

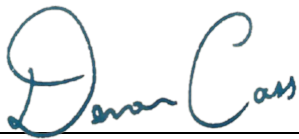
Status as an Equal

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This thesis is solely the work of its author. No part of it has previously been submitted for any degree, or is currently being submitted for any other degree. To the best of my knowledge, any help received in preparing this thesis, and all sources used, have been duly acknowledged.

Signed: 

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For Dagmar and Doris

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Abstract: Nearly everyone thinks equality, in some sense, is a fundamental requirement of justice; however, there is no consensus about what this commitment amounts to. In recent work, several theorists have argued for a ‘social’ or ‘relational’ conception of equality, which holds that the fundamental sense in which equality matters for justice involves the realization of equal social relations and the absence of particular forms of social hierarchy. While there is a growing literature on social egalitarianism, the position remains undertheorized on key issues. Social egalitarians have extensively critiqued what they regard as rival views (luck egalitarianism in particular) but have spent less effort developing the positive details of their own account. Thus, it is not yet entirely clear whether and how the approach is distinct from existing egalitarian views; and more broadly, it is not clear where social egalitarianism stands in relation to well-studied schools of thought such as liberalism and republicanism. This thesis addresses these issues: I offer a characterization of the social conception of equality and situate the view against Rawlsian and neo-republican approaches to the theory of justice.

In the introduction, Chapter One, I discuss several senses in which equality is endorsed by nearly any theory of justice: e.g. all count as moral equals, and the state ought to show concern and respect for persons as equals. I explain that a wide range of theories of distributive justice—e.g. libertarianism, utilitarianism, sufficientarianism, luck egalitarianism—may be regarded as competing interpretations of what these basic egalitarian commitments require. I then introduce social egalitarianism as an account of this issue that has emerged in the recent literature, and I outline several respects in which the view is undertheorized.

In Chapter Two, I examine the nature, importance, and distinctness of social egalitarianism. First, regarding the nature of social equality, I contrast what I call the ‘interpersonal’ conception with the ‘institutional’ conception, and I argue in favour of the latter. Second, I distinguish several reasons social equality might be thought to be important. Existing views focus primarily on its personal value. I explore these accounts and raise some problems for them; in turn, I argue that social equality is better grounded by the requirement that the state respect its members as equals. Finally, I examine existing accounts of the distinctness of social equality and show that none of them succeed. I sketch a novel characterization which holds that social equality is distinct in that it is concerned with a particular type of ‘positional’ good—an idea I explore in more detail in the following chapter.

Chapter Three explores what I call the ‘convergence thesis’ for positional goods. This thesis holds that prioritarrians, sufficientarians, and egalitarians all have reason to favour an equal distribution of positional goods. I discuss some problems for this thesis when applied to the goods for which it has been proposed: education and wealth. I show, however, that there is a variant of the thesis that avoids these problems. This version of the thesis is significant, I demonstrate, because it applies to a person’s status as a citizen, which on my account is the core concern of social egalitarianism. The difference, I explain, hinges on a distinction I develop between ‘position-sensitive’ versus ‘position-defined’ goods.

Chapter Four assesses the relationship between social equality and the work of John Rawls.¹ I show that none of the arguments given by John Rawls and his supporters provides an adequate defence of the priority of liberty thesis. In turn, I develop a distinct social egalitarian approach, which focuses on the status-conferring function of the basic liberties. On the account I propose, assigning priority to the basic liberties is required on the grounds that doing so gives persons a status as equal bearers of the moral powers. In addition, I argue, Rawls’s political conception of the persons as a bearer of the two moral powers offers a helpful way of developing the content of social egalitarianism.

Chapter Five examines and defends the following republican claims: 1) goodwill and virtuous self-restraint are insufficient to realize justice; and 2), law has constitutive importance. In the contemporary literature, these claims are defended by reference to the conception of freedom as non-domination. Critics argue, however, that this defence fails, and that freedom as non-domination is problematically moralized and impossible to realize. In response, I propose that the point of protecting people from domination is better understood not as realizing freedom, but as giving persons a civic status as equals or realizing social equality. I argue this account vindicates the distinctive republican claims and avoids the impossibility and moralization objections. I conclude by suggesting my account has some other advantages over the standard republican view.

Chapter Six concludes, discussing how the account of social equality I develop over the course of the thesis handles some standard objections to egalitarianism. In addition, I point toward some directions for future work.

¹ This chapter is based on a forthcoming paper in *Law and Philosophy*, entitled “The Priority of Liberty: an argument from social equality”.

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1) Introduction: The Concept of Equality

Not long ago, Ronald Dworkin wrote that equality had become “the endangered species of political ideals” in both politics and political thought.² Today, this is far from the case. On the one hand, a concern for equality—in one form or another—has been at the center of many recent and ongoing social and political issues: in the drive for same-sex marriage reform, for example, and in the Black Lives Matter, MeToo, and Occupy movements. On the other hand, egalitarian theories of justice—of one or another variety—are at the forefront of discussion in political theory.

While it is safe to say equality is no longer an endangered species, it is nonetheless an elusive one, and is not as well understood as we might hope. In part, this is because there are different *kinds* of equality—e.g. economic, social, political, legal—and different *reasons* for concern. As T.M. Scanlon points out, for instance, the reasons to object to *economic* inequality are diverse, including (but not limited to) the avoidance of domination and stigma.³ However, we fail to fully understand the nature of egalitarian concern if we think only in economic terms. Consider the social movements just mentioned. The push for same-sex marriage for example, has not primarily been about same-sex couples being economically worse off than others. Rather, it is about same-sex couples being equal to others in a different sense. Even if a homosexual person does not wish to marry, they may have a complaint of justice that they should not be socially

² (Dworkin 2000), p 1.

³ (Scanlon 2003), (Scanlon 2018)

downgraded in virtue of being denied that opportunity. Considering another example, though the disparity of economic advantage between White and Black Americans may be part of what is at stake in the Black Lives Matter movement, it would obscure the issue to think this is the whole issue. Even the richest (or happiest) Black Americans, it might be thought, have a legitimate complaint of justice if they are disproportionately subject to ‘Stop and Search’ policies and discriminated against in other ways. Perhaps the Occupy movement might be thought of in primarily in economic terms: the main complaint, after all, was that wealth was too unequally distributed. But this seems like an oversimplification: complaints that the wealthy had too much power and political influence were also at issue.

So, if I may continue to abuse Dworkin’s metaphor, it appears there is more than one species of equality of contemporary concern. We are not only concerned with *economic* equality or with the distribution of goods such as resources and welfare. We are also concerned (and perhaps even *fundamentally*) that certain forms of social hierarchy are absent, that social relations have an egalitarian character, and that all have a status as civic equals—or so it has been argued by proponents of what has become known as the ‘social’ or ‘relational’ concept of egalitarian justice.⁴ The aim of this thesis is to examine and develop this social account of equality.

