

12.4 *Exploitative Offers, Revisited*

With the Duty to Exclude in hand, we can finally explain Employee's complaint about Boss's exploitative offer in Car Wash: to keep Employee on if Employee washes Boss's car. That was the fly in the ointment in our effort to explain, in general, when and why Hablo's Conditioning and Announcing of a response to Audito's choice wrongs Audito. In most cases, we observed, the explanation was given by Choice: namely, that Hablo left Audito's choice situation worse than Audito was entitled to from Hablo. But Car Wash was a stubborn exception. For Boss's offer leaves Employee with, if anything, a better choice situation than Employee is entitled to from Boss: namely, Boss's firing Employee flat out.

With the Duty to Exclude, we have a fresh lead. Observe that Boss occupies a position of superior power and authority over Employee. Granted, *some* tempering factors may be present. Employee may be able find work elsewhere, for example, or there may be democratically enacted labor laws. Still, the firm involves particularly pronounced asymmetries of power and authority. In particular, it is 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 it should not be surprising that some of our correctives are called for in relations between employers and employees.

Observe, next, that firing Employee is an exercise of office, and that Conditioning or Announcing firing Employee, whether or not it is an exercise of office, is certainly a use of office.

Finally, observe that whether or not 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 values. That social structure allows for efficient production, for example, where transaction costs among autonomous producers would be prohibitive (Coase XXXX). But doing personal services for Boss plays no role in that justification.

Thus, firing Employee for not washing Boss's car violates the Duty to Exclude, and so Least Discretion. So too does Conditioning or Announcing it. This is so even if there is only Conditioning without Announcing, as in Silent Car

Wash, or if there is only Announcing without Conditioning, as in Akrotic Car Wash. As we noted earlier, in connection with Silent Car Wash, the objection to such threats or offers does not depend on anything being communicated to Employee. The fact that Boss aims to get Employee to do his bidding, or intervenes in his deliberation, is a red herring.

Does this cover all wrongfully exploitative offers? In *Melodrama*, Mater cannot pay for treatment that will save her child's life, and Mustache offers to pay for the treatment in return for sexual favors (Feinberg 1986)—or, dialing back the villainy, a kiss or some obsequious display. If Mustache has a duty of rescue to pay for the treatment, then Choice might explain straightaway why the offer is wrong. She is entitled to a choice situation in which Mustache will pay for the treatment whatever she decides to do, and Mustache would wrong her by not paying for it. But, if the treatment is costly enough, then Mustache's paying for the treatment seems supererogatory. In that case, the offer would seem to improve her choice situation beyond what she is entitled to from Mustache. So Choice seems not to explain the case.

Melodrama differs from Car Wash in at least two ways. First, the asymmetry of power and authority is not established and ongoing. Still, while there is no established, ongoing hierarchical relationship, Mater is nonetheless in desperate need of what Mustache is able to provide, so desperate that, if not for the excessive cost to Mustache, he would have a duty of rescue to provide it. One might have thought that the argument for a social safety net is in part that it would prevent this sort of asymmetry from arising. The argument is not only that people should get aid when they need it, but also that they shouldn't be made dependent in this way on others (Satz 2010; Khokhar ms.).

But this brings us to a second and more decisive difference between the cases. While the asymmetry between Boss and Employee, we are supposing, serves impersonal reasons, the asymmetry between Mater and Mustache does not. Mater should not be dependent on Mustache in this way to begin with. So Least Discretion has nothing to apply to. What would it be for Mustache to use the asymmetry *for* proper reasons, which serve the impersonal reasons that justify that asymmetry? There are no impersonal reasons that justify that asymmetry.

Perhaps, then, our distaste for what Mustache does has to do with what it expresses. As Mustache should acknowledge,

Mater should not be dependent on Mustache in this way. Now it's one thing if Mustache acts as he would if he were duty-bound to provide the aid, accepting no more than compensation, a fair return, or a free gift after the fact. And it's one thing if he just opts not to help, as he would if he decided that he has his own life to live. But it's quite another if he conveys that he embraces Mater's dependence on him, by demanding favors, or by making a production of the fact that whether the child lives is up to him to decide, say, by ostentatiously flipping a coin. Mustache should want not to be in the position, rather than to see it as a welcome opportunity.

12.6 *Equal Treatment by Officials, Revisited*

Now, let us ask: Why are officials under the requirement of Equal Treatment? Why is it the case that when an official, Offe, provides a benefit, *B*, for one person subject to the office, Dee, that Offe does not provide for another person subject to the office, Dum, when there is no “justifying difference” between Dee and Dum, Dum has a complaint?

Later, we will explain why the *state*, in particular, is under a particularly stringent requirement of equal treatment, stemming from the correctives of Equal Consideration and Equal Citizenship. But those explanations appeal to special characteristics of the state. It is less clear that they can explain why a requirement of equal treatment should apply to many *non-state offices*, such as teachers, administrators, employers, even custodians of children. So what accounts for *Equal Treatment By Officials*?

Of course, Offe might decide to benefit Dee, or not to benefit Dum, for a reason that does not serve the impersonal reasons that justify the office. Perhaps Dee is Offe’s nephew, or perhaps Dum refused to pay Offe a bribe. In that case, Offe would simply violate the Duty to Exclude.

But consider the following possibility. If Offe were to follow decision-making process, *A*, which conforms to the Duty to Exclude, Offe might decide to *grant* Dee an exemption. However, if Offe were to follow a different (or perhaps even the same) decision-making process, *B*, which also conforms to the Duty to Exclude, Offe might decide to *deny* Dee an exemption. In other words, Dee’s case might be underdetermined, such that Offe could reach either decision without violating the Duty to Exclude. Imagine that Dee’s case is like this. Then Offe might grant the exemption to Dee, but not to Dum, while conforming all the while to the Duty to Exclude. So not all violations of Equal Treatment by Officials are violations of the Duty to Exclude.

However, even if Offe does not thereby violate the Duty to Exclude, Offe would still violate the broader principle of Least Discretion. Offe, exercising discretion, has granted an exemption to Dee. Holding that fixed, why shouldn’t Offe simply apply to Dum whatever judgment was reached in Dee’s case? Why should Offe have the *further* discretion to deny Dum an exemption, assuming that there is no justifying difference between Dee and Dum? This seems like

unjustified, “excess” discretion, which does not serve impersonal reasons. So it violates Least Discretion.

To be sure, we’re not denying that a decision-making process that leaves Offe with discretion may serve impersonal reasons. The point of offices is largely to reap the benefits of Offe’s exercise of judgment about particular cases. But once it is settled that, exercising that judgment, Offe has reached a certain decision in Dee’s case, nothing is lost if Offe henceforth applies the same judgment to all cases that in all relevant respects, as Offe acknowledges, are the same as Dee’s. (Moreover, it seems that some things are gained. Offe doesn’t have to rethink the case. And Dum now knows what the decision in his case will be.)

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.

Consider now three objections. First, 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. There is a recognizable complaint against an official who grants you an exception one day, but not the next, while acknowledging that there is no relevant difference between the cases, other than, apparently, how they feel from one moment to the next. 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*. By contrast, Equal Treatment By the State, which, as we will see, is based on Equal Consideration, is concerned with equality among people subject to the state.

Second objection: What if Offe simply made a mistake in, say, denying Dum an exemption in the past? In that case, in granting Dee the exemption, Offe is simply saving Dee from Offe’s past mistake. This sort of discretion is not unjustified. It corrects an error. So Dum has no complaint, at least on the grounds of Least Discretion, in this case. But, intuitively, it may be thought, Dum does have a complaint. Perhaps, however, the complaint is simply the non-comparative

complaint that Offe made the mistake in Dum's case—a complaint that Dum would have even if Dee hadn't appeared on the scene.

Final objection: Suppose Offe denies Dum the exemption, but grants it to Dee, even though there is no justifying difference. Our proposal suggests not only that Dum, but also, oddly, that Dee, has a complaint against Offe: namely, that Offe violated Least Discretion, by not applying the same judgment to them both. I suspect, however, that the oddness is just the general oddness of having a complaint about an action that has in fact benefitted one. But it is clear, or so it seems to me, that we can complain of actions that benefit us.⁷⁹

⁷⁹ In many cases, the oddity has to do with the “affirmation dynamic” illuminated by Wallace 2013.

14 CONSIDERATION

So far, I have been focused on asymmetries of power and authority over, and the vertical correctives to them: Impersonal Justification, Least Discretion, Equal Influence, and Proper Representation. However, relations of inferiority are also partly constituted by disparities in consideration. I now turn to those.

14.1 *Consideration as Treatment*

The responses that count as “consideration” consist in forms of *treatment* and in forms of *expression*. We begin with treatment, and then turn to expression.

The relevant forms of treatment—that is, those that count as consideration—are those forms of treatment that superiors in a social hierarchy, as such, characteristically attract. Or, viewed from another direction, the relevant forms of treatment are those 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. Examples are responses such as respect and intimidation. In our society, everyone, we feel, should be given equal respect, and no one should feel intimidated.

Looking to paradigm cases of social hierarchy to determine what forms of treatment this includes, we find examples such as: 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; “treating them as individuals”; and recognizing their contributions.

For simplicity, the form of consideration that I will mainly consider is acting to advance, or to be perceived as acting to advance, someone’s interests. However, there is much to say about other forms of consideration, much of which has already been helpfully illuminated by others. Some brief comments will have to suffice.

On “listening to people and taking them at their word”: Fricker’s (2007) path-breaking work on “epistemic injustice” is, I would say, an exploration of disparities of consideration, often along lines of gender, constituted by disparities in listening to people and taking them at their word.

On “noticing and attending to people”: Consider Moreau’s (forthcoming) insightful discussion of “structural accommodation,” architecture, literal and social, that presupposes that the needs, interests, abilities, etc. of a privileged group are normal: such as the ability to climb stairs to access spaces otherwise open to the public. To be sure, those unable to climb stairs presumably have an

improvement complaint about this. Their situation could be improved, without unfairness to others. However, they have a further complaint about the fact that this simply fails to see them or to take their needs into account, while seeing and taking into account the needs of the privileged group. This is a disparity of consideration, where the consideration takes the form of seeing someone and taking their needs into account. Something similar might be said of Moreau's example of how representations of, as it were, "the man in the street" overlook people from certain groups—such as, to wit, people who aren't men.

On "trusting them by default": This seems to me the negative image of what Moreau (forthcoming) calls "censure." Her example of censure is assuming that any Muslim must sympathize with terrorism or extremism. That is, I would say, to withhold from them a form of consideration: namely, the default trust extended to others. Although not all unmerited responses to a person wrong them, it seems plausible that unmerited censure does, and quite independently of disparities of consideration. However, when the unmerited censure is unequal, then there is, in addition, is a disparity of consideration, which wrongs them in a further way.

On "treating people as individuals," rather than as instances of stereotypes, even if the stereotypes are otherwise favorable: See Eidelson 2013 and Beeghly 2018. Eidelson's example is assuming that a female Asian-American musician who has a technically imperfect audition must just be having a bad day.

For his part, Eidelson suggests that the intuitive objection so naturally described in terms of "failing to treat as an individual" is a general objection to failing to respect someone's autonomy, by neglecting evidence of past choices, or assuming an incapacity for future choices. Now, perhaps there is such a general objection, which would apply when someone assumes that someone who is unusually tall, presumably not by choice, plays basketball (Eidelson 2013 208). At very least, your taking offense when someone "makes assumptions" about you is intelligible in a way in which your taking offense when, say, someone, knowing of your good deeds, admires them is less intelligible. But, as Eidelson acknowledges (2013 208), the objection seems significantly clearer and more forceful when the assumption is based on a view about a minority or disfavored protected class, such as being an Asian-American female. But why should this be, if, as Eidelson proposes, the objection is a

general objection to someone making assumptions about you? Moreover, there seem to be similar objections to your “failing to treat someone as an individual” even if you draw inferences from that person’s acknowledged choices: for example, that a man who has chosen to wear a yarmulke will be combative, or that a woman who has chosen to wear a headscarf will be retiring. Conversely, it seems that you can fail to treat someone as an individual by neglecting evidence of some unchosen trait that they have, such as refusing to believe the mounting evidence that someone of African descent is congenitally beat deaf, and so will never “have rhythm.”

This suggests to me that “failing to treat someone as an individual” matters, when it does, because it contributes to a disparity of consideration, where the relevant form of consideration is precisely attending to people’s particular qualities, whether chosen or unchosen. The disparity of consideration, in other words, consists in one’s attending to the individual traits of some people, but not of others. Why should this matter, especially if the individual traits to which one attends in others are defects? Well, among other things, people whose particular traits are not attended to are thereby disbarred from forms of association, such as love and friendship, that require attention to particular traits. In other words, to view people as merely instances of a stereotype, even a favorable stereotype, is to keep them always at a distance. Thus, it is a disparity of consideration when members of the majority or favored protected class treat one another as individuals, attending to their particular qualities, while treating members of the minority or disfavored protected class as merely instances of a stereotype, even if it is the stereotype of a “model minority.”

From this list, we can identify some marks of the sort of treatment that counts as consideration. First, although the “basing trait,” if there is one, may be some specific attribute, the treatment tends to take into focus the person as a whole. Thus, because Herr Geldsack *has high net worth*, one is particularly courteous to *him*. By contrast, we can rate a sprinter highly along the dimension of speed, say, without this bleeding into our responses toward him as a whole.

