

Claims against inferiority:

Individuals who find themselves in the *inferior* position in untempered relations of inferiority have complaints against being so positioned.

Strictly speaking, claims not against the *relations* of inferiority themselves, but instead claims addressed to certain agents, to perform or refrain from certain *actions* that involve relations of inferiority.

First, Indy has a claim on Benny not to “relate to” Indy as an inferior:

- not to wield untempered superior *power or authority over* Indy,
- not to wield untempered superior *authority than* Indy,
- and not to give Indy untempered *lesser consideration or authority than* Benny gives Altra.

Claims of this kind have a “deontological” or “agent-relative” character.

Second, Indy has a claim on Benny, that Benny work, where he can, to temper relations of inferiority that Indy stands in with others, or to bring it about that Indy avoids those relations. A “consequentialist” or “agent-neutral” character.

Justifying the State, Revisited

What, then, do claims against inferiority imply for the state? A problem looms. After all, the state wields vastly greater power and authority over, and vastly greater authority than, the individuals who are subject to it. At the same time, the state just is, like *l'enfer* of Sartre, other people. So, it would seem, those other people wield vastly greater power and authority over, and authority than, the rest of us. Why don't we stand in relations of inferiority to those individual, natural persons?

Primary tempering factors no help:

1. State is an established social structure and our relations to it are ongoing.
2. State has extensive reach
3. Few limits on what the state can do to us, or command us to do.
4. Costly and difficult to avoid relations to the state.
5. State's decisions are typically “final”: that is, no further appeal.
6. If equality of citizenship with others is not available, not clear what *other* relation of equality with them will be available.

So, perhaps *this* is the complaint against the state: The state wields vastly greater power and authority over, and vastly greater authority than, those who are subject to it. And, where the state is concerned, the tempering factors are conspicuously absent. Yet, the state just is, when the robes and badges are stripped away, other people. So, the complaint against the state is a complaint against standing in relations of inferiority to those natural persons whose decisions the state's decisions are.

Would explain why...

- ... there continues to be a complaint against the state in the Myths of the Omittites and the Trusting Future. Even if there is no force or threat, there are still final and inescapable asymmetries of power and authority.
- ... why complaint so often expressed in terms of “coercion” or “backing by coercion.” Gestures toward the finality of state power and authority. Compelling steering is *usually* necessary for holding final power and authority.

Secondary Tempering Factors:

If the state just is *les autres*, if it wields vastly superior power and authority over each of us, and if our relations to the state are not tempered by the primary factors, then how can they not be relations of inferiority?

Secondary tempering factors, to be discussed later:

- Impersonal Justification: asymmetries are offices justified by impersonal reasons
- Least Discretion: officials exercise no more discretion than serves impersonal reasons
- Equal Influence: those subject to the state have equal opportunity to influence its decisions
- Proper Representation: representatives stand in the right relationship to citizens
- Equal Consideration: the state shows equal consideration to its citizens
- Equal Citizenship: in virtue of Equal Influence and Equal Consideration, those subject to the state stand in at least one relationship of equality to one another, namely that of equal citizenship, whatever other asymmetries, disparities.

—Might apply to non-state arrangements where, like the state, primary tempering factors are absent (e.g., warlords, Pinkerton in a company town).

—Might apply to non-state arrangements where some of the primary tempering factors *are* present. In particular, employees have claims to Impersonal Justification and Least Discretion against their employers, even when the employment arrangement is tempered by, among other things, the primary factor of freedom of exit.

—Perhaps not all of the secondary tempering factors are required. Perhaps Impersonal Justification, Least Discretion, Equal Consideration, and Equal Citizenship, *suffice*, so that the distinctively “democratic” secondary tempering factors of Equal Influence and Proper Representation are *not required*.

—Note that these secondary tempering factors differ from many of the legitimating conditions or limits of legitimacy traditionally said to be necessary for the state’s justification or legitimacy. In order to satisfy the secondary tempering factors, the state doesn’t need to restrict its efforts to protecting people from invasion of their person or property, but could promote other goods as well. Nor need the state have the consent of the governed, or a public justification for what it does.

