THE UNANIMITY STANDARD

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Thomas Nagel's *Equality and Partiality*[1] is a profound meditation on one of the most fundamental problems of political philosophy. Although a short work, it illuminates the field, and deserves to be read and read again. And yet, for all that, I think that it fails to meet one of its central aims.

The particular aim I have in mind is best understood in terms of the more general goal of political philosophy, which is to describe a set of social and political institutions and to defend these institutions as morally justified. Designing a morally acceptable set of institutions is, of course, a notoriously difficult undertaking, and most of Nagel's book is devoted to explaining exactly why this task is so intractable. Nagel holds, in point of fact, that "all social and political arrangements so far devised are unsatisfactory" (3): not only are all actual systems inadequate, we do not even have so much as an acceptable proposal before us—and Nagel worries that none may be possible at all.

Obviously enough, the difficulty of the task—and the plausibility of such a pessimistic assessment—is a direct function of the moral standards that we use to evaluate various potential political institutions. The more demanding the standard, the more difficult it is to design institutions that meet it. So a great deal turns on finding the correct standard for political legitimacy. As Nagel sees it, "the pure ideal of political legitimacy is that the use of state power should be capable of being *authorized* by each citizen...." (8)

> ...our ultimate aim in political theory should be to approach as nearly as possible to unanimity, at some level, in support of the basic framework of those political institutions which are maintained by force and into which we are born. Such a claim may seem extravagant or unintelligible, since lack of unanimity is the essence of politics; but I shall try to defend it, and to explain how it is related to Kantian ethics and to the hypothetical contractualism which is its political expression (8).

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In essence, the first five chapters of *Equality and Partiality* are spent explicating and defending this standard; the last ten, demonstrating just how difficult it is to meet it. Of course, even if Nagel is right about the relevant standard, he might still be wrong about how various political institutions measure up against it. But in this essay I am going to be concerned solely with the first of these two topics, that is, with the defense of the unanimity standard, as opposed to its application. And since I believe that Nagel's discussion is not altogether successful in this regard, my own aim will be to try to bring out some of the ways in which Nagel's attempt to motivate and defend this standard is inadequate.

Let me begin by summarizing the main line of argument for the unanimity standard. (In presenting it, I draw freely on the first five chapters of the book.) The starting point of Nagel's discussion is this: we are, each of us, capable of adopting either of two standpoints—a personal and an impersonal one. Typically, we largely view the world from our individual, personal points of view: each of us has our own particular set of concerns and interests, and from the personal standpoint these individual projects, commitments, and desires largely determine what is most important to us. Naturally enough, we normally find ourselves strongly motivated to pursue our various personal projects and concerns, in accordance with the weight they have from the personal standpoint.

But we are also capable of adopting an impersonal standpoint, in which we view the world without regard to our own particular position in it: we attend to all the various needs and interests of the various individuals that exist in the world, but we disregard the question of which particular individual we happen to be. From the impersonal point of view, we recognize the equal reality and significance of everyone's personal point of view; "everyone's life matters, and no one is more important than anyone else" (11). The impersonal point of view is thus the source of egalitarian values, and insofar as we are motivated by the impersonal standpoint we recognize and try to realize these values. (Nagel also believes that the impersonal standpoint is egalitarian in an even stronger sense—giving extra weight to improving the lot of those who are worst off—but for our purposes we can ignore this complication.)

Given that each of us is capable of occupying and being moved by the impersonal standpoint, the needs of others cannot be simply dismissed: we have reason to try to accommodate the egalitarian values of the impersonal point of view. But since the personal point of view remains present as well, our special concerns for our own personal projects cannot be dismissed either: we also have reason to try to accommodate the individualistic values

of the personal point of view. Unfortunately, the demands of these two standpoints will typically—and significantly—conflict. This is the source of ethics as well as political philosophy. The challenge is to find principles that represent reasonable compromises between both points of view.

Since the impersonal standpoint is a genuine part of the individual self, the quest for principles that represent reasonable compromises between the two standpoints is in effect a search for principles that the individual himself can accept. We are looking for principles that individuals can be motivated to accept and support, given their dual natures. But it is equally true that this dualistic nature is characteristic of everyone, and so the problem of finding acceptable principles is common to everyone; thus acceptable principles will be ones that everyone can accept.

What we are looking for, then, are principles (and institutions conforming to those principles) that everyone can accept. This is the unanimity standard. Clearly, it can easily be understood in contractualist terms: legitimate principles and political institutions are those which we could all agree to be bound by—ones which no one could reasonably reject, given the universality of our dual natures. And since legitimate political institutions, if there were such, could not be reasonably rejected by anyone, everyone would have reason to accept and support them, even if she had the power to impose some alternative arrangement under which she might fare better. Legitimate political institutions would thus be cooperative undertakings, having the support of all reasonable individuals.

This is, of course, only a sketch of Nagel's argument. But even this sketch should suffice to make clear that Nagel's defense of the unanimity standard is a complex one; his account brings together a number of distinct ideas. Thus, if we are to accept Nagel's claim that the unanimity standard offers the correct basis for assessing political legitimacy, we must examine his arguments for that standard more carefully. We need to explore, for example, why exactly a legitimate principle will have to represent a *compromise* between the two standpoints, why that compromise must be *acceptable* to the individual, why indeed it must be acceptable to *everyone*, and similarly for various other aspects of Nagel's account as well.

In raising these questions, my primary aim is not so much to challenge the unanimity standard itself, as to criticize Nagel's defense of it. Nagel is certainly right that many people are intuitively attracted to something like the unanimity standard. The question, however, is whether Nagel provides that standard with an adequate explication and defense.

Now the driving idea behind Nagel's entire approach is the thought that legitimate principles must represent a reasonable compromise between the demands of the personal and the impersonal standpoint. But this prompts

the obvious question: why must we compromise at all? (Nagel typically talks of "integrating" or "accommodating" the two standpoints, rather than "compromising" between them; but given the conflict between the two points of view, I take it that this comes to the same thing.)

I will certainly concede the reality of the two standpoints: we can look at the world both ways, and different things seem important from the two points of view; the two standpoints are the source of distinct and conflicting value judgments. But recognizing the *reality* of the two standpoints does not yet give us any reason to believe that legitimate principles will necessarily combine, integrate, or somehow compromise between the two sets of values. After all, all sorts of unsound points of view are describable, and can be occupied by one or all of us. So, in principle, any given point of view might well be the source of illusory or unsound values. Why then assume that the "values" derived from both the personal and the impersonal standpoints are genuine or legitimate? Why must they be given a place within legitimate principles, rather than simply being dismissed?