Second, the treatment is not simply a detached appraisal, of the sort that an uninvolved spectator might make, such as that Genghis Khan was an able archer.

These first two remarks show that it isn't sufficient for a disparity of consideration that one simply appreciates that one person has, whereas another lacks, attributes that are desirable or sources of pride.⁸⁰ Buyers in a slave market can discern skills or beauty in their prospective "purchases." And while politeness might require paying some minimum of attention and regard to each fellow guest at a dinner party whoever he or she may be, it does not require that one find them all equally lively or skilled at conversation.

Of course, traits such as beauty or skill might *become* basing traits for a disparity of consideration that consists in responses other than mere appreciation of those traits. In that case, the resulting "meritocratic" disparity in consideration may become objectionable in the way that disparities of consideration based on race or lineage are.

Third, it isn't necessary for treating someone in the relevant way that one's treatment of them has any particular effects, such as that their interests are in fact advanced. Accidents happen.

Fourth, it isn't necessary that one treats the person that way because one believes that one has noninstrumental reason (or any other reason in particular) to treat the person that way. For example, you might be conspicuously solicitous of your patron's interests simply to curry favor.

Accordingly—and this is a point that bears emphasis—it is not necessary for a disparity of consideration that it be believed that the social inferiors are *unworthy* of the greater consideration that the social superiors receive. So, in particular, it is not necessary that it be believed that because the social inferiors lack some relevant basing trait, they are not fully human, have lesser basic or fundamental moral status, or have interests and claims of lesser weight (compare Manne 2018, Ch. 5; contrast Hellman 2008 38 and Viehoff 2019 19).

People can show greater consideration for some over others from motivations that do not depend on any such belief. People may be responding from unthinking habit or merely copying what others do. People may be temporizing or

⁸⁰ And even if such appreciation of special attributes were a disparity of consideration, it might still be unobjectionable insofar as it was merited. See Merited Disparities, below.

responding strategically, whether out of self-interest or for more altruistic reasons. For example, they may just be catering to the interests of those with greater purchasing power. Or, finally, people can take pleasure in belonging to the in-group, without any illusion that their belonging to it has some deeper justification. To overlook this is to underestimate the human genius for social distinctions.

Fifth, however, it is necessary that one does *not* treat people in that way simply because one believes that some special relationship to that person gives one agent-relative reason to do so. In social hierarchies, people treat members of the higher stratum more favorably than members of the lower stratum, regardless of their relationship to them.

Accordingly, it is not sufficient for a disparity of consideration that people act from what they believe is justified agent-relative partiality. Merely to treat one person and not another as a friend is not to treat the latter as a member of a lower stratum. He's just not a friend, and he has other people, but not you, as friends.

Finally, a disparity of consideration from a superior has special significance. To be the favorite of a superior is itself a kind of superiority.

14.2 Consideration as Expression

Disparities of consideration, as I noted earlier, consist not only in disparities in certain forms of treatment, which we have just described. Disparities of consideration also consist in forms of *expression*.

The central question is what the content is that's expressed. We've already ruled out the answer that what, in general, is expressed is that some people are less worthy of something, let alone that they are less worthy because they are less than fully human. The answer, I think, is instead that what is expressed (possibly insincerely or as mere lip-service) is an *endorsement of independent relations of inferiority*. Those independent relations of inferiority might be constituted by a disparity of consideration of *another* kind or by an asymmetry of power and authority. Whether or not it is expressed that anyone is less *worthy*, in other words, the *social fact* of the inferiority of some to others is embraced or ratified.

I take it that an act, *A*, expresses a content, *E*, only insofar as *some* people in the relevant culture either *intend* to communicate *E* by *A* or *interpret* others as doing so (Ekins 2012). If *A* does not bespeak or invite such intentions or interpretations, then it simply does not express *E*. Whether *A* expresses *E* will of course depend on convention, context, history, and more general cognitive limits of intention and interpretation.

These expressions depend "recursively," in two ways, on independently existing relations of inferiority. First, to repeat, the *content* expressed is an *endorsement of some independent relation of inferiority* of Xs to Ys. Again, it is endorsement of that *social fact*, whether or not that endorsement is grounded in some further judgment that, e.g., the Xs lack moral status.

Second, 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*. Whether it counts as lesser consideration to be required to sit in the back, as opposed to the front, of the bus is impossible to say without knowing whether it is the superiors or inferiors (as determined by *other* contexts) who are required to sit in the back (Hellman 2008 27). Holding other things fixed, if African Americans had been told to stop at the front of the bus and only white

passengers been allowed to sit at the back of the bus, “going to the back of the bus” would have had the opposite valence.

14.3 Merited Disparities

Some disparities of consideration may be “merited,” or “made fitting,” by a relevant difference in attributes. That is, it may be constitutive of, or internal to, recognizing values of certain kinds that, when one judges certain differences in people’s attributes, one treats those people differently in one of the ways that we have listed as forms of consideration. For example, it may no longer be fitting to hear someone out, because he has shown himself to be untrustworthy, or it may be fitting to withdraw goodwill from someone, because he has seriously wronged others. I have assumed that disparities of consideration that are responsive to merit are less objectionable, if objectionable at all, even if other tempering factors are absent. Why this is so is a further question. I’m not sure what its answer is.

Whatever its answer, however, one might worry that if we say that disparities of consideration are not objectionable where they are merited, then we are just implicitly conceding that what we are calling an “objection to disparities of consideration” is really just an objection to something that has nothing to do with relations of inferiority. Instead, the objection is either (i) that we are responding to some people in ways that they have not merited, or (ii) that we are withholding from some people responses that they have merited.

However, there is no complaint, in general, about *giving* someone a favorable response when they have no trait that merits it. No one has a complaint against you for simply hearing a stranger out because, as far as you know, they have done nothing that would give you grounds to mistrust them. And yet it’s not clear how your willingness is a response to the stranger’s *merit*. You don’t know them from Adam.

And while it might be more objectionable to *withhold* from people responses that they have merited, it isn’t true, in all of the relevant cases, that the withheld consideration is merited by the people from whom it’s withheld.

The Half-Warm Society illustrates both points. The objection to the Half-Warm Society can be neither to giving the right handed something that they have not merited—since the right-handed are given the same responses in the unobjectionable Warm Society too—nor to withholding something from the left-handed that they have merited—

since that is also withheld from them in the unobjectionable Cold Society.

To grant that disparities in consideration are not objectionable when they are merited is also not to endorse, say, grafting the pattern of consideration characteristic of an aristocratic order onto “meritocratic” competitions: that is, simply replacing lineage with qualifications or career as the basing trait. This is because there is no reason to think that qualifications or career merit such responses. Qualifications, to the extent that they are admirable, merit admiration. But admiration is not, for example, acting to advance someone’s interests. And one’s being better qualified, as we saw in XXXX, means that beneficiaries have weaker objection to one’s getting a job. But this is not a response to merit; it’s purely instrumental.

Of course, some might say, not without justice, that we *do* currently view qualifications and careers in the way in which aristocratic orders viewed lineage (Arneson 1999 93–94).⁸¹ But it isn’t clear to me as a conceptual matter that qualifications and careers, however scarce and desirable, *must* be freighted with such further significance. The fact that someone spends his days doing something that I would prefer to spend my days doing needn’t mean that he has a higher rank, any more than that he enjoys, in the privacy of his own home, some labor-saving convenience that I don’t.⁸² This is not to deny, of course, that the distribution of such goods—desirable work or conveniences—is of concern. It is just to observe that the concern is not rooted in a claim against inferiority.

⁸¹ If so, then it suggests another explanation of why we view White’s advantage as different from Hauser’s in Substantive Equality of Opportunity: namely, that careers attract consideration in a way in which owning, rather than renting, a domicile does not.

⁸² I worry that these are run together in the opening lines of Arneson’s 2015 encyclopedia entry on “equality of opportunity”: “Equality of opportunity is a political ideal that is opposed to caste hierarchy but not to hierarchy *per se*. The background assumption is that a society contains a hierarchy of more and less desirable, superior and inferior positions.”

14.4 Discrimination, Revisited

This suggests what the discrimination complaint in the Half-Warm Society might be: a complaint about a disparity of consideration, which is neither merited, nor tempered, since it is ongoing, inescapable, pervasive, and not cabined to any one time, place, or context.

More generally, I suggest that discrimination complaints are against:

- (i) a disparity of consideration,
- (ii) which is not tempered,
- (iii) *because* the disparity tracks a basing trait.

Condition (iii), that the disparity tracks a basing trait, matters morally only insofar as it explains *why* condition (ii) is satisfied: why the tempering factors go missing. The basing trait matters morally as a coordination point, targeted by many different people and institutions across society, that makes for an *ongoing and inescapable system, which pervades a variety of contexts*, of differential consideration.

What meant by “discriminating against” someone, I suggest, is giving that person lesser consideration, in a way that tracks the basing trait, when such a system is established (or threatens to take root). However, there can be discrimination complaints against people don’t themselves discriminate, for failing to take measures to combat discrimination by others.

Earlier we asked what counts as a “protected class,” such that treating people differently based on their membership in that class gives rise to a discrimination complaint. How should we generalize from the cases of race and gender? We proposed only a vague, necessary condition: that differential treatment on the basis of membership of the class in question be “widespread in society.” What this necessary condition was gesturing at was, we can now say, a certain way in which the tempering factors can go missing, and so a disparity of consideration can become objectionable. Namely, the disparity of consideration can track a basing trait across a variety of contexts, in a way that is ongoing and inescapable.

I now suggest that there is nothing more to a protected class than this. A “protected class,” then, is simply any group defined by a basing trait around which an untempered

disparity of consideration has gathered (or threatens to gather).⁸³

The relevant basing trait needn't, in principle, be one that the bearer is not responsible for: traits that they cannot choose, or traits that they are born with. It does not make discrimination against race and gender acceptable that people can, in some cases, successfully "pass" or change their birth-gender (Boxhill 1992 12–17). (Nor, as we will see, is it obvious that it would be acceptable to graft the pattern of consideration characteristic of an aristocratic order onto meritocratic competitions, simply replacing lineages with test scores as the basing trait, even if people are responsible for success in those competitions.) However, the difficulty of escaping a disparity of consideration may be correlated with the disparity of consideration tracking a basing trait that the bearer is not responsible for.

The relevant basing trait needn't, in principle, be visible or salient. However, basing traits that are less visible or salient may be less likely, in practice, to attract a widespread disparity of consideration.

As we noted earlier, "protected classes" are sometimes defined as classes that have been subject to discrimination in the not-too-distant past. We worried that this risked a regress. In order to be discriminated against now, the class would have to have been discriminated against in the past, and in order to have been discriminated against then, the class would have to have been discriminated against in the further past, and so on. How could discrimination ever start? The present suggestion avoids this regress, since it does not define protected classes as those that have been subject to discrimination in the past.

However, there is something right in the suggestion that protected classes are classes that have been subject to discrimination in the not-too-distant past. This is because of the second sort of "recursion" that we discussed in *Consideration as Expression*: namely, that a response that would not express an endorsement of a relation of inferiority may express such an endorsement because of a history of relations of inferiority. Thus, a response to a basing trait that would not otherwise count as lesser consideration can come to have that meaning within a not-to-distant past of lesser

⁸³ Compare Lippert-Rasmussen 2014 on "social salience."

consideration for people with that trait. In this way, what would not otherwise be discrimination may become discrimination because of existing discrimination. Consider an example that Hellman 2008 discusses, of a principal segregating black and white students for a school photo, which might have been an innocuous aesthetic choice, like clustering taller people in the center, if not for the history of segregation by race.

We can now explain our misgivings about Alexander's suggestion that the distinctive wrong of discrimination is rooted in judging a person to be of lesser moral worth.

We observed, first, that as Alexander's own formulation reveals, the discrimination complaint seems to be a *comparative* objection to a judgment of *lesser* moral worth *than others have*. It's not the objection that one might have to a consistent amoralist, who underestimated everyone's moral worth. We have now explained why this is. In the case of the consistent amoralist, there is no disparity of consideration.

Second, we worried that there seems a further objection when the underestimation of moral worth is *based on one's being a member of a "protected class,"* such as race or gender, as opposed, say, to being a judgment motivated by some personal jealousy, enmity, or dislike. In the latter cases, but not the former, the tempering factors are absent. Personal animosity is typically localized in time, place, and context, limited in its effects, and escapable.

Finally, we worried there can be a discrimination complaint about differential treatment that *does not involve any underestimation of moral worth*, as in the Half-Warm Society. This is because there can be a disparity of consideration without any underestimation of moral worth.

This account of discrimination might explain why people have complaints about discriminatory *patterns* of responses in society. But, one might ask, does it explain why the victim of some *specific* discriminatory response has a special complaint about that specific response, and not just a complaint about the broader pattern, or others' support of it?

It does. Their complaint is that, on this occasion, a specific person "related to" them as an inferior, in the sense explained in *The Structure of Claims Against Inferiority*. Granted, in the absence of the broader social pattern, the

same treatment would not have counted as responding to them as an inferior, and so they would not have that complaint about it. But this is compatible with their complaint still being against that *specific response toward them*, not only about the social pattern. Something can be a condition of a complaint without being the only thing (or without even being one of the things) that it is a complaint against.

How might the disparity of consideration “track” a basing trait? The most straightforward way is that the “judges”—whether people and institutions—categorize the “judged” people *as* having the basing trait and show differential consideration on the basis of that categorization. Note that this judged categorization might be unconscious or implicit. This would correspond to one understanding of “direct” discrimination.