Impersonal Justification and Least Discretion

The first secondary tempering factor, *Impersonal Justification*, is that the relevant asymmetry of power of A over B constitutes an impersonally justified office.

- asymmetry constitutes an *office*: it consists in A's making certain decisions, by certain processes, which have certain implications for B.
- an office is *impersonally justified* when its existence and operation serves impersonal reasons, against the relevant background, at least as well as any alternative, and better than any alternative not marked by a similar asymmetry.
- *impersonal reasons* = reasons that are not personal. What is being ruled out is that it could justify my asymmetric power or authority over you that the asymmetry would serve *my* interests, projects, or relationships, as opposed merely to *someone's* interests, projects, or relationships.
- Not denied that personal reasons are genuine reasons, which can justify acting in ways to which someone would otherwise have a complaint.
- Not a ban on all *agent-relative* reasons: in particular, agent-relative restrictions, e.g. Force Constraint, which make reference not to the agent's interests, projects, or relationships, but only to the structure of the choice.
- The principal impersonal reasons are reasons to promote the public interest.

Impersonal Justification explains the *Duty to Execute*. Personal reasons cannot justify using an office at the expense of the public interest. An office that operated in this way would not serve impersonal reasons as well as an alternative office in which the official's use of the office was not sensitive to personal reasons.

The next secondary tempering factor, *Least Discretion*, is that the official should exercise only so much discretion in decisions about how to use the office as serves the impersonal reasons that justify it. If the official could serve the impersonal reasons no less well without such and such discretion, then the official should not exercise it.

Why do Impersonal Justification and Least Discretion temper asymmetries of power? They effect a separation of the *office* from the *natural individual* who occupies it. To the extent possible, the superior power of the office is not that of the natural person who occupies it. Thus, you are not, or less, subject to him, the person occupying the office, and rather, or more, subject to the office alone. To be sure, you are subjected to the asymmetric power and authority of the office itself. However, whatever the office is, it is not another natural person. It is not the sort of entity to which relations of inferiority (or superiority or equality) are possible.

How do IJ and LD effect that separation?

- Insofar as Impersonal Justification is satisfied, the office serves *reasons*, as opposed to the whims of the occupant or particularized considerations.
- And the office serves only *impersonal* reasons, not the personal reasons of the occupant.
- Insofar as Least Discretion is satisfied, the official's use of the office is limited to the service of those impersonal reasons.

An alternative? “What is needed is not that the asymmetry serves *impersonal* reasons alone. What is needed is instead that the asymmetry serves *your* reasons alone.”

- Insists on *positive* rule over *oneself*, not merely *negatively* not being ruled over by *another*.
- These two ideas are often conflated.
- Such positive self-rule would rule out asymmetries that serve the public interest—perhaps even any organized social life.

Corruption, Revisited

Least Discretion explains the *Duty to Exclude*: the duty to exclude improper reasons.

- *improper reason* = a reason such that the official could execute the office *just as well* without being sensitive to it (even if sensitivity to improper reasons, in any given case, might not mean that the official executed the office any *worse*).
- Insofar as the official does *not* exclude improper reasons, insofar as the official *is* sensitive to them, the official violates Least Discretion. The official exercises “excess” discretion, discretion beyond what the official needs in order to serve the impersonal reasons that justify the office.
- Explains the distinctive wrong of official corruption. The paradigms, e.g., bribery, nepotism, consist in failing to exclude reasons of personal gain, or of the gain of one’s nephews. These reasons are improper. One doesn’t need to be sensitive to them to serve the impersonal reasons that justify the office.

Why more restrictive “could execute the office *just as well without* sensitivity to improper reasons”? Why not more permissive “would execute the office *worse with* sensitivity to improper reasons”?

- More restrictive prohibition is more in keeping with the spirit of *Least Discretion*
- And would explain why being bribed to resolve underdetermined decision violates Duty to Exclude: sensitivity to the bribe adds nothing to the service of the impersonal reasons that justify the office (even if it doesn’t detract either).

