

## The Irrelevance of Coercion, Imposition, and Framing to Distributive Justice

A distinctive and troubling aspect of the comprehensive political power exercised by states is its nonvoluntary character. States do not simply direct us to do things, they also expect our compliance, and punish us if we disobey. Reflecting on the problem of what, if anything, might justify such power, an influential and increasingly popular chorus of political philosophers has endorsed a particular form of socioeconomic justice, which I shall call *nonvoluntarism*. All nonvoluntarists argue that distributive obligations more demanding than humanitarianism (hereafter, “more demanding distributive obligations”) obtain when and because compliance with a system of comprehensive societal norms is nonvoluntary in some relevant sense.<sup>1</sup> For Michael Blake and Mathias Risse, for

For very helpful comments and suggestions, I would like to thank Charles Beitz, Chris Bertram, Paul Bou-Habib, Luke Brunning, Ian Carter, Clare Chambers, Mette Eilstrup-Sangiovanni, Istvan Hont, A. J. Julius, Gerald Lang, David Lefkowitz, Kasper Lisper-Rasmussen, Pietro Maffettone, Sebastiano Maffettone, Raffaele Marchetti, David Miller, Serena Olsaretti, Mike Otsuka, George Pavlakos, Gianfranco Pellegrino, Mathias Risse, David Runciman, Nicos Stavropolous, Annie Stilz, Laura Valentini, Alex Voorhoeve, Leif Wenar, Jo Wolff, Gabriel Wollner, John Wright, and the editors of *Philosophy & Public Affairs*.

1. By “distributive obligations more demanding than humanitarianism,” I mean to include obligations that require us either to narrow the gap between the well-off and those less well-off (“egalitarianism”), or to give greater moral weight to the well-being of the badly off in an overall calculation of how to distribute scarce resources (“prioritarianism”), or to ensure that everyone has enough, where the threshold is set at a higher level than mere humanitarianism. Each type of nonvoluntarism will specify the content of the more demanding distributive obligations differently. It should be noted that all of the currently existing forms of nonvoluntarism support some form of egalitarianism, though we can easily imagine forms of nonvoluntarism that could support either (robustly) sufficientarian or prioritarian obligations. For example, a nonvoluntarist interpretation of Elizabeth Anderson’s “democratic equality” would support a form of sufficientarianism. See Elizabeth Anderson, “What Is the Point of Equality?” *Ethics* 109 (1999): 287–337. My criticisms would touch any such alternative specification, hence the more general term “more demanding distributive obligations.”

example, such obligations are triggered when and because compliance with comprehensive societal norms has been coerced.<sup>2</sup> For Thomas Nagel, Joshua Cohen, and Charles Sabel, more demanding distributive obligations hold when and because individuals are subject to a system of comprehensive societal norms that claims to speak in their name, and with which they have no reasonable option but to comply.<sup>3</sup> And, for A. J. Julius, they are triggered when and because we knowingly and willingly support a system of comprehensive societal norms that foreseeably and avoidably gets others to act, without their consent, in ways that benefit us.<sup>4</sup> As we will see, there are two dominant interpretations of why non-voluntary subjection to political power triggers more demanding distributive obligations. According to the first, nonvoluntary subjection is *pro tanto* wrong. To be all things considered justifiable, its wrongness must therefore be either *outweighed* or *compensated* by the realization of a more demanding set of distributive obligations. According to the second, nonvoluntary subjection to political power directs our will to serve ends that we cannot avoid but for which we are responsible. The subjecting power therefore owes us a special, more stringent justification for its directives, which can only be discharged if its exercise of power satisfies a more demanding set of distributive standards.

It is important to emphasize that nonvoluntarists do not simply argue that forcing us to comply with law is a useful way of enforcing distributive obligations that are justified independently. Given certain standard assumptions about the way human beings are—free rider problems, cheating, and the like—few would dispute that attaching sanctions to violations of law is a good (perhaps the only) way of securing general compliance with, and trust in, *otherwise* just or nearly just directives.

2. Michael Blake, "Distributive Justice, State Coercion, and Autonomy," *Philosophy & Public Affairs* 30 (2001): 257–96; Mathias Risse, "What to Say about the State," *Social Theory and Practice* 32 (2006): 671–98; and Mathias Risse, *Grounds of Justice* (Princeton, N.J.: Princeton University Press, forthcoming); Laura Valentini, *Justice in a Globalized World: A Normative Framework* (Oxford: Oxford University Press, 2012).

3. NB: One could have no reasonable option to comply with a set of norms even if one was not coerced into complying with them. This would be the case, for example, if avoidance of, or noncompliance with, the system was sufficiently costly. Thomas Nagel, "The Problem of Global Justice," *Philosophy & Public Affairs* 33 (2005): 113–47; Joshua Cohen and Charles Sabel, "Extra Rempublicam Nulla Justitia?" *Philosophy & Public Affairs* 34 (2006): 113–47.

4. A. J. Julius, "Basic Structure and the Value of Equality," *Philosophy & Public Affairs* 31 (2003): 321–55; A. J. Julius, "Nagel's Atlas," *Philosophy & Public Affairs* 34 (2006): 176–92.

And, similarly, most agree that were people to lack assurance of sufficiently general compliance with more demanding distributive obligations, the obligations would cease to bind them. (Compare humanitarian obligations where this may not be the case.)<sup>5</sup> The controversial and more interesting claim is that more demanding distributive obligations are *grounded in* some morally relevant features of the comprehensive and public imposition of norms, that some morally relevant features of imposition *explain* the content and scope of the distributive obligations themselves. Nagel is representative of the key nonvoluntarist claim: “Sovereign states are not merely instruments for realizing the preinstitutional value of justice among human beings. . . . On the political conception [socioeconomic justice] is fully associative. It depends on positive rights that we do not have against all other persons or groups, rights that *arise* . . . *because* we are joined together with certain others in a political society under strong centralized control.”<sup>6</sup>

In this article, I will press a single, general objection, namely that, on either of the two dominant ways of construing the nonvoluntarist argument, nonvoluntarists fail to explain how morally relevant facts regarding nonvoluntary subjection to societal norms issue in a commitment to a more demanding distributive principle or set of distributive obligations. I shall argue that bending people’s will by, for example, coercing them is at best a causal means or instrument for ensuring compliance with distributive obligations that hold independently; the fact that such norms are enacted via will-bending does not fix the content or the scope of the obligations themselves. I do not, however, claim to refute *all* possible forms of nonvoluntarism. It is possible that alternative interpretations of nonvoluntarism might be developed that would be able to account for how the exercise of comprehensive directive power

5. In support of the position that assurance matters, see Thomas Nagel, “Libertarianism without Foundations,” *Yale Law Journal* 85 (1975): 136–49, at pp. 145–46. For a powerful set of objections (and some concessions) to the role of assurance in suspending distributive obligations, see G. A. Cohen, *If You’re an Egalitarian, How Come You’re So Rich?* (Cambridge, Mass.: Harvard University Press, 2000), p. 168ff. Whoever turns out to have the upper hand in this argument, it should be clear that it has little to do with our guiding question regarding the *grounds* of justice.

6. Nagel, “Global Justice,” pp. 120, 127, emphasis added. The ellipsis after “arises” deletes “only.” As we will see, I assume, for the purposes of this article, that nonvoluntarists only hold the weaker thesis that nonvoluntary subjection to societal norms is a *nonredundant member of a set of jointly sufficient* conditions rather than a *necessary and sufficient* condition for the existence of distributive obligations.

contributes to fixing the content and scope of more demanding distributive obligations, and that would avoid the objections I will mount. But, if so, we have yet to see them.

Nonvoluntarism first emerged as a position in the global justice debates. This is not surprising: if nonvoluntarism is correct, it provides an argument for the claim that the scope of justice is restricted to those institutions that make compliance with their directives nonvoluntary. There have therefore been many attempts to consider the implications of *accepting* the nonvoluntarist thesis for the question: Do more demanding distributive obligations extend across state borders? Are states, for example, really the only political institutions that make compliance with their rules and directives nonvoluntary?<sup>7</sup> Or are there forms of internationally exercised political power that also force those subject to them to comply? This is not the question taken up here. Rather, our main aim is to put into question the central *normative* thesis sustained by nonvoluntarists, rather than to query its empirical application. However, this does not mean that the argument has no implications for debates on global justice. If the argument presented here is successful, then it undermines the claim that nonvoluntarism explains the nature of demanding distributive obligations *of any scope*, whether global, statist, or something else in between. It undermines, that is, one of the most often avowed arguments in the global justice literature.