However, there are at least two other ways of tracking a basing trait. First, paradoxically, the judges may be *insensitive* to the basing trait, which results in lesser consideration of those with the basing trait. Consider the phenomenon of structural accommodation mentioned earlier, where design choices *overlook* the needs of people with disabilities (see also Young XXXX).

Second, although the judges’ consideration is not sensitive to their categorization (if any) of the judged as having the basing trait, their consideration might be sensitive to a factor that is correlated with that basing trait. This corresponds to one understanding of “indirect” discrimination. Consider a case in which women are paid less than men for the same work, because men, perhaps due to hormonal overconfidence, are more likely to press for higher pay in negotiations. Insofar as pay is a way of valuing contributions, and insofar as valuing contributions is a form of consideration, employers show lesser consideration for women, in a way that tracks that they are women, which, at least given the broader disparity of consideration between men and women, is to say that employers discriminate against women.

In principle, there might be a system of discrimination that was entirely “indirect” in this way. However, in practice, systems of discrimination are usually anchored by “direct” discrimination, which is then sustained or amplified by “indirect” discrimination. For example, educational institutions deny members of the disfavored group access on

the explicit grounds of their basing trait, and promotions are then conditioned on tests, which are impossible to pass without the relevant education.

While this account covers many forms of indirect or implicit discrimination, it admittedly does not cover what might be called “egalitarian discrimination.” Suppose that a culture believes in a gendered division of labor, although (somehow) this is in no way linked to asymmetries in power or authority, or disparities of consideration (Lippert-Rasmussen 2014 41). Or suppose that two equal groups just do supererogatory things for their own members, without any suggestion of a hierarchy, just as members of different families do.

If there really is no connection whatsoever to hierarchy, then, I submit, the problem, if there is one, is different. In the gendered labor case, for example, the problem is just that everyone is pointlessly limited by their gender in the opportunities that they can pursue.

As we will see in the next chapter, there are cases in which (i)–(ii), but not (iii), obtain: where there is a disparity of consideration that is not tempered, but not because it tracks a basing trait. These cases are of *non*-discriminatory disparities of consideration *by the state*. While they are not cases of discrimination, they are objectionable in a similar way.

15 EQUALITY AS A CITIZEN

We return now to claims against inferiority addressed to the *state*. Earlier, we discussed claims raised by those subject to the state's decisions against their standing in relations of inferiority to the *agents* of the state: those who decide what the state does. They are concerns about "vertical" relations to the state. These relations to the state are tempered, or so I have suggested, by the secondary factors of Impersonal Justification, Least Discretion, Equal Influence, and Proper Representation.

Now we discuss concerns that some of those subject to the state's decisions stand in relations of inferiority to *other patients* of the state: others who are likewise subject to the state's decisions. They are concerns about the state's role in "horizontal" relations, between one patient of the state and another.

15.1 Equal Consideration

As we saw in the last section, discrimination represents one way in which a disparity of consideration can be untempered. Some basing trait, such as handedness, serves as a coordination point for lesser consideration from many different persons and institutions, across society. The disparity of consideration is thus made ongoing, inescapable, pervasive, etc. It is unlike a fleeting episode of lesser consideration from a lone individual, such as a driver who performs a “random act of kindness” by picking up another hitchhiker, but, deciding that is enough for the day, not you. Discrimination, as we have described it, is an untempered disparity of consideration constituted by the responses of many different actors, state and non-state, which is made possible by coordination on a basing trait.

Our question now is what we should say about disparities of consideration that are constituted *by the responses of the state itself*, when they are *not* connected to any pattern of discrimination, so understood. If it is objectionable for *the rest of society*, coordinating on a basing trait, to, say, count your interests for less in the provision of public services, might it also be objectionable, for a similar reason, for *the state*, without the cooperation of the rest of society and independent of any basing trait, to count your interests for less in the provision of public services?

One might answer no. “After all, it isn’t objectionable for the isolated, randomly kind driver to show you lesser consideration, again so long as they treat you adequately and so long as this isn’t connected to any independently existing pattern of discrimination, so long as there isn’t any coordination on a basing trait. So, likewise, it isn’t objectionable for the *state* to show you lesser consideration, so long as it treats you adequately and so long as this isn’t connected to any independently existing pattern of discrimination.”

However, the reason why the isolated individual’s lesser consideration of you was unobjectionable, we said, was that tempering factors were present. The lesser consideration was not ongoing, or inescapable, or pervasive. It was both regulated by higher-order structures with a different character and occurred against the background of other structures within which you enjoyed equal standing with the person who enjoyed greater consideration from that isolated individual. By contrast, 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 with them. In other words, because the tempering factors are absent, 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. (Granted, the state might do more for others without judging (whatever that would come to) that you are unworthy of more. But, as we saw, the same can be true of discrimination. Other individuals in your society might do more for others without judging that you are unworthy of more.)

The state's consideration is special in a further way: it is the consideration of a *superior* power and authority. A disparity in the state's consideration, therefore, does more to constitute those it favors as superior than would a disparity in any individual's consideration.

This suggests that the state is under a more stringent requirement, *Equal Consideration*, 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. Private persons are required, perhaps, only to refrain from contributing to patterns of discrimination. The state, by contrast, is required to show equal consideration even absent any pattern of discrimination, any coordination on basing traits.

This may be why when theorists offer examples of "wrongful discrimination" against members of a group that are isolated from any broader pattern of discrimination against that group, they tend to offer examples in which the *state* directly distributes some benefit or privilege unequally, when there is no justifying difference. Witness Hellman's example of a "state law forbidding people with freckles from voting" (2008 41), or Moreau's example of denying heterosexual couples civil partnerships.⁸⁴ If it were a private actor, rather than the state, distributing a benefit unequally, then given that it was isolated from a broader pattern of discrimination, or coordination on a disfavored basing trait

⁸⁴ [A similar case is Eidelson's (2018 28–30) of "wrongful discrimination" by an employer on the basis of hair color, which would be a violation of Equal Treatment by Officials.]

(freckles and heterosexuality not being *disfavored* traits), then it would be less clear that it was wrongful.

This view assumes that the state, understood as the agency that wields final power and authority, has a certain unity, even over time, even when distributed into a multitude of offices. And insofar as the state's consideration takes an expressive form, it also assumes that what the state does can have expressive significance. Both assumptions are open to question, granted. But they seem to me plausible.

There may also be traits such that if one lacks them, one is, as a contingent matter, less likely to be accorded Equal Consideration by the state. If one has no mailing address, then one may not receive certain forms of government aid. This might be so even if there is no pattern of discrimination against people lacking a mailing address. This can be practically significant, as we return to in Poverty, Relative and Absolute. For it suggests another strategy for addressing violations of Equal Consideration: to work not on the sensitivity of state action to those traits, but instead on the traits, such as homelessness, themselves.⁸⁵

⁸⁵ See Moreau forthcoming on "basic goods."

15.2 *Equal Citizenship*

Suppose the state satisfies Equal Influence and Equal Consideration. And suppose, moreover, that those subject to the state have not only *equal*, but also sufficient *positive*, influence over it, or that the state shows them not only *equal* consideration, but also sufficient *positive* consideration. It follows that those subject to the state enjoy a kind of socially recognized equal status with one another in virtue of the relations of each of them to the state. In virtue of Equal Influence, one is an equal “active” citizen. One has the same say as any other citizen has in what the state does. In virtue of Equal Consideration, one is an equal “passive” citizen. One enjoys the same consideration from the state as any other citizen does.

This means that, as a kind of happy by-product, the state satisfies the last of the tempering factors that we listed. 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, that is constituted by their relations with the state. Moreover, because the state wields final power and authority, which regulates all other relations, citizenship is, in one sense of “fundamental,” one’s most fundamental standing with respect to others in society (Miller 1997 234).

Equal Citizenship, note, requires not only equal influence in or consideration by the state, but also sufficiently positive influence or consideration. If the state plays little role in people’s lives, for example, it might trivially satisfy Equal Consideration. However, it would not go very far in satisfying Equal Citizenship, since the relationship of equal citizenship that it established would be relatively thin; it would not amount to much.

This might remind the reader of one of Rawls’s arguments for the priority of the equal basic liberties. The argument’s main premise is that it is important to secure for everyone a kind of equal status: that, whatever other hierarchies there may be in society, there be at least one socially recognized relationship in which members of society stand as equals to one another. The difference lies in what this socially recognized relationship might be. Rawls’s answer is that it is the socially recognized relationship that is realized by a basic structure that secures the *equal basic liberties* and that gives that equality in the basic liberties priority over the

distribution of other goods. My proposed answer is more general: that the socially recognized relationship of equality is the relationship realized by Equal Influence and, more important for present purposes, Equal Consideration by the state.

15.3 *Equal Treatment by the State, Revisited*

If we accept Equal Consideration, then Equal Treatment by the State follows as a special case. In general, to give a benefit *B* to Dee but not to Dum, absent a justifying difference between them, is to show greater consideration for Dee than for Dum. So, for the state to show equal consideration for its citizens, it must treat them equally.

If Equal Treatment by the State is a special case of Equal Consideration, then this explains why it 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. What one says oneself is a more significant expression of one's state of mind, for example, than what one suffers others to say. Thus, when the state unequally provides something that it directly provides, this is a more significant expression of the state's unequal consideration than when something, via the actions of the state and of intervening agencies, is unequally provided.

This in turn assumes a distinction between what the state directly does and what it indirectly allows to happen. In the latter case, what happens is more the result of independent initiative by other agents, who, even if regulated by the state in what they do, are not implementing its directives or carrying out its express charges. This means that, for present purposes, the state may be something less than the "basic structure," insofar as the "basic structure" includes some of those regulated, but not directed or charged, agents, such as participants in a market economy.

One might worry that this makes it too easy for the state to slip the fetters of Equal Treatment. All it needs to do is "privatize" (Patten 2014 4.4). However, first, much that goes by the name of "privatization" would not be "indirect" in the relevant sense. The state's contracting with non-state employees to do what state employees would be in their place directed to do, for example, makes little difference. Those "private contractors" are still carrying out the state's express charges.

Second, there are reasons against replacing direct provision with (genuinely) indirect provision. One is simply that people might be worse served by indirect provision. Another reason against indirect provision is that it would

undermine Equal Citizenship. Granted, the state might fully satisfy Equal Treatment by providing equally *little* to everyone. After all, the Aztec Empire trivially satisfied Equal Treatment with respect to you and me by giving neither of us anything. But if the state provides equally *sufficiently much* to everyone, then it provides them with Equal Citizenship. That is something that the Aztec Empire, despite its flawlessly equal treatment, does not provide us with.

This view explains why Dum has no equal treatment complaint when Dum is a non-resident alien of the state in question. In that case, Dum's relations to that state are not ongoing, inescapable, pervasive, etc., and that state does not play the same final, regulating role over Dum's society.

This view also explains why Dum can have an equal treatment complaint even if the unequal treatment does not stem from Dee's and Dum's belonging to different "protected classes." The root objection is to an *untempered* disparity of consideration. Again, the disparity in this case is untempered not, as in the case of discrimination, because of *coordination* across many agents on *some disfavored basing trait*, but instead because it is the *state* whose consideration is at issue.

This view also explains why equal treatment complaints typically apply to *specific* benefits. Giving people the same benefits is typically, given the cognitive limits of interpretation, a less ambiguous expression of equal consideration than compensating lesser provision of a certain good with greater provision of another.

Finally, this view suggests that what counts as a "justifying difference" will similarly depend, in part, on the contingencies of what expresses what. Perhaps the fact that the state cannot give *B* to Dum (because, say, the rule was already applied in Dum's case) but can now give *B* to Dee might be enough for the unequal provision *not* to express *unequal* consideration. But, then again, it might be less ambiguous, and more of a *positive* statement of *equal* consideration, simply not to give *B* to Dee under the circumstances.

One might object: "You grant that what counts as equal consideration depends, in part, on 'what expresses what.' What if prevailing interpretations were such that the state *cannot* express *unequal* consideration by how it *henceforth*

acts *so long as* it henceforth acts in whatever way brings it about, directly or indirectly, that interests in improvement are best satisfied overall, treating any mistakes that it might have made in the past as water under the bridge? In that case, once the state determined how best to satisfy improvement claims going forward, Equal Consideration would impose no further constraint on its deliberations.”

First, it’s not clear that, given the general cognitive limits of interpretation, what expresses what is so malleable. Second, I have supposed that consideration consists not only in expression, but also in treatment. It is not clear that what counts as equal treatment is so malleable. In any event, even if we grant that Equal Consideration imposed no independent constraint, it would still be a further reason *to* satisfy improvement claims (at least within a given society).

15.4 *Equal Basic Liberty, Revisited*

As we noted, the argument for Equal Citizenship just given more or less follows the structure of Rawls's second argument for the priority of the equal basic liberties. The shared main premise is that it is important to secure for everyone a kind of equal status: that, whatever other hierarchies there may be in society, there be at least one socially recognized relationship in which members of society stand as equals to one another.⁸⁶

Where the argument departs from Rawls is in what the socially recognized relationship is. Rawls suggests that it is realized by a basic structure that secures the equal basic liberties, and, moreover, gives that equality priority over the distribution of other goods.

