reason to reject principles of global distributive justice. However, as Charles Beitz makes clear, theorists disagree about how to formulate the Rawlsian idea of justifiability to free and equal persons at the global level. Social liberals, Beitz claims, conceive of the problem of global justice as the problem of the interaction of societies organized as states. With respect to the question of the theoretical framework theorists should employ to justify principles of global justice then, social liberals argue that principles must be justifiable to free and equal peoples or states. Rawls’s *Law of Peoples* is thus a typical example of social liberalism insofar as it understands the problem of global justice to be the problem of the relation of peoples who possess their own internal

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governments. According to Rawls, principles of global justice must therefore be chosen from the standpoint of a global original position in which the parties represent peoples.

Cosmopolitan liberals, by contrast, understand the problem of global justice to be the problem of the relation of individual persons. As Beitz puts it, cosmopolitan liberalism “accords no ethical privilege to state-level societies” but instead “aims to identify principles that are acceptable when each person’s prospects, rather than the prospects of each society or people, are taken fairly into account.” Rawlsian cosmopolitans have operationalized this idea by employing a global original position whose parties represent individual persons. For example, in Realizing Rawls, Thomas Pogge suggests that principles of justice – domestic and global – should be chosen from the standpoint of a single original position. Pogge’s original position thus makes no distinction between the questions of domestic and global justice.

Beitz’s distinction between social and cosmopolitan liberalism is a helpful one; however, I don’t think that the political authority theory implies either a social liberal or cosmopolitan liberal contractualist framework as Beitz defines them. Instead, I will employ an alternative contractualist principle for approaching the problem of the principles that should govern the relations between internally just liberal states. I will call this principle the principle of justifiability to free and equal persons qua citizens of an internally just liberal state, or the ‘global principle of justifiability to free and equal persons’ for short. According to this principle, the

528 Ibid, 32.
530 Pogge, Realizing Rawls, 246-247.
right principles of justice to govern the relation between liberal states are those that are justifiable to free and equal persons considered as citizens of an internally just liberal state.

My reasons for employing this framework reside in the problems that affect Beitz’s conception of cosmopolitan and social liberalism. First, from the standpoint of the political authority theory, the problem with Pogge’s interpretation of cosmopolitan liberalism is that it fails to recognize any difference between domestic and international systems of social cooperation. However, as I make clear in chapter 4, the state’s exercise of political authority over its citizens raises a distinctive problem of justice. In short, because persons are free and equal, the state can only exercise its political authority legitimately if it does so in accordance with principles that are justifiable to its citizens considered as such. To choose all principles of justice – both domestic and global – from a single original position as Pogge suggests would be to fail to recognize the distinctiveness of the state’s relation to its citizens and the way in which the state’s exercise of political authority over its citizens raises important problems of justice. From the standpoint of the political authority theory therefore, a contractualist framework for dealing with the problems of global justice must recognize the normative significance of the state’s relation to its citizens, including both the entitlement of the state to exercise its political authority over its citizens, as well as the special distributive responsibilities that the state possesses.

Social liberalism certainly provides a framework that recognizes these aspects of the state’s relation to its citizens. However, from the standpoint of the political authority theory, social liberalism is not entirely adequate either. Cosmopolitan liberals often criticize social liberalism for being both metaphysically and morally dubious. For example, in *Justice without Borders*, Tan argues that a theory of global justice that “treats states as basic in this way shoulders considerable metaphysical burdens of proof” and also fails to recognize that we “are
moved by global injustices in the first place because of the pain and suffering inflicted on individuals rather than by the suffering of some abstract collectivity like the state."531 However, while these complaints might be true of some forms of social liberalism, they seem to be unfair to the more sophisticated versions. For example, in The Law of Peoples, Rawls’s concept of peoples seems to be neither metaphysically nor morally dubious in the way that Tan suggests. Peoples, Rawls tells us, are just citizens of a state acting collectively through their political institutions.532 The concept of peoples is thus no more metaphysically mysterious than the concept of the liberal state as a collective agent constituted by its free and equal citizens acting together. Similarly, Rawls’s idea of peoples does not seem to be morally dubious either. That is, the fundamental interests of peoples in securing their political independence and just political order and in cooperating with other peoples on the basis of fair terms simply represent the highest-order interests of their free and equal citizens in exercising their capacity to be reasonable and their duty to support just institutions.533

However, at the same time, one questionable aspect of social liberalism as a contractualist framework is the lack of a direct reference to the interests of citizens considered as free and equal persons. As I will show below, this is a problem for discussing the question of the principles of justice that should govern an international system of economic cooperation because it is not possible to understand why participation in such a system is appealing simply by reference to the two fundamental interests of peoples. Instead, as I will argue below, one must

531 Kok-Chor Tan, Justice without Borders, 36.
533 Ibid, 34-35.
refer to the interests of free and equal citizens in designing a system of economic cooperation that is as efficient as possible – interests that international trade advances.

Global justifiability to free and equal persons solves the problems with both cosmopolitan liberalism and social liberalism. On the one hand, this principle recognizes the distinctive relation that the state stands in with respect to its citizens and so avoids the problem with cosmopolitan liberalism. On the other hand, it avoids the perceived problems of social liberalism insofar as it makes reference to the interests of persons rather than peoples or states. In what follows, I will rely on this contractualist principle to show that free and equal persons have reason to reject principles of global justice that imply that the scope of distributive justice is global.

3 Global Luck Egalitarianism

Global luck egalitarianism (GLE) is committed to the luck egalitarian principle that inequalities in the distribution of benefits and burdens are just if and only if they are the result of choice and not circumstance. However, GLE claims that this principle must be applied globally, irrespective of practice-mediated relationships, and not merely within the context of a domestic society.

As I note above, GLE is a type of consequentialist cosmopolitanism (CC). First, GLE is committed to consequentialism insofar as it claims that justice demands that agents act to realize a certain valuable state of affairs, namely, a pattern of distribution in which inequalities are only

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Cohen, *Rescuing Justice and Equality*,

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due to choice and not circumstance. Second, GLE is practice-independent. According to GLE, inequalities due to circumstance are unjust even if agents do not interact with each other. With respect to our thought experiment then, GLE claims that inequalities between citizens of A and citizens of B that are due to differences in natural resources are unjust. Citizens of A therefore possess a duty of justice to redistribute part of their GDP to citizens of B to redress this inequality, whether they interact with each other or not.

To my knowledge, no theorist has explicitly defended GLE as a principle of global distributive justice. However, the principle of GLE, namely, that inequalities that are due to circumstances and not choices are unjust, is prominent in the global justice literature. Many global justice theorists have argued that nationality (and the benefits that go along with it), like talent, is arbitrary from the moral point of view and so should not be the basis for inequalities. For example Ayelet Shachar appeals to this idea in *The Birthright Lottery: Citizenship and Global Inequality*. Here, she argues that the institution of birthright citizenship is analogous to the institution of inherited property.535 Birthright citizenship, like property regimes, Shachar claims, “define access to certain resources, benefits, protections, decision-making processes, and opportunity-enhancing institutions which are reserved primarily to those defined as right-holders.”536 The problem with both institutions, Shachar argues, is that they distribute benefits and burdens in a radically unequal way on the basis of circumstances for which individuals are not responsible, namely, the circumstances of their birth.537 With respect to the institution of birthright citizenship, Shachar puts the point in the following way:

536 Ibid, 7.
537 Ibid, 3-4, 97-98.
For those granted a head start simply because they were born into a flourishing political community, it may be difficult to appreciate the extent to which others are disadvantaged due to the lottery of birthright. But the global statistics are revealing. Children born in the poorest nations are five times more likely to die before the age of five. Those who survive their early years will, in all likelihood, lack access to basic subsistence services such as clean water and shelter, and are ten times more likely to be malnourished than children in wealthier countries. Many will not enjoy access to even basic education, and those out of school are more likely to be girls than boys. The odds that they will either witness, or themselves suffer, human rights abuses are also significantly increased. What is more, these disparities that attach to birthright citizenship are not a matter of individual desert or fault; rather, they represent systemic and structural patterns. In such a world, citizenship laws assigning political membership by birthright play a crucial role in the distribution of basic social conditions and life opportunities on a global scale.\footnote{Ibid, 3.}

The institution of birthright citizenship is objectionable, Shachar claims, because it stands in the way of the “equal realization of opportunities” and distributes the good of political membership on the basis of a “morally arbitrary set of criteria.”\footnote{Ibid, 4.} Shachar’s solution, however, is not the abolitionment of the institution of birthright citizenship, which would threaten the collective good of citizenship, but rather the imposition of a “birthright privilege levy”\footnote{Ibid, 86.} on persons who benefit from the institution of birthright citizenship to “redress the profound global consequences of the property-like birthright regimes that maintain their privilege.”\footnote{Ibid, 70.} The birthright privilege levy, Shachar claims, would redistribute resources (or valuable infrastructure, services, or transfers-in-kind) from those who have disproportionately benefited from the intergenerational transfer of the property of citizenship to those who have not” with the aim of equalizing opportunity.\footnote{Ibid, 97. Shachar does specify that those children who benefit from the institution of birthright citizenship must still have the resources necessary to have a fair chance to live a successful life. Ibid, 98.}
Simon Caney makes a very similar argument in “Cosmopolitan Justice and Equalizing Opportunities.” Here, Caney defends a global principle of fair equality of opportunity.\(^{543}\) According to this principle, “global equality of opportunity requires that persons (of equal ability and motivation) have equal opportunities to attain an equal number of positions of a commensurate standard of living.”\(^{544}\) Caney justifies this principle on grounds similar to Shachar’s, namely that persons should not face worse chances in life because of circumstances that are arbitrary from the moral point of view.\(^{545}\) As Caney puts it, “people should not be penalized because of the vagaries of happenstance, and their fortunes should not be set by factors like nationality or citizenship.”\(^{546}\)

Shachar and Caney each articulate a plausible ground for global distributive justice by appealing to the compelling luck egalitarian principle that inequalities are just if and only if they are the result of choice and not circumstance. This principle is compelling precisely because it seems unfair if persons fare better or worse than others because of luck. However, I want to argue here that luck egalitarianism, whether considered as a domestic principle of distributive justice, or as a global principle of distributive justice, faces serious problems. First, I will argue that luck egalitarianism fails on its own terms. Luck egalitarianism claims that inequalities in the distribution of benefits and burdens are unjust if they are the result of brute luck or factors that are arbitrary from the moral point of view. However, I will argue that luck egalitarianism violates its own principle insofar as it necessarily imposes an unequal distribution of duties and entitlements on agents on the basis of such brute luck/arbitrary factors. Second, I will argue that


\(^{544}\) Ibid, 130.