In Section I, I shall lay out three different understandings of what constitute the relevant kinds of forced subjection, and discuss the two main interpretations of *why* and *how* such forced subjection generates and grounds more demanding distributive obligations. In Section II, I argue against the first interpretation. In Section III, I turn to the second. Section IV explains why the *prima facie* plausibility of nonvoluntarism depends on what I will call “the spurious role of consent”; clearing up the role of consent will show that this *prima facie* plausibility is, in fact,

7. See, e.g., Chris Armstrong, “Coercion, Reciprocity, and Equality Beyond the State,” *Journal of Social Philosophy* 40 (2009): 297–316; Christian Barry and Laura Valentini, “Egalitarian Challenges to Global Egalitarianism: A Critique,” *Review of International Studies* 35 (2009): 485–512; Cohen and Sabel, “Extra Rempublicam Nulla Justitia?”; Arash Abizadeh, “Cooperation, Pervasive Impact, and Coercion: On the Scope (Not Site) of Distributive Justice,” *Philosophy & Public Affairs* 35 (2007): 318–58; Lea Ypi, Robert Goodin, and Lena Eriksson, “Associative Duties, Global Justice, and the Colonies,” *Philosophy & Public Affairs* 37 (2009): 103–35.

illusory. Section V concludes by considering some of the implications of my arguments for the global justice debates.

#### I. NONVOLUNTARISM: VARIATIONS

Nonvoluntarists usually maintain that forced subjection to comprehensive societal norms is a necessary condition for the existence of more demanding distributive obligations. In the absence of a nonvoluntary system of norms, other obligations of justice might apply—including, for example, obligations of mutual aid and forbearance—but more demanding norms of distributive justice would not.<sup>8</sup> For the purposes of this article, however, I will assume that nonvoluntarists only hold the significantly weaker thesis that some form of nonvoluntary subjection is a nonredundant member of a set of jointly sufficient conditions, namely an NS condition.<sup>9</sup> The reason to construe nonvoluntarism as setting out a series of NS conditions for demanding distributive obligations to hold is to give our arguments the widest possible scope. If we can put in question the weaker idea that nonvoluntarism only asserts a set of NS conditions, then we will also have put in question, by contraposition, all stronger variants as well—including variants which contend that nonvoluntary subjection to societal norms is an individually *necessary* component of a set of jointly sufficient conditions (which is the currently dominant interpretation). My strategy will then be to demonstrate that for any set of jointly sufficient conditions that include nonvoluntary subjection to societal norms, and that together seem to explain when and why more demanding obligations X apply, nonvoluntary subjection

8. For example, Blake, in “Distributive Justice,” writes, “Only in the search for the justification of state coercion . . . does egalitarian distributive justice become relevant” (p. 265). Similarly, Nagel, in “Global Justice,” writes: “Justice is something we owe through our shared institutions only to those with whom we stand in a strong political relation” (p. 121).

9. An NS condition can be either an individually necessary or an individually unnecessary condition. As an individually *unnecessary* condition, it would be what Mackie called an INUS condition, namely an individually Insufficient but Nonredundant member of a set of Unnecessary but jointly Sufficient conditions. Lighting a match is an INUS condition for the house’s burning down, since other things also have to be true for the match to trigger the fire, and since the fire could have been caused in a different way (say, by a short-circuit). See J. L. Mackie, “Causes and Conditions,” *American Philosophical Quarterly* 2 (1965): 245–64.

is, in fact, *redundant*.<sup>10</sup> In an explanation of why a house burned down, for example, the fact that the house was blue is redundant: all else equal, the house would have burned down even if the house had been not blue but red. If nonvoluntary subjection to norms is redundant in this way, then the nonvoluntarist thesis that forms of nonvoluntary subjection are NS conditions for more demanding obligations to apply fails.

As we have said, all nonvoluntarists agree that more demanding obligations of distributive justice obtain if, and because, subjection to societal norms is nonvoluntary in some relevant sense. What divides them is their commitment to different understandings of the relevant form of nonvoluntary subjection. To capture the unity and diversity of nonvoluntarist views, consider the main aspects of three prominent representatives.

*Coercion*: More demanding distributive obligations hold if (or if and only if), and because, (a) individuals coerce one another to comply with a system of social arrangements, and (b) those arrangements have a deep, immediate, and pervasive impact on people's holdings and life prospects.<sup>11</sup>

*Imposition*: More demanding distributive obligations hold if (or if and only if), and because, (a) individuals share in imposing a system of social arrangements which claims to speak in their name and with which they have no reasonable option but to comply, and (b) such a system has a deep, immediate, and pervasive impact on individuals' holdings and life prospects.<sup>12</sup>

*Framing*: More demanding distributive obligations hold if (or if and only if), and because, (a) individuals act with the intention of getting others to act, without their consent, in ways that benefit the former, and (b) such actions together contribute to the generation of a system of social arrangements with deep, immediate, and pervasive effects on individuals' holdings and life prospects.<sup>13</sup>

10. This is not to say, however, that the presence of nonvoluntary subjection carries *no* normative implications (as we will see, it does); but those normative implications have nothing to do with explaining why some more demanding set of distributive obligations X apply.

11. E.g., Blake, "Distributive Justice."

12. E.g., Nagel, "Global Justice."

13. E.g., Julius, "Basic Structure and the Value of Equality."

In each of these cases, some agents exercise *directive power*, by which I mean that they exercise the ability to get others to do as the agent wants by issuing a directive or promulgating a set of rules.<sup>14</sup> Notice that the mere exercise of directive power, however, is not enough to subject the will in the relevant sense required by nonvoluntarists. If I get you to do as I want by offering an incentive to comply with my directive, there is an important sense in which I leave it up to you whether to comply or not.<sup>15</sup> Similarly, if I consent to your exercise of directive power, then, while it is true that your directives now replace and exclude whatever directive-independent reasons for action I might have had, that replacement is still willed by me; *ex hypothesi*, if I were to come to believe that your directive power over me was no longer useful or rightful, I could withdraw my consent.<sup>16</sup> It is therefore central to nonvoluntarism that directive power be exercised in a way that *subjects* our will or, as I will sometimes say, that *bends our will into compliance*.

Condition (a) in each case sets out a different way of understanding how our will has been bent or subjected (rather than merely directed). For *Coercion*, the system of social arrangements must be enforced via threats and sanctions. For *Imposition*, the system need not be enforced via threats and sanctions; it is sufficient that the system be imposed in the name of those it directs, and that they have no reasonable alternative but to comply. For *Framing*, the system does not need to be enforced by threats and sanctions or enacted in the name of those it directs, nor must those subject to it have no reasonable alternative but to comply; it is sufficient that individuals be steered into complying without their

14. For this usage, see Christopher McMahon, *Authority and Democracy: A General Theory of Government and Management* (Princeton, N.J.: Princeton University Press, 1994), p. 25ff.

15. It is, of course, a vexed question in the literature on coercion how to characterize the distinction between (noncoercive) offers of this kind and (coercive) threats. See, e.g., Robert Nozick, "Coercion," in *Philosophy, Science, and Method: Essays in Honor of Ernest Nagel*, ed. S. Morgenbesser, P. Suppes, and M. G. White (New York: St. Martin's Press, 1969), pp. 440–72; Alan Wertheimer, *Coercion* (Princeton, N.J.: Princeton University Press, 1987). These disagreements are not relevant here. Whatever the best account of the distinction between (noncoercive) offers and (coercive) threats, the account will need to capture the thought that (noncoercive) offers "leave it up to us to choose" in a way that (coercive) threats do not.

16. If the consent limited my ability to withdraw in the future, or if withdrawing in time came to carry significant costs, then we would say that my will was no longer free. It is now being bent into compliance in the relevant sense.

consent in an attempt to benefit the steerer. For the purposes of setting out our main objections, the various interpretations of condition (a), including the tenability of the distinctions invoked and their implications for the empirical scope of social justice, need not detain us.<sup>17</sup> This is because our objections will undermine the weaker thesis that is implied by all three, namely that distributive obligations arise when and because our will has been bent into compliance with a comprehensive system of societal norms.

So far we have reconstructed the core of the nonvoluntarist thesis. Now we may wonder: What are the arguments for it? *Why* does bending our will into compliance with a comprehensive system of societal norms give rise to more demanding distributive norms? Although they are not clearly distinguished in the literature, there are, as I have mentioned, two main ways of answering this question. It is important to distinguish them because, as we will see, they have a very different structure and rationale. My argument will then be that, on either interpretation, nonvoluntarism fails. Once again, my aim is to put nonvoluntarists on the defensive. I do not deny that there may be other interpretations of the central steps in the nonvoluntarist argument that avoid my criticisms. But, if so, we have yet to see them.

