Book Review

Relativism and Normative Choice in the Legitimation of Transnational Coercion


Reviewed by Evan Tsen Lee2

When a nation reaches a certain stage of maturity — economically, militarily, culturally — its government’s actions inexorably begin to produce profound effects outside its borders. Many of these actions will fundamentally reshape the lives of individuals who seemingly have no connection to the actor government beyond planetary coexistence. Some of these effects will be benign, perhaps even salutary. Others will be coercive in nature, forcing those individuals into economic Hobson’s choices, or entirely depriving them of liberty or life itself.

With power comes responsibility. There naturally comes a yearning for a principle by which particular exercises of power can be judged legitimate or illegitimate. In surveying their quest for such a principle, there are at least two conceptual axes along which the range of international relations scholars can be plotted.3 One axis represents a continuum measuring the degree to which the scholar in question believes in the need for, and intellectual plausibility of, some kind of justification for governmental action exogenous to self-
interest. The other axis represents a continuum measuring the degree
to which the scholar believes that governments, rather than the indi-
viduals affected, should be the focal points for our efforts at justifica-
tion.

The first continuum runs from those who essentially believe that
undiluted pursuit of national self-interest is the only principle around
which global order can be made to cohere (the realists) to those who
believe that transborder governmental action cannot properly be
characterized as legitimate unless it conforms to some sort of a uni-
versally accepted ethical code (the state moralists and the transna-
tional moralists). The second continuum runs from those who believe
that governments are the only relevant players in this justification
game (the state centrists, which include both realists and state mor-
alists) through those who believe that both governments and affected
individuals deserve “standing” (the transnational moralists) to those
who think governments are largely or wholly irrelevant to the justifi-
cation equation (the cosmopolitans). Together, these axes are
thought to form a matrix upon which all international relations dis-
course can be located.

In Justifying International Acts, Professor Lea Brilmayer offers a
theory of international relations that she says transcends this ma-
trix. Professor Brilmayer readily concedes that her proposed princi-
ple for measuring the legitimacy of transborder governmental coer-
cion falls somewhere in the middle of the second axis — namely,
that it recognizes, on proper occasions, the relevancy of either for-
eign governments or affected foreign individuals. But Professor
Brilmayer’s proposed principle, which she refers to as the “vertical
thesis,” makes recourse to neither national self-interest nor ethics.
Rather, it demands a political justification for every act of trans-
border governmental coercion. And not just any political justification
will do; to conform to the demands of the vertical thesis, the political
justification used to prove the legitimacy of transborder governmen-
tal coercion must be identical (save for what is lost in translation) to
the political theory that the actor government uses to justify coercion

4. See id.
5. Id.
6. The thesis is said to be “vertical” because it focuses the justification inquiry on
the relationship between actor government and affected individual, rather than on the
relationship between actor government and affected government (“horizontal”). When
the justification inquiry is focused on the relationship between actor individual and af-
fected individual, that too is said to be horizontal.

When a government exerts coercive force against one of its own citizens, that is the
archetypal form of “vertical” action. When, on the other hand, a government exercises
coelection against a noncitizen, the action is said to be “diagonal.” Throughout this essay,
I use the terms “diagonal” and “transnational” interchangeably, despite Professor
Brilmayer’s cautions about the possible state-centrist connotations to the latter.
of its own citizens. The vertical thesis, then, is a requirement of consistency. It prescribes no particular political theory to which a government must adhere, but insists only that whatever theory is used to legitimate domestic coercion is also used to measure the legitimacy of transborder coercion. So, without relying upon the concepts of national self-interest or ethics, Professor Brilmayer has expanded the parameters of international relations discourse.

The potential benefits flowing from this breakthrough in international relations theory are not to be doubted. In the United States, for example, there still sits a sourness from the discredited human rights theme of President Carter's foreign policy. Nobody questions the nobility of that enterprise, but nobility guarantees neither coherence nor efficacy. In the return to unabashed pursuit of perceived national self-interest, the human rights problems have not gone away. Shots fired by the death squads in Nicaragua still echo in the corridors of Congress and the universities, as do the screams of tortured blacks in South Africa (for Professor Brilmayer, as for many of us, intervention for humanitarian purposes against oppressive regimes may under certain circumstances constitute a claim just as strong as one not to engage in coercive activity). If a transcendent theory of international relations can break us out of our conceptual stagnation, we would be a significant step closer to deciding what we should do about these and like situations.