In this chapter, I introduce the social concept of equality and place it in context, discussing how it has emerged in reaction to other influential theories of justice. In the first part of the chapter,

⁴ I prefer the term ‘social’ over ‘relational’ equality and will use the former throughout. There are a couple of reasons for this choice. First, every theory of equality is relational, in a sense, since comparing any two people involves a kind of relation. In this way, the term ‘relational’ is sometimes used to distinguish theories of justice that take into account relative differences instead of only absolute levels of enjoyment. What is meant, instead, is that *social* relations are of concern. Second, it seems to me that for many the idea of ‘relational’ equality leads one to think, in the first instance at least, of face-to face interpersonal relations. As we’ll see in Chapter Two, I want to avoid this way of thinking about the issue. Instead, I favour an institutionalist approach. We will see, then, that there are two different *conceptions* of the social concept of equality— to invoke the concept vs. conception distinction found in (Rawls 1999), p. 21.

I explain three senses in which nearly every (plausible) theory of justice accepts a principle of equality. In the second part, I survey some of the most influential theories of justice developed throughout the 20th and 21st centuries and explain that they can all be regarded as competing accounts of meeting these basic egalitarian requirements. In part three, I introduce the social concept of equality and outline the plan of the thesis.

1.1 Platitudes and Plateaus

Far from ‘endangered’, a basic kind of egalitarian concern has become a platitude of contemporary political thought. Every theory of justice taken seriously today endorses a basic—though quite abstract—egalitarian requirement: government should treat its members as equals, showing them equal concern and respect.⁵ In this abstract sense, equality has come to be regarded as what Will Kymlicka calls the ‘plateau’ of argument in contemporary political theory.⁶ Any theory that does not hold that people are owed equal treatment or concern or respect—because of differences of race, say, or gender, or something else—would be rejected as beneath consideration. It is in this sense, too, that equality is what Dworkin calls the ‘sovereign virtue’ of political thought.⁷ If two theorists disagree about whether freedom or equality—of welfare, for instance—is more important, they do not disagree about whether equality in this abstract sense matters. Instead, they disagree about *how to interpret* the basic egalitarian requirement: one side argues that giving each person freedom (however specified) is the appropriate way to treat them as equals; the other side argues that treating people as equals requires that they enjoy welfare to the same degree.

⁵ (Dworkin 2000)

⁶ (Kymlicka 2002)

⁷ (Dworkin 2000)

The sense(s) in which equality is nearly universally accepted goes by many names such as ‘formal’ ‘basic’, ‘abstract’, ‘deep’, or ‘expressive’ equality. Whatever name is adopted, I want to suggest there are three notions that are worth distinguishing. I will call the first ‘formal equality’; the second, ‘moral equality’; and the third, ‘expressive equality’. I will discuss each of these notions in turn and explain that they all fall far short of determining any substantive egalitarian requirements of justice.

i) *Formal equality*

Since Aristotle, it has been acknowledged that justice requires ‘treating like cases alike’.⁸ This is a merely ‘formal’ principle, specifying only a form justice might take, without filling in the content of that form. It is not ‘substantive’ because it does not tell us how any cases should be treated. The formal principle says only that whatever justice requires of particular case; we must treat relevantly similar cases in the same way. Justice is violated when we treat relevantly similar cases differently—on an arbitrary or random basis, for instance. But the formal principle does not fill in what counts as ‘relevant’. If a person has some property, in virtue of which they are owed a certain kind of treatment, justice requires that we extend that treatment to all other persons that possess that property.

On the face of it, it might seem that a policy that discriminates on racial grounds violates this formal principle. If the members of one race are precluded by law to hold certain desirable offices, we may think that the law has not treated ‘like cases alike’. But this judgement requires a further assumption: that race is *not* a *relevant* basis for treating people differently. While this judgement

⁸ (Aristotle 1985), *Nicomachean Ethics*, V.3. 1131a10-b15; (Aristotle 1985) *Politics*, III.9.1280 a8-15, III. 12. 1282b18-23.

is certainly correct, it is not contained in the formal principle of equality. On the one hand, then, the principle of formal equality does tell us something significant and important about justice, capturing the traditional idea that justice involves maintaining a kind of balance.⁹ But on the other hand, it does not tell us more than that; and it does not tell us enough about the requirements of *equality* in particular.

ii) *Basic moral equality*

Let's turn, then, to a more substantive notion of equality: what might be called 'basic moral equality'. The idea of basic moral equality is that all human beings are equals in the sense that everyone has an equal moral standing. As T.M Scanlon puts it, the idea is that "everyone counts morally, regardless of differences such as their race, their gender, and where they live".¹⁰ Endorsing basic equality, then, precludes denying persons equal moral consideration on the basis of some kind of difference (e.g. of race, gender, and so on). Moral equality has only become regarded as a platitude of justice in fairly recent times, unlike the ancient idea of formal equality. Aristotle, for instance, regarded some as 'natural slaves' and so not moral equals, while he nonetheless endorsed formal equality.¹¹ Today, however, it would be unthinkable to defend a political theory that did not accept basic moral equality. And this would appear to be a welcome development: as Scanlon notes, "the increased acceptance of the idea of basic moral equality, and

⁹ We might also want to that this sense of equality also involves the idea that justice requires 'treating different cases differently' (Hart 1961) p. 159

¹⁰ (Scanlon 2018), p. 4.

¹¹ (Aristotle 1985), *Politics*, Bk. 1

the expansion of the range of people it is acknowledged to cover, has been perhaps the most important form of moral progress over the centuries.”¹²

While there is now widespread agreement that basic moral equality matters, there is nonetheless widespread disagreement over what *justifies* or *grounds* this commitment. If people are to count as moral equals, we should want to know why this should be so. Presumably, we need to be able to point to some sense in which people *are* in fact equals, such that they have equal moral standing. This is the question of the basis of moral equality: what kind of sameness across persons explains their moral equality? A wide range of answers have been given to this question, but it will not concern us here.¹³ The project of this thesis is to examine the nature of egalitarian justice, assuming that moral equality is defensible on one basis or another—or that equality matters for justice on some other basis.

While basic equality rules out certain kinds of political and social practices—those that deny some persons moral consideration—it is not clear whether it requires much more than that. Jeremy Waldron proposes that one way of thinking about basic moral equality is that it is incompatible with persons permanently holding different statuses based on the sort of person they are—either in the eyes of the law, or more broadly, according to political and social institutions.¹⁴

¹² *Ibid.*

¹³ Philosophers typically point to particular shared capacities—of sentience or rationality, for example. It is worth noting, however, that not all pursue this kind of account. Hannah Arendt suggests a forward-looking or proleptic account: accepting basic moral equality, on her view, is not justified on the basis of any sameness across persons, but instead because doing so enables the realization of an important kind of political community. See (Arendt 1973), p. 301. Joel Feinberg suggests it is a ‘groundless commitment’ which does not stand in need of justification. (Feinberg 1973), p. 93.

¹⁴ (Waldron 2017) p. 20.

A system of slavery, as for instance practiced in the United States from 1776 to 1865, would violate basic equality in this sense.