\(^{545}\) Ibid, 124-125.

\(^{546}\) Ibid, 125.
free and equal persons have reason to reject GLE on the grounds that it is committed to a collective version of what I identify as the objectionable premise in chapter 5. According to this version of the objectionable premise, citizens of an internally just liberal state, state 1, are entitled to demand of citizens of internally just liberal state 2 that the citizens of 2 design their domestic system of economic cooperation not on the basis of their own highest-order interests, but instead on the basis of the considerations of what would be best for citizens of 1. This premise is objectionable, I will argue, because free and equal persons must be entitled to decide questions regarding their productive life – whether concerning their choice of occupation or the design of the system of economic cooperation within which they participate – on the basis of their own highest-order interests, not the interests of others.

3.1 Luck Egalitarianism: Failure on its own Terms

Proponents of luck egalitarianism motivate the view by appeal to one of two closely related ideas. First, luck egalitarians sometimes appeal to the compelling Rawlsian idea that natural and social contingencies are arbitrary from the moral point of view. On the basis of this premise, they then derive the conclusion that inequalities that are due to such arbitrary factors must be redressed. Second, luck egalitarians also appeal to the claim that persons are not responsible for natural and social contingencies because they are a matter of brute luck. They

547 Shachar, The Birthright Lottery, 4; Caney, “Cosmopolitan Justice and Equalizing Opportunities,” 124-125. See Samuel Scheffler’s “What is Egalitarianism?” for an excellent account of the way in which some versions of luck egalitarianism take Rawls’s claim concerning the moral arbitrariness of such contingencies as the root of the view. Scheffler, “What is Egalitarianism?”
then draw the inference that justice therefore demands that inequalities that are due to brute luck be neutralized or redressed.⁵⁴⁸

I want to argue here that on either of these two readings, luck egalitarianism faces a serious problem of consistency. The source of this inconsistency, I will suggest, lies in the nature of the inference that luck egalitarians draw from either of these two premises. I will argue first that if luck egalitarians are right that justice demands that inequalities in the distribution of a particular benefit or burden that are due to brute luck/arbitrary factors be redressed, then justice also demands the imposition of an unequal system of entitlements and duties on persons on the basis of brute luck/arbitrary factors. For luck egalitarianism therefore, a just distribution of some particular benefit requires the unjust distribution of some other particular benefit. This is a problem for luck egalitarianism, I will argue, since it follows from this that even if it is true that inequalities in the distribution of benefits and burdens that are due to brute luck/arbitrary factors are unjust, it is unjust, by appeal to this principle, to require individuals to redress these inequalities. I will argue second that the source of this problem lies with the inference that luck egalitarians draw from the two premises that I identify above. It simply does not follow from these claims either that inequalities that are due to brute luck/arbitrary factors are unjust, or that justice demands that such inequalities be redressed. Instead, I will argue that all that follows from either of these claims is that brute luck/arbitrary factors do not provide persons with a reason to make claims on each other, or to design institutions one way or another. Luck egalitarianism not only therefore faces a serious problem of consistency, but also conflicts with the claims that provide its central motivation.

To see why for luck egalitarianism a just distribution of a particular benefit requires an unequal distribution of duties and entitlements, recall first that luck egalitarianism imposes a duty on individuals to bring about a pattern of distribution in which inequalities are only due to choice and not circumstance. Individuals thus possess a duty of justice to redress any inequalities that are due to bad brute luck. However, it is important to note that this duty does not fall on everyone’s shoulders equally. Those subject to bad brute luck cannot be held responsible for redressing the very inequalities that are due to their bad brute luck, since it is precisely these inequalities that are the problem. As well, since, according to luck egalitarianism, those whose income or wealth is due to their choices are fully entitled to it, this duty of redress cannot fall on those whose wealth is due to their own choices. Instead, this duty of redress must fall on the shoulders of those who have been favoured by brute luck. The beneficiaries of good brute luck therefore possess a special duty to redress any inequalities that are due to the bad brute luck of others. The flip side of this special duty of redress is thus that those persons who have not been favoured by brute luck, simply because they have not been so favoured, possess a special entitlement to demand of others that they redress any inequalities between themselves and others that are due to their bad brute luck. The important point to notice here is not only that this distribution of entitlements and duties is unequal, but also that brute luck/arbitrary factors are taken as the ground of this distribution. The implication of this, I will argue below, is that while the lucky must organize their lives around the duty of redress, the unlucky are entitled to redistributive shares and to do what they wish with their bodily powers.

An example will help illustrate this point. Suppose that Sarah is the recipient of good brute luck. She was born to an upper-middle class family that emphasized education over the course of her upbringing, and she possesses superior cognitive abilities simply as a matter of the outcome of the natural lottery. Frank, by contrast, has not been favoured by natural and social
contingencies. He was born to a working class family that did not emphasize the importance of education, and he possesses less than average cognitive abilities. Since luck egalitarianism demands that inequalities are just if and only if they are the result of choice and not circumstance, Sarah and Frank possess different sets of duties and entitlements. First, assuming that Frank possesses no comparative advantage over others that is due to his brute luck, Frank effectively possesses two different entitlements. First, he possesses a right to the income that he is able to earn. Second, Frank possesses freedom of occupational choice insofar as he is also entitled to choose his occupation on the basis of whatever his conception of the good happens to be. By contrast, Sarah effectively possesses neither of these entitlements but instead, simply because she is the recipient of good brute luck, possesses a duty to redress inequalities that are due to the bad brute luck of others. First, she is not entitled to the income that she earns, but instead must effectively pay a tax if she decides to make use of her talents and upbringing. If, for example, because of her good brute luck Sarah is given the opportunity to take a management job at a salary of $100,000, whereas Frank is only able to earn a salary of $40,000, Sarah can only take the job if she redresses the inequality between herself and Frank that is due to her good brute luck. She does not therefore possess the right that Frank possesses to reap the benefits of her bodily powers. Second, however, Sarah is not free to choose her occupation on the basis of her conception of the good life either. The reason for this is that there might be certain cases in which lucky persons can only fully redress inequalities that are due to bad brute luck if they work at productive occupations. Sarah cannot therefore choose her occupation on the basis of her conception of the good life, but must instead make this decision, at least in part, on the basis of her duty to redress inequalities. For example, even if Sarah would prefer to work as a gardener for a salary of $30,000 than as a corporate executive for a salary of $100,000, in certain cases, she might nonetheless be under an obligation to work at the latter occupation in order to redress
certain types of large inequalities that are due to the bad brute luck of others. This type of case will no doubt arise when the inequalities in question are not due simply to differences in talent, but rather to things like physical and mental disabilities that can be extremely costly to redress, and when lucky persons must work at productive occupations if there is to be sufficient resources to do so.

Luck egalitarianism can only therefore secure a just distribution of some particular benefit by imposing an unequal distribution of duties and entitlements. Of course, the nature of the unequal system of duties and entitlements will depend on the particular example. In this case, because of the type of benefit involved – income – the entitlements in question take the shape of a right to income and freedom of occupational choice. However, even if the specific duties and entitlements are different, this type of unequal distribution will always be present since, as I argue above, for luck egalitarianism, a just distribution of a particular benefit requires the imposition of a special duty to redress, and a special claim to have inequalities be redressed. My point here is thus a structural one. To redress an unequal distribution of a particular benefit, it is necessary to impose an unequal distribution of duties and entitlements. The lucky must organize their lives around the duty of redress; the unlucky are entitled to redistributive shares and to do what they wish with their bodily powers.

The luck egalitarian might object that there is some way to construe the idea of benefits and burdens such that the entitlements and duties that I claim are distributed in a non-reciprocal manner are not benefits and burdens at all. For example, in the case that I outline above, the luck egalitarian could argue that the rights to income and freedom of occupational choice are not entitlements worth having.
However, I don’t think that such a strategy can work. To be successful, the luck egalitarian would have to devise a conception of benefits and burdens such that the special duty to redress would never impose an unequal burden on an individual. This seems to me to be a tall order. For example, in the case I discuss above, although the idea of a right to income is controversial, it is difficult to envision a conception of benefits and burdens that did not consider freedom of occupational choice to be a benefit. On a welfarist view – whether hedonist or preference satisfaction – the occupation that one performs is bound to have an impact on one’s welfare. Similarly, according to Ronald Dworkin’s equality of resources, the occupation one performs is part of the bundle of resources that one possesses.549

The luck egalitarian therefore faces a dilemma. She can either apply the luck egalitarian principle consistently, for example, by identifying inequalities that are due to circumstance and not choice as unjust, but not requiring anyone to redress them. Or, she can apply the principle inconsistently, holding that the unequal distribution of the entitlements and duties that is necessary to redress an inequality is somehow a lesser injustice than the initial inequality in the distribution of a particular benefit.

However, although these choices are unpalatable, I think that there is further reason to reject luck egalitarianism as a principle of distributive justice. The reason for this is that the luck egalitarian principle is not only inconsistent in the way that I identify above, but also conflicts with its motivating premise, whether it is understood to be the idea that natural and social contingencies are arbitrary from the moral point of view, or that persons are not responsible for brute luck.