Which Reasons are Excluded?

How to specify *which* reasons are improper to a given office? Need to know which decision-making processes enable the office, given the relevant background, to serve the impersonal reasons that justify it.

- Not only accuracy, but also
- the cost, speed, transparency, and predictability of the process;
- the incentives created when others expect the process in the future;
- the relationships the process would foster or rupture;
- democratic values or pragmatic responses to disagreement.

A fortiori, improper reasons need not benefit oneself or relatives, base, *quid pro quo*.

A further difficulty lies in specifying the “relevant background.” What sort of concessions, if any, do we make to imperfections of people and existing institutions?

- I don't have an answer—a general problem in political philosophy.
- Murky and controversial where to draw the line between proper and improper reasons in any particular case.
- But we can explain the relative clarity and consensus in condemning paradigmatic cases of corruption, such as bribery and nepotism. Even if we don't confidently agree on which reasons are proper, we may still confidently agree that the benefit of oneself or one's relatives are not among them.

The Duty to Exclude might seem to police officials' motivations.

- Rigidistic
- Paradoxical: Why aren't anti-corruption laws entrapment?

We need to distinguish:

- *Excluding* certain considerations as reasons in decisions about how to use the office. The Duty to Exclude does police this.
- *The reasons why* one excludes those considerations. The Duty to Exclude does *not* police this. It calls for exclusion, not exclusion *from certain motives*.

Exploitative Offers, Revisited

Duty to Exclude explains exploitative offers. Recall Car Wash: "I could rightly fire you, but you can keep your job, if you wash my car." Not explained by Choice, since leaves Employee with a *better* choice situation.

- Granted, some *primary* tempering factors may be present in the firm. Rights of exit, labor protections.
- Still, the firm involves particularly *pronounced* asymmetries of power and authority. One of the few settings in modern society, outside of the formal state itself, in which some adults give other adults, for most of their waking hours, orders that they are expected to obey.
- So *some* of the secondary tempering factors are called for in relations between employers and employees.
- Firing Employee is an exercise of office.
- Conditioning or Announcing firing Employee is at least a *use* of office.
- Whether Employee washes Boss's car is not, in the main run of cases, a reason that serves the impersonal values that justify the asymmetry.
- The hierarchical structure of the firm, to be sure, serves some impersonal reasons: in particular, efficient production where transaction costs among autonomous producers would be prohibitive.
- But doing personal services for Boss is not one of those reasons.
- Thus, firing Employee for not washing Boss's car violates the Duty to Exclude, and so Least Discretion.
- So too does Conditioning and Announcing it.
- So too does just Conditioning without Announcing, as in Silent Car Wash. Actually irrelevant that Boss *aims* to get Employee *to do his bidding*, or interferes with his *deliberation*.

Corruption without Inequality?

Objection: Can the complaint against official corruption a complaint against inferiority? Complaints against official corruption have been voiced by people otherwise at peace with hierarchy. Surely a coherent position!

Perhaps these people thought that, while hierarchy does need to be tempered in some way, Impersonal Justification and Least Discretion are *sufficient* to temper it. *Further* tempering factors, such as Equal Influence, are not necessary. They agreed that hierarchy is a problem; they just accepted non-corruption as a sufficient solution.

Equal Treatment by Officials, Revisited

Why is it the case that when an official, *O*, provides a benefit, *B*, for one person subject to the office, *X*, that *O* does not provide for another person subject to the office, *Y*, when there is no “justifying difference” between them, *Y* has a complaint?

Of course, might violate Duty to Exclude: e.g., if *X* is *O*’s nephew, or perhaps *Y* refused to pay *O* a bribe.

But there can be unequal treatment without violating Duty to Exclude. Suppose whether or not to give *B* to *X* is underdetermined. It can be resolved either way without resorting to improper reasons. Then *O* might give *B* to *X*, but not to *Y*, even though the relevant features are exactly alike, without violating the Duty to Exclude.