Even as I pile onto the vertical thesis bandwagon, though, I confess to a vague sense of uncertainty about the degree to which vertical analysis really transcends the current range of thinking on international relations. Professor Brilmayer's instinct is that her advocacy of the vertical thesis places her nearest on the matrix to the transnational moralists; however, she says that the gulf between the verticalists and transnational moralists is still "fairly wide." I am not so sure. My sense is that, at least to the degree that transnational moralists believe that both governments and affected individuals have "standing" to complain about the coercive conduct of other governments, verticalism is logically subsumed within transnational moralism, and vice versa. This certainly does not mean vertical theory has no value. It merely means that the value of vertical theory may

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7. L. BRILMAYER, supra note 3, at 28.
8. Id. at 22.
9. Id. at 36-37.
10. Id.
11. Professor Brilmayer so assumes. Id. at 36.
differ qualitatively from that which the verticalists expect.

To understand the equivalence of verticalism and transnational moralism, it is necessary to introduce a third conceptual axis. This axis measures the degree to which a person believes that generally applicable moral constraints require all nations to adopt a certain type of political constitutive theory. At one extreme of this axis we find the moral absolutists, who deny that different peoples can rightfully embrace different moral systems. Because at bottom all political constitutive theories are based on some moral system, and because all peoples must adhere to the same moral system, the moral absolutists hold, all nations are required to adopt the same basic set of politically justificatory principles. At the other extreme of this axis are the relativists. The relativists believe in the ontological absence of any morals that can constrain a government from exerting coercion on its citizens, or they hold an epistemological skepticism that we can ever know what these morals are, or both. As a result, the relativists are unwilling to posit any moral requirement that nations adopt any specific type of political constitutive theory.

It is easy to find the transnational moralists on this axis. They are at the front end, arguing that the political justification for coercive action in all nations is constrained by the same set of morals. They are the human rights advocates, commonly urging Rawls’s *A Theory of Justice* as the political constitutive theory of every nation. They disdain the idea that morality, or political constitutive theory based thereon, is relative to the values of any particular society.

Where does the vertical thesis fall on this axis? The natural temptation is to place it squarely at the relativist end. In its strong version, the vertical thesis claims only to require consistency in justifica-

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professes no preference among competing models of constitutive political theory. Insofar as the thesis aims to legitimate all coercive conduct that meets the consistency requirement, it seems relativistic virtually by definition.

Professor Brilmayer has anticipated this charge:

The vertical thesis seems to suggest that all political theories are equally valid. Nothing could be further from the truth. . . . Far from declaring that all theories are equally good, it invites analysts to criticize or reject particular international actions as politically illegitimate. Such criticism is part of the first-order enterprise, however, and not the second-order enterprise. The second-order enterprise merely imposes formal requirements of theoretical consistency between domestic justification and international coercion, arguing that consistency is theoretically necessary and examining whether other second-order requirements might follow from the formal consistency criterion.17

According to Professor Brilmayer, then, the vertical thesis is off the continuum. It is neither morally absolutist nor relativist—it simply makes no normative claim at all about the substance of constitutive political theories. It is only after someone else has chosen from among the competing models that the vertical thesis comes into play, requiring even application intranationally and transnationally. Viewing the determination of the legitimacy vel non of transnational coercion as a whole, the ascertainment of a particular political theory is the first part of the enterprise, and the requirement of consistent application is the second part.

It is somewhat difficult to assess the plausibility of this claim to make no claim, but for me the issue is settled by the possible consequences. The purpose of the consistency requirement is to allow judgments about the legitimacy of particular coercive action. If a constitutive political theory based on an immoral foundation legitimates transnational coercive conduct by virtue of its consistency with domestic applications, then the vertical thesis has accomplished something quite affirmative and normative. This kind of affirmative legitimation must be distinguished from a purely descriptive enterprise, such as assessing the military success of an attack or invasion. The bottom line is that the vertical thesis, in its strong version, provides immoral political regimes with a new vehicle for legitimating their transnational coercive conduct.