549 Dworkin, Sovereign Virtue, 83.
Luck egalitarianism is often understood to be a kind of radicalization of Rawls’s discussion of the moral arbitrariness of natural and social contingencies in *A Theory of Justice*.\(^{550}\) Here, Rawls claims that natural and social contingencies are arbitrary from the moral point of view. By this, he means two things. First, he means that these contingencies are arbitrary from the moral point of view in the sense that they are a matter of luck. As Rawls puts it, the natural capacities that one has are decided by the “natural lottery” and the family that one is born into is a matter of “social fortune.”\(^{551}\) More importantly however, for Rawls, these contingencies are also arbitrary from the moral point of view in the sense that they don’t provide persons with grounds to make claims on others. With respect to the question of distributive justice, because the possession of talent is morally arbitrary, talented persons cannot therefore make claims on the cooperative surplus simply on the grounds that they are talented; and, similarly, untalented persons cannot make claims on it simply on the grounds that they are untalented. The parties to the original position do not therefore know what their class position is and they don’t know what their fortune in the distribution of natural assets and abilities is.\(^{552}\)

Luck egalitarians agree with Rawls that natural and social contingencies are arbitrary from the moral point of view; however, on the basis of this claim, they draw a different inference, namely that it is unjust for inequalities in the distribution of benefits and burdens to be the result of such factors and that such inequalities must be neutralized or redressed. The problem with this inference however, is not merely that it is unwarranted, but also that it implies a principle of distributive justice according to which natural and social contingencies are not at


\(^{551}\) Rawls, *A Theory of Justice*, 64.

\(^{552}\) Ibid, 118.
all arbitrary from the moral point of view. The reason for this is that as I show above, these
contingencies provide the basis for a unequal distribution of duties and entitlements. Natural and
social contingencies are not morally arbitrary at all for the luck egalitarian but instead articulate
the ground on the basis of which certain duties and entitlements are distributed. Whereas for
Rawls these factors, by themselves, do not give persons a reason to make claims on the
cooperative surplus or to design institutions one way or another, for the luck egalitarian they do.
Those who have not been favoured by natural and social contingencies, simply because they
have not been so favoured, are entitled to make a special claim on others that any inequalities
that are due to their bad brute luck be redressed. Those who have been favoured by such
contingencies, by contrast, possess a special duty of redress, simply because of their good brute
luck. Although a central motivation of luck egalitarianism is the claim that natural and social
contingencies are arbitrary from the moral point of view, for luck egalitarianism then, these
factors are not at all morally arbitrary insofar as they provide the basis of unequal system of
entitlements and duties.

Luck egalitarians also motivate their position by appeal to the idea of responsibility. Here
the thought is that natural and social contingencies are not merely arbitrary from the moral point
of view, but are arbitrary partly because individuals are not responsible for them. The natural
talents that individuals possess and the families that they are born into are simply a matter of
brute luck as opposed to desert. On the basis of this claim, luck egalitarians draw the inference
that justice demands that inequalities in the distribution of benefits and burdens only reflect
factors for which persons are responsible – choice – and not factors for which persons are not
responsible – circumstance. The problem here is structurally similar to the problem above. Not
only is this inference not warranted, but it also implies a principle of distributive justice that
distributes benefits and burdens in a way that in fact reflects factors for which persons are not
responsible. Just as luck egalitarianism takes factors that are arbitrary from the moral point of view as the basis for an unequal distribution of duties and entitlements, it also takes factors for which persons are not responsible as such a basis. After all, natural and social contingencies are in part arbitrary from the moral point of view in part because persons are not responsible for them. The lucky, insofar as they possess a special duty of redress, are therefore held responsible for the bad brute luck of others.

Luck egalitarianism therefore fails on its own terms. While it professes that inequalities in the distribution of benefits and burdens should not reflect factors either that are either arbitrary from the moral point of view or for which persons are not responsible, it requires a distribution of entitlements and duties that does precisely that. In the next section of this chapter, I will suggest that this feature of luck egalitarianism also provides free and equal persons with reasons to reject it, whether considered as a domestic principle of distributive justice, or a global principle of distributive justice.

3.2 Reasons to Reject Luck Egalitarianism

Unlike luck egalitarianism, justifiability to free and equal persons is committed to the Rawlsian claim that natural and social contingencies are arbitrary from the moral point of view. Such factors do not therefore give persons reasons to make claims on others or on the design of institutions. Principles of justice should therefore neither benefit nor burden individuals simply because of factors that are arbitrary from the moral point of view. In this section of the chapter, I want to argue that it is this difference between justifiability to free and equal persons and luck egalitarianism that provides persons with a reason to reject luck egalitarianism, whether
considered as a principle of domestic distributive justice, or as a principle of global distributive justice.

First, free and equal persons have reason to reject luck egalitarianism, considered as a principle of domestic distributive justice, because all will do better under the difference principle. The reasoning is fairly straightforward. Since, for luck egalitarianism, natural and social contingencies are not morally arbitrary but in fact provide the ground for a duty to redress, such factors cannot also be the basis for inequalities that benefit all. For luck egalitarianism, it is thus unjust to provide the talented with incentives even if they are necessary to make the least advantaged as well off as they can possibly be. Since the difference principle permits such incentive inequalities, both the lucky and the unlucky have reason to reject luck egalitarianism as a principle of domestic distributive justice because they will do better under the difference principle.

Although the line of reasoning is more complex, free and equal persons also have reason to reject GLE. To see why this is so, consider first the thought experiment that I introduce above. Recall that in my hypothetical world, there are two states, A and B, which are both internally just. A’s per capita income is $40000, while B’s per capita income is $25000. This difference in wealth is due to two factors. $7500 of the difference is due to the fact that A has greater natural resources than B; the other $7500 of the difference is due to the fact that most citizens of A have each, individually, decided on a conception of the good that require many all-purpose means. For this reason, citizens of A are willing to work longer hours than citizens of B at productive occupations.

The question of justice that citizens of A and citizens of B face is not the question of whether states are entitled to exercise legislative control over the way in which other states make
use of their natural resources. The luck egalitarian’s claim is not that the citizens of B are entitled to exercise such control over the natural resources of A. Rather, it is that justice demands that the citizens of A exercise this legislative authority in one way rather than another, namely to redress inequalities that are due to circumstance and not choice. For both global justifiability to free and equal persons and luck egalitarianism then, citizens, acting collectively through their public legislative authority are entitled to legislatively enact their own system of economic cooperation – including legislation defining the ways in which citizens may use natural resources to set and pursue productive ends. Instead, the question that citizens of A and citizens of B face is the question of the principles of justice that should govern the way in which they design their respective systems of economic cooperation. Are citizens of A entitled to set up their system of economic cooperation for the purposes of pursuing their own productive ends? Or, must they do so for the purposes of redressing any inequalities between themselves and the citizens of B that are due to brute luck?

GLE demands that citizens of A redistribute $3750 per capita GDP to citizens of B to redress the inequality that is due to circumstance: the different natural resource endowments of each state. In contrast to the domestic case therefore, here, the unlucky – the citizens of B – have reason to accept the luck egalitarian principle since it secures for them more, rather than less, all-purpose means. However, despite this, I don’t think that free and equal persons, considered as citizens of internally just liberal states, have reason to accept GLE as opposed to an alternative principle.

Consider first that the highest-order interest of free and equal persons lies in setting and pursuing a conception of the good life. Because particular conceptions of the good life require means, the citizens of A and the citizens of B have reason to legislatively enact a system of
economic cooperation – including laws governing access to and use of natural resources – that permits individuals to set and pursue productive ends, that is, to produce the goods and services that they require to set and pursue particular conceptions of the good life. Moreover, because a system of economic cooperation is simply a means for producing goods and services that persons can use to set and pursue particular conceptions of the good life, the citizens of A and the citizens of B have an interest in designing their system of economic cooperation to do so as effectively as possible. Only if the citizens of A and the citizens of B are free to do so is their productive life subject to their highest-order interests in setting and pursuing a conception of the good life.

Given this interest of the citizens of A and the citizens of B, the correct principle of justice to govern the way in which they design their respective systems of economic cooperation must entitle them to design their systems to produce those goods and services that they require to realize their particular conceptions of the good life, and to do so as effectively as possible. I will call this principle ‘the equal right to productive autonomy.’ This principle grants the citizens of states an equal collective right to design their systems of economic cooperation to realize their productive ends as effectively as possible. Citizens exercise this right by collectively determining the shape of their system of economic cooperation through their public legislative authority, on the basis of their highest-order interest in setting and pursuing a conception of the good life. According to this principle then, citizens are entitled to design the rules governing the way in which they pursue productive ends, on the basis of their highest-order interests.

GLE secures this right but only in an unequal way. With respect to our hypothetical example, GLE secures for citizens of B the right to productive autonomy insofar as they are free to design their system of economic cooperation – including the rules defining the ways in which
they may use natural resources – in the way that they see fit. However, it only secures this right for citizens of A in a restricted sense. Because citizens of A have been lucky in the distribution of natural resources, they are only free to use their natural resources to realize their productive ends up to the point that they gain no more benefits from them than others. In this way then, GLE provides the ground for an unequal set of entitlements. The right to productive autonomy of the citizens of A is constrained by the claims of citizens of B in a way that the right to productive autonomy of the citizens of B is not constrained by the claims of the citizens of A.

This unequal distribution of entitlements provides citizens of A with a special complaint against GLE. Citizens of A can complain that GLE infringes their right to productive autonomy, and argue that there is an alternative principle – the principle of equal rights to productive autonomy – which secures this right equally. Citizens of B can of course argue that their complaint against the principle of equal rights, namely that they would do better under GLE, is stronger than the citizens of A’s complaint against GLE. However, I think that the latter is qualitatively more important than the former. The former complaint concerns the interest of the citizens of B in having more rather than less all-purpose means. The latter complaint, however, concerns the interest of citizens in collectively determining the shape of their productive life – the rules that govern the way in which they may pursue productive ends – on the basis of their own highest-order interests in exercising their capacity for a conception of the good. This latter interest is qualitatively more important since free and equal persons can only realize their highest-order interest in setting and pursuing a conception of the good life if they are entitled to decide questions regarding their productive life on the basis of this interest. In short, because the highest-order interest of free and equal persons lies in setting and pursuing a conception of the good life, and because they only have reason to set and pursue productive ends to the extent that doing so is required by this highest-order interest, persons can only realize this interest,
considered as a highest-order interest, if they are free to decide questions concerning their productive life on the basis of it. GLE, by contrast, requires the citizens of A to design their system of economic cooperation not on the basis of their own highest-order interests, but instead on the basis of the interests of citizens of B in having more rather than less all-purpose means. Although the citizens of B would do better under GLE, their complaint against the principle of equal rights to productive autonomy is not as strong. Provided that their basic needs are satisfied, free and equal persons do not require more as opposed to less all-purpose means to realize their highest-order interest in setting and pursuing a conception of the good, but only to pursue particular conceptions of the good.

