

Mopping up: Least Discretion

Duty to Exclude

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

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

We need to distinguish:

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

Exploitative Offers, Revisited

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

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

Equal Treatment by Officials, Revisited

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

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

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

But still violates the broader principle of Least Discretion.

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

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

Consideration:

Consideration as treatment:

Heuristics:

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

Partial list:

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

personal qualities. Explains why even “positive” stereotypes can be objectionable.

- recognizing their contributions.

General comments:

- “Basing trait,” if any, focused on the person as a whole.
- Not mere detached appraisal.
- Not necessary for a disparity of consideration that social inferiors are believed to be *unworthy* of the greater consideration, that they are not fully human, and so lack full moral status.
- Not sufficient for a disparity of consideration that some appreciate that one person has, whereas another lacks, attributes that are sources of pride. (Buyers in a slave market can discern skills or beauty in their prospective “purchases.”)

Consideration as Expression:

What’s expressed?

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

Merited Disparities:

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

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

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

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

Discrimination, Revisited:

Discrimination complaints are against:

- (i) a disparity of consideration,
- (ii) not tempered (where tempering factors include that it is a merited response),
- (iii) *because* tracks a basing trait (e.g., handedness).

Condition (iii), that the disparity tracks a basing trait, matters only insofar as it explains, sociologically, why condition (ii) obtains: why the disparity is untempered. The basing trait serves *as a focal point*, targeted by many different people and institutions across society, for a system of differential treatment and expression that is untempered: ongoing, pervasive, and inescapable.

Equal Consideration

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

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

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

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

Equal Citizenship:

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

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

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

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

Equal Treatment by the State, Revisited:

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

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

Equal Basic Liberty, Revisited:

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

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

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

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

- Why home security systems OK.
 - Again, the greater security is not directly provided by the state.

Differences from Rawls:

- First, the focus is not on individuals *having* equal amounts of some privileged good. The focus is rather on the *state's directly providing* equal amounts.
- Second, the comparative complaint doesn't attach to some *privileged kind* of good, such as *liberty*. Rather: special pressure on the state to provide *whichever goods it directly provides* equally. (Would apply similarly to vaccinations.)
- Third, no *priority* of liberty over other goods assumed.

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

- First, people would have an improvement complaint if the state did not give them *sufficient* protection from assault, fraud, etc.: that is, if the could have given them greater protection without unfairness to others.
- Second, people would have an equal treatment complaint if the state were to provide better protection to some people than to others.

Alternative Explanations?

Few would deny that there are "complaints," to put it mildly, against the extreme cases of bondage or caste. But are those complaints against relations of inferiority as such, but instead against something else, which we are confusing with relations of inferiority?

Expression

Complaints against what relations of inferiority express or symbolize? But what is that?

- Objectionable endorsement of relations of inferiority themselves? But that presupposes that relations of inferiority are objectionable.
- A lack of concern for interests in improvement or rights against invasion? No, since relations of inferiority can obtain where there are no unmet claims to improvement and no violated rights against invasion.
- That some lack the basis, such as humanity or rationality, for basic moral status?
 - No, again, disparities of consideration need not be so based.
 - Asymmetries of power may simply be brute force.
- E.g., Viehoff: The only objection to the sort of untempered disparity of consideration that characterizes a caste hierarchy is that it expresses that some are morally inferior to others. It expresses that, b/c the untempered disparity of consideration would be *unjustified unless* some were morally inferior to others.
 - But the very need for justification presupposes a prior objection.
 - In any event, subtraction test: Imagine that it is common knowledge those who uphold the caste hierarchy freely admit that it has no justification.
- That some have superior virtue, wisdom, or judgment?
 - Again, relations of inferiority need not express that.
 - And, in any event, expressing that is not, in general, objectionable.

Psychic Cost

Relations of inferiority matter only because, if recognized, they do psychic harm.

- Unpleasant feelings.
- Loss of confidence (for Rawls why parties in the original position care about the “social bases of self-respect”: confidence a means to pursue conception of good).

Saying that relations of inferiority matter *only* because they have such psychic costs like saying that the insincerity of one’s (seeming) friend matters only because, if one finds out about it, one will be sad. Psychic costs occasioned by the recognition of some underlying bad: relations to others that one had reason to want to be otherwise. But that presupposes that it is a bad.

Moreover, this underlying bad explains why *these* psychic costs matter in the way that they do. After all, we don’t feel obligated to forestall or mitigate every psychic cost. By and large, people are left to their own devices to cope with life’s disappointments.

Subtraction test: relations of inferiority seem objectionable even when purified of the psychic costs. Suppose:

- The inferior so thoroughly internalize the lesser consideration that they receive that they cease to be pained by it (e.g., “adaptive preferences”). Not a bad?
- Or the superior are buoyed by the greater consideration. A good thing?