This is more than an abstract worry, since both the personal standpoint and the impersonal standpoint have had their critics. Indeed, Nagel's general description of the impersonal standpoint virtually invites the thought that it is flawed. In adopting the impersonal standpoint, I disregard my knowledge of which particular individual I am in the world. I set this fact "aside": "It isn't that one doesn't know; one just omits this fact from the description of the situation" (10). Now it is hardly surprising that if I disregard one or another bit of knowledge, this can dramatically alter the conclusions I reach. (And given its centrality to my view of the world, we would expect the effects of my disregarding my knowledge of who I *am* to be quite far-reaching indeed.) But normally we would take such a disregard for relevant facts to lead to unreliable and misleading conclusions. So it is puzzling why we should take the impersonal standpoint to be the source of genuine values and reasons for action, rather than an epistemically flawed point of view leading to illusory values that are best discounted.

I do not take this argument to be decisive. Sometimes it is appropriate to disregard a given fact, if there is reason to think it is misleading; putting aside such relevant but misleading facts can potentially help us reach superior conclusions. Thus, in principle, it is open to the advocate of the impersonal standpoint to defend the legitimacy of that point of view, by explaining how knowledge of my own place in the world can mislead me—resulting in distorted conclusions about what is important. But to offer such a defense of the impersonal point of view would be, simultaneously, to offer an attack on the personal point of view. If knowledge of who I am has a distorting influence on the value judgments that I reach, then it is now the

personal standpoint—which makes essential use of that knowledge—that is called into question as an epistemically flawed point of view. And this should undermine our readiness to assume that the values emerging from the personal standpoint are legitimate ones, to be accommodated—so far as this is possible—in any legitimate principle.

In sum, despite the reality of the two standpoints, we cannot simply assume that legitimate principles will necessarily give a place to the demands of both. The claim that legitimate principles will represent a compromise between the concerns of the two standpoints presupposes that *both* standpoints are themselves legitimate. But Nagel does nothing to defend this assumption. Despite Nagel's efforts to describe (in general terms) the *content* of the two standpoints, he makes no attempt to defend the legitimacy of either of them. And despite his considerable sensitivity to the conflicts between the two standpoints, he does not seem to recognize—let alone address—the worry that a defense of one standpoint might necessarily undermine a defense of the other.

Of course, in fairness to Nagel, it must be noted that *Equality and Partiality* is hardly the first work in which Nagel has discussed the nature of the conflict between the personal and the impersonal standpoints.[2] So perhaps Nagel is simply assuming that in the present context he can reasonably take for granted that both standpoints are indeed sources of legitimate values. We might view this, accordingly, as something like a presupposed starting point for Nagel's defense of the unanimity standard. And it is, I think, a starting point that many people will readily grant: intuitively, at any rate, both standpoints do seem to be legitimate sources of values. Given this belief, it does seem plausible to insist that legitimate principles will have to try to accommodate—so far as this is possible—both sets of values. And to the extent that the two standpoints essentially conflict, legitimate principles will have to represent reasonable compromises between them.

Perhaps I should mention an alternative response, one that might be offered on Nagel's behalf, but which I think he would resist. Regardless of the epistemic and evaluative legitimacy of the two standpoints, their motivational influence seems undeniable. That is, even if one or the other (or both) of the two standpoints lacks legitimacy as a direct source of values, the fact remains that we are moved by both of them. (Typically, no doubt, the personal standpoint is dominant as a determinant of our motives, but the influence of the impersonal standpoint should not be overlooked either.) Perhaps, then, a compromise between the two standpoints is necessary in the following sense: a legitimate principle must reflect our motivational psychology; we cannot be asked to do what we cannot be motivated to do. Thus insofar as we are incapable of being motivated by principles that do not give

sufficient weight to both the personal and the impersonal points of view, legitimate principles will have to represent compromises between these two standpoints.

Nagel is undeniably sympathetic to both premises of this argument. He repeatedly stresses the motivational influence of both points of view and, as we shall see, part of his defense of the unanimity standard turns on his belief that "moral justification must be capable of motivating" (45). So I think that Nagel would readily admit that a kind of *de facto* compromise will be necessitated by the motivational power of the two standpoints. (To some extent, this very argument is the theme of Nagel's third chapter, "The Problem of Utopianism".) But I also think that this argument alone would not go far enough to satisfy him. Nagel believes that both standpoints are sources of legitimate values: they are not mere motivational obstacles, hindrances that may need to be accommodated; rather, they are sources of *reasons*, generating normative support for various actions and goals. Compromise is called for not merely as an unavoidable response to the hard facts of motivational power-sharing between the two standpoints. It is also appropriate as the only reasonable response to the fact that each standpoint is a legitimate source of value in its own right.

This distinction is significant, it should be noted, for determining what constitutes a reasonable compromise. If a given standpoint needs to be accommodated merely insofar as it is capable of putting up motivational roadblocks, the concession to be made to that standpoint might be considerably less than what would be appropriate if the standpoint were instead recognized to be a legitimate source of reasons and values. Since Nagel believes in the legitimacy of both standpoints, reasonable compromise is here a matter of the relative strengths of the competing reasons; it is not simply a matter of the relative strengths of the two competing motives.

Suppose we grant, then, that legitimate principles will represent reasonable compromises between the two conflicting standpoints, viewed as legitimate sources of competing values. Such principles, were we able to find them, would tell us, in effect, what it is reasonable for each person to do and want—given their dualistic nature. But for all that has been said so far, there is no reason to assume that the same principle will hold for any two individuals, and no reason to assume that a given individual must be able to accept or agree to the particular principles that govern his own behavior. Nagel, however, introduces all of these claims simultaneously. We must, he says,

> go beyond the question "What can we all agree would be best, impersonally considered?" to address the further question "What, if anything, can we all agree that we should do, given that our motives

are not merely impersonal?" (15)

Now on a modest reading of this passage, the references to what we can all agree to are mere rhetorical flourish. The first question could then be restated as "What is best from the impersonal standpoint?", and the second question could be restated as "What should a given individual do, given his dualistic nature?" So understood, the move to the unanimity standard has not even been broached: the second question merely marks the need for principles that accommodate both standpoints. But it is clear that this modest reading is not at all what Nagel intends, for immediately after raising the second question he continues: "That is how we reach the demand for ideal unanimity mentioned earlier...." (15). That is, Nagel writes as though once we recognize the need for principles governing the behavior of agents with dualistic natures, we will also recognize that these principles must be ones that all can agree to.

As far as I can see, however, what we have here instead are three distinct claims: legitimate principles must (1) represent compromises between the two standpoints that are (2) agreeable or acceptable (3) to all. Someone might well believe the first without accepting the second or the third: perhaps legitimate principles need not be acceptable to anyone, let alone everyone. Or one might believe the first two claims while still rejecting the last: perhaps legitimate principles must be acceptable to anyone bound by them, but not to others (since the others may themselves be bound by distinct principles). So it is best, I think, to treat the three claims separately. We have already considered Nagel's case for the first, what of the second? Why must a legitimate principle be one that is acceptable to any given individual bound by it? Why must it be one that she could agree to?