GLE is thus committed to a collective version of what I identify in chapter 5 as the objectionable premise. According to this collective version of the objectionable premise, the citizens of internally just liberal state B are entitled to demand of the citizens of internally just liberal state A that the citizens of A design their domestic system of economic cooperation not on the basis of their own highest-order interests, but instead on the basis of the considerations of what would be best for the citizens of B. This premise is objectionable because free and equal persons must be entitled to decide questions regarding the setting of productive ends – whether these concern their choice of occupation or the design of the system of economic cooperation within which they participate – on the basis of their own highest-order interests, not on the basis of the interests of others.

Free and equal persons therefore have reason to reject luck egalitarianism in favour of the principle of equal rights to natural resources. This latter principle entitles the citizens of both A and B to determine the fundamental terms of their productive life on the basis of their own highest-order interests. From the standpoint of justifiability to free and equal persons then, the
luck egalitarian principle, whether considered as a domestic or global principle of justice, is an unacceptable principle of justice. For this reason, theorists committed to GLE cannot appeal to it to show that the scope of distributive justice is global. GLE therefore not only fails on its own terms, but also from the standpoint of justifiability to free and equal persons.

4 Global Left-Libertarianism

Global left libertarianism (GLL) holds that an egalitarian Lockean proviso must be applied globally. According to GLL then, any original appropriation of external objects is unjust unless it leaves all others – including all foreign others – with an opportunity to appropriate an equal share. GLL is thus committed to deontological cosmopolitanism (DC), according to which the problem of distributive justice is primarily concerned with the rules individual agents should follow in their interactions with each other. The site of distributive justice, according to this position, is the acts of individual agents; the scope is practice-independent.

In this part of the chapter, I discuss the two most prominent examples of GLL: Hillel Steiner’s global left-libertarianism and Charles Beitz’s resource redistribution principle. Although the theoretical backgrounds of their positions are different in important ways – Steiner is a Lockean, Beitz a Rawlsian – both Steiner and Beitz ground their principles of global distributive justice on the basis of the Lockean solution to the problem of original acquisition. That is, both thinkers follow Locke in arguing that any private, original appropriation of external objects is unjust unless it leaves all others with an opportunity to appropriate an equal share. This Lockean idea, these theorists argue, provides the basis for a global principle of distributive justice.
In what follows, I will discuss each of these positions in turn. I will then argue that free and equal persons have reason to reject the Lockean approach to property rights. I will argue instead that for free and equal persons, the acquisition and exercise of property rights is a question of justice not because of the impact such rights have on the ability of persons to realize their conception of the good; but rather because of the way in which property rights constitute a form of authority and so entitle persons to direct the actions of others. Although, as I argue in chapter 4, the acquisition and exercise of such rights is legitimate only if certain conditions are satisfied, global distributive justice is not one of them.

4.1 Steiner’s Global Left-Libertarianism

In An Essay on Rights, Steiner formulates a view that has come to be known as left-libertarianism. Steiner’s position is libertarian insofar as it is committed to the libertarian idea of self-ownership; however, it is a leftist view insofar as it is also committed to an egalitarian distribution of material resources. Steiner’s formulation of left-libertarianism is of particular importance for our purposes because of its implications for global distributive justice.

According to Steiner, justice demands that persons be assigned equal freedom by means of a system of rights.\footnote{Steiner, An Essay on Rights, 229.} By freedom here, Steiner means the actual or subjunctive possession of the things that are necessary to perform an action.\footnote{Ibid, 38-39.} I am free to perform an action if I actually or subjunctively have control over the means necessary to carry it out; I am unfree to perform an
action, if another denies me control of one of the things necessary to perform the action in
question.\textsuperscript{555} A system of rights that secures the equal freedom of persons, according to Steiner
then, takes the form of a system of property rights, that is, rights to physical things.\textsuperscript{556} Such
property rights, Steiner claims, constitute “\textit{title-based} domains” that specify the sphere within
which persons are entitled to act.\textsuperscript{557}

According to Steiner, persons possess two types of property rights. First, they possess
original property rights. Original property rights specify the “\textit{initial allotted action-spaces}” that
persons possess naturally.\textsuperscript{558} First, persons have original property rights to their bodies.\textsuperscript{559} Such
rights entitle persons to decide what to do with their bodies, to reap the fruits of their labour, and
to transfer their self-ownership rights, whether in part or in whole, to others.\textsuperscript{560} Second, persons
have original property rights to an equal share of unowned external things, whether these things
are initially unowned, or have come to be unowned by means of abandonment or death.\textsuperscript{561} The
justification for this right is a Lockean one: persons can only come to justly own unowned
external things if they leave enough and as good for others.\textsuperscript{562} Moreover, because persons
possess a property right to themselves, it follows from this that persons also possess a property
right to those things that they produce from their equal share of unowned things.\textsuperscript{563}

\textsuperscript{555} Ibid.
\textsuperscript{556} Ibid, 91.
\textsuperscript{557} Ibid.
\textsuperscript{558} Ibid, 228-229.
\textsuperscript{559} Ibid, 232.
\textsuperscript{560} Ibid, 231-236.
\textsuperscript{561} Ibid, 236.
\textsuperscript{562} Ibid, 235.
\textsuperscript{563} Ibid, 236.
Steiner’s two original property rights are global in scope.\textsuperscript{564} Persons therefore have a duty to respect the self-ownership rights of others whether they are citizens of the same state or not, and, more importantly for our purposes, persons possess a duty to only appropriate an equal share of the world’s unowned things. Persons who appropriate more than their fair share – “‘over-appropriators’” – thus possess a duty of justice to redistribute that portion of their share that has been appropriated unjustly to “‘under-appropriators.’”\textsuperscript{565} Over-appropriators, Steiner claims, thus possess a duty to pay into a fund on which under-appropriators have claims.\textsuperscript{566}

This feature of Steiner’s view is important for the question of global distributive justice. Because, for Steiner, original property rights are global in scope, the fund is global.\textsuperscript{567} All persons, therefore, regardless of nationality, possess a right to an equal share of unowned things, whether these things are unowned because they have not been appropriated, or because of abandonment or death. In a fully-appropriated world, Steiner claims, such a right takes the form of a right to an equal share of the total economic value of the unowned things that persons have appropriated.\textsuperscript{568} Property owners, Steiner claims, “thereby owe, to each other person, an equal slice of the current site value of their property: that is, the gross value of that property minus the value of whatever labour-embodying improvements they and their predecessors may have made to it.”\textsuperscript{569} Like GLE therefore, Steiner’s GLL provides the ground for global distributive justice.

\textsuperscript{564} Ibid, 262.
\textsuperscript{565} Ibid, 268.
\textsuperscript{566} Ibid.
\textsuperscript{567} Ibid, 270.
\textsuperscript{568} Ibid, 271-272.
\textsuperscript{569} Steiner, “Territorial Justice and Global Redistribution,” 35. Thomas Pogge makes a similar argument in World Poverty and Human Rights. Here, Pogge argues for a “Global Resources Dividend” on the Lockean grounds that contemporary property allocations cannot reasonably be thought to have arisen from a process that satisfies the
However, unlike GLE, Steiner’s GLL only concerns the distribution of unowned external objects, not the distribution of goods that are the result of persons employing their bodily powers.

4.2 Beitz’s Resource Redistribution Principle

In *Political Theory and International Relations*, Charles Beitz comes to a similar conclusion as Steiner. Here, Beitz argues that principles of global justice should be chosen from a Rawlsian global original position in which the parties are representatives of states.\(^{570}\) Beitz argues that the parties would not only agree to familiar principles of international justice such as principles of self-determination and non-intervention but also a “resource redistribution principle” on the grounds that natural resources, like natural talents, are distributed in an arbitrary manner:\(^{571}\)

In the case of natural resources, the parties to the international original position would know that resources are unevenly distributed with respect to population, that adequate access to resources is a prerequisite for successful operation of (domestic) cooperative schemes, and that resources are scarce. They would view the natural distribution of resources as arbitrary in the sense that no one has a natural prima facie claim to the resources that happen to be under one’s feet. The appropriation of scarce resources by some requires a justification against the competing claims of others and the needs of future generations. Not knowing the resource endowments of their own societies, the parties would agree on a resource redistribution principle that would give each society a fair chance to develop just political institutions and an economy capable of satisfying its members’ basic needs.\(^{572}\)

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\(^{570}\) Beitz, *Political Theory and International Relations*, 133-134.

\(^{571}\) Ibid, 140.

\(^{572}\) Ibid, 141.
According to this resource redistribution principle, Beitz claims, “each person has an equal prima facie claim to a share of the total available resources, but departures from this initial standard could be justified (analogously to the operation of the difference principle) if the resulting inequalities were to the greatest benefit of those least advantaged by the inequality.”

Beitz’s resource redistribution principle is an example of DC. First, Beitz’s principle if grounded on a deontological normative principle: the contractualist framework of the original position. Moreover, although the parties to the global original position are representatives of states, Beitz still classifies his position as cosmopolitan insofar as it “is concerned with the moral relations of members of a universal community in which state boundaries have a merely derivative significance.” Beitz seems to construct the parties as representatives of states because states are the “primary actors in international politics, [and] are more appropriately situated than individual persons to carry out whatever policies are required to implement global principles.” However, Beitz claims that “it should be understood that the international obligations of states are in some sense derivative of the more basic responsibilities that persons acquire as a result of the (global) relations in which they stand.” Second, Beitz’s resource redistribution principle is an example of DC insofar as it is practice-independent; that is, it applies whether or not individuals or states interact with each other.

573 Ibid.
574 Ibid, 181-182.
575 Ibid, 153.
576 Ibid.
577 Ibid, 140-141.
4.3 Property and the Political Authority Theory

For our purposes here, the important thing to note is that although Steiner and Beitz employ differing theoretical frameworks, their arguments for a global principle of distributive justice depend on a Lockean solution to the problem of original acquisition. According to Steiner, property owners “owe, to each other person, an equal slice of the current site value of their property” because all persons have a right to an equal share of unowned things.\(^{578}\) Similarly, for Beitz, states must comply with the resource redistribution principle on the grounds that the “appropriation of scarce resources by some requires a justification against the competing claims of others and the needs of future generations.”\(^{579}\) For both therefore, the acquisition of private property is a problem of justice because of the way in which property rights limit the external objects that are available for use and so impact the ability of persons to employ them to realize their conception of the good.