Egalitarian Relationships as Positive Goods

- Not: untempered asymmetries / disparities are *in general a bad*.
- Rather: they are implicated in *a failure to realize some specific good*: an egalitarian friendship, marriage, etc.
- Grant that friendship and marriage, as we have come to know them, aspire to an egalitarian form.
- Still, claims against inferiority can be raised in cases in which no specific, positive egalitarian relationship is possible, e.g., asymmetric power of a guardian over child ward. Calls for tempering factors of Impersonal Justification and Least Discretion. But not because it would fail to realize some specific egalitarian relationship, such as friendship, between custodian and child.
- And we might want some articulate explanation of why *these* specific relationships, but not others, must be egalitarian. In particular, why must co-citizenship be egalitarian?
 - On the “general bad” view, there’s an articulate explanation.
 - 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 Consideration, and Equal Citizenship.

- And these correctives imply an egalitarian form of co-citizenship.

Theory of Cosmic Fairness:

The T of CF is so much an alternative interpretation of the complaints against bondage or caste as an alternative view of the significance of equality in general.

Tenets:

- *Agent-independence*: A distributive state of affairs can be cosmically unfair to Altra, *whether or not it results from what any agent does*.
- *Directedness*: ... unfair to Altra...
 - Instead cosmically unfair *period*? Just *impersonally bad*?
 - However, Temkin and Cohen describe it as unfair *to Altra*.
 - And the idea that cosmic unfairness is impersonally bad, even if it isn't unfairness *to anyone*, is a far less compelling idea.
- *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).
- *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.
- *Agent-universality*: This reason in no way depends on any special feature of Benny's situation.
- *Patient-universality*: In no way depends on Altra's and Indy's relations to one another, such as their belonging to the same society or epoch.

Contrast Benny's reason to *mitigate cosmic unfairness to Altra* with:

- Benny's reason to *improve Altra's situation*, which doesn't argue *against* weak Pareto improvements to Indy.
- Benny's reason to *treat Indy and Altra equally*, if Benny wields superior power and authority over them (and there is no justifying difference between them).
 - Might argue against weak Pareto improvements to Indy.
 - But in contrast to Agent-Independence, Altra's complaint is only against what someone (i.e., Benny) *does*.
 - In contrast to Agent-Universality, Altra's complaint depends on Altra's being subject to Benny's superior power and authority.
 - In contrast to Patient-Universality, Altra's complaint depends on Indy's also being subject to Benny.
 - And a different basis: Altra's claims against inferiority, rather than in anyone's claims against cosmic unfairness.

Theory of Cosmic Fairness seems implausible.

- Mitigating cosmic unfairness would be a reason *against* improving things for future generations, because that would mean that our posterity, unfairly, had more than our ancestors (keep Patient-Independence in mind).

Any superficial plausibility that T of CF has is borrowed from other ideas.

- 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.)
- "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*?"
 - I don't deny that it would have been better for Altra to have enjoyed good fortune / escaped 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, one can personify "Fate." Temkin: Altra "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."
 - 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 an *improvement* complaint against Fate.
 - Or if Fate, while holding sway over Indy and Altra, plays favorites, thus violating *Equal Treatment by Officials*, then Altra has a complaint of inferiority against Fate.

Solidarity

Another kind of comparative reason that might 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.
- E.g., among members of trade unions, or musketeer trios, prisoners of war.
- Typically, organized around a common struggle or danger, refused improvement is relief from the common struggle or danger.

The point of such an act of solidarity by Indy 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.

- *Not* to reject a *superiority* over Altra that would come from the improvement.
- Nor to reject a *cosmic unfairness* to Altra that would come from the improvement.

However, the appeal of solidarity is sometimes *mistakenly attributed* to cosmic fairness.

- Cohen: Jane, the beneficiary of manna in which others cannot share, decides to destroy it (i.e., undo a weak Pareto improvement). Intuitively, Jane has reason to. After all, we might even admire her. But what reason is this, Cohen reasons, if *not* the reason to mitigate cosmic unfairness?
- Reply: A reason of solidarity. This seems a more plausible interpretation.

- First, Jane would not have 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, would not have the same value, even though it would mitigate cosmic unfairness to precisely the same degree.

Collective Inferiority

Contrast:

- Complaint of *individuals* against relations of inferiority to other *individuals*.
- Complaint of individuals that a *group* to which they belong is subordinated to another *group*, with which their group has a claim of equality.

I don't mean to rule out complaints of this second kind.

Such vicarious, collective subordination are possible without relations of inferiority among individuals. So might account for:

- Complaints of persistent minorities:
 - Each member of a persistent minority enjoys equal influence with each member of the majority.
 - However, the persistent majority as a group enjoys superior influence, indeed decisiveness, over the persistent minority as a group.
- Complaints about colonial annexation:
 - After the annexation, any member the annexed group is a citizen like any member of the annexing group.
 - However, 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.

Domination

Common response: "Aren't what you describing as complaints against inferiority just what republicans describe as complaints about 'domination'?"

X "dominates" Y 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."

On the one hand, domination is *narrower* than relations of inferiority. Only power to invade, as opposed to asymmetries of power of other kinds, disparities of consideration.

On the other hand, domination is *broad*, since it is present whenever one is *exposed* to an alien, arbitrary or unilateral *will's* power of invasion.

- *Generality*: the alien will need not be that of a *superior individual*. It might be the will of an equal, or a collective or artificial person, with which comparisons of "equality" or "inferiority" make little sense.