One possible answer, of course, is this: any legitimate principle will be true, and so in principle, at any rate, every reasonable individual will be capable of recognizing the grounds for believing it; thus, assuming that the person bound by the principle is rational, she can in principle come to agree to it, that is, accept it as true. (Note, incidentally, that on this account legitimate principles would indeed be acceptable to everyone—including individuals not themselves bound by them: everyone could come to recognize that, in point of fact, such and such was the appropriate principle for governing the behavior of this or that particular individual.) On this account, legitimate principles must indeed be acceptable, but the acceptability of the principles contributes nothing at all to their validity (rather, it is entirely the other way around).

Nagel considers such a "strongly objective" position (22), but rejects it. As he intends the notion, acceptability is not a mere matter of assent to an independently true proposition. Rather, acceptability is a matter of the given

individual being able to agree to the principle as something that he can reasonably intend to conform to, to live by—and this is something necessarily constrained by the facts of his motivational psychology (although—it should be noted—it is not a simple matter of what he *already* wants). Thus in claiming that legitimate principles must be acceptable, Nagel is claiming that the validity of a principle depends upon the possibility of the appropriate individuals being moved to endorse it and to act upon it. "Justification in political theory," he informs us, "is intended to produce not just assent to a proposition, but acceptance of and support for a set of institutions and a form of life...." (23).

But, of course, what we want to know at this point is precisely why justification in political theory requires acceptance, in this motivationally-laden sense. Unfortunately, little is said by way of defense of this claim. Nagel warns us not to ignore "the relevance of what is motivationally reasonable to what is right" (21), but as Nagel is fully aware it is far from obvious that motivation *is* relevant to ethical justification in this way, and many have denied it.

At one point Nagel writes (in a passage already partially quoted):

> The relation between motivation and justification in ethical theory is a matter of controversy. My own view is that moral justification must be capable of motivating, but not in virtue of reliance on pre-moral motives (45).

In effect, Nagel is accepting a version of what is sometimes called "internalism"—the thesis that there is a necessary connection between moral obligation and motivation. For our purposes, the details of Nagel's particular version of internalism need not concern us. What is important is Nagel's *assumption* of internalism—effectively, without argument—in the face of an admitted controversy over the legitimacy of this assumption.

Apparently, then, we must treat this as one more presupposed starting point of Nagel's discussion: internalism in ethics is not to be defended; rather, Nagel is interested in seeing what standard for political legitimacy follows once we assume it. And it must be admitted, once more, that this is a starting point that many people will be prepared to grant (although critics of internalism are hardly far and few between).

If we do assume the truth of internalism, then something like the following will seem plausible: for a principle to be genuinely binding upon an individual, it must be possible for the individual to be motivated to conform to it; thus a legitimate principle must be one that the individual bound by the principle can agree to. And given the dualistic nature of the individual, the only principles that can be reasonably accepted by someone

are principles that represent reasonable compromises between the personal and the impersonal standpoints.

This gives us the first two clauses—compromise and acceptability—but not yet the third: acceptability by *everyone*. As Nagel sees it, legitimate principles must be acceptable to all; they are the ones that everyone could (in principle) agree to.

Now were acceptability merely a matter of assent to an independently true proposition, then, as I have already noted, adding this third clause would be a trivial extension of what we already have. Legitimate principles would be true independently of what anyone accepts, or can be motivated to do—and if some principle did legitimately govern the behavior of a given individual, then that fact would be one that everyone could, in principle, come to recognize; thus legitimate principles would be ones that could be accepted as such by everyone.

But as we have seen, Nagel means more by "acceptance" and "agreement" than this (at least when applied to ethical and political principles). Given internalism, legitimate principles must be ones that the agent bound by the principle is capable of being motivated to conform to; acceptability is a matter of motivational accessibility.

Given this motivational reading of the notion of agreement, the claim that legitimate principles must be those that everyone can agree to comes to this: legitimate principles must be ones that everyone is capable of being motivated to conform to. Yet what reason is there to believe this? All that internalism entails is the motivational accessibility of a legitimate principle to each individual that is bound by that principle. Accordingly, we cannot assume that a legitimate principle will be motivationally accessible to everyone, unless we can assume that if a principle is legitimate it will be equally binding upon everyone. That is, legitimate principles need not be acceptable to everyone unless the very same principles must be binding upon everyone.

Up to this point, however, nothing has ruled out the possibility that legitimate principles will not be common or "shared" in this way. For all that we have seen so far, it might be that legitimate principles are "individual-relative," potentially varying from person to person; at any rate, we've been given no reason to assume that legitimate principles must be *universally* binding—that is, binding upon everyone.

Now I think that Nagel does in fact believe that legitimate principles will be binding upon all. He claims that "if an ethical or political theory is to tell people how they should live ...it must try to give an answer which is *generally* valid...." (14). He suggests that it "will not be a solution to the ethical problem if the two standpoints are simply left to fight it out or reach

some kind of individual accommodation within each person" (15). And a few lines after making this last remark, he raises a question we have already quoted: "What, if anything, can we all agree that we should do, given that our motives are not merely impersonal?" (15) While none of these passages are as explicit as I would like on this score, I think their joint intent is reasonably clear: Nagel believes that the quest for legitimate principles is a quest for principles that will be binding upon all of us; they will be universal.

But even if this is indeed Nagel's view, that does not yet provide us with a reason to believe it. Why shouldn't legitimate principles vary from individual to individual? Why *can't* the given individual's need for compromise between the two standpoints find a solution in "some kind of individual accommodation" that may vary from person to person?

Nagel nowhere provides us with an explicit argument for his belief that legitimate principles will be ones that are universally binding, but there is a passage that at least suggests what he might well have in mind. He writes:

> What is needed instead is some general method of resolving the inner conflict that can be applied universally and that is acceptable to everyone in light of the universality of that conflict (17).

Perhaps, then, Nagel's thought is this: the conflict between the impersonal and the personal points of view is one that each of us faces; each of us needs to find a reasonable compromise between the two standpoints. But since the problem is common to all of us, the solution will be as well. Principles that represent reasonable compromises for one will represent reasonable compromises for all.

If this is indeed the line of argument that Nagel has in mind, then it seems to me mistaken. The commonality of the problem does not guarantee the commonality of the solution. Let me be more precise. Trivially enough, at a sufficiently high level of generality the solution to the problem of inner conflict is necessarily the same for all of us: find a reasonable compromise between the two standpoints. But there is no reason to assume that the *substantive* principles that constitute the reasonable compromises will be the same for all of us.