This move, however, from moral equality to equality of status seems to involve a bit of a jump (if not quite a leap). It does not immediately follow from the idea that humans all count as moral equals that there should be no permanent status differences across persons based on the ‘sort’ of person they are. In principle, different statuses in the eyes of the law or society need not imply a denial that all are moral equals. One possibility is that different statuses need not involve any ranking or hierarchy between them. Differential legal statuses for minors versus adults, or for citizens vs. outsiders, need not count as denying moral equality.

Even among full citizens, differential statuses may not imply that some count more than others morally. The idea of groups of persons being assigned different but not unequal statuses is a coherent possibility, even if empirically very unlikely to obtain. In the United States Supreme Court, in *Plessy v. Ferguson* (1896), it was (successfully) argued that segregation as an ‘equal but separate’ system did not violate the ‘equal protection’ clause of the Fourteenth Amendment. In practice, the system did not live up to the idea and so was rejected in *Brown vs Board of Education*. But the idea seems at least coherent as a matter of principle—even if those behind the ‘separate but equal’ legislation were entirely disingenuous in judging act as they did. Perhaps something closer to realizing the possibility of a separate but equal (or at least not patently unequal) system is the example of Indigenous people in some contemporary nations, who, like in Canada under the Indian act of 1876, possess a different legal status from other citizens. Such differential statuses (in theory) need not deny that all count fully as moral equals. Though again, given the great disparities in advantage that pertain between Indigenous persons and others in Canada and elsewhere, this may again seem only a theoretical possibility. My aim, of course, is not to evaluate

these real-world cases, but only to suggest that it seems at least *coherent*—if not plausible or likely to obtain—that basic moral equality is compatible with different legal and social statuses.

It also seems coherent that even a system of explicitly hierarchical or ranked—and not just different—statuses could be regarded as consistent with the idea of basic moral equality. Edmund Burke, for one, seems to have thought so. In *Reflections on the Revolution of France*, Burke suggests that upholding “the true moral equality of mankind” involved embracing social hierarchy, because it was “as much for the benefit of those whom it must leave in a humble state as those whom it is able to exalt to a condition more splendid”.¹⁵ Although all count as moral equals, on this view, the appropriate response is allow some to enjoy an ‘exalted’ state, others a more ‘humble’ existence. By contrast, he thought the kind of social equality favoured by the French revolutionaries involved a kind of “monstrous fiction which, by inspiring false ideas and vain expectations into men destined to travel in the obscure walk of laborious life, serves only to aggravate and embitter.”¹⁶ Again, we might take issue with Burke’s view for a variety of reasons—but his view seems at least coherent.

iii) *Expressive political equality*

Thus, while basic moral equality is a significant notion, and is certainly more substantive than the principle of formal equality, it also falls far short of determining any well worked out ideal of the just egalitarian society. But often a different notion of equality is invoked as a basic requirement of justice. As Dworkin puts it, “no government is legitimate that does not show equal concern and

¹⁵ (Burke 1987). p, 124

¹⁶ *Ibid.*

respect for the fate of all those citizens over whom it claims dominion and from whom it claims allegiance.”¹⁷ Call this notion ‘expressive equality’.¹⁸

What exactly is this requirement that the government show equal concern and respect for its members? How does it differ from the idea of moral equality? There are several features here worth mentioning. The first feature is that it specifies a requirement of *government* in particular; moreover, what Dworkin suggests is that it is that it is a requirement of *legitimate* government. In this sense, the notion is more specific than the idea of moral equality; which, if true, is presumably true in all times and places, even in the absence of any state, government, or relevantly similar entity. And in this sense, this basic egalitarian requirement adopts a different starting point. Instead of starting with the question of what humans are worth (on the basis of their intrinsic properties), the starting point is instead what a coercive government owes to those over whom it rules and claims allegiance. As Dworkin puts it, “coercive government needs a justification that explains why it isn’t a terminal insult to human dignity to force somebody to do what he thinks wrong as, of course, government must do.”¹⁹ Dworkin contends that this justification includes, at a minimum, that equal concern and respect be shown to all members of the political community. Second, this notion of equality involves a *publicity* requirement. To meet the basic conditions of legitimacy it would not be enough only for government to *in fact* have concern and respect for its members as equals. Equal concern and respect must be *shown*, or communicated, and made a matter of common awareness. For this reason, ‘expressive equality’ is an apt name for this notion. Third, this notion of expressive equality identifies two kinds

¹⁷ (Dworkin 2000), p. 1

¹⁸ (Pettit 2012)

¹⁹ (Dworkin 2011)

commitments—both *concern* and *respect*. Concern, on the one hand, involves an appropriate response to the fact that humans are ‘capable of suffering and frustration’. Respect, on the other hand, involves appropriately responding to the fact that humans are ‘capable of forming and acting on intelligent conceptions of how their lives should be lived’.²⁰

In these ways, then, expressive equality is more determinate than basic moral equality; but as we will see next, it is again far from clear what its implications are for working out a theory of justice

1.2 Substantive Equality of What, if Anything?

All three of the abstract egalitarian requirements just considered might be taken to constitute the ‘egalitarian plateau’ or ‘sovereign virtue’ of contemporary political thought. But while these requirements are important, they remain highly abstract. They do not generate a determinate theory of justice, nor even tell us exactly what *equality* involves as a requirement of justice (supposing, as many do, that a complete theory of justice will involve equality as well as other concerns, such as freedom). This point becomes vivid when we recognize that the most influential contemporary approaches to the theory of justice can be regarded as ways of working out the how the abstract egalitarian principles might be made more precise.

On most approaches, there are two key aspects involved in determining the requirements of justice. The first involves the *metric*, or *currency* of justice. What good or dimension of people’s lives do we look at when judging whether a society is just? Different theories of justice propose a

²⁰ (Dworkin 1978a), p. 272. For more developed accounts of how to distinguish concern from respect see (S. Darwall 2010) and (Cullity 2018).

range of answers: e.g., rights, welfare, resources, capabilities, some combination of these, or something else altogether. Distinct from this question about the metric or currency of justice, however, there is the question of the correct distributive *principle*. Whatever good or dimension of concern is determined relevant, we also need an account of how that good ought to be distributed or enjoyed across persons. A principle of equality is, of course, one way of filling in this question. But, as we will see shortly, other principles have been argued for; and indeed, they might be argued for as more appropriately showing persons equal concern and respect.

(i) *Lockean Libertarianism*

One influential approach, inspired by John Locke, and later developed by Robert Nozick and others, holds that justice fundamentally involves respecting people's rights to self-ownership, and by extension, their property. On the Lockean view, persons have pre-political, 'natural', rights to their own bodies and labour. By the 'mixing' of one's labour with the natural world (e.g. by gathering berries or cultivating the land, and so on), one may legitimately come to acquire property, provided 'enough and as good' is left for others.²¹ When property is rightfully acquired, each person is permitted to do what they like with it—they can exchange with others, sell it, or give it away—provided they do not violate the rights of others.