As it stands, however, the argument invites the first two puzzles about the doctrine of the basic liberties discussed in Equal Basic Liberty. 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? Second, why are some inequalities in liberty, such as those that result from home security systems purchased on the open market, unobjectionable?

And further questions arise. Even if we grant that equal status requires equality in the holdings of goods of some kind, why should the goods be all and only the liberties? Why not money, or less than all the liberties, or some of the liberties and some money?

A natural reply is that it is easier to tell whether there is equality of liberty than whether there is equality of other goods. But this isn't obvious, as Shiffrin 2004 observes. On the one hand, with appropriate reporting requirements, we could monitor equality in income and wealth. On the other hand, monitoring equality in some of the basic liberties can be quite difficult.

By contrast, I have been suggesting that the relevant equal status, of Equal Citizenship, is constituted by Equal

⁸⁶ For Rawls, this equal status matters, in turn, because it supports the social bases of self-respect, which matters, in turn, because the social bases of self-respect are important means to pursuing one's life plan. I discuss more in *Psychic Cost*.

Influence and Equal Consideration (where there is sufficiently positive influence or consideration). It is equality in the relations, active and passive, that each of us bears to the state.

Furthermore, I propose 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.

Again, what is the difference between freedom of movement and bus fare even supposed to be—setting aside the question of why the difference should matter? 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, the state's role is less direct. One's inability to travel is due to a greater extent to the intervention of independent agencies.

To be sure, this may be more a difference in degree than in kind. Insofar as it is in the state's power to regulate those other agencies, the difference is in *how directly* one is treated by the state: *how far* one's treatment is mediated by the decisions of other agencies. And degree of directness may be hard to measure; in some cases, there may be no answer as to whether one sort of provision is more or less direct than another. But it is still a difference.

This difference matters if, as we have suggested, Equal Treatment by the State applies more stringently to what the state more directly provides. This may mean that one has an equal treatment complaint about inequality in freedom of movement that one lacks about inequality in bus fare.

This view, of course, differs in several ways from Rawls's doctrine of equal basic liberty. First, the focus is not on individuals *having* equal amounts of some privileged good. The focus is rather on the state's *providing* equal amounts. If some threshold of basic security has been *provided* equally, there is no violation if some *have* additional security because they have purchased it on the open market.

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. It isn't violated when the state simply upholds an otherwise justified economic system with the predictable but indirect result that some, but not others, can induce a private provider of transportation services to provide them. 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.

If we understand the equality of the basic liberties to be a special case of Equal Treatment by the State—namely, where as the state *directly* provides protection from interference—then we can explain why it isn't violated when the state, while providing equal police protection to all, in addition upholds an otherwise justified economic system with the predictable but indirect result that some, but not others, have home security systems.

This proposal is thus relieved of the need to draw a clear, general distinction between liberty and money. And this proposal does not imply that protection from sentience is somehow more important than protection from disease. The state's directly providing sewers to only some would be objectionable in the same way as its providing police protection to only some.

Finally, there is no insistence on the *priority* of distributing one kind of good over any other. Again, the idea is simply that the unequal provision of goods directly provided by the state, but not the mere unequal holding of goods that are not directly provided by the state, gives rise to a comparative equal treatment complaint.

One might worry that this gives the 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, it would violate Equal Consideration for the state to provide better

protection from assault to some people than to others. Finally, Equal Citizenship might require not only equal, but also *sufficient*, protection.⁸⁷

All this view is committed to is that if, both having received that equal and sufficient protection, Dum were to be victimized but Dee were not to be victimized (no protection being perfect), Dum would have no complaint against the state.

⁸⁷ Cohen (2011) suggests two other possible differences between “state” and “business” provision of freedom. One is that the businesses, but not the state, are distributing scarce goods (188–9). But police protection is also in limited supply. Indeed, so too are many legal permissions: only so many can do the permitted act before the cost becomes prohibitive. The other possible difference is that the “prohibition” of an act can be an “insult to” or “diminution of” “status” in a way in which the refusal to give a gift or accept an exchange on certain terms is not (191–2). I explore something like this in Self-sovereignty.

IV. ALTERNATIVES TO NON-INFERIORITY

In Part III, we suggested that claims against inferiority might be invoked to explain what, in Part II, we argued claims to improvement and claims against invasion could not. But are there claims against inferiority? Few would deny that there are “complaints,” to put it mildly, against the extreme cases of bondage or caste. But, some may contend, those complaints are not against relations of inferiority as such, but instead against something else, which we are confusing with relations of inferiority. This Part, IV, considers contentions of this kind.

17 REDUCTION

17.1 *Expression*

It might first be suggested that the alleged complaints against relations of inferiority are instead complaints to what relations of inferiority express or symbolize.

Yet what do relations of inferiority express or symbolize? Relations of inferiority themselves? To be sure, if relations of inferiority are objectionable, then expressions of those relations—e.g., statues of colonial oppressors, Confederate flags—may be objectionable. Moreover, such expressions amount to a disparity of consideration as expression. But this just presupposes that relations of inferiority are objectionable.⁸⁹

Do relations of inferiority instead express a lack of concern for interests in improvement or rights against invasion? It would seem not. After all, relations of inferiority can obtain where there are no unmet claims to improvement and no violated rights against invasion.

Do relations of inferiority instead express judgments that some lack the basis, such as humanity or rationality, for basic moral status, so that, among other things, their interests count for less? As we have seen, disparities of consideration need not be based on such judgments. And asymmetries of power need not involve any judgments at all about the inferiors. They may simply be a matter of brute force.

Consider Viehoff's suggestion that the only objection to the sort of untempered disparity of consideration (as I would call it) that characterizes a caste hierarchy is that it expresses that some are morally inferior to others: that their interests count for less (2019 19). It expresses this, he suggests, because the untempered disparity of consideration would be

⁸⁹ Something similar can be said in reply to the suggestion that the objection is not to relations against inferiority themselves, but instead to the vices of superiority (for example, haughtiness) and inferiority (for example, obsequiousness) to which they give rise. To count these as *vices* seems to presuppose that relations of inferiority are a bad thing.

unjustified, according to the norms of the society in question, *unless* some were morally inferior to others.

But the idea that this is the *only* objection to disparities of consideration seems to me incoherent. That objection—that the disparity would express that some are morally inferior because it would be unjustified otherwise—presupposes a prior, independent objection to disparities of consideration (or at least an objection by the lights of the norms of the society in question). After all, what it means to say that the disparity of consideration would be *unjustified* otherwise, presumably, is that there is some *objection* to it that would not be answered otherwise.

In any event, a simple subtraction test indicates that it is not the only objection. Take an objectionable caste hierarchy. Now imagine that, according to the norms of the society in question, it is justified not by any moral inferiority, but instead by long tradition, the inscrutable will of God, or, not to put too fine a point on it, by bad karma in a past life. Would that make it unobjectionable? Or imagine that it is common knowledge those who uphold the caste hierarchy freely admit that it has no justification. Would that make it unobjectionable?

Do relations of inferiority instead express that some have superior virtue, wisdom, or judgment? For similar reasons, relations of inferiority need not express that. And, in any event, expressing that is not, in general, objectionable. Some people do have superior judgment, and acknowledging it as merited, and in a way that takes care not to cause gratuitous offense, is certainly permissible.

17.2 *Psychic Cost*

Some might suggest that relations of inferiority matter, if they do, only because, if recognized, they do psychic harm. Such harm might be unpleasant feelings. Or it might be a loss of confidence, which in turn limits one's opportunities to lead a fulfilling life. This is part of Rawls's account of the parties' reasoning in the original position. They are to care about the "social bases of self-respect," because without the social bases of self-respect, those whom the parties represent will not be motivated to pursue their conceptions of the good.⁹⁰

To be sure, recognizing that one stands in these relations of inferiority can take such a toll on one's psychology. But saying that relations of inferiority matter *only* because they have such psychic costs seems to me like saying that the insincerity of one's (seeming) friend matters only because, if one finds out about it, one will be sad. In both cases, there are, to be sure, psychic costs. But they are occasioned by the recognition of some underlying bad: relations to others that one had reason to want to be otherwise.

That is, if someone's recognizing that they stand in these relations of inferiority has these psychic costs, then it is presumably because they independently view the relation of inferiority itself as something bad. But if people independently view relations of inferiority as bads, then why not take their value judgments seriously in their own terms? Why should we second-guess them—especially when they are us?

I suspect that it may appeal to political theorists to invoke only the effects of a value judgment that relations of

⁹⁰ There is certainly *some* affinity between claims to social bases of self-respect and claims against inferiority. The affinity is strongest where Rawls suggests that the social bases of self-respect are (at least partly) secured by equal public standing. The affinity seems weaker, though, elsewhere. Rawls includes among the social bases of self-respect having one's talents appreciated (1971 § 67), which, as we saw, is compatible with a disparity of consideration. And Rawls includes not being sacrificed for the benefit of others already better off (§ 29), against which there is already an improvement complaint, of having one's interests unfairly traded off against the interests of others.

inferiority are bads, because they thereby avoid committing themselves, controversially, to the value judgment itself. But there is something unstable in the attempt to avoid an allegedly controversial value judgment by assuming that, as a matter of psychological fact, everyone makes it.

Moreover, this underlying bad explains why the psychic costs matter in the way that they do. After all, we don't feel obligated to forestall or mitigate every psychic cost that a person might experience. By and large, people are left to their own devices to cope with life's disappointments. But we view differently the costs associated with perceiving oneself to stand to others as an inferior.

In any event, the relations of inferiority seem objectionable even when purified of the psychic costs. Suppose that the inferior so thoroughly internalize the lesser consideration that they receive that they cease to be pained by it. Would this solve the problem? And, human frailty being what it is, the superior are usually buoyed by the greater consideration. Is this an unambiguous good? Or suppose that people are largely unaware of the fact that there are untempered disparities of consideration. If some are dismayed to discover these disparities, are they dismayed only about the psychic costs that will be borne *henceforth*? Or are they dismayed in part about *how things have been*?

18 NEIGHBORING VALUES

18.1 *Egalitarian Relationships as Positive Goods*

It might next be said that asymmetries of power and authority, or disparities of consideration, even absent tempering factors, are not *in general objectionable*, as I have been suggesting. They are not *in general a bad*. Instead, asymmetries or disparities matter only insofar as they are implicated in *a failure to realize some specific good*: namely, a relationship of a kind whose value depends on its being egalitarian (Scheffler 2015; Viehoff 2019).⁹¹ Such relationships might include friendship, or loving marriage or partnership, or citizenship.

On one version of this view, asymmetries and disparities matter only insofar as they are an *impediment* to the specific good of, say, egalitarian friendship. But surely complaints against a relation of inferiority to someone else amount to more than simply complaints about some impediment to such a relationship. Simply living in different times and places is also an impediment to such relationships. It keeps people from being egalitarian friends. But living at different times and places from people with whom one might have been egalitarian friends isn't, in general, objectionable or a cause for regret, at least not in the way in which asymmetries and disparities are.

A more plausible version of the view is that when there is *a not necessarily ideal* form of relationship of a certain kind, such as a friendship, it *calls for* each participant to strive for an *ideal* form. This ideal form is constituted by, inter alia, "egalitarian" attitudes, dispositions, or practices, which are incompatible with asymmetries or disparities. So, if there are asymmetries or disparities, then that indicates that one participant has not striven for the ideal form. Some other participant may have an objection about that failure to strive.⁹² This objection doesn't apply when mere distance in

⁹¹ However, elsewhere Viehoff (2017 293) seems to suggest that equal power can be ("nonderivatively") justified only on the grounds of that it avoids the "distinctive bad" of unequal power, not on the grounds that it is a positive good constituted by our having equal power.

⁹² Of course, if the asymmetries or disparities are too severe, then one may begin to doubt whether there even is a relationship of a relevant kind. Compare: if one "friend's"

time or space prevents so much as a non-ideal friendship from arising in the first place.

I don't doubt that some specific relationships do call on their participants to avoid asymmetries or disparities in this way, quite independently of the fact that there is, in general, an objection to untempered asymmetries or disparities. It does seem internal to the value of friendship and marriage, as we have come to know them, that they aspire to an egalitarian form. But I do not think that we can explain all of the relevant phenomena this way.

First, claims against inferiority can be raised in cases in which no specific, positive egalitarian relationship is possible. Consider an example from Viehoff (2019 36): the asymmetric power that a guardian might have over his child ward. This does call for the tempering factors of Impersonal Justification and Least Discretion. The guardian, for instance, would wrong the child in taking a bribe to enroll the child in one school rather than another. But this is not because it would fail to realize some specific egalitarian relationship, such as friendship, between custodian and child. That is not in the cards, at least not for the time being.⁹³

Second, we need some articulate explanation of why *these* specific relationships, but not others, must be egalitarian. In particular, to take a case that vexes Viehoff (2019), why must co-citizenship be egalitarian, whereas other relationships need not be? How do we show that it is of the nature of co-citizenship, as it is of the nature of friendship, that it calls for its participants to strive for an egalitarian form?

The view that I have proposed, by contrast, offers an articulate explanation of why co-citizenship should take an egalitarian form. First, we cite the general objection to untempered asymmetries and disparities. Second, we observe that where the state is concerned, the asymmetries and disparities are untempered; the state is inescapable, it wields final power and authority, and so forth. This then calls for correctives such as Equal Influence, Equal

disregard is too severe, then one may begin to doubt whether there is even a friendship.