Someone might object, on Nagel's behalf, that since it is the very same two standpoints that conflict in each of us, a reasonable compromise between those two standpoints cannot be something that varies from individual to individual. But this objection presupposes that the *content* of the two standpoints is the same in each of us; otherwise there would be no reason to assume that what constitutes a reasonable compromise between one such pair of conflicting standpoints will do so for all such pairs. And while it may be plausible to assume that the impersonal standpoint is—at least in the ideal

limit—the same for all of us, there is every reason to believe that the *personal* point of view varies from individual to individual. Thus, at best, each person faces the need for a compromise between an impersonal point of view (common to all) and a personal point of view whose particular content will be at least somewhat unique to that person. What constitutes a reasonable compromise for one person, therefore, may not constitute a reasonable compromise for someone else—and so legitimate principles may not be the same for all.

Of course, despite the variations in the contents of our various personal points of view, it might still be that the points of overlap are sufficiently important, so that the same principles will in fact emerge as legitimate for all. But the mere universality of the "inner conflict" within our dualistic natures is not—in and of itself—sufficient to guarantee this. So we do not yet have any reason to assume that legitimate principles will be binding on everyone. And this means that even if legitimate principles must represent reasonable compromises between the personal and the impersonal standpoints, acceptable to all those bound by them, we do not have any reason to believe that legitimate principles must be acceptable to all.

Once more, however, it must be admitted that many people will find it quite plausible to assume that legitimate principles will indeed be universal, common to all of us. So perhaps we should take this as one more starting point for Nagel's discussion—something that is being presupposed, rather than defended. We will then have the pieces for one kind of argument for the conclusion that legitimate principles must be acceptable to all: legitimate principles are common to everyone, and so—given internalism—each of us must find these principles acceptable.

Nonetheless, although Nagel would accept the assumptions that generate this argument, and would, presumably, accept the conclusion as well, that conclusion would not yet go far enough toward giving Nagel what he wants. For in saying that legitimate principles must be acceptable to all, we are—so far—only saying that each person must be able to accept those principles as principles that are binding upon herself. Given internalism, each of us must be capable of being moved to act on any principle by which she is bound. But this only shows that the principle must be acceptable in this sense: each must be able to accept the principle as something that *she* will conform to. I must be able to accept the principle as binding upon myself; you must be able to accept the principle as binding upon you. It does, of course, follow that if the same principles are binding upon all of us, then all of us must be able to accept any legitimate principle. But none of this entails that I must somehow be able to accept the principle as binding upon *you*, or that you must somehow be able to accept the principle as binding upon me.

We each must agree to our own conformity; we need not agree to anyone else's.

Indeed, it is not at all clear what it would mean for someone to accept a principle as binding someone else, given the motivational reading of "acceptability" that we have been using. It is an intelligible question to ask whether I can be motivated to conform to some principle; but it is quite obscure what it would mean to ask whether I can be similarly motivated with regard to someone else's conformity to a principle. With regard to your acting on a principle, my own motivational capacities are quite irrelevant, and—accordingly—so is my ability to "accept" your acting on that principle, given the way we have been construing "acceptance".

Of course, it still makes perfect sense to talk of my ability to accept your acting on some principle, insofar as this is simply a matter of my assenting to the independently true proposition that this principle is a legitimate one for you to act on (it represents a reasonable compromise between the two standpoints, one that you are capable of being motivated to act upon). As already noted, in principle all of us must be capable of *recognizing* the fact that a given principle legitimately governs your behavior. But this would introduce a systematic ambiguity into Nagel's talk of what we can all agree that we should do: agreement on my part with regard to what I am bound by would be a matter of motivation, while agreement with regard to what others are bound by would be a matter of mere belief.

More importantly, such an approach still falls short of Nagel's claim that the unanimity standard can be understood in contractualist terms. Nagel believes that the legitimacy of a principle is grounded in the very fact that we can all accept it: "If such a hypothetical unanimity were discoverable, it would explain the rightness of the answer rather than being explained by it" (34). Clearly, then, in the search for principles that we can all accept, acceptance is neither a matter of belief nor of motivational accessibility. The former lacks the generative role that Nagel assigns to universal agreement; the latter lacks content with regard to one person's agreeing to the principles that bind another.

This is not to suggest that it is a mysterious affair what Nagel has in mind by agreement. The relevant notion is clear enough from contractualist thought, and indeed from the familiar, everyday phenomenon of a group of people reaching a joint agreement or decision concerning how they shall act. In this context, agreement is a matter of jointly formed intentions concerning the behavior of the members of the group. To agree to a principle in this sense is to "authorize" it, to approve of its being acted upon by the relevant parties. Presumably, then, when Nagel asks, "What, if anything, can we all agree that we should do....?", this is the sense of agreement that he is after.

(Questions of motivational accessibility are not, of course, irrelevant here, since we're not likely to approve of principles if we believe that the relevant parties cannot be motivated to act upon them; but for all that, the two notions are distinct.)

What is not yet clear, however, is why Nagel thinks he is entitled to claim that legitimate principles must be ones that everyone can agree to, in this contractualist sense. Even if we grant Nagel the legitimacy of the two standpoints, the truth of internalism, and the universally binding character of legitimate principles, none of this, so far as I can see, supports the conclusion that legitimate principles must be ones that everyone can agree to. Why should we believe in the validity of a contractualist approach? Why does the legitimacy of my acting on some principle depend at all upon the ability of someone else to authorize or approve of that principle? Why believe that the agreement of others constitutes the *grounds* for the legitimacy of the principle?

Various contractualist thinkers have, of course, offered a variety of answers to these questions. One might, for example, note the possibilities for mutual advantage if we jointly curtail our behavior, restricting ourselves to principles that all can accept. Here, I have reason to limit myself to principles that you can agree to, if this is the only way to win your agreement to limit yourself to principles that I can agree to; on balance, we might both come out ahead. Whatever the advantages and disadvantages of such an approach (and they are considerable, on both scores), such an approach is not Nagel's (see, e.g., 34). But what then is the motivation for the contractualist approach?

Nagel suggests that the answer is to be provided by appeal to the impersonal standpoint. "Otherwise why should we care about justifying the system to more people than we have to in order to secure stability?" (34) But the adequacy of this answer rests on conflating the various senses of "agreement" and "acceptance" that we have been trying to distinguish. Granted, we must be able to justify a legitimate system to everyone: there must be valid reasons for the system's having the character that it does, and for our playing the roles in it that we do. So at the very least, it must be possible for everyone to accept the legitimacy of the principles on which the system is based; that is, it must be possible (if only in principle) for everyone to recognize that these principles are indeed legitimate. But why should we believe that the legitimacy of the principles must be *based* on their universal acceptability? Indeed, why should we assume that legitimate principles must be universally acceptable at all, in the contractualist sense? In short, recognizing the need for universal justification does nothing at all to show that the necessary justification must take a contractualist form.