This account provides a perfectly intelligible sense in which a government may be said to show respect and concern for its members as equals. After all, *everyone's* natural rights must be respected. Justice will not be realized, on this account, if only some people's rights to property are protected. But in another sense, the account is decidedly inegalitarian. While the Lockean account requires equality of property rights, it is consistent with substantial inequality in other dimensions

²¹ (Locke 1980), (Nozick 1974) Ch. 7.

such as opportunities, welfare, and income and wealth—so long as these inequalities may arise consistently with the just acquisition and transfer of property. Nonetheless, a libertarian might argue that the kind of redistribution required to secure more substantive material equality would involve too much interference, and thereby fail to show persons respect as equals.²²

(ii) Utilitarianism

Utilitarianism is another theory that, while not standardly considered ‘egalitarian’, may nonetheless be said to satisfy the abstract egalitarian requirements. As a theory of morality, utilitarianism holds that an action is right if it brings about more aggregate utility, or happiness, than any other action. However, utilitarianism may also be understood as a theory of justice, according to which the just society maximizes aggregate utility. Interestingly, for our purposes, utilitarianism as a theory of justice can be viewed in two ways.

On the first understanding, utilitarianism is a teleological or ‘telic’ account: maximizing equality is required because doing so brings about the best or most valuable state of affairs. We count each person’s utility equally simply because that is the way to maximize value. If we failed to count some people’s utilities as having equal weight to the utility of others, we would ignore possible sources of value, and thus may fail to maximize it. On this view, persons are not in the first instance viewed as moral equals worthy of equal concern and respect: they are instead equally vessels or ‘buckets’ for value.²³

²² It might be suggested that here the requirements of respect and concern come apart. Respect, it might be said, may involve the kind of non-interference libertarians prize; but this fails to show people equal concern, for it permits vast inequalities of wellbeing.

²³ A term J.J.C. Smart is said to have wholeheartedly endorsed, according to ANU folklore. Cf. (Williams 1973).

On another version of the view, however, the requirement to maximize aggregate utility follows from the requirement of expressive equality. First, we recognize that different people have different interests (supposing that utilitarianism is concerned with people's happiness construed in terms satisfying their interests). Since people's interests conflict, we need some standard or procedure that specifies which trade-offs are just or otherwise morally acceptable. The appropriate way to show concern and respect for all as equals is to not give special consideration to any one individual's interests when determining the policy that would bring about the most utility overall. A (natural) suggestion, then, is that we show equal concern and respect for persons by assigning each of their interests equal weight—regardless of their social position, ethnicity, religion, and so on.²⁴ As a result, what is required by expressive equality is the maximization of utility, or aggregate preference satisfaction. Kymlicka outlines the form of this argument as follows:

1. people matter, and matter equally; therefore
2. each person's interests should be given equal weight; therefore
3. morally right acts will maximize utility.²⁵

On this version of utilitarianism, by contrast with the telic view, maximizing utility is not the direct goal. Instead, it is the by-product or result of adopting a particular way of spelling out what it means to show people equal concern and respect. In this way, then, utilitarianism too can be regarded as an account of how to work out the requirements of expressive equality for justice.

(iii) Rawls: Justice as Fairness

²⁴ (Kymlicka 2002), Ch. 2.

²⁵ *Ibid.*

Perhaps the most significant development in the theory of justice in the 20th century was due to the work of John Rawls, especially the publication of *A Theory of Justice* in 1971. Rawls was motivated to develop his theory, ‘justice as fairness’, due to the shortcomings he saw with utilitarianism as well as the ‘laissez-faire’ capitalism endorsed by libertarians. On the one hand, Rawls thought the libertarian view was too permissive with regard to inequalities of resources. And on the other hand, Rawls thought utilitarianism did not adequately account what he called ‘the separateness of persons’: roughly the thought that people lead separate lives that consist of experiences not shared with others. Respecting people as equals, Rawls thought, requires appropriately responding to this fact. “Persons have an inviolability,” Rawls writes, “founded on justice that the welfare of society as a whole cannot override”.²⁶ Utilitarianism, by permitting the sacrifice of a person’s interests for the greater good, does not adequately show respect persons as equals.

Rawls’s alternative theory of justice, known as ‘justice as fairness’, in its original statement, is as follows:

- 1) Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.²⁷

This principle is lexically prior to the second:

- 2) Social and economic inequalities are to satisfy two conditions: 1) They are to be attached to offices and positions open to all under conditions of *fair equality of opportunity*; 2) They are to be to the greatest benefit of the least-advantaged members of society.²⁸

²⁶ (Rawls 1999)

²⁷ (Rawls 2001) pp. 42-43.

²⁸ *Ibid.*

This theory—in particular, the first principle—will be examined in much more detail in Chapter Four. Here I want only to remark how the theory can be viewed as an interpretation of expressive equality. Rawls might agree with Lockean libertarians that by failing to give liberty priority, utilitarianism does not show adequate respect for persons as equals. Rawls’s second principle of justice, however, marks a significant disagreement. First, Rawls requires equality of opportunity; and second, he requires what has become known as the ‘difference principle’—that social and economic inequalities are to the greatest benefit of the least advantaged. These more stringent requirements on material equality, it might be argued, provide a plausible interpretation of what it means to show people concern as equals.

It is noteworthy that in working out what counts as ‘advantage’, Rawls rejects utility or welfare as the appropriate metric of justice. Instead Rawls holds justice ought to look at people’s *resources*, or ‘primary goods’—including income, wealth, liberties, and opportunities, that are all-purpose in the sense that they enable a persons to advance diverse conceptions of the good. Spelling out this thought Rawls says his theory

does not look behind the use which persons make of the rights and opportunities available to them in order to measure, much less to maximize, the satisfactions they achieve. Nor does it try to evaluate the relative merits of different conceptions of the good. Instead, it is assumed that the members of society are rational persons able to adjust their conceptions of the good to their situation.²⁹

This motivation for adopting resources or ‘primary goods’ as the metric of justice over utility or welfare might also be regarded as an issue about the demands of expressive equality. Since people are bound to have diverse conceptions of the good in contemporary societies, respecting them as equals involves giving them equal means to pursue those conceptions.

²⁹ (Rawls 1999), Section 17.

(iv) The Capabilities Approach

In 1979, Amartya Sen presented his famous ‘Equality of What’ lecture, arguing for a new answer to the ‘metric’ question.³⁰ Sen’s proposal was motivated by what he took as shortcomings with focusing on either utility or welfare or on resources or primary goods. Focusing on subjective welfare is problematic, Sen argued, because it concerns only people feel and neglects their actual needs such as physical health. Moreover, Sen pointed to the problem of ‘adaptive preferences’:

Our mental reactions to what we actually get and what we can sensibly expect to get may frequently involve compromises with a harsh reality. The destitute thrown into beggary, the vulnerable landless labourer precariously surviving at the edge of subsistence, the overworked domestic servant working round the clock, the subdued and subjugated housewife reconciled to her role and her fate, all tend to come to terms with their respective predicaments. The deprivations are suppressed and muffled in the scale of utilities (reflected by desire-fulfilment and happiness) by the necessity of endurance in uneventful survival.³¹

Even if a person might adapt to be satisfied with their deplorable situation, that does not remove their having a complaint of justice. Nor, it might be added, would they be shown equal concern and respect if they are left in that condition.