The first interpretation begins with the thought that bending people's will into compliance is *pro tanto* wrong. According to Michael Blake, for example, taxation "gives us, in essence, a choice between surrendering our goods or our lives." Because such coercive taxation subjects our will, and hence infringes our autonomy, it is "presumptively wrong." However, Blake claims, it can still be justified all things considered as long as it "could not be reasonably rejected by those who face the taxation."<sup>18</sup> Asking whether coercive rules of taxation could be reasonably rejected in turn requires "a process [of justification] that will result in the material egalitarianism of the form expressed in the difference principle, since justifying our coercive scheme to those least favored by it will

17. I discuss the implications of adopting various possible moralized and nonmoralized *definitions* of coercion, imposition, and framing for the nonvoluntarist thesis in Andrea Sangiovanni, "Global Justice, Coercion, and Nonvoluntary Interaction," in *Social Justice, Global Dynamics: Theoretical and Empirical Perspectives*, ed. Miriam Ronzoni, Christian Schimmel, and Ayelet Banai (London: Routledge, 2011). In this article, I assume that each view has a non-question-begging, plausible, and consistent definition of coercion, imposition, or framing.

18. Blake, "Distributive Justice," p. 278.

require that we demonstrate that no alternative principle could have made them any better off.”<sup>19</sup>

Here, then, is a schematic summary of the first way of casting the nonvoluntarist position:<sup>20</sup>

- (1) Bending someone’s will (in one or more of the three ways listed above) is presumptively wrongful (on Blake’s view, for example, this is because it violates our autonomy).
- (2) Those whose will has been bent are therefore owed a special, more stringent justification for the bending.
- (3) Basic social and political institutions massively bend subjects’ will by enforcing a vast array of legal rules that shape the full extent of their life and liberty, including how they may acquire, transfer, and so on, property.
- (4) Those forced to live by this pattern of rules are therefore owed a special, more stringent justification for the resulting distribution than those who are not.
- (5) This special, more stringent justification, to be successful, requires the pattern of rules to realize a more demanding set of socioeconomic standards (e.g., egalitarian standards) among those whose will has been bent.

This interpretation puts the central focus on the *pro tanto wrongfulness* of will-bending. The key to the view is to explain how (5) follows from (4). When Blake, for example, writes that comprehensive coercion is justified only if no alternative feasible scheme could make the worst-off among the coerced any better off, we should wonder: Why would it be unreasonable to reject a set of distributive principles that is limited in scope only to those coerced? Why must the justification take the specific form of the difference principle (or other similarly egalitarian standard)? All of the nonvoluntarists who adopt this schema accept the move from (4) to (5) as intuitive, or as if, once in possession of (4), any of the major theories of distributive justice (e.g., *justice as fairness*) could move us to (5).

19. Ibid., p. 283. See also Risse, “What to Say about the State,” p. 688 for a similar claim. (I leave aside here whether the passage is in fact the correct interpretation of the difference principle, or whether, instead, it incorrectly treats “the worst-off” as a rigid designator rather than as a definite description.)

20. This is not a deductive schema. I try to trace here the main intuitive steps in the argument, which is all that is needed for our purposes.

But why? Why does owing someone a stringent justification for the exercise of coercive power necessarily *require* a certain distributive profile?

There are, I believe, two intuitively plausible answers that might help in explaining the jump from (4) to (5). On one variant, (5) follows from (4) because more demanding norms of distributive justice are understood as *outweighing* the initial wrong; on another variant, such standards are understood as *compensating for* the initial wrong. According to the *Compensation* variant, by bending your will, I infringe your right to autonomy (or equivalent), and hence I owe you special compensation for the wrong, a compensation paid in the currency of more demanding socioeconomic standards.<sup>21</sup> You have no reason to complain about being made in one sense worse off (by having your will bent) because, all things considered, the more demanding distributive standard makes you much better off overall. According to the *Outweighing* variant, my infringement of your right to autonomy (or equivalent) is not compensated but *outweighed* (without “moral residue”) by the urgency or weightiness of the general interests protected by the more demanding distributive standard.

The second interpretation places emphasis on the normative consequences of directing people’s wills in ways they cannot avoid, rather than on overcoming or compensating the *pro tanto* wrongfulness of will-bending. According to Nagel, the foremost proponent of this interpretation: “Justice applies, in other words, only to a form of organization that claims . . . the right to impose decisions by force, and not to a voluntary association or contract among independent parties concerned to advance their common interests.” Why? Because, Nagel tells us, “society makes us responsible for its acts, which are taken in our name, . . . [and] it holds us responsible for obeying its laws and conforming to its norms, thereby supporting the institutions through which advantages and

21. The structure of the view is similar to discussions of “moral residue” in the theory of rights. Many believe that when I break into your log cabin to protect myself from a storm, I infringe your property right, and hence owe you compensation as a result. See, e.g., Joel Feinberg, “Voluntary Euthanasia and the Inalienable Right to Life,” *Philosophy & Public Affairs* 7 (1978): 93–123; Judith Thomson, “Rights and Compensation,” *Noûs* 14 (1980): 3–15. In tort law, such scenarios are equivalent to what Coleman calls “infringement” or “takings” cases, in which fully justifiable conduct can still produce wrongful losses (and hence merit compensation). See Jules L. Coleman, *Risks and Wrongs* (Cambridge: Cambridge University Press, 1992), pp. 244–49. See also notes 29 and 30.

disadvantages are created and distributed.”<sup>22</sup> By forcing us to comply with its norms, society makes us complicit in the imposition of a specific pattern of burdens and benefits. We therefore have a right to demand a special, more stringent justification for that pattern than would otherwise have been the case. This special justification, in turn, can only succeed if the society can show that it is what it claims to be, namely our authorized fiduciary. Nagel concludes that only a distribution that secures “equal citizenship, nondiscrimination, equality of opportunity, and the amelioration through public policy of unfairness in the distribution of social and economic goods” could meet such a standard.<sup>23</sup>

Here is a schematic summary of the argument:

- (1) When we are subject to an association that
  - (a) bends our will into compliance (in one or more of the three ways listed above);
  - (b) enacts a vast array of rules that shapes the full extent of their life and liberty, including how we may acquire, transfer, and so on, property;
  - (c) demands compliance with its directives as a matter of right; and
  - (d) grounds this right in the further claim that, in legislating, it speaks in our name,
- (2) we are owed a special, more stringent justification that shows us that the association is what it claims to be, namely our authorized fiduciary.
- (3) This special justification can be successful if and only if the enacted pattern of benefits and burdens satisfies more demanding distributive standards (e.g., egalitarian standards) among those whose will has been bent.

The two crucial steps are (1a) and the move from (2) to (3), which is analogous to the move from (4) to (5) in the first interpretation. Had the association been voluntary, the presence of the other conditions (which, in effect, identify the directing agent as claiming not just a right to *coerce* but also *authority* over those directed) would not have been sufficient to give rise to more demanding distributive obligations. In that case, the

22. Nagel, “Global Justice,” pp. 133, 140.

23. *Ibid.*, p. 127. A broadly similar view is defended in Julius, “Basic Structure and the Value of Equality”; Julius, “Nagel’s Atlas,” pp. 188–89.

association could legitimately claim, “If you do not like the way things are done around here, then go elsewhere; no one is forcing you to participate in *this* association.” But is this plausible? And, supposing one is forced to participate in the association, why does being the authorized fiduciary of our interests require adherence to a specific set of distributive standards?

I shall now argue that on either the first interpretation (whether we construe it in accordance with *Compensation* or *Outweighing*) or the second one, nonvoluntarism fails to explain how subjection to nonvoluntary norms plays a role in determining the content or the scope of the more demanding set of distributive obligations. At most, nonvoluntarists can show that independently derived distributive norms and obligations govern the types of will-bending that are justifiable, rather than the other way around.