⁹³ As it happens, Viehoff sees this as a counterexample to the view that untempered asymmetries of power and authority in general present any problem. But, for the reasons given in the text, it seems to me to support that view.

Consideration, and Equal Citizenship. And these correctives imply an egalitarian form of co-citizenship.

18.3 Cosmic Fairness

In political philosophy, the word, “equality,” most often suggests a principle of “distributive justice”: roughly, that everyone should have the same amount of something. In spite of the egalitarian tenor of this book, this idea of equality, as a principle of distributive justice, plays no role in it. To the extent that something like “distributive justice” enters into the framework of this book, it is a matter of how some agent, Benny, is to trade off the improvement interest of Indy against improvement interest of Altra, when improving Indy’s situation competes with improving Altra’s. Indy’s improvement interest itself is non-comparative; how well off Altra is, or what Benny does for Altra, does not, in itself, affect whether Indy’s improvement interest is satisfied. And what counts as a fair trade-off among improvement interests, I suggested, is prioritarian, and so not egalitarian, in character.

It might be said, however, that distributive justice plays a different role, and that the relevant principle of such distributive justice is egalitarian. My framework, that is, overlooks the “egalitarian” part of the “luck egalitarianism” of Cohen and Temkin. This view, which I will call the Theory of Cosmic Fairness, consists in the following tenets.

Agent-independence: A distributive state of affairs—that things are distributed among people in a certain way—can be cosmically unfair to Altra, *whether or not it results from what any agent does* (Cohen 2008 153–5, 314, Temkin 1993 12–13).

Directedness: Restating *Agent-Independence* with a different emphasis, a distributive state of affairs can be cosmically unfair to Altra, *whether or not it results from what any agent does*.

Bare comparison: More specifically, it is cosmically unfair to Altra for Altra to be *worse off than* Indy, for reasons that are not due to their choices. This last clause leaves open whether the Theory of Cosmic Fairness is “luckist.” It is “luckist” if it is *not* cosmically unfair for Altra to be worse off than Indy for reasons that *are* due to their choices.

Normativity: The fact that it is cosmically unfair to Altra for Altra to be worse off than Indy is a *reason for Benny* to mitigate it. Of course, if Benny *can* do something to mitigate cosmic unfairness, but *refrains* from doing it, then the cosmic

unfairness *does* result from something that someone (i.e. Benny) has done (i.e., refrain from mitigating).

Agent-universality: The fact that it is cosmically unfair to Altra for Altra to be worse off than Indy, which gives Benny a reason to mitigate it, in no way depends on any special feature of Benny's situation, such as his relationships to Altra or Indy, beyond simply Benny's being able to mitigate the unfairness.

Patient-universality: The fact that it is cosmically unfair to Altra for Altra to be worse off than Indy in no way depends on Altra's and Indy's relations to one another, such as their belonging to the same society or epoch.

Note that *Agent-* and *Patient-universality* follow simply from the generality of *Bare Comparison*. What matters is merely that Altra has less than Indy, in ways not due to their choices.

Again, Benny's reason to *mitigate cosmic unfairness to Altra* is distinct from Benny's reason to *improve Altra's situation*. In particular, Benny's reason to mitigate a cosmic unfairness to Altra, unlike Benny's reason to improve Altra's situation, can be a reason for Benny to *refrain from improving Indy's situation*, because this would raise Indy above Altra, even if improving Indy's situation came at no cost to Altra, because, let us suppose, Indy cannot do anything to affect Altra. By contrast, Benny's reason to improve Altra's situation is *not* a reason to refrain from improving Indy's situation. And Benny's reason to improve *Indy's* situation is a reason *against* refraining. In sum, mitigating cosmic unfairness, but not improvement, sometimes argues *against* weak Pareto improvements.

This is not to deny that Benny might have reasons, rooted in Altra's claims, against such weak Pareto improvements to Indy. In this book, I have discussed several such claims. For one thing, the improvement to Indy, but not to Altra, might violate Equal Treatment by Officials, which we in turn explained by Least Discretion. Benny, while wielding superior power and authority over Indy and Altra, gives something to Indy but not to Altra, with no justifying difference between them.

However, *this* reason against weak Pareto improvements differs from the reason to mitigate cosmic unfairness. In contrast to Agent-Independence, Altra's complaint is only against what someone (i.e., Benny) *does*, not against a state of

affairs that comes to pass through no agent's efforts. In contrast to Agent-Universality, Altra's complaint depends on Altra's being subject to Benny's superior power and authority. If Altra is not subject to Benny's superior power and authority, then Altra has no such complaint, even if Benny is able to mitigate the cosmic unfairness to Altra, say, by refraining from improving Indy's situation. In contrast to Patient-Universality, Altra's complaint depends on Indy's also being subject to Benny. And, finally, Altra's complaint against Benny's weak Pareto improvement to Indy's situation has a different basis. It is rooted in Altra's claims against inferiority, rather than in anyone's claims against cosmic unfairness.

One might suggest that Agent-Independence is a dispensable part of the Theory of Cosmic Fairness. As an alternative to Agent-Independence, one could say that what is unfair to Altra is not that she has less than Indy, but instead that *some agent*, such as Benny, *fails properly to respond to her objection to having less than Indy*.

But what, on this suggestion, accounts for Altra's objection, which Benny disregards? It's neither an interest of Altra's in improvement, nor a claim of Altra's against inferiority. It would seem, instead, to be an objection to suffering the unfairness of having less than Indy. But that seems to presuppose that it is unfair to Altra to have less than Indy, whether or not there is a Benny that can do, or could have done, anything about it (Temkin 1993 21 n. 3).

One might also suggest that Directedness is dispensable. It is not cosmically unfair *to Altra* that she has less than Indy. It is instead cosmically unfair *period*. It is simply a respect in which that state of affairs is *impersonally bad*.

However, Temkin (1993 19) and Cohen (2008 157–8) do describe it as unfair *to Altra* that she has less than Indy. And they are right, I think, to do so. The idea that cosmic unfairness is impersonally bad, even if it isn't unfairness *to* anyone, is a far less compelling idea. It seems a fetish for a certain pattern.

Brief digression: If Agent-Independence and Directedness are indispensable to the position, one might still worry that they are incompatible, so that the position must be incoherent. What can it mean to say that having less is unfair *to Altra*, unless it means that Altra, in particular, has a *complaint* about it? But how can Altra have a *complaint* that

isn't *addressed to* anyone? (And there is a further problem. Cohen 2011 133 suggests that there can be unjust outcomes, and presumably outcomes unjust to particular people, about which no one can complain.)

Temkin seems to respond (1993 21 n. 3) by suggesting that what it means to say that it is unfair to Altra is not that she has a *complaint*, in particular, but instead that it is *bad for* her, in particular. However, the idea that it is *bad for* her, in particular, is hard to square with the idea that "merely" improving Indy's situation need not be *worse for* Altra (12). For improving Indy's situation over Altra's would *itself* make Altra worse off. Weak Pareto improvements are impossible. But let us set aside this tension between Agent-Independence and Directedness. End of digression.

In any event, I find the Theory of Cosmic Fairness implausible, so long as I keep that idea, and only that idea, in focus. This comes out most clearly when I focus on the generality of Mere Comparison, reflected, in particular, in its implication of Patient-Independence. Mitigating cosmic unfairness would be a reason *against* improving things for future generations, even in ways that cost us nothing. For refraining from improving things would avoid the consequence that our posterity, unfairly, had more than our ancestors. The thought that there is *any* reason to refrain from improving the situation for posterity, even if outweighed, seems to me hard to credit.

Whatever plausibility the Theory of Cosmic Fairness has, I think, it borrows from other ideas. Granted, it is *not fair* to Altra that she is worse off than Indy. But it doesn't follow from that that it is *unfair* to her. Fairness simply doesn't apply. Likewise, it isn't *fair* that the atomic number of carbon is six. But it's not *unfair* either. Fairness just doesn't apply.

Similarly, it is *not* the case that Altra *deserves* to have less than Indy. But it doesn't follow that it *is* the case that Altra *does* deserve to have as much as Indy. Desert just doesn't apply.

Similarly, it might be said that it is "morally arbitrary," in the sense that it has no moral justification, that Altra is worse off than Indy (Cohen 2008 160, 172). But it doesn't follow from that that it is morally *unjustified* that Altra is worse off than Indy: that no justification is forthcoming when one is called for. Moral justification just isn't called for.

To this, the Theorist of Cosmic Fairness might reply:
“Imagine that Indy enjoys some natural fortune that eludes Altra, or that Altra suffers some natural misfortune that Indy escapes. Can you deny that it *bad for* Altra to be so *unlucky* (Temkin 1993 21–22)?”

I don’t deny, as seems tautologous, that it would have been better for Altra to have enjoyed the good fortune, or to have escaped the misfortune. She would then have been better off, in absolute terms, *than she in fact is*. But is it bad for her to be worse off, in comparative terms, *than Indy actually is* (living on a different planet, millennia apart...)? That’s far less clear. Is it somehow *less* of a misfortune for her if, as it turns out, there was no Indy, and she was always alone in the universe?

Of course, if one personifies “Fate,” with a restless hand on the wheel, one can make sense of Altra’s having a complaint, not (or not just) about being worse off than she could have been, but of being worse off than Indy in fact is. As Temkin stokes our intuitions, the person in Altra’s position “has been treated unkindly by Fate... she has not been treated (by Fate) as the equal of her peers but has, as it were, been treated as less than the equal of her peers” (Temkin 1993 21). If Fate is made an agent who has the power to improve Altra’s situation, in a way that would not be unfair to Indy, but stingily refuses, then Altra has a complaint—to wit, an improvement complaint—against Fate. Or if Fate is made an agent who, while holding sway over Indy and Altra, plays favorites, thus violating Equal Treatment by Officials, then Altra has a complaint—to wit, a complaint against inferiority—against Fate. But such figurative personifications can’t legitimately support the idea that it is unfair to Altra to be worse off than Indy. So what can support it?

The Theorist of Cosmic Fairness might point out that we would expect Altra, upon learning of Indy’s escape from the natural misfortune, to think “Why me?” where this means something like, “If someone had to suffer that, why was it I, rather than Indy?”

Common though this thought may be, it isn’t clear that it makes sense, much less that a moral theory should be beholden to it. In what sense did *anyone* “have to” suffer that? Isn’t the more sensible thought: “Why did *that* have to happen to me—or to anyone?”

At any rate, both “whys” are, of course, rhetorical. There is no “reason” for either occurrence—either for the natural misfortune befalling one person rather than another, or for its befalling anyone—and neither was “fair.” But, again, it does not follow that either occurrence was *unfair*.

Needless to say, it is *regrettable* that the natural misfortune happened to Altra, as it would be regrettable that it happened to anyone. It is a misfortune, after all. (Again, though, I doubt that it is *more* regrettable because there was an Indy to whom it *didn't* happen.) And if anyone can improve Altra's situation, they have, as a result of the misfortune, even stronger reason to do so than they otherwise would have had. And if they disregard that reason, that's cause not only for regret, but also for resentment and guilt. But, beyond that, I don't think that there is anything more to say.

18.4 Solidarity

The Theory of Cosmic Fairness, if it were sound, would offer one putative comparative complaint against weak Pareto improvements: that is, against improving Indy's situation above Altra's, even when it does not come at Altra's expense. This is the putative complaint that it is cosmically unfair for Altra to have less than Indy. Claims against inferiority constitute, in certain contexts, another comparative complaint against weak Pareto improvements. For instance, if Benny is an official to whom Indy and Altra are subject, then Altra may have an equal treatment complaint against Benny's improving Indy's situation when Benny does not do the same for Altra. In this section, I briefly note a third kind of comparative reason that might at least weigh against weak Pareto improvements: reasons of "solidarity."

If Indy has a relationship of a certain kind with Altra, it can be an act of solidarity for Indy to refuse improvements when and because Altra, with whom he has that relationship, could not share in it. Such relationships include those among members of trade unions, or musketeer trios, or prisoners of war. Typically, they are organized around a common struggle or danger. And typically the improvement refused concerns some relief from the common struggle or danger, or its burdens.

The point of such an act of solidarity by Indy, I suggest, following Zhao 2019, is to reject the *separation* that would come from the improvement. By rejecting an improvement in his own situation that Altra would not share, Indy binds his fate to hers, thereby forging a kind of unity with Altra. As the musketeer slogan goes, "All for one, and one for all."

The point of an act of solidarity, so understood, is *not* to reject a *superiority* over Altra that would come from the improvement. The improvement that Indy enjoys might be privately enjoyed, in a way that does not contribute to any superiority over Altra. My *idée fixe* about claims against inferiority is not so *fixe* that I can't recognize this.

Nor is the point of such an act of solidarity to reject a *cosmic unfairness* to Altra that would come from the improvement. However, the intuitive appeal of solidarity is sometimes mistakenly attributed to cosmic fairness. As evidence in favor of the Theory of Cosmic Fairness, for example, Cohen describes a case in which Jane, the beneficiary of manna in which others cannot share, decides to destroy it (2008 317–8,

2011 229). Intuitively, Jane has some reason to undo this weak Pareto improvement, and indeed, we might even admire her doing this. But what reason could she have, Cohen seems to reason, if not the reason to mitigate cosmic unfairness?