In addition, Sen was critical of Rawls’s primary goods approach (as well as resource-based approaches more broadly). His main concern was that focusing on resources ignores the differences between people with regard to how they convert resources into ‘functionings’. For instance, a paraplegic may require more resources, in terms of a wheelchair and appropriate ramps and elevators, to achieve a similar functioning capability of moving around freely. Focusing on

³⁰ (Sen 1980)

³¹ (Sen 1985) pp. 21-22.

resources ignores variations in factors—social, personal, environmental—that determine what a person can do or be with a given set of resources. And, it might be claimed, showing people equal concern and respect requires sensitivity to these ‘conversion factors’.

In place of utility and primary goods, then, Sen proposed the ‘capabilities approach’, which holds that the metric of justice should be “capabilities to achieve functionings,” which are the various things that a person manages to do or be in leading a life.³² A difficult issue for this approach is to specify exactly which capabilities in particular matter. On the one hand, we might point to ‘basic’ capabilities might involve, for instance, being able to move about freely, hold a job, express oneself freely, being safe, and having self-respect.³³ By contrast, Martha Nussbaum suggests we focus capabilities needed for human *flourishing*.³⁴

(v) Priority and Sufficiency

We have seen, then, that there are a variety of answers to the *metric* question, including rights, utility, resources, and capabilities. All of these metrics as involving competing answers to the question of how to work out the requirements of expressive equality.

Now to consider the *principle* issue. Many theorists argue concern with equal distribution—e.g. of welfare, primary goods, or capabilities—is mistaken. A major concern with equality as a distributive principle is what is known as the ‘levelling down’ objection. Equality favours would seem to require ‘leveling down’, or removing advantages from the better off, even when to do so would benefit no one. For this reason, among others, critics have argued we ought

³² (Sen 1992)

³³ *Ibid.*

³⁴ (Nussbaum 1992)

to focus on the worst off having enough by some criterion, or in prioritizing the interests of those who are worse off in absolute terms.³⁵

The sufficiency view involves two theses: one positive, the other negative. The positive thesis is that everyone should have ‘enough’ by some criterion. The negative thesis is that differences between persons above the threshold do not concern justice. If people have sufficiently good lives (whether measured in terms of their happiness, resources, capabilities, or something else), sufficientarians hold it is no concern of justice if others have more.

This view thus assigns no importance to equal distribution per se. However, in some contexts, sufficientarians may favour reducing inequality, if doing so is necessary to give all ‘enough’. But if all do have enough, any degree of inequality is permissible. Suppose for example, that everyone in a society is sufficiently happy or sufficiently well-resourced (however exactly this is worked out). In such a context, it would not seem unjust if become better-off (e.g. more happy or better resources), without making anyone worse-off. In other words, Pareto-improvements do not appear unjust. On this basis, the sufficiency view avoids the levelling-down objection. Provided all have ‘enough’ there is no reason to remove advantages from anyone.

The sufficiency view, however, does not hold that those who barely have enough are of less concern or respect than those who have much more. And indeed, the permissiveness of the view with regard to those above the threshold might be argued to be the appropriate interpretation of equal respect. It might be claimed (in a kind of libertarian spirit) that imposing a particular pattern of distribution above the threshold involves too much interference, and thus does not

³⁵ (Frankfurt 1987), (Parfit 1997)

exemplify equal respect. Whether this is an entirely compelling interpretation of expressive equality is, of course, open to debate.

The priority view, by contrast, holds that benefiting a person matters more the worse-off they are in absolute terms.³⁶ Like utilitarianism, the priority view is ‘maximizing’: whatever the metric of justice is taken to be, the sufficiency view holds we should bring about as much of that good as possible. But unlike utilitarians, prioritarians assign greater weight to those who are badly off in absolute terms. This view avoids the levelling-down problem as well, because to remove advantages from the better off without transferring them to the worst off would be to fail to maximize. In other words, Pareto-*dis*provements are not permitted. The priority view does not say, however, that the worse off are worthy of *more* concern and respect than others, however. Instead, the view is better understood as holding that what it means to give worse off the same concern and respect as the better off is to weight the interests of the former more heavily than those of the latter.

(vi) Luck Egalitarianism

One family of egalitarian theory that continues to enjoy a wide range of support is ‘luck egalitarianism’, as exemplified in the work of G.A. Cohen, Ronald Dworkin, Larry Temkin, Richard Arneson, and others. Luck egalitarians hold that there is a *pro tanto* requirement to distribute a particular good equally—whether welfare, resources, or something else—but that deviations from equality are justified according to a standard of personal responsibility. People should be compensated if they are worse off through no fault of their own, but not otherwise. The state must hold people responsible to bear the cost of their poor choices and allow them to benefit from their good choices. Many luck egalitarians hold that not *all* instances of bad luck are unjust,

³⁶ (Parfit 2002), (Weber 2014)

however. For this reason, a notion of ‘option’ luck is often distinguished from ‘brute’ luck. On the one hand, “option luck is a matter of how deliberate and calculated gambles turn out—whether someone gains or loses through accepting an isolated risk he or she should have anticipated and might have declined”.³⁷ ‘Brute luck’, however, is “a matter of how risks fall out that are not in that sense deliberate gambles”.³⁸ On Dworkin’s view, inequalities due to differences option luck are not unjust. If one buys a lottery ticket—thereby making a ‘calculated gamble’—and do not win, justice does not require that I am compensated. By contrast, inequalities due to brute luck are unjust. If one suffers a congenital disability that makes them worse off than others, then justice does require that they are compensated.

Again, this view might be argued to be the best interpretation of what it means for the state to show persons equal concern and respect—and this is precisely what Dworkin claims. For Dworkin, to do otherwise—e.g. by imposing a scheme of ‘flat equality’, or even something more permissive like Rawls’s difference principle—would unfairly cause some to bear the cost of others’ poor choices. In doing so, the state would fail to appropriately show concern and respect for persons as equals.

1.3 Social Equality and the Project of the Thesis

The social conception of equality came into focus at the very end of the 20th century, in a very influential paper by Elizabeth Anderson.³⁹ This is not to say she was the first to discuss social

³⁷ (Dworkin 2000), p. 73

³⁸ *Ibid.*

³⁹ (Anderson 1999)

equality—just that her contribution has been particularly influential.⁴⁰ In this paper, Anderson extensively critiqued luck egalitarianism, arguing that the view is too harsh on the imprudent (e.g. suffering a driving accident may be a result of bad option-luck, but it still seems like assistance is due) and that it may stigmatize those it is mandated to benefit (e.g. by requiring that reparations be given to the ugly). In addition to these critiques of luck egalitarianism in particular, Anderson raised a general concern about much of the literature on equality: most writers, she suggested, had mistaken the *point* of equality by construing it as a *distributive* ideal.