- *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 (i.e., even if you enjoy "predictable non-invasion").

Relations of inferiority seem to me to better account for what republicans invoke domination to account for.

- Pettit: "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."
- Rhetoric: "domination," "mastery," "servitude," "subjection," "despotism." ≠ "being exposed to another will." Instead, recognized forms of social hierarchy.
- Motivating examples merely of being exposed to the power of another will, but of being subordinated to a superior person in an established social structure: e.g., the clerk and the welfare dependent, the manager and the worker, the teacher and the pupil, the warden and the inmate.
- Boss's exploitative offer in Car Wash seems like the sort of thing republicans are supposed to be concerned with. But Boss need not have the power to "interfere" in Employee's choice, if that means violating Choice.
- 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. (Boxers eyeing one another before a bout.)

The State Must Dominate

Moreover, Generality and Mere Possibility conspire to count living under any state whatsoever as being dominated by it.

- We are exposed to the state's power of invasion. So why then aren't we dominated by the state?
 - Suppose, by analogy, that you are the slave of the kindly master.
 - Perhaps he makes it the case, by threats or barriers that he controls, that other slaves can't invade you.
 - But how could that free you from domination by *him*?
- Presumably, a properly constituted state is supposed to differ from the kindly master. Not an "arbitrary" or "unilateral" will. But what does this mean?
- Pettit (1997) 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.
 - But what holds the state in check: 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.
- Pettit (2012) a will is arbitrary with respect to one just when it is a will that one does not control. Thus, a properly constituted state is a democratic state: a state that we, the People, control.

- But the 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. If the People controls the state, then why am I not dominated by the People?
- At most, in the vanishingly unlikely case of a tie, my vote might be decisive. Compare the coin-tossing master: if, but only if, it lands on its edge, the master will treat the slave in accord with his stated preference.

Least Discretion, not Nondomination

Lesson: The combination of Generality—that mere exposure to *any will* is domination—and Mere Possibility—that *mere exposure* to any will is domination—seals off any deliverance from domination by the state.

Contrast: Even if to live under the state is to be *dominated by the state*, it need not be to be *the inferior of any other individual*, at least if the correctives are satisfied.

Consider, first, the corrective of Least Discretion.

- When it is satisfied, the asymmetric power of an office is the asymmetric power not of the 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.
- 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 better explains how *exercises* of power can wrong.
 - Again, republicans probably want to explain Employee's complaint about Boss's exploitative offer in terms of domination.
 - Mere Possibility makes 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.
 - This means that Boss has no reason, at least as far as domination is concerned, to *refrain* from making the offer.
 - By contrast, Least Discretion explains Employee's objection by saying that Boss actually uses his office for reasons that don't serve the impersonal reasons that justify that office.
- Least Discretion 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, 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 just 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.

Equal Influence, not Nondomination

Consider, next, the corrective 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, 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 difference.
- As the slave of a master, one stands in a relation of inferiority to another individual, whereas as a citizen with as much say as any other citizen, one does not.

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 interests in freedom are just interests in 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 rights against invasion.

Part II: A number of commonplace claims 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. For example, the problem of justifying the state is often billed as the problem of reconciling the state with the freedom of the individual.

Part III: 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.

- A kind of slow-motion, anti-libertarian judo. Press hard enough on worries about the state's encroachment on the individual, and 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.

Conflations with other kinds of freedom

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.

Conflation 1: with predictable non-invasion:

- Republican's non-domination: conflated 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.

Conflation 2: with positive self-rule = the political decisions under which one lives are one's own decisions.

- Conflates having *no* master with having *oneself* as master.
- Rousseau's *Social Contract*, as I read it, is built on this faultline.
 - 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."
 - 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."
- But these are different. 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.
- We can't, even in principle, have our own will as rule (unless one is a dictator).
- But being subjected to political decisions might count as being ruled over by no one else.
- So, 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.

Two critics:

Critic 1: "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!"

- I have argued that they are *part, but only part*, of what is required to address relations of inferiority.
- If the critic argues that any such structures, however supplemented, *must be instruments of oppression*, then we would indeed disagree.
- Also "revolutionary potential": In order to make sense of seemingly minimal, abstract, even "formal" ideas, such as that officials should treat like cases alike is, or that the state must be justified, if the book is right, one must see relations of inferiority as a problem to be addressed, and so, perhaps, be committed to many maximal, concrete, "substantive" protests. The concerns that underlie them are continuous.

Critic 2: All of this talk of "equality" lacks historical consciousness. Blows out of all proportion the opportunistic rhetoric of certain coalitions of social classes in the North Atlantic at the end of the eighteenth century.

Consider our ancestors living in nomadic bands or small settled tribes.

- They could not 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 "conception of the good." What was to be done was what everyone did, and what everyone had done, for as long as anyone could remember.
- Still, fierce vigilance in maintaining relations of equality.
- What was intolerable, evidently, was not the absence of another option about what to do, but instead someone setting himself up as *the one to tell you* to do it.
- 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.

So, if we take the longest historical view, perhaps, the question that we have been exploring comes to seem not a recent, adventitious preoccupation, but instead 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?