However, the reason might instead be one of solidarity. And indeed this seems a more plausible interpretation of the case. First, Jane would not have anything like the same reason if she had no relationship with the others who were not so lucky: if she lived centuries after them. Second, if a third party were to intervene to destroy the manna, over Jane's unwilling protests (with Jane crying out "No! Every woman for herself!"), it would not have anything like the same value, even though it would mitigate cosmic unfairness—the bare comparative fact that Jane has more than others—to precisely the same degree.

We might distinguish between two possible forms of solidarity. A stronger form of solidarity would reject improvements that others do not share to the *same* extent. This would require *strict equality* among the relevant group.

A weaker form of solidarity, by contrast, would reject improvements that others do not share, to *some* extent. The weaker form of solidarity might support something like the stricter, comparative interpretation of Rawls's difference principle. On this stricter interpretation, inequalities are justified only insofar as they work to the advantage of the worse-off. So understood, the difference principle *prohibits* weak Pareto improvements for the better off, which do not come at the expense of the worse off, let alone come *unfairly* at their expense. For those improvements amount to a further inequality that does not work to the advantage of the worse off. On the more lax, non-comparative interpretation, by contrast, the difference principle is simply prioritarianism with infinite weight given to those worst off (or to those worse off, what Sen dubbed "leximin"). So understood, the difference principle does not prohibit weak Pareto improvements for the better off (see also Cohen 2008 17, 29, 157–8).

While there is more to be said about solidarity, I leave it there. For our purposes, what matters is to distinguish it from imagined or real comparative complaints of other kinds.

18.6 Collective Inferiority

So far we have been discussing a complaint of *individuals* against relations of inferiority to other *individuals*. There may be a different, but related, phenomenon. This is a complaint of individuals that a *group* to which they belong is subordinated to another *group*, with which their group has a claim of equality. Such vicarious, collective subordination is possible even where there are no relations of inferiority among individuals.

This objection to vicarious, collective subordination might explain objections to persistent minorities, which are consistently outvoted. After all, as we will return to later, each member of a persistent minority enjoys equal influence with each member of the majority. There is no subordination as an individual of any member of the minority to any member of the majority. However, the persistent majority as a group enjoys superior influence, indeed decisiveness, over the persistent minority as a group. So the objection of each member of the minority may be that, although he is not individually subordinated to any other individual, a group to which he belongs is subordinated to another group, with which it has a claim of equality.

This objection to vicarious, collective subordination might also explain objections to colonial annexation. Suppose that the United States were to annex Iraq as the fifty-first state. Assuming that every member of the first fifty states stood as an equal with every other, it would seem that every member of the now fifty-one states stands as an equal with every other. The objection of each of the annexed may again be that, although he is not individually subordinated to any other individual, a group to which he belongs is subordinated to another group, with which it has a claim of equality.

Note that, conversely, relations of inferiority among individuals are possible even where there is no vicarious, collective subordination. Anti-colonial movements, for example, might see their people as liberated once the colonizing power has been thrown off. But not all anti-colonial movements are democratic.

The main challenges for this idea, that there is an objection to vicarious, collective subordination are to say, first, what defines the relevant groups and, second, what gives them a claim of equality with one another. Why should any given

member of the minority be counted as a member of the minority, rather than as a member of the electorate as a whole, or, indeed, of any number of other intermediate groups, such as the majority plus that individual?

In the cases that we have discussed, however, a division of groups suggests itself. The divide between persistent majority and persistent minority may track a divide between salient ethnic, racial, or religious groups, between which there has been a history of oppression, hostility, or mere separation, even if presently there is no substantively unfair treatment. It is certainly intuitive that such distinctions might plausibly make the majority and minority—the first fifty versus Iraq, polarized white voters versus black voters, colony and metropole—“relevant” groups.

19 DOMINATION

In this chapter, I consider the possibility that what I have sought to analyze as complaints against inferiority are better understood as protests about something else: what neo-Roman republicans call “domination” (Pettit (1997, 2012a, 2014), Skinner (1998, 2002a, 2008), Lovett (2010)), or what scholars of Kant’s legal and political philosophy call “dependence” (Ripstein (2009), Stilz (2009), Pallikkathayil (2010, 2017)).

19.1 Defining “Domination”

For Pettit, X “dominates” Y just when X is a will with the power to interfere in Y’s choices that is “alien” and “arbitrary” with respect to Y. Ripstein’s “dependence” differs in that what matters is not interference in choice, but instead the (nonconsensual) use or destruction of Y’s body or property. And what matters is not that the will is “arbitrary” with respect to Y, but instead that it is “private” or “unilateral.”

Let us consider a general formulation that tries to remain neutral on these differences. The objection is to domination, where X “dominates” Y (let us now say) when X is a will with the power to *invade* Y, which will is “alien” with respect to Y and either (i) “arbitrary” with respect to Y, or (ii) “private” or “unilateral.” To “invade” Y is either (i) to interfere in Y’s choice or (ii) to use or destroy Y’s body or property without Y’s consent. Although the literature says surprisingly little about when X has the “power” to invade Y, it seems to assume something like the following *Can Do Test*. Imagine that X were to will to invade Y. Hold fixed, to the extent possible, everything else, including all other actual wills, besides X’s.⁹⁴ Then ask whether X invades Y. If so, then X has the power to invade Y, otherwise not.⁹⁵

On the one hand, domination is narrower than relations of inferiority. Domination consists only in the power to invade. By contrast, relations of inferiority consist in asymmetries of

⁹⁴ Why keep all other wills fixed? If we don’t hold all other wills fixed, then we can’t hold the existence and character of the state fixed, since the existence and character of the state depend, in complex ways, on human wills. And if we can’t hold the existence and character of the state fixed—in particular, the fact that the state stands ready to prevent each from invading another—then it isn’t clear how the state could free us from domination by other individuals, as proponents of the relevant views seem to assume.

⁹⁵ At times, the literature may suggest a “Can Do With Impunity Test”: if they were to do it, they would not be punished. But why should we care whether someone would be punished after the accomplished fact of their invasion, if our concern is being proof from invasion? Of course, the fear of punishment may be why they *won’t* will to exercise the power of invasion that they nonetheless have, but what they won’t do, as opposed to what they can’t do, seems a matter of predictable non-invasion.

power of other kinds, and well as in asymmetries of authority and disparities in consideration.

On the other hand, domination is broader, since it is present whenever one is exposed to an alien, arbitrary or unilateral *will's power* of invasion. This contrasts with relations of inferiority in two main ways.

First, domination insists on what I will call "Generality": the alien will need not be that of a *superior individual*. It might be the will of an equal, or for that matter inferior, individual, or it might be the will of a collective or artificial person, with which comparisons of "equality" or "inferiority" make little sense.

Second, domination insists on "Mere Possibility": it suffices for domination that the alien will can invade. Once it can invade you, you are dominated, no matter how the alien will might be disposed to restrain itself.

To bring this out, contrast domination with what we might call "predictable non-invasion." One enjoys predictable non-invasion just when one can predict that others will not, in fact, invade (however one chooses from among some sufficiently broad range of options).

In one way, our concern about predictable non-invasion may be, like the concern about domination, a concern, specifically, about how other wills relate to us. We are concerned about predictable non-invasion, presumably, because we are concerned about invasion. And our concern about invasion may well be, at least in part, a concern specifically about our relations to other wills, rather than about some independent harm that might just as well have been brought about by natural forces or our own imprudence. Ripstein's (2009, 22) examples of harmless trespass suggest this. Suppose I break into your house, while you are away, and sleep in your bed, without leaving any physical traces. Your concern is not about some independent harm that you suffer. My trespass is harmless. Nor is your concern about your mere loss of control over what happens to your property. Had a gust of wind blown your door open, rustled your sheets, and then a countervailing wind undone the effects of the first, you would have had no concern at all. Nor had you done the same yourself in your sleep. Your concern may be, specifically, about a loss of control over what another will does to your property.

In another way, however, predictable non-invasion differs from non-domination. Even if you can predict that others will not in fact invade, and so enjoy predictable non-invasion, they may still have the power to invade. Although they do not actually will invasion, if they were to will invasion, they would invade. Since the only thing that holds them back is their “arbitrary” or “unilateral” will, according to Mere Possibility, you are dominated by them (Pettit 1997, 24–25, 2012a, ch. 1.4; Ripstein 2009, 15, 36, 42–43).

When one re-reads republican and Kantian discussions with relations of inferiority in mind, one finds that relations of inferiority often fit them at least as well as, if not better than, domination. For one thing, Pettit’s (2012a) general descriptions of non-domination frequently are just descriptions of the absence of relations of inferiority: “The idea that citizens could enjoy this equal standing in their society, and not have to hang on the benevolence of their betters, became the signature theme in the long and powerful tradition of republican thought” (2012a, 2, see also 11).

Consider, next, the rhetoric that is used to characterize being under the power of another: “domination,” “mastery,” “servitude,” “subjection,” “despotism.” As a matter of etymology and common usage, these don’t mean “being exposed to another will.” They mean something more specific, which involves a relation of inferiority or subordination to another person. That is, we understand what “domination,” “mastery,” “despotism,” and so forth, are, in the first instance, by reference to recognized forms of social hierarchy.

Consider, next, the paradigms that are used to elicit concern about being under the power of another. These are not cases of merely being exposed to the power of another will, but instead of being subordinated to a superior person in an established social structure. In addition to the examples listed in the introduction, witness Pettit’s (1997, viii, 5, 57; 2012a, 1, 2, 7) examples: the priest and the seminarian, the creditor and the debtor, the clerk and the welfare dependent, the manager and the worker, the teacher and the pupil, the warden and the inmate.

Granted, we are eventually presented with an instance of mutual domination among equals: our neighbors in the state of nature. But this is an extension, into a new context, of concepts that we are expected to grasp first from recognized

forms of social hierarchy. After all, when Ripstein (2009) seeks to tap anxiety about dependence, or when he introduces independence as a “*compelling* normative” idea, he glosses it as “to be one’s own master” (4), understood as: “to have no *other* master,” “that no person be the master of another” (36). And this is unsurprising. To audiences not primed in the right way, “Let us have no masters” is a rousing political slogan. “Let us have no peaceful and benevolent co-equal neighbors” is not.

Moreover, I imagine that republicans and Kantians might want to count Boss’s exploitative offer in Car Wash as a case of domination. But Boss need not have any power to invade. Boss need not have the power to “interfere” in Employee’s choice, if that means violating Choice: leaving Employee with a worse choice situation than Employee is entitled to. Much less need Boss have the power to use or destroy Employee’s person or property.

Next, Pettit’s (2012a, 8, 82) test of non-domination — that one can “walk tall amongst others and look any in the eye,” “not have to bow or scrape, toady or kowtow, fawn or flatter” — is not obviously a test of immunity to the power of others, but instead a test of equal standing with others. Think of boxers eyeing one another before a bout.

19.2 *The State Must Dominate*

So republicans and Kantians very often seem to be describing not domination, but instead relations of inferiority. And there is another reason to believe that the concept of relations of inferiority better suit their purposes than that of domination. It is that Generality and Mere Possibility conspire to count living under any state whatsoever as being dominated by it.

The basic point is simple. We are exposed to the state's power of invasion. Why then aren't we dominated by the state? Suppose, by analogy, that you are the slave of the kindly master. Now suppose he acquires a second slave. And suppose that he makes it the case, by threats or barriers that he controls, that neither of you can invade the other—as slave masters, kindly or not, are wont to do. How could that free you from domination by him?

Presumably, a properly constituted state is supposed to be different from this kindly master. But how different? For Kantians, for example, a properly constituted state is a “public” or “omnilateral” will, rather than a “private” or “unilateral” will. Suggestive words, but what exactly do they suggest?

Not a will: One possibility is that, strictly speaking, the state isn't a will at all. However, the state makes decisions and takes actions in coordinated and structured ways. Why isn't that enough to make the state a will? Granted, one might argue that while we should be concerned about being under the power of individual wills, we should not be concerned about being under the power of collective wills, such as the state. But this would be to give up Generality and, more importantly, to take a step toward conceding that relations of inferiority are the underlying problem.

Pettit (2012a, 160–66) pursues, in a different direction, the idea that in being exposed to the state we are not under the power of a will in the relevant sense. He doesn't so much deny that the state is a will. Rather he emphasizes that no will is responsible for the fact that one lives under some state. Pettit is not denying, I take it, that there is some possible pattern of human action that would make it the case that I was not exposed to some state. His point is instead that if any particular state were to try, on its own, to bring about this pattern, it would fail. Another state would simply move in and take over. Thus, each state can honestly say to its

citizens: “Nothing we might do would make any difference as to whether you are exposed to some state.”

Suppose this is true. It hardly seems to follow that the state doesn’t thereby dominate its citizens. Compare taking captives at the fall of Troy. Each can honestly say to Hecuba, “If I don’t dominate you, another Achaean will.” True, but does it mean that Hecuba wasn’t dominated by whoever does take her captive?⁹⁶

Won’t invade except for the right sort of end: One might next suggest that a properly constituted state won’t invade except for the right sort of end. For Ripstein (2009, 192), a “public” will is one that acts with a “public purpose”: that is, in order to achieve a condition of equal independence.

So stated, this answer is uninformative. It defines “public” in terms of “independence” — a public will seeks (a condition of equal) independence — whereas “independence” is itself defined in terms of “public” — independence is exposure only to public wills (but not private wills). By contrast, if a “public purpose” is understood as a condition not of equal independence, but instead of equal predictable non-invasion by any will, public or private, then the suggestion is informative. But then the kindly slave master seems to be acting from a public purpose; he never invades the slaves, except to prevent them from invading one another. Indeed, the same is true of my neighbors in the ideal state of nature. And the same would be true of my neighbor who takes it upon himself to improve local police protection, threatening to lock me in his basement if I don’t contribute to his scheme, and doing so when I refuse. Yet one would have expected Kantians to count these all as “private” wills.