However, I want to argue here that for free and equal persons, this Lockean approach to the question of property misses the central feature of property rights, namely, that they constitute a form of authority. When I claim an external object as my own, I not only remove this object from the stock of objects that you could potentially use and so impact your ability to realize your conception of the good; rather, I also exercise authority over you insofar as I unilaterally impose an obligation on you to refrain from accessing or using the object without my consent. By claiming an object as my own therefore, I unilaterally restrict the freedom of others. The unilateral nature of this imposition of obligations on others is a problem for free and equal

\(^{578}\) Steiner, “Territorial Justice and Global Redistribution,” 35; An Essay on Rights, 236.

\(^{579}\) Beitz, Political Theory and International Relations, 141. My claim here is not that Beitz is a Lockean theorist, but only that he thinks that the problem of acquisition can be solved in a non-institutional way.
persons since all persons possess the equal authority to co-determine the principles on the basis of which they will interact with each other. By unilaterally claiming a particular external object as my own, I fail to respect the equal authority of others insofar as I claim to be entitled to impose terms of interaction on them without justifying these terms to them.

This distinction between the Lockean approach to the problem of property and the approach of the political authority theory is an important one since it has implications for the question of the range of agents who are owed a justification. For the Lockean left-libertarian, the acquisition and exercise of a property right must be justified to all those who are impacted by the restriction on the access and use of the object of the right. As Steiner and Beitz point out this means that property rights must be justified to foreigners. For the political authority theory by contrast, property rights must only be justified to those over whom this distinctive form of authority is exercised, which, I will argue, only includes one’s fellow citizens.

To see why this is so, consider first that as a form of authority, a regime of property rights must respect the equal authority of free and equal persons if it is to be legitimate. As I argue in chapter 4, for private property rights to objects of personal use to be legitimate in this way, two conditions must be satisfied. First, the fundamental rules governing access to and use of objects of personal use must be determined by a public legislative authority, to which all citizens possess political rights. Second, the basic needs of all citizens must be satisfied.

Consider second however that although domestic distributive justice is a condition of the legitimacy of private property rights, global distributive justice is not. To see this, it is helpful to return to our thought experiment consisting of two internally just liberal states, A and B. Both the citizens of A and the citizens of B, as citizens of an internally just liberal state, possess private property rights to particular external objects and so exercise a form of authority over their fellow
citizens. However, notice that to render this form of authority legitimate, it is enough that the states satisfy the two conditions that I outline above. The reason for this is that the citizens of one state do not exercise this form of authority over the citizens of the other. First, neither the citizens of A nor the citizens of B are entitled to tell the citizens of the other state how they may use the external objects at their disposal; instead, it is up to the citizens of each state working through their public legislative authority to determine the rules governing access to and use of such objects.

Second, even if A and B share a border and prevent each other’s citizens from crossing the border in an unregulated fashion, they do not do so rightfully by invoking the private property rights of their citizens, but instead by invoking the right to determine who is to become subject to the their legislative authority. An immigration agent who denies a foreigner permission to cross the border does not prevent the foreigner from using a particular external object, but instead imposes a constraint on her freedom of movement. Similarly, the foreigner’s claim is not to make use of a particular external object, but rather to enter the territory of a foreign state. The relevant form of interaction here therefore has little if anything to do with property and the right to exclude, but rather has to do with the entitlement of an internally just state to regulate the entry of foreigners into its territory.

For the political authority theory then, property rights are normatively significant not because they impact the ability of persons to realize their conception of the good, but rather because they constitute a form of authority. Whereas for the Lockean position, global distributive justice is a condition of the justifiability of such rights since the private property rights of citizens impact the lives of foreigners; for the political authority theory, the form of authority that is
constitutive of property rights and that requires justification can be made wholly legitimate by
the state and so does not require global distributive justice.

The left-libertarian might object here that my understanding the problem of property in
terms of authority does not necessarily imply that global distributive justice is not a condition of
the legitimacy of property rights. For example, if it’s the case that persons possess the earth in
common and so possess a collective authority concerning questions of access and use, private
property rights to particular external objects might only be legitimate on the condition that an
equal distribution is secured.

The problem with this line of argument however is that free and equal persons have
reason to reject the premise of common ownership. The reason for this is that it presupposes the
assertion that persons have claims on each other’s actions, even in the absence of interaction.
The principle of common ownership is committed to this claim insofar as it holds that all persons
possess the equal authority to co-determine the rules governing access to and use of external
objects regardless of the presence or absence of interaction. Thus, according to the principle of
common ownership, if you and I live on islands with no possibility of interaction, you still have a
claim on what I may do with the external objects at my disposal even though my use of them
does not interfere with your freedom. Free and equal persons have reason to reject this principle
for the simple reason that in the absence of any possibility of interaction, we have no claims on
each other’s actions. Although each of us has a fundamental duty to respect each other’s free and
equal nature, we can comply with this duty simply by exercising our freedom as we see fit since
there is no sense in which my exercise of freedom interferes with yours. Without the possibility
of interaction, there is thus no problem of justice.
To put this point another way, according to the political authority theory, property rights constitute a form of authority insofar as my right to a particular external object entitles me to direct the way in which you may act with respect to it. Although this claim to authority requires justification to be legitimate, it is nonetheless a candidate for such justification since, as I argue in chapter 4, persons require private property rights to objects of personal use if they are to set and pursue a conception of the good life. With respect to the premise of common ownership, the left-libertarian agrees that property rights constitute a form of authority and so must be justified. However, there is no reason to think that the claim of the collective to be entitled to decide questions concerning access and use can be a legitimate form of authority. Why think that you have a say about what I do with a particular object if my use of it does not interfere with your freedom?

From the standpoint of the political authority theory therefore, property constitutes a problem insofar as it is a form of authority and not because of the way in which it impacts on the ability of persons to realize their conception of the good. As a form of authority, property rights require justification if they are to be legitimate; however, left-libertarians are wrong to think that such justification requires global distributive justice.

5 Rawlsian Cosmopolitanism

Rawlsian cosmopolitans are committed to two claims that they understand to be foundational for Rawls’s theory of domestic distributive justice. The first claim is the idea that persons are free and equal and that principles of justice must be justifiable to persons considered
as such.\textsuperscript{580} As these theorists note, Rawls expresses this idea in the form of the original position as a standpoint for choosing principles of domestic distributive justice. The second claim is that the basic structure of society is the primary subject of distributive justice because of its profound effects on the life prospects of individuals.\textsuperscript{581} Rawlsian cosmopolitans are thus committed to what Abizadeh calls a “pervasive impacts theory” of the basic structure.\textsuperscript{582} According to this theory, the scope of distributive justice is limited to those persons who participate in, or are affected by, a shared set of cooperative institutions because of the effects such institutions have on the life prospects of their members. Rawlsian cosmopolitans are thus committed to individual practice-dependent (IPD), the view that distributive justice concerns the shape of the institutions that individual agents participate in. The site of distributive justice, according to IPD, is the acts of individual agents; however, individuals only possess distributive obligations to each other if they participate in a set of institutions possessing certain characteristics. Membership in a shared set of institutions is thus an existence condition of distributive obligations and so defines the scope of distributive justice.

However, whereas Rawls rejects the idea of global distributive justice in his \textit{Law of Peoples}, Rawlsian cosmopolitans argue that these two features of Rawls’s theory of domestic distributive justice – the idea of persons as free and equal and the idea of the basic structure as the subject of distributive justice – imply duties of global distributive justice.\textsuperscript{583} The reason for

\textsuperscript{582} Abizadeh, “Cooperation, Pervasive Impact, and Coercion: On the Scope (not Site) of Distributive Justice,” 341-342.
\textsuperscript{583} Beitz, \textit{Political Theory and International Relations}, 150-153; Moellendorf, \textit{Cosmopolitan Justice}, 7; Pogge, \textit{Realizing Rawls}, 240;
this, these theorists argue, is that the international sphere constitutes a basic structure in Rawls’s sense – a system of social cooperation that has pervasive effects on the life prospects of its participants.\textsuperscript{584} First, these theorists argue, the international sphere constitutes a system of economic cooperation insofar as there is international trade and foreign investment.\textsuperscript{585} Second, the international sphere constitutes a system of political cooperation insofar as states have established international institutions to govern this international economic cooperation.\textsuperscript{586} Such institutions include the World Bank, The International Monetary Fund, the G8 and G20, the Organization for Economic Cooperation and Development, the European Union, and the World Trade Organization. Finally, as Rawlsian cosmopolitans point out, these institutions have a pervasive effect on the life prospects of individuals.\textsuperscript{587} Kok-Chor Tan sums up the case for global duties of distributive justice in the following way:

Thus, as we need principles of justice to regulate the domestic basic structure whose impact on people’s lives is “profound and present from the start” (Rawls 1971, p.7), so there is a \textit{global} basic structure, whose impact on people’s lives is as profound and present, that must likewise be regulated. This domestic-global basic structure analogy is obviously not airtight. There is no global government, nor are international economic norms and regulations as fully enforceable as those in domestic society. But what is relevant here is that global institutions and practices do significantly constrain and shape a person’s life chances and options. Like the domestic basic structure, global institutions define people’s various social positions, and consequently their expectations in life (cf. Rawls 1971, p.7). As described above, the practices and operating assumptions of the global economic arena determine a person’s chances and goals just as profoundly and presently as domestic economic practices and norms – indeed more so, one could say, given the more pronounced global disparities in wealth, and the more limited degree of mobility between countries than between classes within most liberal countries. A mere accident of birth, such as a person’s citizenship (that is made morally salient by the norms


regulating citizenship, migration, state sovereignty, global trade, and territorial and resource ownership), can drastically affect her entire life expectations and opportunities.\textsuperscript{588}

In this part of the chapter, I want to argue that Rawlsian cosmopolitanism faces two serious problems. First, I will argue that the two claims that Rawlsian cosmopolitans take to be basic to both Rawls’s approach to the question of domestic distributive justice and their own approach to the question of domestic and global distributive justice, namely, the commitment to the idea of free and equal persons and the commitment to the pervasive impacts theory of the basic structure, are in fact incompatible. In short, I will argue that if Rawlsian cosmopolitans want to be committed to the idea that the right principles of justice are those that are justifiable to free and equal persons, they cannot at the same time derive other-regarding duties of justice from the fact of “pervasive impacts.”