Nor is much help provided by Nagel's suggestion—made only in passing—that an explanation of why legitimacy is desirable would need to appeal to "impersonal values of some kind—for example the necessity of treating people as ends and not as means merely" (34). Put aside the obvious worry that nothing in Nagel's argument has yet motivated this particular Kantian imperative. Even if it were simply given to Nagel as one more undefended assumption, it is far from obvious how or whether such an imperative provides a defense of contractualism. Kant certainly believed that it does; but Nagel means to be motivating and defending this Kantian contractualism, not merely presupposing it whole cloth.

To be fair, it seems likely that Nagel himself believes that contractualism follows rather trivially, once we have reached the question "What, if anything, can we all agree that we should do...?" And indeed this does seem plausible, if this question is given the Kantian reading that Nagel intends for it; the move from this to a position couched in explicitly contractualist terms is then fairly straightforward (see, e.g., the discussion at 37). But the very question before us, in effect, is whether or not Nagel is actually entitled to read his question in this way. Why should we accept the claim—implicit in a Kantian reading of the question—that legitimate principles must be ones that all can agree to, in the contractualist sense of agreement? As far as I can see, Nagel fails to motivate this claim, and so fails to motivate his contractualism.

Perhaps, however, a defense of contractualism can in fact be constructed out of the materials that we have already granted to Nagel. Legitimate principles, we are assuming, must represent reasonable compromises between the personal and the impersonal points of view. But the impersonal standpoint includes within itself a representation of the personal points of view of absolutely everyone—hence, of everyone else. Thus the search for a reasonable compromise between the personal and the impersonal standpoints amounts to a search for a reasonable compromise between *all* of the conflicting personal points of view. Accordingly, it doesn't matter whether we think of the reasonable compromise as something being sought within the single individual, or between the plurality of separate individuals. When thought of as something located within the individual, we are looking for a compromise between the two standpoints. But when thought of as something located between separate individuals, we are looking for a reasonable compromise among the conflicting personal points of view. That is, we are looking for principles that everyone can reasonably accept.

I am not sure whether or not Nagel would be attracted to this argument, and so I hesitate to ascribe it to him. But it has a certain plausibility to it, and so it is worth noting why I think it is mistaken. The key premise of the

argument is the assumption that it doesn't matter whether we think in terms of a compromise within the individual—given our dualistic natures—or between individuals: we arrive at the same results either way. We have, after all, already granted that legitimate principles represent reasonable compromises within the individual. And we can certainly agree that the search for reasonable compromises between individuals is a form of contractualism. So if the key premise is correct—if the two compromises come to the same thing—then we have a defense, of sorts, of contractualism.

But the key premise is mistaken. There is no reason to assume that what constitutes a reasonable compromise within an individual between the personal and the impersonal standpoints will constitute a reasonable compromise between individuals (each of whom has both a personal and an impersonal point of view). After all, within the given individual, that person's own personal point of view will be a significant—and largely dominant—source of legitimate claims. A reasonable compromise between those claims and the claims of the impersonal standpoint will unavoidably (and legitimately, given our assumptions) make tremendous concessions to the individual's own personal point of view. In contrast, when it is a matter of reasonable compromise *between* individuals, any one individual's personal point of view will be forcefully countered by the opposing personal points of view of many other individuals. This is not at all to deny that concessions to the given individual's personal point of view will still be made, but there is no reason to assume that the concessions will be comparable to, or even similar to, those that would have been reasonable for a compromise within the given individual himself.

Admittedly, the "gap" between these two compromises will be reduced somewhat by the impact—within any given individual—of the impersonal point of view on the personal point of view, as well as by the recognition within the impersonal point of view of the importance to each person of what they value from their own personal standpoint. But for all that, I see no reason to assume that the two compromises will come to the same thing. Thus even if we grant Nagel that legitimate principles must represent compromises within the individual, there is no reason to believe that legitimate principles will represent compromises between individuals—the principles that everyone could agree to. So we still have no reason to accept Nagel's contractualism.

Worse than this, we seem to have unearthed another possible unnoticed tension within Nagel's view. If, as I have just argued, reasonable compromises within the individual will not be equivalent to reasonable compromises between individuals, then—or so it seems to me—legitimate principles cannot be required to be reasonable compromises in both of these

senses.

Pessimist that he is, Nagel might simply reply as follows: "If the two types of compromise don't coincide, so much the worse for the possibility of legitimate principles, since both types of compromise are valid constraints on legitimacy. Of course, if there are points of overlap between the two compromises—and this is certainly a possibility, even if the two compromises are not coextensive—then those principles that do lie within the intersection will still be legitimate. But if—as might well be the case—no principles at all are common to the two distinct compromises, then indeed no principles will be legitimate."

I won't explore further the adequacy of such a reply as a way of dealing with the "tension" that appears to be generated within Nagel's view if the two compromises are indeed distinct. For our purposes, the crucial point is this: whatever the merits of this reply, it does nothing to repair the argument for contractualism itself; if the two compromises are distinct, then we still have no reason at all to hold that legitimate principles must be ones that are acceptable to all. Thus the argument for contractualism that we have constructed on Nagel's behalf fails.

I will readily admit, of course, that contractualism is a view that many find attractive, and I have not tried to argue against it here. But I take it that Nagel intends to be offering a defense of contractualism—not merely presupposing its truth—and this is something that, so far as I can see, he does not succeed in doing. However, let us grant Nagel his contractualism as well. For even when this is done, there are further claims he makes about the unanimity standard that remain puzzling.

When presenting his view in explicitly contractualist terms, Nagel follows the lead of T. M. Scanlon. He writes:

> In defining legitimacy in this way I have adopted the central feature of Scanlon's account of contractualism—the idea that the right principles to govern a practice are those which no one could reasonably reject, given the aim of finding principles which could be the basis of general agreement among persons similarly motivated (36).

And immediately after quoting Scanlon's own formulation, the first feature Nagel remarks upon is this:

> He [Scanlon] employs the strong condition, "no one could reject"—similar to "everyone must accept"—rather than the weaker "everyone *could* accept." While this makes justification difficult, it seems the right standard of unanimity to try to meet (36).

Obviously enough, these two conditions—"must accept" vs. "could accept"—can only yield different results in the contractualist framework if the following is possible: there are some principles such that although everyone *could* reasonably accept them, nonetheless it is also true that one or more individuals could also reasonably reject them; they are universally acceptable, but their acceptance is not mandatory. If there are no such principles, then the two tests come to the same thing, and there is no need to choose between them: anything acceptable is also mandatory. But it seems plausible to assume, with Nagel, that there might well be principles that are universally acceptable even though they are not universally mandatory.

And if there are such principles, then Nagel is certainly right that by holding out for principles that everyone *must* accept, rather than merely those that everyone *could* accept, we make the standard of justification a more difficult one to meet. So the question, naturally enough, is whether Nagel is right to insist upon this more difficult standard. Why wouldn't it suffice to have a principle that *could* be accepted by everyone? Why is nonrejectability necessary for legitimacy?