## II. AGAINST THE FIRST INTERPRETATION

### A. *Compensation*

Recall that, according to what I have called the first interpretation of nonvoluntarism, an agent *pro tanto* wrongs you by bending your will into compliance with a series of directives aimed at, among other things, defining a set of comprehensive property rights. Why does wronging you in this way trigger special distributive obligations? According to *Compensation*, special distributive obligations are meant to compensate for the wrong of forcing you to do something, in the same way as I might have a duty to compensate you for the damage I do to your cabin when I break in to protect myself from a life-threatening storm in the mountains. Although my breaking in is (*ex hypothesi*) justified all things considered, this does not cancel the fact that I have infringed your property right, and hence owe you (and only you) remedial damages. On this view, distributive justice is understood as a form of rectificatory or corrective justice.<sup>24</sup>

24. One immediate worry is that a view of this kind elides the distinction between corrective and distributive justice, where the aim of corrective justice is to rectify violations of specific and correlative rights we have in relations with others, and where the aim of distributive justice is to respect, instantiate, and protect entitlements we have with respect to society at large. The elision leaves obscure what moral-political (and indeed distributive) theory is used to determine the underlying rights or entitlements whose infringement

The main problem with *Compensation* is that it is very difficult to understand how a set of distributive principles (or the pattern they enact) could be a form of *compensation* for anything, let alone for the will-bending involved in the exercise of political power (however one construes it).<sup>25</sup> Consider, first, that all compensation claims (e.g., in tort law) involve some kind of harm (or loss). If one has been harmed, then one has been made worse off when compared with some relevant baseline (e.g., worse off than one otherwise would have been in the absence of the wrong). But what is the baseline according to which we are to evaluate the kind of compensation required for the wrongs involved in the exercise of political will-bending? Here are three alternatives that strike me as having the most initial plausibility and relevance. We compare our current welfare, opportunities, and resources to what we would have had (1) had the state (or other relevant political agent) lacked the capacity to bend our will, (2) had everyone complied with the law without needing enforcement, and (3) had the state provided us with what we morally ought to have had. It can be easily shown that none of these options is a particularly attractive option for the nonvoluntarist.

If we choose (1), then, given certain reasonable assumptions about the state of nature, the state, in bending our will, has actually made us *better* off.<sup>26</sup> If so, and if the will-bending is *ex hypothesi* justified in order to enforce law (as all nonvoluntarists assume), then it is unclear why the state owes us *any* compensation. (Compare the case in which we *increase* the value of the cabin to you upon entering it in a storm.)

According to baseline (2), we are asked to consider what we would have had if *everyone* had reliably and voluntarily complied with the law. In such a world, the revenue that would otherwise have been used (in the actual world) for enforcement would be freed up for other uses. That

---

requires rectification. On the importance of not eliding the distinction, see Coleman, *Risks and Wrongs*, p. 304.

25. Cf. Nozick's mischievous proposal to enact a one-off distribution in accordance with the difference principle as a form of rectification for past violations of libertarian rights, after which the entitlement theory would reign. See Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 231.

26. If you believe that the civil state has made us all things considered worse off than a state of nature, then, instead of compensation in the form of a more demanding distributive arrangement, you should demand a dissolution of the state *tout court*. Or if you believe that the state has made only some better off, and the rest worse off, the compensation would only be due to those the state has made worse off compared with the state of nature.

revenue would represent the loss we suffer in the current world. To compensate us for this loss, the government would simply return to the actual taxpayer a  $1/n$  fraction of the total enforcement outlay. There are two problems. First, why is this a morally relevant counterfactual? If it were the case that enforcement *in the actual* world was unnecessary, then there might be a case for it, precisely because the government would be uselessly wasting our money. But this seems, given reasonable assumptions about human nature, assurance, and so on, evidently false for our world. Enforcement of the law is in our interest (unlike having someone break into our house in a storm).<sup>27</sup> Second, the proposal would at most justify something like a small minimum basic income. It would not justify a more demanding distributive standard that touches anything like the organization of an entire basic structure (including the distribution of property rights, social insurance, and so on).

This brings us to baseline (3). If in (3) “what we morally ought to have had” includes what we ought to have had according to the more demanding distributive standard in question (which it must in order to generate the desired conclusion), then (3) simply begs the question. *Compensation* is meant to demonstrate that the compensation owed using the correct counterfactual is captured by the pattern mandated by a more demanding distributive standard. But (3) simply assumes the answer to the question.

What about the idea that compensation is for the wrong *itself* rather than for how much it has harmed or otherwise made us worse off? There are two main reasons to reject this alternative. First, the will-bending involved in political power is, we are assuming, all things considered *justified*, so it is unclear why any rectification should be owed for a wrong that is merely *pro tanto*.<sup>28</sup> Recall our storm

27. Cf. the “gold bullion” case in Seana Shiffrin, “Wrongful Life, Procreative Responsibility, and the Significance of Harm,” *Legal Theory* 5 (1999): 117–48.

28. Tort law—whose aim is to repair past wrongs—provides a useful set of contrasts. The closest analogy in tort law to compensation for a wrong itself rather than for any harmful downward effects of the wrong would be punitive damages; or, if not punitive damages, then the closest analogy would be rectification for a strictly “normative” (and hence not “factual”) loss, where normative loss is defined as the “[normative] shortfall from one’s due.” Ernest Weinrib, *The Idea of Private Law* (Cambridge, Mass.: Harvard University Press, 1995), p. 117, but see also p. 135n25. Drawing the analogy, rectification according to this way of conceiving *Compensation* should reflect either the egregiousness or invidiousness of the wrongdoing itself (equivalent to punitive damages) or the normative loss

case.<sup>29</sup> When I justifiably break and enter into your cabin to repair from a storm that would otherwise kill me, take special care not to damage any of your property, and readily pay the full costs for any harm caused, why should I *also* be morally liable to pay *further* damages for what is, all things considered, a *rightful* infringement of your property right?<sup>30</sup> After I have paid any damages for the harm to your property, there is no relevant further “normative” loss left for me to rectify. Second, why is a comprehensively egalitarian distributive standard the correct way of redressing the initial *pro tanto* wrong? Even assuming that the state owes us compensation for the *pro tanto* wrong itself, why would a comprehensively egalitarian distributive standard—whose point is to regulate *inter alia* the entire structure of public and private law—be the correct measure of that compensation? Wouldn’t some kind of lump sum be more appropriate?

---

suffered by the victim (equivalent to nonpunitive, noncompensatory damages, such as nominal damages). But, given that state coercion is (*ex hypothesi*) an all-things-considered *justifiable* means of enforcing (just or nearly just) laws, there is neither an egregious or invidious wrong at stake nor any all-things-considered normative loss to rectify. No common law court would award any punitive or nominal damages in a case like this, and they would be right not to for the reasons cited in the text. See notes 29 and 30 for how common law courts deal with cases where there is a factual loss, infringement of a (legal) property right, but no wrongdoing.

29. Cf. *Vincent v. Lake Erie* 10 Minn. 456, 124 NW 221 (1910), in which a crew moored to a dock during a storm decided not to cast off for fear of losing the vessel. As a result, the dock was destroyed as a result of the wind and waves pounding the ship against it. The dock owners sued for damages, which were granted. On what basis? It is widely agreed that, insofar as damages were due, they were due not as a way of rectifying a purely normative loss (no one argues that the crew were engaged in wrongdoing) but on other grounds. This is why such “takings” cases are normally considered as instances of strict liability. See, e.g., Jules Coleman, “Moral Theories of Torts: Their Scope and Limits, Part II,” *Law and Philosophy* 2 (1983): 5–36, at pp. 16–17; cf. Weinrib, *The Idea of Private Law*, where he argues that, *precisely because no normative loss was involved*, the case should not be explained by the principles underlying tort law. See Weinrib, *The Idea of Private Law*, p. 196ff.

30. Consider that in most common law jurisdictions, we have a necessity-based *privilege* to use someone else’s property to protect our own (as long as we pay any compensation for any factual damage caused). In Hohfeld’s analysis, a privilege correlates with a no-right: no one has a claim on us *not* to use property in the way stipulated. If we assume that this legal privilege is also a privilege we ought, morally, to recognize (and I see no reason why we ought to deny this), why should there be any normative loss suffered by the owner of the cabin for our use of such a privilege (where we pay full compensation for any factual losses)? On incomplete privileges in the law, see Francis Bohlen, “Incomplete Privilege to Inflict Intentional Invasions of Interests of Property and Personality,” *Harvard Law Review* 39 (1925): 307–24.

*Compensation*, I conclude, is a nonstarter.<sup>31</sup>

### B. *Outweighing*

*Outweighing* is more promising. For the *Outweighing* variant of the first interpretation, my infringement of your right to autonomy is not *compensated* but *outweighed* by the urgency or importance or weightiness of the interests protected by the more demanding distributive principle. To return to our previous example, the distributive obligations are here analogous to the weightiness of my interests in avoiding death in a storm, rather than to the compensation owed to you as a result of infringing your property right. The rationale is straightforward: I can only justify infringing your autonomy if I can show you that the will-bending was in the service of a very urgent or weighty end that could not have been pursued in any other way. Only in that case will you lack a reason to reject a principle allowing the will-bending, just as you lack a reason to reject a principle allowing me to break into your house in a storm.