On the distributive conception, equality requires that people enjoy equal amounts of some good. If this is the starting point, it must be specified which good, or set of goods, ought to be equalised—e.g. resources, primary goods, welfare, or capabilities. Since most would find it implausible that it is always unjust for people to have differing amounts of any of these goods, proponents of this conception give accounts of which considerations justify deviations from strict equality such as desert, personal responsibility, or improving the situation of the worst off. Expressing this general form, G.A. Cohen writes that “I take for granted that there is something which justice requires people to have equal amounts of, not no matter what, but to whatever extent is allowed by values which compete with distributive equality.”⁴¹ On the distributive view, then, equality involves a pro tanto equal division of goods, which then may be combined with a

⁴⁰ Before Anderson’s paper, several theorists had articulated, or at least gestured toward, a social conception of equality, such as Iris Marion Young in her critique of the ‘atomist’ distributive paradigm as well as David Miller and Richard Norman. (Young 1990; Miller 1997; Norman 1997). More generally, social equality is regarded as having roots in a wide range of canonical thinkers such as Jean-Jacques Rousseau, Adam Smith, Thomas Paine, Karl Marx, R. H. Tawney, and T. H. Marshall. See (Nath 2020) and the references contained therein.

⁴¹ (Cohen 2011), p. 906

supplementary account of what justifies deviations from equality, as well as an account of the relevant good.

Proponents of the social conception of equality have argued that this focus on equal distribution ignores the sense in which equality matters most. The chief sense of equality that we should be concerned with, they claim, refers to the nature of social relations. Elizabeth Anderson says, for example, that “we should be fundamentally concerned with the relationships within which...goods are distributed, not only the distribution of goods themselves.”⁴² Similarly, Samuel Scheffler claims that our core concern with equality involves the thought that “that there is something valuable about human relationships that are, in certain crucial respects at least, unstructured by difference of rank, power or status.”⁴³ For David Miller, social equality consists in “the ideal of a society in which people regard and treat one another as equals, in other words, a society that is not marked by status divisions such that one can place different people in hierarchically ranked categories, in different classes for instance”.⁴⁴

Despite substantial attention in recent work, however, the social conception of equality remains under theorized in several important respects. Social egalitarians have for the most part spent more effort critiquing what they see as rival views (especially luck egalitarianism) than they have developing the positive account their view. As such, we do not have an entirely clear picture of what social equality consists in. What does it mean for a society to realize social equality? In what dimension(s) must people be social equals? In addition, it is not clear *why* exactly social

⁴² (Anderson 1999) p. 314

⁴³ (Scheffler 2005)

⁴⁴ (Miller, 1997) p. 224

equality is important. Second, while Anderson and others claim there is a fundamental distinction between social and distributive equality, it is not clear what, if anything, makes this the case. It might be thought, for example, that social egalitarians simply substitute ‘social’ or ‘relational’ goods like status, rank, or standing for traditional ‘distributive’ goods such as rights, welfare, resources, and capabilities. Third, it may appear unclear why social or relational *equality* matters. For example, if goods like status, rank, or standing are of concern, one might wonder why they should not be distributed according to other principles such as priority or sufficiency.⁴⁵ Fourth, it is not entirely clear where social egalitarianism stands in relation to well-studied schools of political thought such as liberalism and republicanism. Some theorists, for example, invoke a connection between social equality and the liberal theory of John Rawls,⁴⁶ while others draw a connection between social equality and neo-republican theory, particularly in work of Philip Pettit. In both cases, though, the relationship has not been examined in enough detail.⁴⁷ These issues will be addressed over the course of the thesis, which proceeds as follows.

Next, in Chapter Two, I offer an account of the *nature*, *distinctness*, and *importance* of social equality. First, regarding the nature of social equality, I contrast what I call the ‘interpersonal’ conception with the ‘institutional’ conception, and I argue in favour of the latter. On the institutional conception I propose, social equality is best regarded as involving the concern that persons share a civic status as equals that is conferred by social, political, and legal institutions. Second, I distinguish several reasons social equality might be thought to be important. Existing views focus on its personal value. I explore these accounts and raise some problems for them; in

⁴⁵ (Lippert-Rasmussen 2018a)

⁴⁶ (Scheffler 2005), (Schemmel 2011)

⁴⁷ (Anderson 2012), (Schuppert 2015), (Garrau and Laborde 2015)

turn, I argue that social equality is better grounded by the requirement that the state respect its members as equals. Finally, I examine existing accounts of the distinctness of social equality and show that none of them succeed. I sketch a novel characterization, which holds that social equality is distinct in that it is concerned with a particular type of ‘positional’ good.

Chapter Three explores an important implication of the position-defined character of civic status. I examine what I call the ‘convergence thesis’ for positional goods. Some philosophers have argued that there is a kind of convergence between different principles of justice—priority, sufficiency, and equality—with regard to positional goods such as education and wealth. I examine this thesis and develop a distinction between what I call ‘position-sensitive’ versus ‘position-defined’ goods introduced in Chapter Two. I argue that the convergence thesis is more compelling when applied to the latter kind of good, and that this result is significant because civic status is a position-defined good.

In Chapter Four, I situate my account of social equality against Rawls’s theory of justice as fairness. I examine three arguments for the thesis: the first is based on the two ‘moral powers’; the second, on the social bases of self-respect; and the third, on a Kantian notion of autonomy. I argue none of these accounts successfully establishes 1) the distinct claim of *lexical* priority, 2) for the *complete* package of basic liberties (including the fair value of the political liberties), on the basis of reasons that are appropriately public. In turn, I propose an alternative argument, in support of those two claims, based on the social or ‘relational’ conception of equality.

In Chapter Five, I examine the contemporary neo-republican account of justice. I defend the following republican claims: 1) goodwill and virtuous self-restraint are insufficient to realize justice; and 2), law has constitutive importance. In the contemporary literature, these claims are

defended by reference to the conception of freedom as non-domination. This account, however, is often rejected on the grounds that freedom as non-domination is *moralized* and *impossible* to realize. In response, I propose that the point of protecting people from domination is better understood, not as realizing freedom, but instead as giving persons a civic status as equals. I argue this account vindicates the distinctive republican claims and avoids the *impossibility* and *moralization* objections.

Chapter Six concludes, discussing how the account of social equality I develop offers compelling responses to some objections to egalitarianism in general; in addition, I outline some directions for future work.

2) The Social Concept of Equality

In the previous chapter, we saw that the social concept of equality has emerged in the current literature in reaction to the so-called ‘distributive’ concept of equality; and that these accounts, along with a wide range of others, may be regarded as different ways of realizing widely accepted—but highly abstract—egalitarian requirements. The positive account of social equality remains elusive, however. Social egalitarians disagree over what their ideal consists in, and they have diverse views about why it is important. Moreover, it is not yet entirely clear whether and on what basis social equality represents a genuine alternative to the distributive concept of equality. My aim in this chapter is to address these issues: I will examine the *nature*, *importance*, and *distinctness* of social equality in turn.

Part one of the chapter distinguishes two approaches to characterizing social equality: one *interpersonal*, another *institutional*. I critique the interpersonal approach and offer an initial account of the institutional account I favour. The second part of the chapter looks at several different grounds on which social equality is taken to be important. Several philosophers hold that social equality is important because it is personally or even impersonally valuable. I suggest that while these accounts are not implausible, the most compelling defense of social equality is based on expressive equality—and that this is not best understood as a claim about personal or impersonal value. In part three, I examine the question of what, if anything, makes social equality distinct from distributive equality. I survey existing accounts of this issue, showing that none are

entirely satisfactory. In turn, I sketch a novel account of the distinctness of social equality, which I explore in greater detail in the Chapter Three.