Nagel's answer is this:

> The range of institutions that people *could* accept without being unreasonable is far too broad—if one is willing to regard substantial levels of voluntary self-sacrifice as not unreasonable (36).

The general strategy behind Nagel's answer is clear enough. He wants to convince us that accepting a version of contractualism that settled for principles that people *could* accept would let in too much: some principles that would pass this test do not intuitively strike us as legitimate. If Nagel is right about this, then we may want to move to the more demanding version of contractualism, where the fact that everyone could accept a principle is not sufficient for legitimacy; legitimate principles would have to be ones whose acceptance is mandatory, not merely possible. (Of course this move only solves the problem if the intuitively unacceptable principles are *not* ones that no one could reasonably reject; but if a given principle is, indeed, intuitively illegitimate, there is at least some reason to hope that one or more people will in fact be able to reasonably reject it.)

The strategy behind Nagel's argument seems sound (at least, if we are prepared to give sufficient weight to our intuitive assessment of a principle's legitimacy). What is less clear is whether the particular example that Nagel offers meets the needs of that argument. Indeed, it is not completely clear just what the example is supposed to be. Nagel asks us to concede that "substantial levels of voluntary self-sacrifice" need not be unreasonable. That is, I take it, he's asking us to concede that someone might reasonably

volunteer to make a quite significant self-sacrifice. Fair enough, this certainly does seem to me to be something that someone might reasonably agree to do. But what exactly is the principle whose legitimacy we are now supposed to assess?

One possibility, I suppose, is this: Nagel wants us to consider a principle which permits people to volunteer for significant acts of self-sacrifice. Plausibly enough, this may be a principle that everyone *could* accept: but it is hard to believe that this is a principle that Nagel finds intuitively objectionable or illegitimate. So *this* can't be the counterexample to the more modest version of contractualism.

More likely, Nagel has in mind a principle which permits us to coercively impose extremely high levels of sacrifice on individuals against their will. If the sacrifices are significant enough, then I imagine many people will share the intuition that such a principle is illegitimate. But this only provides us with a counterexample to the modest version of contractualism if such a principle is one that everyone can reasonably accept. And it is far from obvious that such a principle *is* one that *everyone* can reasonably accept. Indeed it is not even obvious that *anyone* can reasonably accept this principle. After all, all that Nagel asked us to concede was that someone might reasonably *volunteer* for some sacrifice; it hardly follows that anyone at all would reasonably agree to having such sacrifices imposed on him against his will. But, at any rate, even if someone *could* reasonably agree to this, that's not at all the same thing as showing that *everyone* could reasonably agree to it—even those of a less self-sacrificing nature.

Or perhaps Nagel has in mind a principle which merely morally requires significant sacrifices of the agent, without permitting the rest of us to coercively enforce this requirement. Here too, if the level of required sacrifice is sufficiently high, many people will doubtless have the intuition that such a principle is illegitimate. But these very same people are also likely to believe that a principle imposing such a high level of moral requirement is *not* one that can be reasonably accepted by *everyone*. So once more Nagel will have failed to provide the necessary counterexample.

If there is a fourth principle in the offing here, I do not know what it is.[3] And so I have to conclude that Nagel's argument for the more demanding version of contractualism is inadequate. It is, of course, possible that some other example might be offered, one that would be more clearly successful; but this particular case is, at any rate, the only one that Nagel considers.

There is, furthermore, at least some reason for scepticism about the possibility of finding a more compelling example. After all, it does not seem implausible to suspect that if a principle is genuinely illegitimate, there will be at least one person of whom it is true that she cannot reasonably accept

that principle. So I doubt that any principle will be found that meets all the needs of Nagel's argument. Yet absent an example of a principle that is both clearly acceptable to everyone and clearly illegitimate, we have no reason to insist upon a version of contractualism that holds out for principles that no one can reasonably reject.

Nagel does offer a second argument, however, one of a quite different sort. It comes, a page later, in the course of comparing Scanlon's contractualism with Kant's universal law formulation of the categorical imperative. Nagel claims that—unlike principles that no one could reasonably reject—a principle that could be reasonably rejected by someone is one that "no one could will as a universal law, since it would be unwillable for the case in which he imagines himself in the position of that person." It would, therefore, "fail to satisfy the categorical imperative" (37).

But this seems to me to be too quick. What we are wondering about, remember, is the legitimacy of principles that everyone could reasonably accept. So even if it is true of someone that he could also reasonably reject a given principle (i.e. its acceptance is not mandatory), given that—by hypothesis—the principle is one that the person *can* reasonably accept, it seems incorrect to me to describe that principle as one that would be "unwillable" by that person (or by the rest of us, when we imagine ourselves in his position). Indeed, I would have thought that the very point of saying of some principle that it could be reasonably accepted by all of us was to express the thought that in principle it could be agreed to or "willed" by everyone.

Thus, like the first argument, Nagel's appeal to the categorical imperative seems to me inadequate to establish his claim that legitimate principles must be nonrejectable, rather than merely being ones that everyone could reasonably accept. In short, even if we agree with Nagel that legitimate principles must be ones that everyone can agree to (in the contractualist sense of agreement), we have no reason to accept his claim that legitimate principles must be ones that no one can reasonably reject.

Now, as with the previous features of Nagel's view that I have isolated for examination, I intend to grant this one as well, if only for the sake of argument. But one further point is worth noting: unlike the earlier features that we've considered (that is, the legitimacy of the two standpoints, internalism, universally binding principles, and contractualism)—this latest feature is not one, I think, concerning which people are likely to have any independent intuitions or commitments. Thus this aspect of Nagel's unanimity standard is one that is in particular need of defense. If I am right that his arguments on this point are inadequate, raw intuition alone is not going to help buttress Nagel's position.

There is a further aspect of Nagel's contractualism that warrants discussion as well. As I have already noted, Nagel approvingly quotes Scanlon's own formulation of contractualism.

Here is Scanlon:[4]

> An act is wrong if its performance under the circumstances would be disallowed by any system of rules for the regulation of behaviour which no one could reasonably reject as a basis for informed, unforced general agreement (36).

Nagel suggests that certain minor modifications are appropriate if this is to provide us with a standard for political legitimacy (rather than a general account of moral theory, as Scanlon himself originally intended): the principles under consideration are to be subject to "enforced conformity" rather than "unforced general agreement" (36-7). But putting such details aside, it seems to me that on a plausible reading of his formula Scanlon's position boils down to this: an act is wrong if and only if some principle prohibiting the act is nonrejectable.[5]

After comparing Scanlon's contractualism and Kant's categorical imperative (in a passage already discussed), Nagel concludes that both have this property:

> A course of action is prohibited ...if and only if every universal rule of conduct which would permit it falls within this... class of rejectable principles (37).