To bring the justificatory model implicit in *Outweighing* into sharper focus, let us contrast cases in which we bend someone's will via coercion, imposition, or framing (and hence make compliance nonvoluntary) with those in which we offer someone advice (and hence leave compliance voluntary). Suppose your son would like to borrow your car to go to a party with friends, but you are not sure whether to give it to him. I offer you advice, suggesting that you should; after all, he is a trustworthy and reliable young man. My offering advice (whatever its content) is not something that requires any special justification. At most, I may have an obligation to give you *sincere* advice. But now suppose that instead of offering you advice, I bend your will—for example, by threatening to break your arm—in such a way as to ensure that you will give the car to your son, whether you want to or not. Now suppose that I bend your will in an effort to take possession of the car to rescue the lives of ten people who are drowning. We believe that threatening to twist your arm in the latter case (where people are drowning) is justifiable, whereas in the former it is not. How did we make up our minds?

The general form of a *bending of the will* is this: A bends B's will to do some action  $\phi$  in order to attain some end C. We then ask: does B have

31. For different arguments against nonvoluntarism qua *Compensation*, see Richard Arneson, "Do Patriotic Ties Limit Global Justice Duties?" *Journal of Ethics* 9 (2005): 127–50.

a morally weighty reason to  $\phi$  sufficient to outweigh or override the wrong involved in bending her will to  $\phi$ ? To answer this question, *Outweighing* asks us to tally up the moral weightiness of A's interests in B's  $\phi$ -ing, the moral weightiness of B's interests in not- $\phi$ -ing, and the moral weightiness of the interests significantly affected by the pursuit of end C. We then see whether the net moral weightiness of the interests involved on both sides of our ledger outweighs the moral weight of B's interest in not having her will bent (however that interest is construed).<sup>32</sup> To illustrate: The moral weight of my (A's) interests in your giving the car to your son ( $\phi$ ) is (barring unusual circumstances) not very strong. The moral weight of your son's (and his friends') interest in driving the car (C), it also seems plausible to assume, is also not very strong: at most, getting around will be more difficult. But your (B's) interest (your fear that he will get in an accident) in not giving the car to your son (not- $\phi$ -ing) is much more morally weighty, as is the moral weightiness of your interest in not being coerced. Therefore, we conclude, it is unjustifiable for me to bend your will. It should be clear that the same analysis can easily be used to demonstrate that coercion is justifiable in the case of the ten drowning people.

The justificatory model employed by *Outweighing* can also be used to explain the justification of will-bending in cases involving not only *general* obligations—as in our rescue case—but also *special* obligations. Let us assume a case in which a group of neighbors all have fair play obligations to maintain their communal garden.<sup>33</sup> Would will-bending by the rest of the group (call them A) be justified as a way of making an unwilling neighbor who greatly benefits by the scheme (call him B) contribute his fair share? It seems not. Even though we assume that free-riding B has a fair play obligation to contribute, the moral weights of the interests protected by the gardening scheme are fairly insignificant, and so we conclude that the interests in not having one's will bent outweigh

32. See, e.g., Joel Feinberg, *The Moral Limits of the Criminal Law*, 4 vols. (New York: Oxford University Press, 1988–90). According to Feinberg, “Liberty should be the norm; coercion always needs some special justification. . . . [This presumption in liberty's favor] transfer[s] the burden of argument to the shoulders of the advocate of coercion who must, in particular instances, show that the standing case for liberty can be overridden by even weightier reasons on the other side of the scale” (1:9; see also chap. 5).

33. For the classical statement of a fair play obligation, see H.L.A. Hart, “Are There Any Natural Rights?” *The Philosophical Review* 64 (1955): 175–91; see also John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971).

the moral weightiness of the interests protected by the gardening scheme. Compare this with a case in which individuals have (let us suppose) fair play obligations to contribute to the construction of a levee necessary to prevent serious flooding. Assuming that all the lowlanders have fair play obligations to contribute, we would say that coercion *is* justified: the moral weightiness of the interests protected by the levee is very important, and significant enough to justify bending individuals' wills into compliance.<sup>34</sup>

But here's the problem: the moral weightiness of A's interests in B's  $\phi$ -ing, the moral weightiness of B's interests in not- $\phi$ -ing, and the moral weightiness of the interests significantly affected by the pursuit of end C can be identified *without any reference to whether or not A bends B's will*. They remain, that is, *constant* across both scenarios in which will-bending is present and those in which it is not. We can check this result by running through each of the will-bending-independent interests we have identified in the cases above, namely the moral weightiness of individuals' interests in maintaining tidy gardens, building levees, going to parties with friends, being rescued, and so on. Would the moral weights of any of these interests change were they to be achieved by voluntary action? No. The moral weights of the interests involved remain *exactly the same* in each of the cases considered with and without the will-bending. To be sure, whether the course of action is ultimately justified hinges on whether B's will has been bent or not. But the moral weight of B's interest in not having her will bent serves as a counterweight only once the net moral weightiness of the other interests has been determined. The moral weights assigned to the various interests

34. I have focused on cases that involve coercing people to benefit *others* since those are the cases we are primarily interested in when discussing distributive obligations, but the model also works for cases that involve coercing people for their *own* benefit. In standard cases involving paternalism, we usually assume that the moral weightiness of either A's interests in B's  $\phi$ -ing or the interests generally affected by end C will normally not be very weighty (unless there is, say, a risk of indirect harm). As a result, it will be much more difficult, on this model, to justify paternalistic coercion than coercion aimed at benefiting others. The outcome of our justificatory test will largely come to depend on the weight assigned to B's interests in not- $\phi$ -ing and the weight we give to the strength of B's interest in not being coerced (their interest in liberty). The important point is that, in both cases involving paternalism and those not involving paternalism, the will-bending-independent interests remain constant across scenarios in which will-bending is present and those in which it is absent. I thank one of the editors for encouraging me to clarify this point.

involved are therefore not a function of how, or even whether, the ends at stake are attained via bending B's will.

And there's the rub. Recall: A bends B's will to do some action  $\phi$  in order to attain some end C. Using this framework, nonvoluntarist views say that a political association (e.g., a state A) bends its subjects' (B's) wills to comply ( $\phi$ ) with a system of social arrangements in order to attain some political end (C), which, in turn, determines a distribution of life chances and property holdings. How do we determine whether such bending is justified? We first assume (as we did above) that any bending of the will is *pro tanto* wrong. We then ask: are the interests involved sufficiently weighty to outweigh the presumptive wrongness of bending individuals' wills? To simplify our task, divide the population into two groups: those whose interests are served by political ends C insofar as they keep the distribution of holdings and life chances more or less in place (the "better-off"), and those whose interests are to change ends C in order to change the distribution ("the worse-off"). To determine whether the moral weightiness of the interests significantly affected by the distribution of holdings and life chances is sufficient to overcome the presumptive wrongness of bending subjects' wills, we need to compare the moral weightiness of the better-off's interests with the moral weightiness of the worse-off's interests. But notice that, just as before, determining the balance of interests can proceed *without knowing* whether the scheme is enacted via bending subjects' wills or not. Of course, the fact that the scheme is enacted via bending individuals' wills means that the net balance of interests must be *strongly* positive (i.e., the moral weightiness of the interests of the better-off in the distribution produced by pursuing C must be not only strong enough to outweigh the moral weightiness of the interests the worse-off have in a distribution produced by not-C but also weighty enough to overcome the presumptive wrongness of bending everyone's will into conformity with the distribution realized by C). But, however strong the net balance must be, the content and scope of the obligations governed by the assignment of moral weights to the interests involved are *not* a function of the type, degree, or extent of will-bending involved. Nonvoluntarists thus fail to show how the mere fact that a scheme is enacted via some form of will-bending can shape the contours or character of distributive obligations.