But still violates the broader principle of Least Discretion.

- *O*, exercising discretion, has given *B* to *X*.
- Holding that fixed, why shouldn’t *O* simply apply to *Y* whatever judgment was reached in *X*’s case? Why should *O* have the *further* discretion to deny *Y* an exemption, assuming that there is no justifying difference between *X* and *Y*?
- This is unjustified, “excess” discretion, which does not serve impersonal reasons.
- Not denying that a decision-making process that leaves *O* with discretion may serve impersonal reasons. The point of offices is largely to reap the benefits of *O*’s exercise of judgment about particular cases.
- But once it is settled that, exercising that judgment, *O* has reached a certain decision in *X*’s case, nothing is lost if *O* henceforth applies the same judgment to all cases that in all relevant respects, as *O* acknowledges, are the same as *X*’s.

In sum, Equal Treatment by Officials is a special case of Least Discretion. Equal treatment curbs what would otherwise be the excess discretion of officials.

Objection: Least Discretion implies something broader than Equal Treatment by Officials. By the same logic, Least Discretion should rule out inconsistent treatment of a *single* person, over time, by an official. Is this not an overgeneralization?

- No, on reflection, it seems to me the right result. This means that insofar as Equal Treatment by Officials stems from Least Discretion, it is not really

concerned with maintaining *equality among the various people subject to the office*. It is concerned, instead, with a kind of limitation of official discretion, which is itself, in turn, called for in order to preserve *equality between the occupant of the office and anyone subject to it*.

Objection: Suppose *O* denies *Y* the exemption, but grants it to *X*, even though there is no justifying difference. Our proposal suggests not only that *Y*, but also, oddly, that *X*, has a complaint against *O*: namely, that *O* violated Least Discretion, by not applying the same judgment to them both.

- I suspect that the oddness is just the general oddness of having a complaint about an action that has in fact benefitted one. But we can complain, or so it seems to me, of actions that benefit us.

Equal Influence

Equal Influence = any individual who is subject to superior untempered power and authority has as much opportunity as any other individual for informed, autonomous influence over decisions about how that power and authority are to be exercised.

If I have as much opportunity for informed, autonomous influence over the exercise of the power and authority as anyone else has, then there's no one to whom I can point and say, because *he* had greater influence, I, in being subjected to that power and authority, am subordinated to *his superior* power and authority. Granted, far lesser influence than the collective will, but that collective will is not another natural person, with whom a question of equality arises.

- *Influence*, not *correspondence*.
- *Relative* influence, not *absolute*. *Equal*, not necessarily *positive*.
- *Opportunity* for influence, not *actual exercise*.
- *Informed* influence.
- *Autonomous* influence: influence knowingly in accord with judgments that are themselves reached by free reflection on what one takes to be relevant reasons.

How might Equal Influence be realized?

- Decisions might be made by *someone*, but not by someone with whom any of us, who are subject to the decision, has ongoing social relations. Rule by the "dead hand of the past."
- As for new decisions: equally zero influence via lottery, or positive but equal influence via voting.
- Answers the *Question of Institutions*. Democracy realizes Equal Influence.
- Why positive influence / voting rather than merely equal influence / lottery?
 - Instrumental reasons: more substantively reliable.
 - Non-instrumental reasons? Doubts:
 - We struggled to identify such reasons earlier.
 - When an instrumental case against positive influence, the case for lottery seems incontestable: e.g., deciding who will be drafted.

Question of Authority: Why does the fact that a political decision was made democratically give others an objection, or even a complaint, if I fail to implement or comply with it?

- Because, if I were to disregard the democratic decision, I would be depriving others of equal opportunity to influence it.

Question of Legitimacy:

- Why does the fact that a political decision was made democratically *remove my pro tanto objection against* its implementation? Why a “legitimizing condition”?
- Well, if the complaint against the state concerns the untempered asymmetry of power and authority that the state involves, then it makes perfect sense that Equal Influence would be a legitimizing condition.