Nagel apparently takes this second formulation to be equivalent to the original one given by Scanlon. But this is, I believe, a mistake. The second formulation says that an act is prohibited if and only if every principle permitting the act is rejectable. But Scanlon's original formula, I suggested, says that an act is prohibited if and only if some principle *forbidding* the act is *non*rejectable. The two formulations differ, in that Scanlon's own formula prohibits less.

To see this, imagine a situation in which *all* principles governing some type of behavior could be reasonably rejected by someone. (To make the logical point, it is unimportant whether such cases actually arise.) If *all* principles governing the behavior are rejectable, then—trivially—all principles *prohibiting* the behavior are rejectable. So there will be no principles prohibiting the behavior that are nonrejectable. But Scanlon's formula holds that an act is prohibited if and only if there is a nonrejectable principle forbidding the behavior. Thus, on Scanlon's formula, the behavior in question will not be forbidden. That is to say, it will be permitted.

In contrast, according to Nagel's attempted paraphrase of Scanlon, an act is prohibited if and only if every principle permitting it is rejectable. But if, as we are imagining, *every* principle governing the behavior in question is rejectable, it trivially follows that every principle *permitting* the behavior is rejectable. Therefore, according to this second formulation, the behavior in question is indeed prohibited. Thus Nagel's reformulation at least sometimes prohibits where Scanlon's original permits.

What's more, Nagel's paraphrase leads to moral dilemmas where Scanlon's original does not. If *all* principles governing the relevant type of behavior are indeed rejectable, then principles governing the performance of a relevant type of act will be rejectable and principles governing the omission of that type of act will be rejectable as well. On Scanlon's view, this will have the result that both the act and the omission of the act will be permissible (in the absence of a nonrejectable principle forbidding one or the other, both are permissible). But on Nagel's paraphrase both the act and the omission of the act will be *forbidden* (since all principles permitting one or the other of these will be rejectable).

So the two formulas are not equivalent. In effect, Scanlon's formula offers nonrejectability as the relevant standard for prohibitions, while Nagel's paraphrase offers nonrejectability as the relevant standard for permissions. In moving from the former to the latter, it becomes more difficult for behavior to satisfy contractualism; at least, this will be so *if* there can be cases where all principles governing a type of behavior are rejectable.

Unfortunately, there is also a *third* formulation of contractualism to which Nagel helps himself as well, once more apparently unaware of its lack of equivalence to the other two.

In a passage we have already quoted, Nagel describes the central feature of Scanlon's account of contractualism:

> the idea that the right principles to govern a practice are those which no one could reasonably reject...(36).

Unlike Scanlon's original formula, which focuses on whether *prohibitory* principles are nonrejectable, or the supposed paraphrase, which focuses on whether *permissive* principles are nonrejectable, this third formula holds out nonrejectability as the relevant standard for *all* principles. I take it that this represents a third possible position, which can be stated as follows: a principle is legitimate if and only if it is nonrejectable.

Now if there are cases where all principles governing some type of behavior can be reasonably rejected by someone, then according to this third formulation, no principles whatsoever governing that behavior are legitimate. This is an *extremely* strong result. Indeed, as far as I can see, it borders

on incoherence. Unless I am mistaken, it has the following implications: on the one hand, since (by hypothesis) all principles permitting performing the relevant type of act are rejectable, all such principles are illegitimate; thus performing the act is not permissible. On the other hand, since (once more, by hypothesis) all principles prohibiting the performance of the act are rejectable as well, all such prohibitions are illegitimate; thus performing the act is not prohibited either. In short, performing the act is neither permitted nor prohibited! (The same is true for omitting the act.) This seems to me equivalent to saying that the act is both permitted *and* forbidden; but even if this last inference is somehow blocked, it seems sufficiently incoherent to hold that an act (and its omission) might be neither permitted nor prohibited.

Thus there are three distinct ways in which Nagel characterizes the contractualism that he means to endorse. They differ with regard to whether nonrejectability is the relevant standard for prohibitions, permissions, or for all principles altogether. And their implications, accordingly, differ as well—if there can be areas of behavior where no relevant principles are nonrejectable. Simplifying somewhat, in the absence of agreement the first approach permits everything, the second approach forbids everything, and the third approach inconsistently does both.

The differences between the various formulations go unobserved by Nagel, and I presume that he is unaware of their differing implications. But the choice between the three formulas is a significant one, since Nagel believes that there can indeed be cases in which for some range of behavior every principle taking a stand on that behavior is reasonably rejectable by someone. Indeed, Nagel repeatedly emphasizes his belief that such cases are prevalent (see, e.g., 50, and 169-171). But if there are such cases (a point on which, incidentally, I am not myself convinced), then we need to know which of the three formulations offers the correct version of contractualism.

Since Nagel himself seems unaware of the need to choose between the three formulas, he nowhere explicitly argues for the superiority of one over the other two. Of course, even in the absence of explicit discussion of the subject, we might still hope that some of the general arguments offered on behalf of contractualism *per se* somehow differentially support one or another of the three formulas. But since I have argued that Nagel's own attempts to motivate contractualism are in fact quite inadequate, I won't try to explore which, if any of them, might be extended in this way.

We might ask, instead, which of the three formulations of contractualism is actually used by Nagel in the course of later discussion; this might at least leave us clearer with regard to Nagel's intentions. Unfortunately, it seems to me that there is no single standard that gets used. (Perhaps this should not

surprise us, given Nagel's apparent failure to recognize the differences between them.) Typically, when Nagel considers disputes for which he believes that there are no nonrejectable principles, he concludes, pessimistically, that there are no legitimate political solutions. He thus seems to be presupposing the third formula, according to which any principle at all must be nonrejectable if it is to be legitimate. But he nowhere goes on to draw what seems to me the necessary (albeit incoherent) inference: that in such cases whatever one does is both permitted and prohibited. On the contrary, what Nagel does say about such cases is simply that individuals would be "morally justified" in resisting whatever arrangement is in effect (51). And this, it seems to me, presupposes the first formula, according to which if no relevant principle is nonrejectable, then anything is permissible.

I suspect, then, that no one formula will sit comfortably with all the conclusions Nagel wants to draw. But to establish this point conclusively, or to ask—alternatively—which formula would best suit Nagel's purposes overall, would be large undertakings that we cannot pursue here.

Let us, therefore, turn our attention instead to one final feature of Nagel's view. The difficulties we have just been exploring arise in those cases (if such there be) where there are no relevant principles that no one can reasonably reject. What of the happier circumstances in which there *are* nonrejectable principles? Such principles will presumably be legitimate—they will meet Nagel's unanimity standard—and if political institutions are founded on them, then those institutions will be legitimate as well.

Nagel realizes, of course, that a legitimate system need not be an empirically stable one; it is always possible that some group of individuals will have sufficient power to overthrow the system without justification (35). But from the moral point of view, at least, legitimate systems command the support of everyone: "Legitimacy implies that there is no moral justification for disrupting or subverting the system" (35).