This has important implications for the nonvoluntarist thesis that more demanding distributive obligations are triggered by participating

in an extensive web of mutual coercion, imposition, or framing. For if the moral weightiness of the interests involved can be adjudicated without knowing whether individuals are engaged in any kind of mutual bending of the will, then nonvoluntarism could be compatible with holding (*per absurdum*) a *nonrelational* account of the grounds of justice, which holds that more demanding distributive obligations apply to us whether or not we stand in some social relation to one another.<sup>35</sup> There is no reason why we cannot say something like the following: A's bending of B's will is justified if the bending serves to realize or bring us closer to a distribution of holdings and life chances equalized *across all human beings as such*. No reason is offered why a nonrelational account of justice is the *incorrect* standard for identifying the moral weightiness of the interests at stake; no reason is offered why more demanding distributive obligations arise among those who bend one another's wills.<sup>36</sup> We can use our analysis once again to illustrate the point. Above I said that to determine whether bending subjects' wills was justified in the political case, we have to compare the moral weightiness of those whose interests are served by C and those whose interests are not. But why assume that only those who are subject to the bending have their interests significantly affected by C? Indeed, in the case of the ten drowning people and the levee, the interests that justify the bending are not the interests of B at all. In the case of the ten drowning people, A's taking B's car by force is justified if the interests affected of everyone affected by the car theft are sufficiently weighty, but there is no requirement that the interests affected be limited to B's; and, similarly, in the levee case, the levee-building group's bending of B's will into compliance is justified if the interests protected by the building of the levee are sufficiently weighty, but there is no reason to think that the only person's interests that matter in the deliberation are B's. We can employ much the same reasoning in the case of a state's exercise of power in defining a distribution of holdings and life chances. When we say that we need to compare the moral weightiness of those who favor the distribution realized by aiming for C

35. For the distinction between relational and nonrelational grounds of justice, see Andrea Sangiovanni, "Global Justice, Reciprocity, and the State," *Philosophy & Public Affairs* 35 (2007): 2–39, at p. 3.

36. Brad McHose develops a similar point in "Imposition Arguments and Egalitarian Justice" (manuscript). I thank an editor at *Philosophy & Public Affairs* for suggesting this article to me.

with those who do not, why assume that either of those classes of individuals must be limited to those whose will has been bent? We need some independent criterion, not offered by nonvoluntarists, to decide how the affected interests enter the moral balance. As we have seen, for all that nonvoluntarists tell us, the correct criterion may be a nonrelational one. Nonvoluntarist views must thus *presuppose* a prior set of entitlements (what I have called “morally weighty interests”) rather than provide grounds for a new one. They leave us, therefore, with no explanation of how and why the morally relevant features of will-bending fix the content and scope of the obligations in question. At most, an independently justified set of distributive obligations affects the kinds of will-bending that might be permissible in the circumstances, but no moral features of the will-bending itself explain which obligations apply and why they only hold among those whose will has been bent. Subjection to nonvoluntary norms is a *redundant* part of the explanation for the distributive standards.

But, surely (it might be said) I have misunderstood the nonvoluntarist claim. The nonvoluntarist says that when I impose an extensive system of social arrangements on you, and you have no option but to comply, I owe you a special justification for the way the system benefits or harms you (compared to other feasible institutional schemes), a special justification that, in turn, I do not owe to those who are not forced to comply. The fact that outsiders are not forced *explains* why their interests for or against the scheme do not count in the same way as those who *are* forced.

I do not see how the objection serves to support the nonvoluntarist claim. I do not deny that those who are forced require a “special justification” for the forcing. That was never in question. The point of the argument we have been pursuing is to demonstrate that there is no reason given why the fact that those forced are owed a “special justification” narrows or helps to specify the interests that can be considered in offering that justification, or why it otherwise specifies the terms in which that justification must be given. The fact that you are forced just means that the general bending-independent interests invoked in justifying the force against you must be morally weighty enough to outweigh the *pro tanto* wrongness of bending your will. But the fact that you have been forced doesn’t limit or specify the range of interests to be considered. It is one thing to say that coercion, imposition, or framing requires

special justification, and another to say that it justifies treating the bending-independent interests of those framed, coerced, and so on, differently than those not framed, coerced, and so on. Nonvoluntarist views only succeed by eliding the distinction. Consider the following passage by Michael Blake (which reflects a common pattern in the literature): “We have to give *all individuals within the web of coercion* [group X], including those who do most poorly, reasons to consent to the principles grounding their situation by giving [group X] reasons they could not reasonably reject—a process that will result in the material egalitarianism of the form expressed in the difference principle, since justifying our coercive scheme to those least favored by it will require that we demonstrate that no alternative principle could have made *them* [emphasis mine] any better off.”<sup>37</sup> But here we may wonder: why should *only* the interests of group X be considered in justifying the coercion of those in group X? Why would it not be sufficient to say that those coerced, namely group X, have no reasonable objection to the coercion because the interests of *others* (in our case, nonmembers) are sufficiently weighty? Why couldn’t we replace the last, italicized “them” with some other group, Y (rather than the group X intended)? I do not see how appeal to some kind of hypothetical consent eliminates that possibility.

A different and more promising strategy of objection is to question the model of *Outweighing* I have offered in a way that might help nonvoluntarists. If we could find instances of will-bending that *change* the moral weightiness of the will-bending-independent interests, thereby creating new entitlements and obligations, then that might show how will-bending plays a role in fixing the content and scope of distributive obligations. A potentially fruitful class of examples involves the use of continuous and comprehensive will-bending (rather than the one-off cases we have already covered). Suppose there is a major flood and a group of people, including you, are trapped on the top floors of a taller house. Most of this group (except for you and someone else, whom I will call the “onlooker”) has started to panic and wants to swim away in the strong current. You and the onlooker realize that this would be suicide.

37. Blake, “Distributive Justice,” p. 283. See also Risse, “What to Say about the State,” p. 688: “if individuals live by a set of rules that define the environment on which their most basic liberties depend, and thus affect them in a particularly profound manner, these rules should be justifiable to each person subject to them.” Why must the interests of only those persons subject to the set of rules count in the justification?

You (but not the onlooker) decide to help the panicked by bending their will to stay in the house (they are sufficiently about their wits to respond to the coercion though not to respond to reason). The group's nerves remain frayed, and you need to continually bend their will over the next few days while you wait for support. The thought that is meant to drive us to the conclusion that you now have new special obligations toward those whose will has been bent that the onlooker lacks is that you have taken their lives into your hands, you have replaced their will with yours. This morally relevant fact *explains* the nature of the new obligations to serve their interests; indeed, it explains why their morally relevant interests must now count for *more* in the justification of your actions than they do in the justification of the onlooker's actions. Now that coercion is in the offing, these special obligations must be satisfied for your coercion to be justified *all things considered*.

Undoubtedly, the fact that you have taken their lives in your hands changes your and their normative situation (but not the onlooker's). You can now, for example, be called to account if any of your directives are unsuccessful; you are now liable for damages or compensation should you put them unnecessarily in harm's way; you must take special care in forming plans for the group (much greater than if you were deciding only for yourself, or were merely providing advice). But what explains the content and scope of these further special obligations and responsibilities? On further reflection, the most plausible explanation has little to do with the morally specific character of will-bending. All of these further normative effects can be fully explained as specific instantiations of a *will-bending-independent* and general duty *not to harm*. By coercing the panicked, we risk harming them more than we might help them, so we ought to take special care that our action doesn't make them worse off than they otherwise would have been. It is for this reason that we must show special concern, bear liability when things go wrong, and so on. The important point is that we have such obligations even when will-bending is not in the picture; indeed, we have the same set of obligations in *any* case in which we knowingly put others at risk of harm.<sup>38</sup> Bus

38. Notice that this is the case even when we voluntarily get on the bus, go to dinner, allow the doctor to take care of us, and so on. Of course, if others specifically *consent* to be put at risk, then that may waive the obligations to take special care, bear liability, and so on, but this is a special case, on which more below.

drivers share a similar set of obligations, but so do construction workers building in congested areas, cooks both professional and domestic, tree surgeons, medical doctors, and so on. Once seen in this light, it becomes clear that will-bending is special only insofar as it is itself a violation of a *pro tanto* moral right (to autonomy, to not having one's will bent, and so on), and so its all-things-considered justification requires countervailing interests that are much more morally weighty than, for example, those involved in cooking dinner or driving a bus. What will-bending does not do is change the moral weight of any of the independent interests that go into the justification of the will-bending itself, namely, in this case, the interests of the panicked in survival and not being harmed (when compared to a baseline defined by what would have happened had we not bent their will), and your interests in survival and not being overburdened by the coordinative task.<sup>39</sup>

This point is best illustrated by discussing how the example might bear on the moral weightiness of our interests in a just distribution of goods, which is the case we are primarily concerned with. Suppose that your directives not only prevent the panicked from hurting each other irrationally, but also direct them in organizing the construction and deployment of a raft to go on mini-expeditions in search of food. The onlooker also participates in the mini-expeditions. Though his will is not bent into participating, everyone else's is. Let us further suppose that the decision on how to distribute the food once it has been collected falls to you (the onlooker will willingly comply). How do you decide to divide the food (and enforce your decision)? Do you have any reason to give some special weight to the interests of those whose will you have bent rather than to the interests of the onlooker? It should be clear that you do not. Why should the fact that you have coerced one group of people but not another change the moral weights of their interests in receiving a distributive share, in this case, of food? Recall that the justification of coercion offered in this case was that the coercion facilitates the group's acting according to reasons they would have accepted had they been rational. But, again, the reasons they would accept had they been rational are just the reasons that apply to them *independently* of the

39. On paternalistic coercion generally, see note 34.

coercion.<sup>40</sup> What explains everyone's right to a share of the food is the fact that they have participated and borne significant costs in its retrieval. To further verify this claim, compare a variant in which the onlooker does not participate in the mini-expeditions (but in which his needs are fully met). In that variant, it seems morally permissible to exclude him from the bounty. The reason, however, is not that he has not been coerced, but rather that he has failed to participate in the joint effort. The morally relevant claims in distribution in both cases could be fully explained by a fair play principle. Will-bending is irrelevant.