More generally, any reply of this form—that one is not objectionably under the power of another will so long as that will actually exercises its power for the right ends—seems to give up on Mere Possibility: namely, that what matters is how power is actually exercised.

⁹⁶ In personal communication, Joseph Moore raises another problem. Pettit seems to be assuming that if I can truly say “Nothing I can do will keep you from being dominated,” then I don’t dominate you. But this implies that I cannot dominate you involuntarily. And Pettit (2012a, 62) suggests that I can dominate you involuntarily.

Not only won't, but also can't, invade except for the right sort of end: Perhaps, then, a properly constituted state is a will that not only won't, but also can't, invade except for the right sort of end. Pettit (1997, 23, 55) understands an "arbitrary" will as a will that is not forced, in the exercise of its powers, to pursue a certain end: to track one's interests and ideas.⁹⁷

On the one hand, I doubt that this really captures the concern. Suppose that my neighbor, who has taken it upon himself to act as a state, has a brain defect, such that if he were to try to lock me in his basement for any end other than to improve local police protection, he would die on the spot of an aneurysm. Would that assuage the concern about his taking it upon himself to lock me in his basement for that end?

On the other hand, what forces the state to pursue the right sort of end: that is, prevents it, if it should will invasion for the wrong ends, from so invading? Surely no natural force holds it in check. And yet if the state is held in check by some other will, then why aren't we dominated by that will? Compare a master who controls whether one particularly strong slave will be constrained in his dealings with other slaves. And, as Pettit 2012a 202 observes, I don't avoid domination if I must rely on the military to hold the state in check.

It might be replied that what holds the state in check, even though a will, lacks the power to invade us (for the wrong ends). It might at first seem puzzling how this could be. "Mustn't this checking power have the power to invade? After all, if it should will invasion, then all it needs to do is to lift its check on the state. The state will then invade, acting as its agent or instrument."

However, on the Can Do Test, whether the checking power has the power to invade depends on whether the state it checks actually wills invasion. If the state does not actually will invasion, then the checking power has no power to invade. Let the checking power will invasion. Let it remove

⁹⁷ Although Pettit's account of non-arbitrariness is "substantive," requiring being forced to a certain end, the arguments in the text apply as well to a "procedural" account, such as Lovett's, which requires simply being forced, to whatever end.

its check so as to bring it about. All the same, holding fixed the will of the state not to invade, no invasion will take place.

How might this abstract possibility, of a power to check invasion but not to invade, be realized? Through divided government, with a separation of powers, it might be said. A properly constituted state is one in which each branch can check the actions of the others. Suppose no branch actually wills invasion, but each is disposed to check, and can check, the attempt of any other branch to invade. Then, by our test, no branch has the power to invade.

The difficulty is that even if no branch taken singly has the power to invade, it isn't clear why the composite state, all three branches taken together, lacks the power to invade. It might be said that the composite state itself, while having that power, does not count as a will. But why not, given that it reaches decisions and takes actions through structured and coordinated procedures? The stock analogy to slavery is not encouraging. Compare three siblings who have jointly inherited a slave, on the condition that each has a veto over any invasion of the slave by the others. Would this free the slave from domination? And, on the other hand, do we really want to say that the absence of any separation of powers — say, Westminster-style government, with a parliamentary executive and no judicial review of primary legislation — is, of conceptual necessity, dominating?

This brings us to another possible answer to the question: Why aren't we dominated by whatever holds the state in check? What holds the state in check, while not a natural force, might not itself be a will. How might this abstract possibility be realized? By the rule of law, it might be said, which is no one's will (Larmore 2003; List 2006; Lovett 2010, ch. 4.2.3; Pettit 1997, ch. 1.V; Ripstein 2009, 9, 191; Stilz 2009, 73). Indeed, I noted earlier, I suspect that much of the appeal of the ideal of the rule of law derives from the thought that the law is impersonal. To be ruled by law, it is said, is not to be ruled by men.

But this suggestion faces two basic problems. The first is that if some people make the law, at least by a coordinated and structured process, then the law would seem to be their will (Sharon 2016). Granted, it is conceivable that the law might be made in such a way that it was no one's will. Law could be made by lottery. Law could be a timeless, received code. Law could be a social convention that arose as organically as a natural language (a kind of limiting case of a certain ideal

of the common law) (Pettit 2012a, 134–35). Still, it would be odd to suppose that only a regime of law made by no one could save us from domination.

Moreover, even if we imagine a law made by no one, we still face a second problem. How does this law constrain the state, if not by means of something that enforces the law? What if the state — or, if you like, all of the natural persons who occupy offices within the state, exploiting its structure and coordination — were to decide to disregard the law? What, other than a will, might hold the state in check?

Perhaps we can imagine that each natural person, who does not occupy an office within the state, is disposed to resist any attempt by the state to disregard the law. And perhaps this pattern of individual dispositions would not itself have sufficient structure and coordination to constitute a collective will itself. But the less structure and coordination this pattern has, the less it will be able to hold the state in check. Or, at very least, the less structure and coordination this pattern has, the weaker the state must be for it to hold the state in check. And the weaker the state, the less it will be able to satisfy the functions expected of the modern state.

Controlled by those subject to it: Putting a new gloss on “arbitrary,” Pettit (2012a, 57–58) suggests that a will is arbitrary with respect to one just when it is a will that one does not control. When one controls the invasion, the alien will is acting as one’s servant, rather than as one’s master, and so one is not dominated. Thus, a properly constituted state is a democratic state: a state that we, the people, control (ch. 3.4). More ambitiously, one might go so far as to say that the decisions of a democratic state simply are our own decisions. The will of state is the will of the people, and the will of the people is our will. It doesn’t even matter whether the will of the people is arbitrary. It isn’t alien, and that alone is enough to free us from domination.

However, our question is whether each of us is, as an individual, dominated by the state. And even in the most idealized democracy I do not, *as an individual*, control the state’s invasion. Still less can it be said that the state’s will, even if it just is the People’s will, is my will, *as an individual*. This is clearest in cases in which the People’s will and my will will different things. But it remains true even when they happen to coincide. It remains the case that the people *could* have willed something different from what I willed, that I determined only one and not the other, and so on.

The most that can be said is that in the vanishingly unlikely case of a tie, my vote might be decisive. A tiny chance of decisiveness, however, can't free one from domination. Suppose a master, as a kind of cruel joke, informs his slave of the following plan. The master will toss a coin. If, but only if, it lands on its edge, the master will treat the slave in accord with his stated preference. How is gaining the franchise any different? If, but only if, the votes of everyone else line up just the right way, one's vote will determine how the state treats one. If this tiny chance of decisiveness is not enough in the case of the slave, why should it be enough here?

Here one might stress that we must respect everyone's equal claims (Pettit 2012a, 168). "Whatever control is given to you must be equally given to everyone else. Granted, you aren't given individual control, but you are given the closest thing compatible with giving the same to everyone."

But, first, this does not address the basic problem: What is being distributed isn't control, and so it offers no relief from domination in the first place. It says, in effect, "Granted, you aren't given relief from domination, but you are given the closest thing to what you would need for relief from domination compatible with giving the same to everyone." Compare a doctor saying: "Granted, this fraction of a tablet won't lessen your symptoms, but it is the closest thing to what would be needed to lessen your symptoms compatible with giving the same to everyone."

Second, let us assume that control is the only way to avoid domination, and that only one, or a few, can enjoy control in any meaningful measure. In that case, we have a scarce, indivisible resource. The appropriate response to equal claims in that case, presumably, is a fair lottery. Thus, the appropriate response to equal claims to control would seem to be not democracy, but instead a lottery for dictatorship.

To be fair, Pettit doesn't say that we, as individuals, control the state. He says that, in a democracy, we have an equal share in the people's control over the state. This is more plausible, but less relevant. If the people controls the state, then perhaps the people is not dominated by the state. And perhaps this assuages a concern about vicarious, collective subordination, discussed earlier: a concern that a group (such as the people) to which I belong not be dominated by another group (such as the state). But it doesn't mean that I

am not dominated as an individual. It is still the case that the people, a will that I do not control, controls the state's invasion of me, just as the military, a will that I do not control, might control the state's invasion of me.

Note also that it is not clear why I need to have an equal share in the people's control in order to avoid vicarious collective subordination by the state. Is the thought that unless I have an equal share, I do not belong to the people?

But, first, this isn't intuitively obvious. Members of a colonized people might take their people not to be dominated when the colonizer is thrown off, even if they do not have an equal share in control over their people. Not all anti-colonial movements are democratic.

Second, it seems to imply that I avoid vicarious domination even if I don't have an equal share. For if I don't have an equal share, then I don't belong to the group. And if I don't belong to the dominated group, then I am not vicariously dominated.

19.3 Does the State Minimize Domination?

To live under a state, then, is to be dominated by it. Republicans and Kantians might concede the point. There is no way to avoid domination. The aim is to minimize domination. And the state is part of best minimizing strategy.

I doubt that this aim of minimization will appeal to some Kantians, for whom a miss is as good as a mile in normative matters. And some republicans also appear to hold out the possibility of a state that would free us from domination, as opposed to merely lower our net unfreedom (Pettit 2009, 40). But let us put these more ambitious arguments aside.

To defend the claim that the state is part of the best minimizing strategy, Kantians and republicans appeal, in part, to:

Necessity: we avoid being dominated by other individuals *only if* we live under a state.

As Kant famously puts it, the state is necessary “however well disposed and law-abiding human beings might be” (Kant 1996, §44).

To set the stage for the argument for Necessity, consider two reasons why, at least under certain contingent conditions, a just distribution of predictable non-invasion might require the state. One reason is coordination. There are many just distributions of predictable non-invasion. If each individual tries, independently, to realize one of these distributions, each is likely to try to realize a different distribution. For example, I may try to realize a distribution in which I work the land to the east of the creek and you work the land to the west, whereas you may try to realize a distribution in which I work the land to the west of the creek and you work the land to the east. This is likely to result in a worse distribution than if the state were to make some particular scheme salient. I may plow up the field you just planted. Another reason is assurance. I may not be able to predict that you will try to realize even a salient distribution. In order to enjoy a just distribution of predictable non-invasion, each needs to be assured that the state stands ready to prevent others from invading.

Necessity goes further. Even in an ideal state of nature—where there is no problem of coordination — where a single, definite scheme strikes us all as natural — and no problem

of assurance — where we know, in the way that we know of good neighbors, that they will not, in fact, invade — we would still need the state. This is because, so long as we remain in a state of nature, other individuals retain their power of invasion. Although they do not will invasion, if their wills were to change, they would invade. They dominate us (Pallikkathayil 2017; Pettit 2012a, 181–84; Stilz 2009, 56). So we need the state to deprive them of this power.⁹⁸

Is Necessity correct? Perhaps not when understood as a necessary truth about any state of nature. There are contingent conditions under which the state would not be needed to deprive individuals of the power to invade one another. Suppose that in our ideal state of nature, everyone is, for his own independent, idiosyncratic reasons and without prior agreement, disposed to protect any individual from invasion by any other individual. Would any individual then have the power to invade any other? According to the Can Do Test, this comes to the question: If any single individual were to will to invade another, would he succeed, holding fixed the wills of others? The answer seems to depend entirely on contingent physical or technological conditions.

But even if Necessity is correct, it remains to be seen whether the corresponding claim of Sufficiency is correct:

Sufficiency: we avoid being dominated by other individuals *if* we live under a properly constituted state.

As things are, the state does not deprive me of the power, for instance, to trespass on my neighbor's yard. Of course, I won't do so, because, as she knows, I respect her rights, and

⁹⁸ Ripstein (2009, 173) however, does not make (or does not read Kant as making) this argument for Necessity. Once we have set aside issues of coordination and assurance, he seems to suggest, the only remaining problem concerns the acquisition of property: namely, that in a state of nature, acquisition amounts to one person unilaterally putting others under enforceable obligations. In fact, one wonders whether, despite Ripstein's invocations of the kindly slave master and the republican tradition, he needs to understand dependence in such a way that it is implied by the mere possibility of relevant kinds of treatment by a unilateral will. Those arguments might not change much if Ripstein held that one is dependent only insofar as one is *actually* treated by a unilateral will in those ways.

I'm reflexively obedient to the (relevant part of the) law. All the same, if I were to will to trespass, I could do it with ease. So, as far as the Can Do Test is concerned, I retain the power. We can imagine contingent technological or physical conditions in which the state might deprive me of this power. The state might be able, for example, to fit me with a bracelet that would incapacitate me should I so much as will invasion. And we might insist that, in order to count as "properly constituted," a state would have to implement such a scheme of incapacitation. We might thus vindicate the Sufficiency claim, but only by ratcheting up what a "properly constituted" state requires.

In any event, Kantians and republicans might reply that they need defend nothing as unqualified as Necessity or Sufficiency. What matters, they might say, is that in the most likely contingent conditions, the introduction of a state roughly like the better ones known to us would reduce, if not eliminate, our domination by other individuals. That is enough for the case that the state minimizes domination.