Consideration:

Consideration as treatment:

Heuristics:

- Forms of treatment that superiors in a social hierarchy, as such, characteristically attract.
- Or forms of treatment that, in a society uneasy with hierarchy, it is felt that either every person is owed equally simply in virtue of being a person, or are problematic for anyone to give anyone else.

Partial list:

- Acting to advance, or to be perceived as acting to advance, someone’s interests, aims, preferences, or enjoyments;
- making efforts to ingratiate oneself, or curry favor, with them;
- showing them deference, courtesy, and respect;
- noticing and attending to them; listening to them and taking them at their word;
- trusting them by default as decent, peaceable people;
- “treating them as individuals”—attending to their personal qualities, and so viewing them as not disbarred from forms of association that require attention to personal qualities. Explains why even “positive” stereotypes can be objectionable.
- recognizing their contributions.

Marks:

- “Basing trait,” if any, focused on the person as a whole.
- Not detached appraisal.
→ So, not sufficient for a disparity of consideration that one appreciates that one person has, whereas another lacks, attributes that are sources of pride. Buyers in a slave market can discern skills or beauty in their prospective “purchases.”
- Treator *intends* to treat others in that way: for instance, that one intends to advance their interests or at least to be perceived as doing so.

- Need not believe that social inferiors are *unworthy* of the greater consideration, that they are not fully human, and so lack full moral status.

Consideration as Expression:

What's expressed?

- Not that some are *less worthy* of greater consideration.
- Instead, *endorsement of independent relations of inferiority*: that *social fact* is embraced or ratified. So, in one way, "recursive," depends on independently existing relation of inferiority to endorse.
- Also recursive in another way: the *vehicle* of expression may be some difference in response to Xs and Ys that, *apart from independently existing relations of inferiority, would not express an endorsement of relations of inferiority*.

Merited Disparities:

Some disparities of consideration may be "merited," or "made fitting," by a relevant difference in attributes. Constitutive of, or internal to, recognizing values of certain kinds: e.g., it may no longer be fitting to hear someone out, because he has shown himself to be untrustworthy.

I assume that disparities of consideration that are responsive to merit are less objectionable, if objectionable at all.

Objection: But then the "objection to disparities of consideration" is really just an objection to either (i) responding to some people in ways that they have not merited, or (ii) withholding from some people responses that they have merited.

However, re (i), no complaint, in general, about *giving* someone a favorable response when they have no trait that merits it, e.g., trusting a stranger. And re (ii), there can be disparities of consideration where the withheld consideration is not merited by the people from whom it's withheld, e.g., from the left-handed in the Half-Warm Society.

Discrimination, Revisited:

Discrimination complaints are against:

- (i) a disparity of consideration,
- (ii) not tempered by the primary factors,
- (iii) which is not merited, and
- (iv) which tracks a basing trait (e.g., handedness).

Condition (iv), that the disparity tracks a basing trait, matters morally only insofar as it explains *why* condition (ii) is satisfied: why the primary tempering factors go missing. The basing trait matters morally *only as a coordination point*, targeted by many different people and institutions across society, for a system of differential treatment and expression that is untempered: ongoing, inescapable, etc.

Equal Consideration

Also cases of *non-discriminatory*, untempered disparities of consideration *by the state*.

- (iii) Unmerited (i) disparity of consideration,
- where (ii) the primary tempering factors go missing,
- but where the reason *why* the primary tempering factors go missing is *not* (iv) coordination on a basing trait,
- but instead that it is the *state's* responses that are at issue.
 - Relations to the state are ongoing, inescapable, pervasive, and not regulated by higher-order structures.
 - And if, in one's relations with the state, one does not enjoy equal standing with other individuals, there may be no *other* structures in which one does enjoy equal standing.
- In other words, the state seems to play something more like the role of "the rest of society" in a case of discrimination and less like the isolated stranger in a random act of kindness.

So secondary tempering factor (?) of *Equal Consideration*: The state under a more stringent requirement to show equal consideration for its residents than private persons, such as the randomly kind driver, are under to display equal consideration for one another.