### III. AGAINST THE SECOND INTERPRETATION

Recall that the second interpretation of nonvoluntarism focuses on the way in which political authority makes us responsible for its directives, rules, and norms, whether or not we accept or endorse or consent to that responsibility. It therefore prescind from the central assumption of the first interpretation, namely that will-bending is *pro tanto* wrong; as a result, it may seem that it can survive the criticisms leveled at *Outweighing*. I shall argue that this appearance is illusory: the second interpretation lacks a convincing way of explaining both why subjection to political authority triggers more demanding distributive norms and why it should matter that our subjection to such authority is nonvoluntary.

Why, according to the second interpretation, are we specially responsible for the distributive patterns enacted by a political authority with which we are forced to comply? The rationale underpinning the second interpretation can be helpfully reconstructed in terms of the general notion of a *fiduciary obligation*. Recall: According to the second interpretation, we are made responsible (and hence accountable) for a political authority's directives when and because it (a) demands our compliance as a matter of right and (b) grounds this right in the claim

40. Cf. Raz's Normal Justification Thesis: "the normal way to establish that a person has authority over another person involves showing that the alleged subject is likely better to comply with reasons which apply to him (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly." Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), p. 53. The key here is that the "reasons which apply to him" are, as we might say, *directive-independent*: the reasons are reasons that apply to us independently of the authority's (or, in our case, coercer's) directing us to do something.

that it speaks in our name. When conditions (a) and (b) are satisfied, we can rightly be called the *authors* of the directives governing our society. But, as we know from condition (1a) (the condition which states that subjection must be nonvoluntary), those governed by our directives have no choice but to comply; their submission to the exercise of collective authority is compulsory. The relation between authors and addressees in political society is therefore equivalent to the relation between a *fiduciary* and a set of *principals*. As Weinrib notes, the “hallmark of a fiduciary relation” is “such that one party is at the mercy of the other’s discretion.”<sup>41</sup> Similarly, in political society, we are “at the mercy” of others’ decisions on how to steer and shape the basic societal and legal norms governing our lives.

Fiduciary relationships, in turn, create special obligations: precisely because of the discretionary authority exercised by the fiduciary, she must take special care of the principals’ interests in making decisions for them, a care that she is not required to give to others with whom she does not stand in that relationship. Analogously, as *authors* of the law we must give special concern to the interests of those over whom we exercise authority, namely the law’s *addressees*. This special concern, as a type of fiduciary obligation, is one we do not owe to those not subject to our exercise of authority. What form must this special concern take to be justifiable? An appealing response is to say that our fiduciary relation is only legitimate if the principals would or could have consented to our decisions; the fiduciary must act for the benefit of the principals rather than for her own. Employing the idea in the context of a political association is then straightforward: as coauthors of a political association, our decisions with respect to each other (as fiduciaries) can only be legitimate if we, in our role as addressees (and hence as principals), could have consented to them. And they can be consented to, the second interpretation concludes, only if a more demanding distribution is maintained through them. The demand for special and more stringent concern is generated here not by the need to outweigh or compensate a *pro tanto* wrong, but by the nature of the fiduciary relationship involved.

Is the argument successful? There are two problems with it. First, the fact that, on this view, our nonvoluntary subjection to political authority

41. Ernest Weinrib, “The Fiduciary Obligation,” *University of Toronto Law Journal* 25 (1975): 1–22, at p. 7.

makes us in some relevant sense *responsible* for its edicts, directives, and rules should strike us as surprising. When we are forced to do something, we usually believe that this fact *mitigates* or *eliminates* our responsibility. Why, in this special case, does our being forced into compliance trigger a responsibility that otherwise would not have existed? Put another way, why does the political authority's *claim* that we are responsible for what it does actually *succeed* in making us responsible (whether or not it is ultimately justified in enforcing its norms against us)?<sup>42</sup> It is striking that nonvoluntarists have not addressed this obvious point.<sup>43</sup>

Second, I have no reason to doubt that the strategy sets up the need for a special, more stringent justification for the authority exercised (just as I had no reason to doubt that the same thing was true of *pro tanto* wrongfulness views). But the account does not tell us anything about the terms this justification should take, and so does not provide the materials for explaining why specific types of nonvoluntary subjection issue in some particular set of principles for their regulation. This is easily illustrated. Consider that what might count as the principles required to justify the actions taken by a guardian on behalf of an infant, or a hospital trust on behalf its beneficiaries, or a corporation on behalf of the shareholders, or a franchisee with respect to a franchisor will vary enormously. This would not be a problem if the general idea of a fiduciary relation could usefully constrain the range of considerations that might go into identifying the specific obligations held vis-à-vis the principal in each case. But the idea of being a fiduciary only tells us that we should act on behalf of a principal, in their interests. This can all be summarized with the idea that we ought only to act in ways they could consent to. What it does not tell us is *which features* of the relationship or context are relevant in specifying substantive, governing principles for discharging the more general obligation to act in their interests, and *how* those features are relevant.<sup>44</sup> This is particularly clear in the case we are most interested

42. On the difficulties involved in making nonvoluntarism depend on the state's (or its officials') attitudes toward its subjects (What if the state [or its officials] do not claim or expect compliance? What if they simply believed they had a right to coerce?), see Julius, "Nagel's Atlas."

43. In *ibid.*, p. 186, Julius objects to Nagel's view on these grounds. The construal of the second interpretation I give below I believe withstands these criticisms.

44. Cf. Justice Frankfurter's oft-cited remark in *SEC v. Chenery Corp* 318 U.S. 80 (1943), at pp. 85–86: "To say that a man is a fiduciary only begins the analysis; it gives direction to further enquiry. To whom is he a fiduciary? What obligations does he owe as fiduciary? In

in, namely our relations as coauthors of a comprehensive legal and political order: What aspects of this relationship fill out the notion of being one another's fiduciaries? *Why* and *how* does our fiduciary role as authors of the law require that we enact a more demanding distributive pattern among its addressees?

It is useful to see how similar *pro tanto* wrongfulness versions of non-voluntarism in fact are. There, too, we could say that those whose will has been bent can demand to be offered reasons for the will-bending that they "could consent" to. And there, too, there was no moral connection between nonvoluntary subjection and a set of more demanding distributive norms. Indeed, the similarity runs deeper: just as it was never explained on the first interpretation why *only* the claims of those whose will has been bent are to be considered in providing the all-things-considered justification, it is never explained on the second interpretation why *only* the claims of those who are subject to our authority are relevant in justifying the specific terms offered by the authority.<sup>45</sup> What, as a result, precludes us (as authors) from saying that our claim to act in the name of the addressees only succeeds when we realize a foreign-cum-domestic policy that meets (as closely as possible) a global and nonrelational egalitarian standard? Because nothing in the mere idea of "acting in someone's name" defines the range of considerations that are relevant in specifying the content of the fiduciary obligations at stake,

---

what respect has he failed to discharge these obligations? And what are the consequences of his deviation from duty?" See also Deborah DeMott, "Beyond Metaphor: An Analysis of Fiduciary Obligation," *Duke Law Journal* (1988): 879–924, who writes: "Although one can identify common core principles of fiduciary obligation, these principles apply with greater or lesser force in different contexts involving different types of parties and relationships. Recognition that the law of fiduciary obligation is situation-specific should be the starting point for any further analysis" (p. 879).