Second, I will address the more general contention of Rawlsian cosmopolitans, namely that because the international sphere is analogous to the domestic basic structure, principles of global justice must include principles of distributive justice. I will argue that this contention is mistaken on the grounds that the disanalogy between domestic and international systems of economic cooperation that Rawlsian cosmopolitans themselves recognize, namely, that a domestic system includes a state whereas the international system does not, is in fact normatively significant for the problem of distributive justice. Because the rules of a system of economic cooperation between internally just liberal states must be voluntarily agreed to, as opposed to coercively imposed as in the case of a domestic system of economic cooperation, citizens of liberal states can participate in an international system of economic cooperation rightfully without complying with principles of distributive justice.

5.1 Free and Equal Persons and the Pervasive Impacts Theory of the Basic Structure

The most prominent contrast between Rawlsian cosmopolitanism and the statist position that I am developing here lies in the differing approach that each takes to the question of the scope of distributive justice. Rawlsian cosmopolitans hold that the scope of distributive justice is global; the political authority theory holds that the scope of distributive justice is domestic. However, an equally important contrast between these positions lies in the differing theories of the basic structure that underlie each. Each possesses a different account of the nature of the basic structure and its normative significance for the problem of distributive justice.

As I note above, Rawlsian cosmopolitans are committed to the pervasive impacts theory of the basic structure. According to this theory, the basic structure consists of a system of institutions that regulate cooperative economic activity. The basic structure is normatively significant for the problem of distributive justice, according to this theory, because of the way in which its institutions pervasively impact the life prospects of persons. On the basis of this theory of the basic structure, Rawlsian cosmopolitans conclude that the scope of distributive justice includes all those persons who are affected by a shared set of cooperative institutions in a pervasive way.

Rawlsian cosmopolitans are thus committed to an instrumentalist conception of institutions. Rawlsian cosmopolitans acknowledge that the institutions of the basic structure are
normatively significant for distributive justice since, on their view, such institutions are existence conditions of distributive obligations. However, these institutions are not significant because of their nature, on this view, but only because they have pervasive impacts on the life prospects of individuals. By contrast, the political authority theory is committed to a non-instrumentalist conception of the institutions of the state. According to the political authority theory, the institutions of the state are not significant for the problem of distributive justice because of their effects, but rather because the state authoritatively enacts, and coercively enforces, rules that govern the ways in which persons exercise their freedom.

Although Rawls himself is often interpreted to be committed to the pervasive impacts theory of the basic structure, I want to argue here that this theory is inconsistent with the Rawlsian idea that persons should be free to set and pursue a conception of the good. To see why this is so, recall first that the pervasive impacts theory of the basic structure is committed to the claim that the basic structure of a domestic society is the primary subject of distributive justice because of its pervasive impacts on the life prospects of its members. Because, according to the pervasive impacts theory, the fact of ‘pervasive impacts’ provides a reason to subject the institutions of the basic structure to principles of justice, the pervasive impacts theory is committed to a more fundamental claim, namely, that the pervasive impacts on an individual, by an agent or institution’s actions, is sufficient to subject that agent or institution’s actions to other-regarding duties of justice. Thus, according to the pervasive impacts theory, it is because the domestic basic structure has pervasive impacts on the life prospects of its members that it is subject to principles of distributive justice. Similarly, for Rawlsian cosmopolitans, it is because the ‘global basic structure’ has pervasive impacts on the life prospects of individuals that it must also be subject to principles of distributive justice.
Consider second, however, that this more fundamental claim, namely that the pervasive impacts on an individual, by an agent or institution’s actions, is sufficient to subject that agent or institution’s actions to other-regarding duties of justice, is incompatible with the principle of justifiability to free and equal persons. Free and equal persons can agree to principles of justice that do not impose other-regarding duties of justice on persons with respect to their actions that have pervasive impacts on the life prospects of others.

To see this, consider first that to set and pursue a conception of the good life, persons require a sphere of action in which they are free to make choices on the basis of their conception of the good. Because, as I point out in chapter 4, action involves taking up means, whether one’s own bodily powers or an external object, to set and pursue an end, such a sphere of action must consist in an entitlement to decide for oneself which ends to set with the means at one’s disposal. Thus, in chapter 4, I argued that to set and pursue a conception of the good life, citizens must have certain civil liberties and basic rights that define a sphere of action within which they are sovereign, and they must have private property rights to objects of personal use. Such rights entitle citizens to decide for themselves, on the basis of their own conception of the good, what to do with their bodily powers and the external objects that they rightfully possess.

Consider second however, that exercises of freedom, whether taken individually or in the aggregate, necessarily have effects on the ability of others to realize their conception of the good. The reason for this is simply that exercises of freedom have effects on the world. If I get the job that you wanted, decline your offer of marriage, or if no one wants to purchase your artworks, you may not be able to successfully realize important aspects of your plan of life because of the actions of others.
Moreover, it is important to note here that such exercises of freedom, although they impact the ability of others to realize their aims, do not diminish the freedom of action of others. To see this, consider the distinction that Arthur Ripstein draws between interfering with a person’s freedom or purposiveness, and interfering with a person’s purposes. According to Ripstein, I interfere with your freedom or purposiveness when I interfere with your ability to use the means that are legitimately at your disposal to set and pursue an end. As Ripstein points out, I therefore interfere with your freedom when I use your means to set and pursue an end of my choosing without your consent as in cases of fraud, or when I damage or destroy the means that are legitimately at your disposal. By contrast, I interfere with your purposes when I act in a way that does not interfere with your capacity to use the means at your disposal to set and pursue an end, but that interferes with the realization of your end. As Ripstein puts it:

There is thus a fundamental distinction between interfering with the *purposiveness* of another person and interfering with that person’s *purposes*. I can interfere with your purposes in a variety of ways – I might occupy the space that you had hoped to stand in, make arrangements with the person you had hoped to spend time with, and so on. Actions that affect you in these ways leave your purposiveness intact, because you still have the ability to determine how to use what you already have, and you are still the one who gets to determine how it will be used. All I have done is change the world in which you act.

This distinction is important because it follows from it that persons can interfere with each other’s ability to realize their ends, that is, by changing the world within which others act, without at the same time interfering with their freedom. Principles of justice can therefore secure the ability of each to exercise their freedom in a way that is consistent with others doing the same, while at the same time permitting persons to interfere with each other’s purposes. This

590 Ibid.
591 Ibid, 43-45.
592 Ibid, 41.
point is important for my argument here because free and equal persons have reason to accept such principles. That is, since free and equal persons possess a highest-order interest in setting and pursuing a conception of the good, to be justifiable to them, principles of justice must permit them to exercise their capacity to set and pursue a conception of the good in ways that are consistent with others doing the same, even if such principles also permit them to act in ways that have pervasive impacts on the life prospects of others. In short, for free and equal persons, it must be permissible to act in ways that have pervasive impacts on the life prospects of others because such impacts are the inevitable consequence of persons exercising their freedom.

G.A. Cohen’s critique of Rawls’s focus on the basic structure illustrates this point nicely. Recall that in *Rescuing Justice and Equality*, Cohen argues that Rawls is wrong to accord the basic structure of society primacy for the problem of distributive justice on the grounds that it has pervasive impact on the life prospects of individuals because “it is false that only the coercive structure cause profound effects.” Cohen concludes that if one is committed to the principle underlying the pervasive impacts theory, then principles of distributive justice should also apply to the legally unconstrained choices of individuals. Individuals, according to Cohen, thus possess a duty of justice to make choices regarding their occupation and salary demands, not on the basis of their own conception of the good, but rather in accordance with the difference principle.

What Cohen’s argument demonstrates is that if one accepts the principle underlying the pervasive impacts theory of the basic structure, namely that the pervasive impacts on an individual, by an agent or institution’s actions, is sufficient to subject that agent or institution’s

594 Ibid, 136-137.
actions to other-regarding duties of justice, then it follows that one must impose other-regarding duties of justice on central aspects of an individual’s life.

The political authority theory of the basic structure avoids this problem since for it the basic structure is not normatively significant because of its effects, but rather because of the way in which the state exercises political authority over its citizens. Because citizens have the equal authority to co-determine the principles of social interaction, the state must exercise its political authority in accordance with principles that are justifiable to its citizens considered as free and equal. As I have shown in chapters 4 and 5, these principles provide citizens with spheres of action in which they are free to set and pursue a conception of the good life. For example, in contrast to the pervasive impacts theory of the basic structure, which, as Cohen shows, seems to be committed to the application of the difference principle to the legally unconstrained choices of individuals, I show in chapter 5 that the political authority theory is committed to the principle of freedom of occupational choice. According to this principle, citizens are entitled to decide for themselves, on the basis of their own conception of the good, what occupation to pursue and what post-tax income to demand to perform the occupation in question. Although, as I make clear in chapter 5, a consequence of this principle is that some individuals will not be as able to successfully realize their conception of the good insofar as they will not have as much material wealth as they would have under Cohen’s suggestion, this principle nonetheless secures for individuals the capacity to govern their own lives in accordance with their own conception of the good life.

Rawlsian cosmopolitans therefore rely on a theory of the basic structure whose basic idea is incompatible with the principle of justifiability to free and equal persons. The implication of this for discussions of the scope of global justice is that Rawlsian cosmopolitans cannot remain
committed to the idea that the right principles of justice are those that are justifiable to free and equal persons, and at the same time derive other-regarding duties of justice from the fact of pervasive effects. Rawlsian cosmopolitans cannot simply appeal to the fact that there is a system of global political and economic cooperation that has pervasive effects on the life prospects of persons that the scope of distributive justice is global.