Despite her steadfast refusal to concede that the vertical thesis is relativistic, Professor Brilmayer does seem to have realized that those with absolutist leanings (or at least antirelativists) may not be

17. L. BRILMAYER, supra note 3, at 24.
satisfied with a mere public disavowal of relativism. Against the charge that the vertical thesis gives immoral political regimes a tool for legitimation of their diagonal coercion, she responds:

The difficulty with this objection is that it does not distinguish between a valid political theory and one that is merely held sincerely. It is not enough simply to postulate a political theory; the theory must be convincing. While the formal requirements of the vertical thesis seem to have been met [by an immoral but consistently applied political theory], the dispute over the legitimacy of state acts has merely been shifted to the domestic theory itself. In order for a state to justify its actions, it cannot simply assume a particular political justification. This would not be convincing as a matter of domestic political justification, and it would not be convincing as a matter of justifying international actions.  

In other words, the vertical thesis will not operate for just any constitutive political theory. The theory must first surmount some sort of threshold of persuasion or plausibility.

But who decides whether the threshold has been satisfied by any particular theory? Is it the citizens of the actor state? This is an attractive option, but inadmissible. For if the requisite plausibility of any particular constitutive theory were left to the judgment of the actor state's citizens, that allocation of prerogative would violate the "agnosticism" of vertical theory. It would be to confine nations to a certain range of substantive constitutive theories. Nations would be free to select only a constitutive political theory that recognized something akin to the "self-determination of citizens," whether that self-determination was based on democracy, social contract, or something else. It would not permit nations to select a political theory that denied citizens participation in national stewardship, such as the "divine right of kings" or a "dictatorship of the proletariat" that is "temporarily" under the guidance of self-appointed party leaders.  

Who, then, decides? Is it the collective judgment of domestic political philosophers, over time? This appears to be Professor Brilmayer's choice. But it is still a normative, nonagnostic choice. Unless watered down to mean nothing, the plausibility requirement makes the vertical thesis's imprimatur of legitimacy contingent on staying within a menu that contains significantly less than a full range of choices among political theories.

Verticalists who cling to the claim of agnosticism may insist that

18. Id. at 47 (bracketed material added).
19. I take "agnostic" in this context to mean "nonnormative." See id. at 22-25.
20. It might be said that leaving a determination of plausibility to the citizenry, without any further constraint on the choice of a substantive political theory, would violate the agnosticism of the second-order enterprise to a lesser degree than would the universal imposition of, say, a Rawlsian theory. Fair enough. I wonder, though, whether it is really any more possible to be "a little bit agnostic" than it is to be "a little bit pregnant."
21. L. BRILMAYER, supra note 3, at 47 ("over the centuries, domestic political theorists have not simply taken any offered justification at face value").

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the plausibility threshold is merely a formal requirement, and that the vertical thesis permits — indeed requires — someone else to elect among constitutive theories. This assertion comes cloaked in the same protective ethos as certain familiar positive law assumptions — for example, that substance can be separated from procedure, or that questions of fact can be separated from questions of law. These assumptions are in turn bottomed on the metatheoretical premise that subjective can always be separated from objective. The problem is that this premise fits better in the realm of positive law, where constitutional and statutory obstacles cannot simply be assumed away, than it does in the realm of first-best political philosophy. Take the example of functional segregation in adjudication. When a judge selects the rule of decision and then charges the jury with the responsibility of finding the facts and applying them to the rule, we may want to say that the judge has still left the jury a free choice among possible results, even though we are well aware that the rule of decision constrains the verdict to a fairly narrow range of outcomes. Thus, in a two-party action at law, the result will be in favor of one and against the other; it will be expressed only in terms of dollars; it will not purport to exercise coercive force against anyone but the plaintiff or defendant; and so on. Although in a deeper sense we know that the judge’s selection of the rule of decision has dictated the result in a profound way, the injunction of the seventh amendment (or its state analogue) cannot be ignored, and so to preserve some sense of meaningfulness to the jury requirement, we say that the jury had a free choice.