45. Julius correctly glosses Nagel in this way: "Say that 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. Nagel argues that to submit terms to standards of justice is fundamentally a way of acting on this duty. If we accept his argument, we can determine a scope for justice by finding out which groups of people form protolegitimate societies" (Julius, "Nagel's Atlas," p. 181). But how does the fact that imposition must be justified to those whose will has been bent into compliance *determine* the scope of justice? Why can't the principles of justice that justify the relevant imposition to those whose will has been bent be nonrelational and global? It seems to me that the same problem applies to the move from the need to justify terms to a restricted scope claim in Julius, "Nagel's Atlas," pp. 188–89; see also Julius, "Basic Structure and the Value of Equality."

the second interpretation fails in explaining why subjection to political power triggers a bounded egalitarian distributive standard.

#### IV. THE SPURIOUS ROLE OF CONSENT

If what I have said so far is correct, then it follows that subjection to nonvoluntary norms is redundant in the explanation of why a certain set of more demanding distributive obligations holds: what explains the existence of more demanding obligations (if and when they exist) must be something other than nonvoluntary subjection to norms. Further intuitive support for this conclusion could be mustered if we could find cases where more demanding obligations obtain in a nonvoluntary scheme that would still obtain *even if membership in that scheme were voluntary*. This would show, I think conclusively, that step (1a) in the second interpretation and step (1) in the first (i.e., the nonvoluntariness conditions) are redundant, and would serve to bring our discussion of nonvoluntarism to a close.

Suppose that you are a well-to-do French immigrant living and working in the United States. Imagine your move was fully voluntary: there is no plausible sense in which you could claim you were forced to relocate because of economic, social, or political conditions. Relocating to the United States is costly for all kinds of personal reasons, but not excessively costly (returning to France would still be feasible should you want to). Now suppose you were to suffer discrimination on the job: you are not paid equal pay for equal work. You protest the injustice. Would the U.S. government or your employer be justified in saying, "Look, you might be right in saying that a citizen of this country who has, in the relevant sense, no choice but to remain in this country would have a claim in justice against our policy. But since your residence in the United States is voluntary, you have no complaint in justice against our treatment of you"? This strikes me as straightforwardly implausible. Of course, if you had explicitly *consented* to be paid at the (lower) wage (e.g., by signing a relevant contract), and your consent had been genuine and unforced, then your employer is right that you have no grounds for complaint. But in that case, what explains the permissibility of the employer's policy is that you have *waived a preexisting* obligation to be granted equal pay for equal work. It would be false, however, to say that the preexisting obligation itself is grounded in facts about the

voluntariness of your residence in the United States. To see this, imagine that, on the contrary, there had been no relevant sense in which you had (knowingly and willingly) consented to unequal treatment (it had not been part of your work contract and the policy had been enacted only after you had already arrived). In that case, we should still say that, even though your residency in the United States is voluntary, your employer does you an injustice by violating your right to equal pay for equal work (grounded perhaps in your full participation in the economy and society in which you live). Nonvoluntarist views at most establish that some obligations can be waived by consent (but who would object to that?), *not* that more demanding obligations arise only among individuals whose interaction is forced.<sup>46</sup> I return to this point in a moment.

The argument is strengthened if we turn to examples involving the fiduciary relations discussed above. Imagine there is only one hospital to which you have access, and you need urgent (though not emergency) treatment, a lung transplant. You are placed on a list. Nonvoluntarists will say that, because you have no reasonable option but to attend *this* hospital, more stringent standards of justice apply for how the list is drawn up, including on what kinds of grounds the hospital can discriminate among people, bump people up the list, and so on. But now imagine there are two (or more) hospitals that you could have access to (with different standards governing how the lists are drawn up). Now you have reasonable alternatives, and we can say that your choosing hospital X versus hospital Y (or Z or . . .) is voluntary. Should this make a difference to the criteria the hospital can use in administering its lists? Would *every* hospital now be subject to *less* stringent standards, simply because of the presence of the others? Once again, if it could be argued that we tacitly

46. It might be retorted that, as long as she remains in the United States, her will *is* being bent. If she were to break the law, she would, after all, be sent to jail. To see why this is an irrelevant sense of will-bending in this context, let us further distill the example: imagine that, if she were to break any U.S. law, she would be able, with absolute certainty, to escape back to France without suffering punishment and without bearing any personal costs; and let us further suppose that she knows this, but both wants to remain in the United States and does not want or intend to break any laws. (This would be analogous to a classic highway gunman case in which we know with absolute certainty that the gun the highwayman carries isn't loaded, and that he is too weak to threaten you in any other way. When you walk away, or willingly give him your wallet nonetheless, your will has not been bent into compliance.) I submit that this makes no difference to our evaluation of the injustice of this case.

*consent* to the services offered by hospital X (by, e.g., explicitly agreeing to be bound by its terms), then that would be a different story, but that is not the claim under discussion.

The distinction between voluntarily joining an association (which only requires us to have reasonable options) and consenting to its terms can be used, I now want to argue, to explain the initial, surface plausibility of the second interpretation, and therefore to serve as a kind of diagnosis of its failure. Recall the crucial premise of the second interpretation, namely that, as Nagel says, “there is a difference between voluntary association, however strongly motivated, and coercively imposed collective authority.”<sup>47</sup> The difference is that when you feel disadvantaged by a set of norms and regulations set by a voluntary association, it seems reasonable to respond “love it or leave it” in a way that it is not when your subjection to the association’s terms is nonvoluntary.

But *why* does it seem like a reasonable reply? Or rather, *under what conditions* is it a reasonable reply? If what we have said so far is right, then, in fact, it is only a reasonable reply when our voluntarily joining an association *counts as* consenting to its terms, which, as we have just seen, is not always the case. And, if some kind of tacit consent is actually doing the work in explaining the initial, *prima facie* plausibility of the central nonvoluntarist premise, then it looks like nonvoluntarism gets things exactly backward. Rather than saying that nonvoluntary associations trigger or give rise to *new* distributive obligations, we ought to say that, when we consent to an association’s terms, we *waive* distributive entitlements *that we have independently*; we waive our right to complain at the bar of justice upon joining; *volenti non fit iniuria*. The case is analogous to someone’s waiving, say, their right to receive a state-based pension: it gets things backward to argue that we *acquire* the right to receive a state-based pension only in virtue of the fact that we have not consented to waive it. Our not having consented to waive it satisfies a necessary condition for us to claim the pension, but it does not in any sense ground or otherwise qualify the content and scope of the general entitlement to a pension. In cases like this (and unlike promises or contracts), consent only plays a role *after* the obligations have already been defined. The initial plausibility of the nonvoluntariness conditions is therefore, on reflection, spurious.

47. Nagel, “Global Justice,” p. 140.

## V. CONCLUSION

I have argued that, on the two dominant interpretations of nonvoluntarism, nonvoluntary subjection to a system of comprehensive societal norms does not *give rise to* or *ground* more demanding distributive obligations. At most, the fact that political authorities such as the state bend our will into compliance with their norms, rules, and directives makes all-things-considered justification of their directive power more difficult. What such subjection does not do is ground or explain the content or scope of the more demanding distributive obligations that might be invoked as part of that justification. Enforcement is just that: a good way of getting people to comply with norms, rules, and directives and of providing general assurance of such compliance. It is a means or tool or instrument for realizing ends that are justified independently.

In conclusion, it is worth mentioning some of the implications for the global justice debate with which we started. Nothing I have said serves to undermine *relational* views generally, which hold (like nonvoluntarism) that more demanding distributive obligations are grounded in some morally relevant feature of a set of social relationships.<sup>48</sup> Indeed, if what I have said is correct, it indicates what the structure of a better sort of relationism would be. A better kind of relationism would abandon the concern with whether political authorities of all kinds—including international institutions—bend or thwart our will. Relationists should focus instead on *what* such institutions do rather than on *how* they do it.<sup>49</sup>

48. A social relationship, in the sense I am using the term, does not require (nor does it exclude) either a history of face-to-face interactions or any specific knowledge regarding the identity of each participant in the relationship. “Social relationship” could refer to something as weak as sporadic trade or as highly developed as the practices and institutions involved in the reproduction of a state or a national culture. Relationists distinguish themselves by specifying exactly *what kind* of social relationship is relevant in generating the demand for distributive justice. For example, *coercion-based* relational views, as we have seen, claim that more demanding distributive obligations hold when and because individuals participate in a comprehensive web of mutual political coercion. According to *reciprocity-based* relational views, by contrast, the relevant kind of social relationship is the mutual provision of a central class of collective goods. There are many other types of relationism possible, as many as there are distinguishable forms of social relationship.

49. An example is the reciprocity-based view defended in Andrea Sangiovanni, “Global Justice, Reciprocity, and the State”; and Andrea Sangiovanni, *Domains of Justice* (Cambridge, Mass.: Harvard University Press, forthcoming).