5.2 Political Authority and International Cooperation

The incompatibility of the pervasive impacts theory of the basic structure and justifiability to free and equal persons is a serious problem for Rawlsian cosmopolitanism. However, I want to argue further that the general contention of Rawlsian cosmopolitans, namely that the ‘global basic structure’ is analogous enough to the domestic basic structure to generate global duties of distributive justice, is mistaken. More specifically, I will argue that the absence of a state in an international system of economic cooperation is normatively significant for the question of the scope of distributive justice. To do so, I will consider the question of the principles of justice that should govern an international system of economic cooperation. By an international system of economic cooperation here, I mean what Rawlsian cosmopolitans refer to as the ‘global basic structure’ – a system of publicly recognized rules and procedures that govern the way in which the citizens of different countries may cooperate to produce goods and services, and that are agreed to, executed, and adjudicated by participating states, either by themselves, or through international institutions. An international system of economic cooperation thus governs the ways in which the citizens of different states may interact with each other to set and pursue productive ends. By such a system therefore, I do not mean to include the rules governing the
ways in which the citizens of different countries can interact to set and pursue final ends, for example, rules governing the exchange of objects of personal use, international travel, or the exchange of information. Instead, I mean those rules that govern international economic cooperation – those international agreements that govern patents and employment relationships, and that permit international trade and investment and that establish international institutions for the purposes of regulating and governing such activity. I will argue that the free and equal citizens of internally just liberal states have reason to reject Rawls’s difference principle as a principle to govern such a system, and to instead accept what I will call the principle of free agreement. According to this principle, the right terms of international economic cooperation are those that internally just liberal states can freely agree to, given the interest of their citizens in maximizing the efficiency of their domestic systems of economic cooperation.

To see why the free and equal citizens of different states have reason to accept this principle, it is first necessary to outline the interests that free and equal citizens have with respect to an international system of economic cooperation. To do this, it is helpful to consider the reasons that they have for establishing such a system in the first place.

Recall first from chapter 4 that free and equal citizens have reason to establish a domestic system of economic cooperation so that persons have the opportunity to pursue productive ends – to produce those goods and services that they require to set and pursue particular conceptions of the good life. Recall second that citizens have reason to set up a domestic system of economic cooperation that is as efficient as possible. Because a system of economic cooperation is simply a means for producing goods and services that persons can use to set and pursue particular conceptions of the good life, citizens should design their system of economic cooperation to provide the maximum production of goods and services with the least inputs of labour and
materials. The less labour that individuals must perform, the more time they possess to set and pursue their plan of life; the less materials that the system employs to produce a particular good or service, the more that are available for other uses.

Free and equal citizens, working through their political institutions, therefore have reason to support the establishment of an international system of economic cooperation provided that it promises to allow individuals to set and pursue productive ends more efficiently. With respect to the question of the principles that should govern the design of such a system then, the primary interest of free and equal citizens lies in efficiency gains for their domestic system of economic cooperation.

To return to my thought experiment, suppose that the citizens of A and the citizens of B, working through their respective public legislative authorities, decide to establish an international system of economic cooperation for the purposes of promoting the economic efficiency of their own domestic systems of economic cooperation. Suppose further that A and B not only establish rules of trade, but also set up international institutions through which they can agree on these rules, render non-binding opinions on trade disputes, and provide banking services. Since, from the standpoint of the citizens of A and the citizens of B, the sole purpose of an international system of economic cooperation is to increase the efficiency of their domestic systems of economic cooperation, the principles of justice to govern this system must advance this purpose. Assuming that free and equal citizens, working through their political institutions, are the best judge of which rules of international cooperation best advance their interests, the right principle to govern the design of an international system of economic cooperation is therefore the principle of free agreement. According to this principle, the right terms of international economic cooperation are those that internally just liberal states can freely agree to,
given the interest of their citizens in maximizing the efficiency of their domestic systems of economic cooperation.

Rawlsian cosmopolitans disagree with this conclusion. Instead, they argue that the difference principle should govern this international system of economic cooperation. According to this principle, inequalities between the citizens of A and the citizens of B, considered as individuals rather than collectively, are just if and only if they are necessary to maximize the expectations of the least well-off. It is, of course, extremely difficult to state what this would require in terms of redistribution; however, a global difference principle would require A to redistribute its GDP until doing so any further would no longer raise the expectations of the least advantaged citizen of B. Within the contractualist framework that I am working with here, Rawlsian cosmopolitans might argue that the citizens of B can complain against the principle of free agreement on the grounds that they would do better under the difference principle. The principle of free agreement, after all, permits inequalities that are not necessary to maximize the expectations of the least advantaged citizens of B.

The problems with this line of argument are twofold. First, it is not at all clear that the least advantaged citizens of B would do better under the difference principle. Since states possess no duty to establish an international system of economic cooperation except to benefit their own citizens, if an international system of economic cooperation must be governed by the difference principle, the citizens of A would have no reason to establish such a system with the citizens of B in the first place. Doing so would mean taking on massive distributive obligations towards the citizens of B.\(^{595}\) If Rawlsian cosmopolitans are therefore correct that the difference

\(^{595}\) For an excellent discussion of the real world implications of globalizing the difference principle, see Joseph Heath, “Rawls on Global Distributive Justice,” 194-198.
principle should govern the ‘global basic structure,’ many states would not have a reason to establish an international system of economic cooperation, even if doing so – under an alternative principle – would mutually benefit the citizens of participating states.

Second, the citizens of A have a complaint against the global difference principle that is stronger than the complaint of the citizens of B against the principle of free agreement. The complaint of citizens of A against the difference principle is analogous to their complaint against GLE. The global difference principle, like GLE, requires the citizens of A to determine the terms under which they pursue productive ends not on the basis of their own highest-order interests, but instead on the basis of what would be best for the citizens of B, given their interest in possessing more rather than less all-purpose means. Whereas the complaint of citizens of B concerns the interest of citizens in having more rather than less all-purpose means, the complaint of citizens of A concerns the ability of citizens to collectively set the terms of their productive life on the basis of their own highest-order interests. As I argue above, this latter interest is qualitatively more important since free and equal persons can only realize their highest-order interest in setting and pursuing a conception of the good life if they are entitled to decide questions regarding their productive life on the basis of this interest. Because the highest-order interest of free and equal persons lies in setting and pursuing a conception of the good life, and because they only have reason to set and pursue productive ends to the extent that doing so is required by this highest-order interest, persons can only realize this interest, considered as a highest-order interest, if they are free to decide questions concerning their productive life on the basis of it.

Like GLE, Rawlsian cosmopolitans are thus committed to a collective version of the objectionable premise. According to Rawlsian cosmopolitanism, citizens of internally just liberal
state 1 are entitled to demand of citizens of internally just liberal state 2 that the citizens of 2 set the terms of international economic cooperation not on the basis of their own highest-order interests, but instead on the basis of the considerations of what would be best for citizens of 1. This premise is objectionable because free and equal persons must be entitled to decide questions regarding the setting of productive ends – whether individually, in the case of choosing an occupation, or collectively, as in the case of choosing the rules of international economic cooperation – on the basis of their own highest-order interests, not the interests of others.

Rawlsian cosmopolitans might argue here that because of the analogous structure of global and domestic basic structures, my rejection of the difference principle in the international case commits me to rejecting the difference principle in the domestic case as well. That is, they might argue that I am being inconsistent. However, I don’t think that I am. The reason for this is that there are two key differences between the domestic case and the international case. First, the contractualist principles are different. In the domestic case, the right principles to govern the domestic system of economic cooperation are those that are justifiable to individual citizens considered as free and equal persons. In the international case by contrast, the right principles are those that are justifiable to free and equal persons considered as citizens of internally just liberal states. Second, in the domestic case, the rules constitutive of the system of economic cooperation are coercively imposed by the state. In the international case by contrast, there is no comparable institution. Instead, the rules constitutive of an international system of economic cooperation are agreed to, executed and enforced, and adjudicated by cooperating states.

These differences are important since they change the dynamics of the contractualist arguments. First, because the rules constitutive of a domestic system of economic cooperation are legislatively enacted and coercively enforced by the state, the question of the principles that
should govern the design of this system of rules is the question of the principles that should
guide the state’s exercise of its political authority. Because the state must exercise its political
authority in a way that respects the equal authority of its citizens, the state must do so in
accordance with principles of justice that are justifiable to them considered as free and equal
persons. Because citizens prefer more all-purpose means than less, and because justifiability to
free and equal persons is committed to the complaint model, the system of economic cooperation
must be designed to maximize the expectations of the least advantaged. Citizens of course have
an interest in deciding for themselves how to participate in this system of economic cooperation;
however, as I argue in chapter 5, in the domestic case this takes the form of a principle of
freedom of occupational choice.

Because the free and equal citizens of internally just liberal states can already participate
in their respective domestic systems of economic cooperation, and because there is no global
state coercively enforcing the rules of an international system of economic cooperation, the
question in the international case is different. It is the question of the principles to govern the
design of an international system of economic cooperation that states have the option of
establishing or not, and that their citizens have the option of participating in or not. Because the
establishment of, and participation in, such a system is voluntary for the free and equal citizens
of internally just liberal states, the citizens of different states can rightfully interact on terms that
are much less demanding than the difference principle. More specifically, the right principles to
govern such interaction are just those that free and equal citizens, acting collectively through
their public legislative authorities, can freely agree to.

Free and equal citizens of internally just liberal states therefore have reason to reject the
difference principle as a principle to govern an international system of economic cooperation.
Rawlsian cosmopolitans are therefore wrong to think that the scope of distributive justice extends beyond the state’s relation to its citizens. Just liberal states can cooperate with each other economically without complying with principles of distributive justice such as the difference principle.

Conclusion

In this chapter, I have argued for the claim that the state’s relation to its citizens defines the scope of distributive justice. In part 1, relying on my argument from chapter 4, I showed that critics of statism are wrong to think that the state’s relation to its citizens is neither distinctive nor normatively significant for the problem of distributive justice. In parts 3-5, I then considered and rejected the most compelling arguments for the claim that the scope of distributive justice extends beyond the state’s relation to its citizens.
Conclusion

My aim in this dissertation has been to defend the claim that the domestic basic structure is the primary subject of distributive justice. Rawls defends this claim in *A Theory of Justice* on the grounds that the domestic basic structure has pervasive effects on the capacity of persons to set and pursue a conception of the good life, due to its coercive nature. However, critics argue that it is not only the domestic basic structure that has these types of effects. Cohen argues that the private choices of individuals, for example their choice of occupation or their demand for an above-average salary, also have such pervasive effects. Principles of distributive justice, Cohen claims, should therefore also apply to these private choices. Similarly, cosmopolitan theorists argue that the global order of trade is sufficiently analogous to the domestic basic structure, both in its makeup and effects, and so should also be subject to distributive principles. According to these critics therefore, Rawls’s stated justification for the primacy of the domestic basic structure doesn’t do the work that it needs to.