- Would explain why, when theorists offer examples of "wrongful discrimination" isolated from any broader pattern of discrimination, they tend to offer examples in which the *state* directly distributes some benefit or privilege unequally, e.g., Hellman's example of a "state law forbidding people with freckles from voting."

Equal Citizenship:

Suppose state satisfies Equal Influence and Equal Consideration (and shows those subject to it sufficient *positive* consideration). Then those subject to the state enjoy a kind of socially recognized equal status of Equal Citizenship with one another in virtue of the relations of each of them to the state.

So, as a happy by-product, the state satisfies the last of the primary tempering factors that we listed earlier. Whatever other asymmetries or disparities there may be between members of society, they stand as equals to one another in at least one other recognized relationship: namely, the relationship of Equal Citizenship, which is constituted by their relations with the state.

Similar to Rawls's argument for the priority of the equal basic liberties:

- Main premise: Secure for everyone a kind of equal status, whatever other hierarchies there may be in society.
- What is that equal status?
 - Rawls's answer: that realized by a basic structure that secures the *equal basic liberties* and that gives that equality priority over other goods.
 - My proposed answer: more generally, that realized by Equal Influence and Equal Consideration by the state.

Equal Treatment by the State, Revisited:

Equal Consideration implies Equal Treatment by the State as a special case. In general, to give a benefit *B* to *X* but not to *Y*, absent a justifying difference between them, is to show greater consideration for *X* than for *Y*.

Explains why Equal Treatment by the State applies to what the state *directly* provides. An agent's providing something directly is *that agent's* treatment and expression in a way in which an agent's merely countenancing, via the intervention of other agencies, something to be provided is not.

Equal Basic Liberty, Revisited:

Recall that Rawls's doctrine of the equal basic liberties posed several puzzles.

- First, how does liberty even differ from money—let alone differ in such a way as to make different principles of justice appropriate to each? What's the difference between "freedom of movement" and bus fare?
- Second, why are some inequalities in liberty, such as those that result from home security systems purchased on the open market, unobjectionable?

I suggest that the truth in Rawls's doctrine of the equality of the basic liberties is simply Equal Treatment by the State as applied to the special cases of (i) the state's *directly* issuing and enforcing prohibitions on what its citizens do and (ii) the state's *directly* protecting citizens from interference by others.

- The difference between freedom of movement and bus fare:
 - When the state denies freedom of movement, it *directly* issues and enforces a prohibition. There is little or no intervention by other independent agencies.
 - By contrast, when the state allows or facilitates an economic structure that ends up leaving one unable to find a private transportation service willing to transport one for what one is able to pay, one's inability to travel is due to a greater extent to the intervention of independent agencies.
 - If, by contrast, in a command economy, the state distributed bus vouchers only to party members and not to others, then that *would* be like the state's granting "freedom of movement" only to party members. In that case, there wouldn't be a significant moral difference between a bus voucher and an internal passport, as seems intuitive.
- Why home security systems OK.
 - Again, the greater security is not directly provided by the state.

Differences from Rawls:

- First, the focus is not on individuals *having* equal amounts of some privileged good. The focus is rather on the *state's directly providing* equal amounts.
- Second, the comparative complaint doesn't attach to some *privileged kind* of good, such as *liberty*. It is rather that there is special pressure on the state to provide

whichever goods it directly provides equally. So, no *priority* of one kind of good over any other.

Objection: Gives state *carte blanche* to stand aside as some are assaulted, defrauded, etc. by others. After all, the state plays only an “indirect” role in those violations of liberty!

- First, people would have an improvement complaint if the state did not give them *sufficient* protection from assault, fraud, etc.: that is, if the could have given them greater protection without unfairness to others.
- Second, people would have an equal treatment complaint if the state were to provide better protection to some people than to others.
- All this view is committed to is that if, both having received that equal protection, Y were to be victimized but X were not to be victimized (no protection being perfect), Y would have no equal treatment complaint against the state.