However, this suggestion, that the state minimizes domination, still faces two deeper questions. First, as we have observed, the state doesn't deprive me of the power to invade my neighbor. If I were to will to climb over her fence, nothing would stop me. Is the state failing in some important respect, which it should be at pains to minimize? Not if our ordinary judgments are any guide. My neighbor does not feel dominated by me, in any ordinary sense of the term, because of my mere physical capacity (as though my pulled muscle is her liberation). Nor would she, I suspect, without a great deal of philosophical priming.

Second, it's not clear how this minimization of domination, even as a conceptual matter, is to be understood, or why the state should be assumed to minimize domination. Crucially, how are we to trade off being subject to the numerous, less powerful wills of individuals against being subject to the single, vastly more powerful will of the state? Granted, to turn Locke's famous metaphor (1960, §93) to a different purpose, we are much *less likely* to be treated badly under a single lion of the right kind, than surrounded by many polecats. But is it better or worse to be exposed to a single *merely counterfactual* lion or several *merely counterfactual* polecats? How are we even to think about it? It isn't just simply that we lack a settled theory, but moreover that we lack particular judgments to guide its construction.

19.4 *Least Discretion, not Nondomination*

To live under the state, then, is to be dominated: to be exposed to an alien will. The commitments of Generality—that mere exposure to *any will* is domination—and Mere Possibility—that *mere exposure* to any will is domination—seal off any deliverance from that. To live under the state, however, need not be to be the inferior of any other individual. The correctives hold out the hope of at least that much.

Consider, first, the secondary factor of Least Discretion. When it is satisfied, the asymmetric power of an office is the asymmetric power not of natural person who occupies the office, but instead of the office itself. As far as Generality is concerned, this makes no difference. The office is still a will, albeit an artificial will, not tied to any particular occupant or group of occupants. But as far as relations of inferiority are concerned, it does make a difference. The office is not another natural person, an entity of the kind to which relations of inferiority, superiority, or equality make sense.

Least Discretion helps to explain how *exercises* of power can wrong, something which Mere Possibility makes mysterious. Grant what we questioned earlier, that Boss has a power of invasion over Employee. Could we then explain Employee's objection to Boss's exploitative offer in terms of domination? Mere Possibility would make this paradoxical. So long as Boss so much as *has* the power to make and carry out the offer to Employee, the objection has *already* occurred (even if the thought of making it would never enter Boss's mind). This means that Boss has no reason, at least as far as domination is concerned, to refrain from making the offer. For as soon as Boss *can* make the offer, he *already* dominates. Whether or not he then refrains from making the offer makes no difference to whether he dominates.

By contrast, Least Discretion explains Employee's objection in a different way. The Boss's offer itself is wrong simply because Boss uses his office for reasons that don't serve the impersonal reasons that justify that office. If the thought of making such an offer never passes Boss's mind, then Boss does not use his office for those impersonal reasons. Boss doesn't violate Least Discretion. No wonder that, in that case, Employee has no objection.

This suggests a theory of error for Mere Possibility. Republicans misidentify the active ingredient in the

examples they use to stimulate anxiety about domination. In the standard examples of domination, the dominator is said to refrain from invading you only because you have “ingratiated” yourself, or because you “please” him, or because it’s his “whim.” Republicans then conclude that the significance of “*only because* it pleases him” is that it implies that there is some *counterfactual* world in which he doesn’t treat you well (namely, one in which it didn’t please him). They take this to support Mere Possibility: that what’s objectionable is mere counterfactual exposure.

Least Discretion suggests a different way of interpreting the significance of “*because* it pleases him.” That it pleases him is not a reason that serves any impersonal values that might plausibly justify his power. So, if he uses that power because it pleases him, then he’s violating Least Discretion. That—what’s happening right here, in the actual world, not what might have happened in some counterfactual world—is the basis of your objection. There’s no reason to accept Mere Possibility.

19.5 *Equal Influence, not Nondomination*

Consider, next, the secondary factor of Equal Influence. When Equal Influence is satisfied, the state's power is no more the power of any other individual. No individual, in being subject to the state's decisions, is subject to decisions that are any more those of any other individual than his own.

As far as domination is concerned, there is no difference between the coin-flipping master and an extension of the franchise. In both cases, as we saw, one's degree of exposure to an uncontrolled alien will is exactly the same. According to Generality, it makes no difference that the will is the People, rather than the master who leaves something to chance.

As far as relations of inferiority are concerned, there is—as intuitively there seems to be—a significant difference. As the slave of a master, one stands in a relation of inferiority, whereas as a citizen with as much say as any other citizen, one does not.

One might add that insofar as domination is concerned, enjoying Equal Influence is to be dispreferred to being a dictator, since being a dictator would free one from domination. By contrast, insofar as relations of inferiority are concerned, Equal Influence is not to be preferred to being a dictator.

One might object, however, that so long as some individuals have greater “raw” power, it remains true, no matter what institutions we imagine, that if they were to will to exercise this greater “raw” power, to determine what the law was or to defy it, they would be successful. There will be military officers, say, who could, if they had a mind to do so, disregard civilian control. So Equal Influence, of the sort that matters, cannot be achieved.

This objection might have force if we were committed to Mere Possibility, or if we assumed that the asymmetries of power that matter are determined by something like the Can Do Test: by what others would do if they so willed.

But why is that the appropriate test, if what we are trying to interpret is an ideal of social relations, rather than an ideal of insulation from invasion? To be sure, we might seem to stand in a relation of inferiority to the Praetorian Prefect if we were to enjoy Equal Influence only insofar as he

refrained from asserting his greater “raw” power over us as a condescending gift. But we have already explained why that would be the case. He would be violating Least Discretion.

VI. CONCLUSION: NOT LIBERTY, BUT NON-INFERIORITY

To sum up: The issue's not so much freedom as equality. At least, this is so if we understand "freedom" in one of the several senses in which it contrasts with "equality."

On one such understanding, one is free insofar as one has the opportunity to live a worthwhile life. Or, at least, that is why being free matters. If so, then claims of freedom are just claims to improvement.

On another such understanding, one is free insofar as one is not invaded, whether or not invasion might improve one's condition. If so, then claims of freedom are just claims against invasion.

In Part II, we saw that a number of commonplace claims, in political theory and practice, are not claims of freedom, of either of these kinds. This is so even when they seem to advance under one or another device of freedom. The problem of justifying the state, for example, is often billed as the problem of reconciling the state with the freedom of the individual.

In Part III, we argued that these commonplace claims are instead claims against inferiority. To a greater extent than is perhaps recognized, our political thinking is driven by concerns not so much about freedom as about inequality.

My train of thought in the book has thus been intended as a kind of slow-motion, anti-libertarian judo—where "libertarian" is meant to cover not only enthusiasts for natural rights over person and property, but also enthusiasts for any conception of individual liberty. If you press hard enough on worries about the state's encroachment on the individual, you end up in a posture not so much of defense of personal liberty as opposition to social hierarchy.

Or, one might say, *if* these relatively overlooked concerns are concerns about freedom, they are concerns about freedom of a different kind. It isn't freedom understood as being resourced to chart a life according to your choices, or of being insulated from invasion by others. Instead, it's freedom understood as having no other individual as master, of being subordinate to no one. It's *liberté* understood so as to make *liberté, égalité, fraternité* a kind of conceptual stutter.

If we understand freedom as having no master, however, we need to fortify ourselves against a temptation to conflate it with freedom of other kinds. Such conflations are tempting, in part, because the limitations of the one notion of freedom can be obscured by substituting, when convenient, the other notion. And it is tempting, in part, because it seems to yield a kind of master value, which could somehow shoulder the whole weight of a political philosophy.

I suspect that the republican's notion of non-domination is born of such a conflation: a conflation of freedom as having no master with freedom as being insulated from actual invasion. The result is a conception of freedom as insulation from so much as *potential* invasion. And that, I have argued, is impossible to realize, so long as we live with others.

Our discussion of democracy touched, in passing, on yet another conception of freedom, besides the opportunity to live a worthwhile life and insulation from invasion: positive self-rule. One enjoys freedom of this kind when the political decisions under which one lives are one's own decisions. Perhaps that means "correspondence": that the political decisions are ones that you prefer. Or perhaps it means, more than this, "success": that this correspondence that results from the positive influence of your choices.

Here too, there is a danger of conflation. The conflation this time is of freedom from inferiority with freedom as self-rule—of having *no* master with having *oneself* as master. Rousseau's *Social Contract*, as I read it, is built on the faultline of this very conflation. On the one hand, Rousseau hopes that rule by the general will will be rule by no other particular individual. Since all have equal influence over the formation of the general will, in being subjected to it, they are not subordinate to any other individual; "each, giving himself to all, gives himself to no one" ("*chacun se donnant à tous ne se donne à personne*," Bk. 1, Ch. 6). On the other hand, Rousseau also hopes that rule by the general will will realize positive self-rule for each person: understood as "obedience to the law one has prescribed to oneself" (Bk. 1, Ch. 8). Rousseau's climactic phrase "obey only himself" ("*n'obéisse... qu'à lui-même*," Bk. 1, Ch. 6) is one among many passages that yoke the two aspirations together: the (here literally expressed) aim of not being subordinate to any

other person—to obey no one else—with the (here at least implicated) aim of positively ruling oneself—to obey oneself.

But this is to yoke two very different beasts, which shouldn't be expected to pull together. The fact that some decision fails to be yours—and so does not realize self-rule—is still compatible with its succeeding in not being any more someone else's—and so freeing one from inferiority. Decisions by lottery offer perhaps the clearest examples. Decisions by lottery are not one's own, because they are no one's. But, for that very reason, they are no more the decisions of any other individual. However, the same can be said of decisions by vote, or other procedures, so long as all have equal opportunity to influence the outcome.

I see no way, barring sleight-of-hand, that we can have our own will as rule, while living under political decisions. Unless one is a dictator, political decisions are not one's own, as an individual. But, as I have suggested, I'm less pessimistic—as a matter of theory, although not of course of practice—that being subjected to political decisions might count as being ruled over by no one else. Not freedom as self-rule, but instead freedom from any other's rule over oneself, may be the most we can, even in principle, hope for.

I close with replies to two imagined critics. The first lays a charge of co-optation. "Objections to hierarchical relations, asymmetries of power, and suchlike have long been at the center of protests against the oppression of the working class, women, and people of color. Appropriating these ideas, you then claim that all that is needed to address them is... wait for it... precisely the formal structures of bourgeois liberalism that we already know are laughably inadequate protections against such oppression!"

To begin with, I have not claimed that such structures are "all that is needed." So I agree that they are, on their own, inadequate protections. I have argued that they are *part, but only part*, of what is required to address relations of inferiority. If the critic were to go further and to argue that any such structures, however supplemented, *must be instruments of oppression*, then we would indeed disagree.

I would also invite the critic to consider the "revolutionary potential" of the book's claim that in order to make sense of

a host of liberal, even libertarian, ideas, one must see relations of inferiority as a problem to be addressed. To embrace those seemingly minimal, abstract, “formal” ideas, such as that officials should treat like cases alike is, if the book is right, to be committed to many of the maximal, concrete, “substantive” protests voiced by feminists or Marxists. One can’t consistently worry about the state’s encroachment on the rugged individual, for example, without also worry about imbalances of power between husband and wife, or the hierarchical authority of employer over employee. The concerns that underlie them are continuous.

The second critic (although it’s hard to imagine that he or she would have had the patience to read this far) finds all of this talk of “equality” utterly lacking in historical consciousness. “It blows out of all proportion,” he or she might say, “the opportunistic rhetoric of certain coalitions of social classes in the North Atlantic at the end of the eighteenth century.” Or something like that.

Perhaps some concerns for liberty have such shallow historical roots. But I suspect that this concern about relations of equality may have deeper roots in the history, or rather the natural history, of our species.

Our ancestors, for the better part of the career of *homo sapiens*, lived in nomadic bands or small settled tribes. It’s hard to see how any of our ancestors, living such a life, could have so much as entertained the idea of liberty, in, say, the sense of “being the author of one’s life,” or pursuing one’s “life plan,” or one’s “conception of the good,” or choosing among meaningfully different options in how to live one’s life. And should one of our ancestors have somehow entertained it, she would have had nothing to apply it to. What was to be done, presumably, was what everyone did, and what everyone had done, for as long as anyone could remember. If you were a woman, there was just one life plan. If you were a man, there was another, single life plan (modulo, perhaps, moonlighting as a shaman).

While liberty, in that sense, was not a concern, equality nevertheless seems to have been. As anthropologists tell the story, our ancestors were fiercely vigilant in maintaining relations of equality, at least among adult men. People who got it into their heads to upset the balance were teased, ostracized, or killed (Boehm 2001). What was intolerable, it seems, was not the absence of another option about what to

do. That was a given. The question of what was to be done had only one answer. What was intolerable was another person setting himself up as *the one to tell you* to do what was to be done.

This was among the reasons, one imagines, why the birth of civilization, with its defining hierarchies, was no easy delivery: why it had to be midwifed by the coordinated manipulation of superstition and the control, by violence, of food stores.

If we take the longest historical view, perhaps, the question that we have been exploring comes to seem not a recent, adventitious preoccupation. It comes to seem instead, perhaps, one of the first questions of politics: Can civilization, with its differentiation of roles, its concentrations of power and authority, be reconciled with the equality of standing that was guarded so jealously before?

The aim of this book has been to suggest that we bring this question into more explicit reflection. Whether it has made any progress in answering it is another story.