2.1 Nature

Approaches to the characterization of social equality have taken two distinct forms. On one account, some philosophers ask what it means for people to relate as social equals in terms of their interpersonal relations having the right kind of character, or in terms of them bearing the appropriate dispositions toward one another. Call this the *interpersonal* conception. On an alternative account that I favour, social equality is understood in terms of persons sharing a status as equals conferred under social and political institutions. Call this the *institutional* conception. Of the two, the interpersonal account finds more support and development in the literature. I will survey several interpersonal accounts given in the recent literature and raise some concerns about their plausibility and applicability to the theory of justice. In turn, I will provide an initial characterization of the institutional account that I develop over the course of the thesis; in later chapters, the details of this account will be developed by comparison with Rawls's theory of justice (Chapter Four) and neo-republican theory (Chapter Five).

I) The Interpersonal Conception

Social equality is often said to involve persons 'relating as equals'. This phrase is suggestive of face-to-face social relations—e.g. between friends, partners, coworkers, and so on—which may be more or less egalitarian. A natural thought, then, is that we might characterize social equality by first giving an account of what it means for interpersonal relations to have an egalitarian character. With this account in place, the thought might go, we can arrive at the relevant social or

political ideal by scaling up or generalizing: perhaps what it means for social equality to be realized in a society is for all interpersonal social relations to have an egalitarian character. But what are egalitarian interpersonal relations? Several accounts of this issue have emerged of this issue in the recent literature by Samuel Scheffler, Niko Kolodny, and Kasper Lippert-Rasmussen. I will examine each of these accounts in turn.

A) Scheffler: the egalitarian deliberative constraint

Scheffler asks us to imagine a married couple who *practice* equality in their relationship. What this fundamentally involves, Scheffler suggests, is that each partner maintains a disposition to take the other's interests equally into account over the course of their relationship. This type of equality might be realized, for example, by adopting certain strategies when faced by disagreement. If John wants to vacation in India, but Jane prefers Japan, they might compromise and go to Spain since it is the second choice of both. Alternatively, they might come to an agreement that one of them will get their first choice of vacation destination this time around, but the other gets to choose on the next occasion. Scheffler generalizes from the way a married couple might enjoy an equal relationship in this sense to a general claim about equality in social relations: a relationship between equals is essentially characterized by a certain set of dispositions and attitudes with regard to joint decision making:

In a relationship that is conducted on a footing of equality, each person accepts that the other person's equally important interests—understood broadly to include the person's needs, values, and preferences—should play an equally significant role in influencing decisions made within the context of the relationship. Moreover, each person has a normally effective disposition to treat the other's interests accordingly. If you and I have an egalitarian relationship, then I have a standing disposition

to treat your strong interests as playing just as significant a role as mine in constraining our decisions and influencing what we will do. And you have a reciprocal disposition with regard to my interests.¹

On Scheffler's view, then, social equality is best viewed as a kind of practice: to enjoy relations of equality we must bear the right sorts of dispositions and attitudes toward one another over time. These dispositions amount to a *deliberative constraint* that is the essential characteristic of equal social relations.

While we can see how Scheffler's 'practice of equality' might work for a married couple, it is much harder to see how it would work for a society or political community as a whole. It is not clear how the proposal 'scales up', and as a result, it seems the deliberative constraint provides no more guidance for distributive justice than the abstract notions of equality considered in the previous chapter. When we abstract away from the context of a face-to-face personal relationship to the context of political society in general, nearly any view of distributive justice might be said to satisfy the deliberative constraint in appropriate fashion. In fact, Scheffler concedes about this much. Scheffler supposes, for example, that one might argue that hedonistic act-utilitarianism appropriately satisfies the deliberative constraint. Even if utilitarianism might require someone's fundamental interests to be sacrificed, one might argue that their interests are still given equal weight because their interests are given the exact same weight as everyone else's in the overall calculation of welfare. On the other hand, another may disagree and claim that this cannot be what it means to give each person's interests equal weight if it permits some unlucky individual's fundamental interests to be sacrificed for the greater good.²

¹(Scheffler 2015), p. 25.

² Scheffler writes:

suppose, for example, that there is disagreement about whether or not hedonistic act-utilitarianism is compatible with the deliberative constraint. One side maintains that it is not, since hedonistic utilitarianism

Scheffler does not argue, though, that such a dispute can be resolved with the normative resources of the deliberative constraint alone. Instead, he responds that such disputes should be evaluated by referring to “other dimensions” of the “broader ideal” of relational equality.³ He does not, however, spell out what these ‘other dimensions’ are.

In effect, then, Scheffler seems to concede that it is an open question whether the deliberative constraint is satisfied by hedonistic act utilitarianism or not. If this is the case, then it might seem it must also be an open question whether the deliberative constraint is satisfied by Nozick’s theory of justice, or for that matter nearly any other theory which purports to give each person’s interests equal weight in *some* respect. As we saw in the last chapter, a wide range of theories of justice might be argued to satisfy this requirement. Thus, it would appear that the deliberative constraint is no more determinate than the kinds of basic egalitarian notions that are accepted by nearly every theory of justice.

Scheffler might reply that his deliberative constraint is not intended to be or generate a theory of justice; instead, it has a more modest aim: suggesting a way in which ‘relational’ equality does not reduce to an equal distribution of some good (the distinctness problem). It might be best regarded as a kind of ‘proof of concept’, making vivid a sense in which equality can be understood as ‘a form of practice rather than a normative pattern of distribution’.⁴

would permit a person’s fundamental interests to be sacrificed in order to maximize aggregate welfare. In such a case, this side argues, the interests of the person who undergoes the sacrifice are not exerting the same influence on social decision as the comparable interests of those who are not sacrificed. The other side argues, however, that the deliberative constraint is satisfied even in this case, because the fundamental interests of the person who undergoes the sacrifice are being assigned exactly the same weight in the overall hedonistic calculus as the comparable interests of others. It is simply this person’s bad fortune that his interests are outweighed while theirs are not. *Ibid.*, p. 40.

³ “the deliberative constraint is only one dimension of the broader relational ideal, the ideal of a relationship among equals. If it is unclear whether a given principle is compatible with the deliberative constraint, then the next question is whether the principle is consistent with the broader ideal.” *Ibid.*

⁴ *Ibid.*

This is a fair enough response. But even if Scheffler succeeds in the aim of showing there is some intelligible form of relational equality that does not reduce to social equality, this does not show that there is a distinct conception of social equality which *also* serves as a conception of egalitarian justice. In addition, it's not so clear if this aim is well motivated. There is little to be gained, I take it, in having a novel conception of equality just for the sake of novelty.