> If a system is legitimate, those living under it have no grounds for complaint against the way its basic structure accommodates their point of view, and no one is morally justified in withholding his cooperation from the functioning of the system, trying to subvert its results, or trying to overturn it if he has the power to do so (35).

It is easy enough to see why Nagel thinks that legitimate systems will be *normatively stable* in this way. Legitimate systems are based on principles that no one can reasonably reject: these principles represent reasonable compromises among the various competing points of view. But if the principles governing the system (and governing the behavior of those whose actions maintain the system) are ones that all reasonable individuals must

agree to, then so long as all individuals restrict their own behavior to morally legitimate acts, they will continue to conform to the principles in question. Thus, even if those who currently lack the power to overthrow the system should come to possess that power, so long as they too abide by the original nonrejectable principles, they will necessarily preserve and maintain the original system. (Of course, those coming into power might well institute different specific decisions within the system; but the system itself will be preserved.)

This line of thought, or something quite similar to it, must lie behind Nagel's repeated claim that legitimate systems will be normatively stable. Unfortunately, it too seems to me mistaken.

Suppose we grant Nagel that the only legitimate principles are those that no one can reasonably reject. And let us assume that the current political system is a legitimate one: the character of the system conforms to these nonrejectable principles, and the existence of the system itself is maintained by the actions of a group of individuals in power, each of whom acts in perfect conformity with the nonrejectable principles as well. If the principles in question are indeed ones that no one could reasonably reject, then even those out of power must recognize that the system does not treat them illegitimately. It accords their own interests sufficient place, in the sense that it would not be reasonable for those out of power to demand that those in power do more for them. In short, those out of power must recognize that the system is a legitimate one: it is morally justified, and so is the behavior of those in power who maintain it.

But none of this shows that if those out of power came into power they would be morally required to maintain or preserve or support the system. Admittedly, if their own behavior is to be morally justified, then they too will be required to conform to the very same set of nonrejectable principles. So let us assume that they do so. Indeed, for simplicity, we can assume that absolutely everyone conforms to these principles throughout. But this still doesn't entail the normative stability of legitimate institutions: a change in the overall distribution of power might result in a very different set of institutions—even if everyone continues to act on the very same nonrejectable principles that they have acted on all along.

How can this be? Simply enough, the principles may give different groups of individuals different and incompatible specific goals. If so, then as we imagine alterations in the balance of power, we may find the ascendant groups legitimately establishing different political institutions, so as best to achieve their own legitimate goals. All of this, however, would be completely compatible with each group recognizing the legitimacy of the rival systems imposed by others, when it is the others who are in power.

Moreover, such a lack of normative stability is exactly what we should expect—even for legitimate systems—given Nagel's insistence that a reasonable compromise between the personal and the impersonal standpoints will give significant place to the personal point of view. If he's right about this, then we can easily imagine those out of power saying to themselves something along these lines: "Those in power have done all that can be reasonably asked of them, given the conflict between their interests and our own. To expect them to be motivated to go any further toward accommodating our interests—given the sacrifices it would require of them—would itself be unreasonable on our part. But should the balance of power ever shift, then it would, similarly, be unreasonable to expect us to remain satisfied with the current institutional arrangements. On the contrary, we will reasonably create alternative institutions which—while reasonably accommodating the interests of those formerly in power—will go significantly further toward meeting our own interests."

In short, when those out of power come into power, they might legitimately alter or subvert or replace the political institutions, even though those institutions were themselves legitimate. Nagel's suggestions to the contrary notwithstanding, legitimacy does not entail normative stability.

Or perhaps I should say, nothing in Nagel's argument gives us any reason to assume otherwise. For it is of course *possible*—despite what I have just been arguing—that the only nonrejectable principles, and hence the only legitimate principles, will be ones that would result in normatively stable institutions. My point is simply that we cannot assume that this is so without further argument—argument that Nagel does not provide.

Once more, this is not to deny the intuitive attractiveness of normative stability. It does seem to me that this would be a desirable property for a political system to have. But believing this is a far cry from showing that a political system *must* have this property if it is to be legitimate. As far as I can see, even if Nagel is right that the unanimity standard provides the correct basis for assessing political legitimacy, we have no reason yet to share his optimism that legitimate systems will be ones that every reasonable individual must support.

Where does this leave us? I began this essay by saying that *Equality and Partiality* is a profound work. Any reader that has come this far might justifiably be excused for wondering whether my praise was sincerely meant. I have, after all, devoted myself to a relentless attack on Nagel's discussion; at point after point I have argued that his explication and defense of the unanimity standard is inadequate. I do not intend to soften these criticisms now, nor would I want to pretend that they do not reveal serious shortcomings in the book as a whole.

But I believe that Nagel is right in his fundamental suggestion that the unanimity standard has a deep hold on our thinking about political legitimacy. By making this standard the center of his discussion, Nagel deepens our understanding of the topic. If the problems of political philosophy are indeed as intractable as they frequently seem, then Nagel goes a long way toward explaining just why this is so. And if, on the other hand, the appearance of intractability is itself an illusion, then it may well be that it is our allegiance to the unanimity standard that generates this illusion. Either way, Nagel is right to think that we do well to focus on the unanimity standard if we are to make progress in our understanding of political philosophy, and—ultimately—progress in politics itself.

Notes

Many of my initial questions about *Equality and Partiality* emerged in the course of discussions with the members of the Ethics Reading Group; I am especially indebted to conversations with Gerald Dworkin.

[1]Thomas Nagel, *Equality and Partiality*, Oxford University Press, 1991. All parenthetical references in the text are to this work.

[2]This is, in fact, a fundamental theme in much of Nagel's philosophical writing. A systematic exposition can be found in *The View From Nowhere* (Oxford, 1986).

[3]Nagel is following Scanlon's lead in offering this example, and so we might well wonder what principle Scanlon himself has in mind. As far as I can see, it's either the second or the third of the three principles that I have mentioned; either way, Scanlon's own argument seems subject to the same objections that I have urged against Nagel. See T. M. Scanlon, "Contractualism and Utilitarianism," pp. 103-128 in *Utilitarianism and Beyond*, edited by Amartya Sen and Bernard Williams (Cambridge University Press, 1982), at pp. 111-112.

[4]Scanlon, p. 110.

[5]Taking Scanlon's formula on its own, it is not obvious whether "any system" should be read as "some system" or as "every system." I have adopted the former reading since this is, I believe, the one that makes the best sense of Scanlon's discussion of the formula in "Contractualism and Utilitarianism." For similar reasons, I've read Scanlon's "if" as meaning "if and only if." But even if I am wrong about these exegetical questions, the position discussed represents one possible contractualist view, and it needs to be distinguished from the alternatives.