It is not so with the metatheoretical enterprise of determining what diagonal coercion is worthy of the appellation “legitimate.” Because there is no particular compulsion to cede the judgment of what constitutes a “convincing” domestic political theory to anyone else, there is far less willingness to indulge the fiction that the rule-constrained result is in fact the product of free choice. If one hands the choice of a constitutive political theory to a group of political philosophers and instructs them to select only a “convincing” theory, and the selection always turns out to look something like Rawls’s *A Theory of Justice,* it would be disingenuous to deny that the “formal requirement” of plausibility has not in a profound way dictated the outcome.

I would not ask the verticalists to refine (i.e., make sneakier) this

charade. Instead, I would urge them simply to posit the moral super-
iority of a particular constitutive political theory. That brings us
back to the transnational moralists. They do just that. They assert
the universality of morals, which logically requires every nation to
found its constitutive political theory on the same moral system. This
greatly restricts the range of outcomes; I do not understand the
transnational moralists to deny that. It does not seem so bad a thing.
If the verticalists' claim of nonnormativism is false, and if relativism
is unattractive, then some kind of moral absolutism is what is left.

It may well be that part of Professor Brilmayer's motivation for
developing the vertical thesis was concern about objections to the
absolutism of transnational moralism. Three of the potential objec-
tions may reflect unresolvable differences of opinion between absolut-
ists and relativists: First, as a metaphysical matter, there are no such
things as universal morals; second, as an epistemic matter, we could
never really be sure we knew what they were; and third, moral abso-
lutism is too dangerous because it might fall into the wrong hands. I
will leave the rebuttal of these objections, if it is possible, to more
capable minds. But there is another potential objection on conse-
quentialist grounds that deserves mention. It could be argued that
moral absolutism cannot function as a foundation for international
law because no single set of morals could ever win the acceptance of
all nations.

The answer is that this must be worked out within the absolutist
framework itself. The absolutist must be willing to retreat to second-
best solutions, to tailor the political theory that springs from univer-
sal morals so that it fits diverse cultural, religious, and geographical
situations, as well as unique political histories and traditions. It is
not that what is right for Iranians is not also right for Britons, but
rather that these two peoples simply will not accept a universal polit-
ical theory if it is not tailored to reflect their unique situations. The
starting point must still come from within absolutist theory, not from
relativistic premises. The absolutist must find a place within Rawl-
sian theory, or whatever constitutive political theory emerges, for the
differences among nations.

It is worth noting that the transnational moralists, being absolut-
ists, must logically believe in the consistency requirement between
justificatory schemes for domestic and diagonal coercion. It would be
virtually impossible to posit a set of universal morals that could give
rise to political theories that would not measure the legitimacy of
domestic coercive action in a way essentially equivalent to that of
diagonal coercion. Taking the worst case— that the universal moral
constraint posited is the racial superiority, say, of Swedes— each
nation would be required to adopt a constitutive political theory that
measured the legitimacy of coercion on the basis of how favorably it
treats Swedes. All domestic coercive acts by all governments would
be judged for their favoring of Swedes over non-Swedes. Though
there would be no formal requirement that the government’s diago-
nal coercive acts be measured by the same justificatory scheme, as a
practical matter, it would always be the same. As long as the univer-
sal moral foundation posits the superiority of Swedes, whatever jus-
tificatory measure is developed to apply to diagonal coercion will be
intelligible in terms of favoritism for Swedes. Thus, even in the worst
case, all transnational moralists are verticalists.

Ultimately, the value of vertical theory is not so much that it pro-
vides a nonnormative vehicle for gauging the legitimacy of diagonal
coercion, but rather that it forces us to struggle for a better under-
standing of the ramifications that domestic political theory has on
international relations. There is usually great value to pulling some-
thing apart, not because the constituent pieces are more valuable
standing alone, but because one then sees which parts do not fit to-
gether well and are therefore prone to friction and wear. The vertical
thesis pulls apart the complex enterprise of legitimating international
action, whether it be coercive conduct, affirmative economic assis-
tance, or humanitarian intervention against oppressive regimes. It
reveals the subtle interrelationships among political philosophy in-
tended for domestic consumption, international law, and foreign pol-
icy. In the process, it is not unreasonable to think that vertical theory
might well lead to foreign policy that is more coherent and stable,
international law that is more likely to be observed, and perhaps
even constitutive political theories that earn greater respect from
both the citizens of their own nations and of others.