To defend the claim that the domestic basic structure is the primary subject of distributive justice therefore, I have provided an alternative account of the normative significance of the state’s relation to its citizens. I have argued that the state’s relation to its citizens is normatively significant for the problem of distributive justice because of the way in which it exercises political authority over them. To exercise its political authority legitimately, I have argued, the

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state must secure distributive justice for its citizens. The state therefore possesses distinctive distributive obligations to its citizens.

In chapter 1, I provided a systematic account of both the question of the subject of distributive justice, and of the positions political theorists have proposed as solutions to it. The question of the subject of distributive justice, I argued, is constituted by the question of the site of distributive justice – the point of application of principles of distributive justice – and by the question of the scope of distributive justice – the range of agents who possess distributive obligations to each other. I argued that political theorists have developed six positions on this question: consequentialist cosmopolitanism, deontological cosmopolitanism, individual practice-dependent, consequentialist state institutionalism, deontological state institutionalism, and conventionalism. I showed that each is grounded in an understanding of the right and in an understanding of the normative significance of certain types of practices. I also motivated the question of the subject of distributive justice, arguing that disagreements concerning the subject of distributive justice indicate a disagreement over the very concept of distributive justice. Such disagreements, I argued, can be more basic than disagreements concerning the content of distributive principles.

In chapter 2 I started my defense of deontological state institutionalism. Here, I formulated my solution to the question of the subject of distributive justice: the political authority theory. According to the political authority theory, the state’s relation to its citizens is the primary subject of distributive justice because of the way in which the state exercises political authority over them. I developed this account of the subject of distributive justice on the basis of what I took to be the shared insight of both Blake’s coercion theory and Nagel’s authorial theory, namely, that the state possesses distributive obligations to its citizens because of
its distinctive relation to them. In chapter 2 I also introduced an argumentative strategy – the legitimacy strategy – for justifying the political authority theory’s account of the normative significance of the domestic basic structure for the problem of distributive justice. The legitimacy strategy aims to show that the state can only exercise its political authority legitimately if it secures distributive justice for its citizens.

In chapter 3, I established the normative foundations of the political authority theory: Rawls’s conception of the person as free and equal and the contractualist principle justifiability to free and equal persons. According to Rawls’s conception of the person, persons are free insofar as they possess a capacity for a conception of the good and a capacity for a sense of justice. Persons are equal insofar as they possess the equal authority to exercise these capacities. As a normative conception of the person, Rawls’s conception provides an account of how we ought to understand both ourselves and others as practical agents facing the problem of the principles of justice that should guide our action. On the basis of this conception of the person, I then derived and defended justifiability to free and equal persons. According to this principle, the right principles of justice are those that are justifiable to persons considered as free and equal.

In chapter 4, I carried out the legitimacy strategy. Here, I defended the legitimacy-distributive justice thesis, according to which the state can only exercise its political authority over its citizens legitimately if it complies with principles of distributive justice. I argued that because the state’s claim to legitimacy is a claim to be entitled to exercise political authority over its citizens, and because persons possess the equal authority to exercise their capacity to be reasonable, the state can only be entitled to exercise its authority over them if it does so in accordance with principles of justice that are justifiable to them considered as free and equal persons. Such principles, I argued, include principles of distributive justice. To exercise its
legislative authority in a way that is justifiable to its citizens considered as free and equal persons, I argued, the state must secure equal civil liberties and political rights for its citizens. To legislatively enact and coercively enforce a system of interaction in a way that is justifiable to its citizens considered as free and equal, I argued, the state must ensure that the basic needs of its citizens are met; secure fair equality of opportunity for contracts and positions of employment; and ensure that the system of social cooperation is set up to maximize the expectations of the least advantaged citizens.

My argument in chapter 4 established that the state possesses distinctive distributive obligations to its citizens because of the way in which it exercises political authority over them. However, it doesn’t follow from this that there aren’t other grounds of distributive obligations. In chapters 5 and 6 therefore, I defended the basic structure thesis, the claim that the state’s relation to its citizens is the site and defines the scope of distributive justice. Here, I considered and rejected the most prominent arguments for extending the site and scope of distributive justice beyond the state’s relation to its citizens.

In chapter 5, I considered Cohen’s critique of the incentives argument for inequality, an argument that Rawls employs to justify the difference principle and which presupposes that this principle only applies to the domestic basic structure. Cohen’s argument applies equally to the political authority theory since I rely on Rawls’s line of argument in chapter 4. According to Cohen’s critique, citizens cannot appeal to the incentives argument for inequality and at the same time stand in a relation of community with each other. Instead, citizens can only stand in a relation of community with each other if they apply the difference principle to their own choices. I rejected Cohen’s critique on the grounds that free and equal persons are entitled to decide questions concerning their employment on the basis of their own conception of the good. On
Cohen’s picture by contrast, persons must decide such questions on the basis of considerations of what would be best for others. Citizens can therefore appeal to the incentives argument and stand in a relation of community with each other by appealing to this principle of freedom of occupational choice.

In chapter 6, I considered and rejected what I take to be the three strongest arguments for a global principle of distributive justice: global luck egalitarianism, global left libertarianism, and Rawlsian cosmopolitanism. According to global luck egalitarianism, inequalities in the distribution of benefits and burdens are just if and only if they are the result of choice and not circumstance. On this view therefore, justice demands that global inequalities that are due to differing natural resource endowments or nationality be redressed. Against this view, I made two arguments. First, I argued that it fails on its own terms. Although global luck egalitarianism – and luck egalitarianism more broadly – claims that inequalities in the distribution of benefits and burdens are unjust if they are the result of brute luck/arbitrary factors, it necessarily violates its own principle. To secure a just distribution of some particular benefit, it necessarily imposes an unequal distribution of duties and entitlements on agents on the basis of brute luck/arbitrary factors. I argued second that free and equal persons have reason to reject global luck egalitarianism on the grounds that it requires the citizens of states to design their systems of economic cooperation not on the basis of their own highest-order interests, but instead on the basis of the considerations of what would be best for foreigners. This is a problem, I argued, because free and equal persons must be entitled to decide questions regarding their productive life – whether concerning their choice of occupation or the design of the system of economic cooperation within which they participate – on the basis of their own highest-order interests, not the interests of others.
Global left-libertarianism claims that an egalitarian Lockean proviso must be applied globally. For global left-libertarianism then, any original appropriation of external objects is unjust unless it leaves all others – including all foreign others – with an opportunity to appropriate an equal share. As I discuss in chapter 6, both Steiner and Beitz rely on this argument to show that contemporary property owners possess distributive obligations to foreigners. Against this view however, I argued that free and equal persons have reason to reject the Lockean approach to property rights. Instead, I argued that for free and equal persons, the acquisition and exercise of property rights is a question of justice not because of the impact such rights have on the ability of persons to realize their conception of the good; but rather because of the way in which property rights constitute a form of authority and so entitle persons to direct the actions of others. Although the acquisition and exercise of such rights is legitimate only if certain conditions are satisfied, I argued that global distributive justice is not one of them.

Finally, Rawlsian cosmopolitanism argues that a proper interpretation of Rawls’s fundamental commitments – the idea of free and equal persons and the pervasive impacts theory of the basic structure – imply a globalization of his domestic theory of justice. The reason for this, according to Rawlsian cosmopolitanism, is that the international sphere constitutes a basic structure in Rawls’s sense – a system of social cooperation that has pervasive effects on the life prospects of its participants. I rejected this argument on two grounds. First, I argued that the two claims that Rawlsian cosmopolitans take to be basic to both Rawls’s approach to the question of domestic distributive justice and their own approach to the question of domestic and global distributive justice, namely, the commitment to the idea of free and equal persons and the commitment to the pervasive impacts theory of the basic structure, are in fact incompatible. I argued second that Rawlsian cosmopolitans are wrong to think that the international sphere is sufficiently analogous to the domestic basic structure to generate global duties of distributive
justice. Instead, I argued that there is a normatively significant difference between these two types of organization, namely, that the domestic system includes a state whereas the international system does not. This difference is significant, I argued, because citizens of liberal states can participate in an international system of economic cooperation rightfully without complying with principles of distributive justice.

By defending the claim that the state’s relation to its citizens is the primary subject of distributive justice, I have made four contributions to contemporary discussions of distributive justice. First, I have shown that Rawls’s central normative commitment – the idea that the correct principles of justice are those that are justifiable to free and equal persons – is consistent with his stated positions on the questions of the site and scope of distributive justice. I have therefore responded to the many internal critiques of Rawls’s work – including that of Cohen and the Rawlsian cosmopolitans – which argue that Rawls is in fact committed to extending the site or scope of distributive justice beyond the domestic basic structure. Second, I have not only shown that Rawls’s position on the subject of distributive justice is consistent with his fundamental normative commitment, but also that this position is normatively attractive. I have defended the claim that the domestic basic structure is the primary subject of distributive justice by appeal to the compelling contractualist idea that the correct principles of justice are those that are justifiable to persons considered as free and equal.

Third, I have developed a distinctive understanding of the problem of distributive justice. In contrast to theorists who argue that distributive justice is fundamentally about cooperation or the promotion of valuable states of affairs, I have argued that it is fundamentally about political authority. Finally, although my claim regarding the nature of global justice is largely a negative one, namely, that whatever global justice demands, it does not demand distributive justice, I
think that my dissertation also makes an important contribution to debates concerning global justice. In contrast to cosmopolitan theorists who argue that the state is not at all normatively significant for global justice, I have shown that it is. The state possesses distinctive responsibilities to its own citizens because of the nature of its relation to them and a viable theory of global justice must take this into consideration.
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