B) Kolodny: resolute dispositions not to interfere

Niko Kolodny's characterization of social equality is also spelled out in terms of the kinds of dispositions people may hold toward one another. He proposes that social *inequality* occurs in virtue of any of the following conditions obtaining:

- (i) Some having greater relative *power* (whether formal or legal, or otherwise) over others, while not being resolutely disposed to refrain from exercising that greater power as something to which those others are entitled.
- (ii) Some having greater relative *de facto* authority (whether formal or legal, or otherwise) over others, in the sense that their commands or requests are generally, if not exceptionlessly, complied with (although not necessarily for any moral reasons), while not being resolutely disposed to refrain from exercising that greater authority as something to which those others are entitled.
- (iii) Some having attributes (for example, race, lineage, wealth, perceived divine favor) that generally attract greater consideration than the corresponding attributes of others.⁵

This account suggests that provided people have the right kind of 'resolute dispositions', then social equality may be realized, even when inequalities of power or authority are present. I say 'suggests' here—rather than 'entails'—because Kolodny does not intend the listed conditions as a complete account. He proposes that the absence of these conditions is *necessary* for social equality but does not commit to saying their absence would be sufficient. Nonetheless, it is noteworthy that

⁵ (Kolodny 2014), p. 295-296

‘resolute dispositions’ play such a central role. The thought is that since some inequalities of power and authority are (more or less) inevitable, people may nonetheless be each other’s social equals, provided that the more powerful are resolutely disposed not to abuse their power or authority—say by interfering with the weaker, or arbitrarily bossing around their subordinates. Moreover, if interpersonal social relations are composed of the right dispositions, there would be nothing further to be gained, from the standpoint of social equality, for people to share a system of law or other institutions. Illustrating these thoughts, Kolodny writes

The brute fact that the stronger Beefy could physically subdue Reedy need not imply his social superiority over Reedy, if Beefy is resolutely disposed to refrain from exercising this greater power over Reedy, not as an optional gift, but as something to which Reedy is independently entitled. In other words, social equality does not require equality of “raw” or “natural” power: power, such as strength, speed, cunning, or knowledge, viewed in abstraction from human dispositions. Nor can equality of “natural” power be realized by institutional design, for institutions, such as legal systems, themselves consist in human dispositions. What social equality requires is that “natural” power be regulated by the right dispositions.

I worry, however, that this way of thinking about social equality is problematic for several reasons. First, Kolodny’s locution ‘*something* to which those others are entitled’ is ambiguous: persons could be regarded as so entitled based on their equality, or based on something else, perhaps even their pitiable *lower status*. Suppose Beefy regards Reedy as entitled to non-interference, not as a moral equal, but as a weakling owed a kind of duty of benevolence (where this duty is strong enough for it not to be an ‘optional gift’. And suppose this is a matter of common knowledge between them. Surely, the disposition not to interfere in this case, though ‘resolute’, would not be enough to make their relationship and equal one. I am also concerned with Kolodny’s statement that ‘institutions, such as legal systems, themselves consist in human dispositions.’ Kolodny does not spell out this claim, but I worry it risks obscuring an important function of law and other

institutions.⁶ A suitable system of law, for instance, might make it explicit, and a matter of common awareness, that Beefy owes Reedy non-interference *on the basis of their equality*, and not some other basis. These issues will be taken up and developed later in Chapter Five. Finally, I worry that this account faces a problem similar to Scheffler's: the implications of the account for distributive justice are unclear. It seems that in principle, people could have 'the right dispositions' under just about any basic structure or distribution of goods.⁷

C) Lippert-Rasmussen: treating and regarding as equals

A third variation of the interpersonal account is proposed by Kasper Lippert-Rasmussen. On his account, 'relating as equals' involves two separate aspects: treatment and regard.⁸ Intuitively these aspects come apart. One may *treat* another as an equal despite *regarding* for them as inferior—in the way that a racist might treat others as equals in a range of contexts to avoid censure. Likewise it is possible for one to *regard* another as an equal even if they do not treat them as such—think of an aristocrat who firmly believes in the equality of all persons, but must betray this belief, 'playing the part' of her social position.

Lippert-Rasmussen suggests, however, that we cannot simply speak of treating and regarding as equals without filling in the relevant dimension at stake. Consider that we cannot ask if a book

⁶ Cf. (Moreau 2019), fn. 18

⁷ Kolodny does, however, argue that social equality requires democracy. While I am sympathetic with the overall line of argument, I do not see how democracy could be strictly necessary given his particular account of social equality. Afterall, in an undemocratic regime, people might possess resolute dispositions not to abuse their greater authority or political influence (however empirically unlikely this might be).

⁸ It is worth noting that Lippert-Rasmussen offers a different taxonomy than the one given here. He distinguishes what he calls 'dispositional egalitarianism' from both distributive and relational equality. See (Lippert-Rasmussen 2018a), Section 7.5.

is simply ‘good’—we must specify if we mean good *qua* humour, *qua* philosophical treatise, *qua* sci-fi thriller, or whatever.⁹ In a similar way, the notion of people treating and regarding one another as equals calls for similar specification, as follows:

X and Y relate as equals

is always shorthand for:

X and Y relate as equals in terms of Z.¹⁰

Lippert-Rasmussen suggests that there are in fact a number of dimensions relevant for the characterization of social equality. These include the following.

First, *Moral* standing concerns whether people are regarded as moral equals. Here Lippert-Rasmussen seems to have in mind the notion of basic moral equality discussed in Chapter One. He writes, for instance, that “we would not be treating one another as individuals with an equal moral standing if we relate to one another as if one party’s interests or will inherently count for more than that of others, morally speaking.”¹¹

Second, *Social* standing, concerns particular kinds of distinctions and honours some may have. Illustrating what he has in mind, Lippert-Rasmussen gives the following example:

“[e]ven after having become a world-famous psychologist Freud presented himself as ‘Dr Dr . . .’. Presumably, the fact that he did so reflected that he lived in a society which was obsessed with titles and, more generally, a society which was (more so than now) focused on social standing and academic degrees.

⁹ *Ibid.* 63-64.

¹⁰ (Lippert-Rasmussen 2018a) p. 69

¹¹ *Ibid.* p. 67

Nonetheless, Lippert-Rasmussen suggests, this did not amount to Freud being regarded or treated as having greater *moral standing* than others, since “people did not believe that Freud’s interests or will counted for more, morally speaking, than their interests or will did.”¹²

Third, *Epistemic* standing involves the weight that is given to a person’s testimony. As Miranda Fricker argues, some groups might suffer ‘epistemic injustice’ if they are generally taken as less credible than others.¹³ And it seems possible for a person to have less epistemic standing in this sense even though that have equal moral standing and even a high social standing.

Finally, *Aesthetic* standing, concerns the kind of norms in a society that determine what counts as beautiful as well as what counts as an ‘acceptable public appearance. Citing Anderson, Lippert-Rasmussen writes that Non-oppressive aesthetic norms are not such that everyone has an equal chance of winning a beauty pageant or of being a ‘hot prospect for a Saturday night date’. However, such norms are ‘flexible enough’ for any person to deem any ‘person an acceptable presence in civil society’.¹⁴

Identifying these various dimensions helpfully illustrates a variety of ways in which interpersonal relations may be egalitarian. But again, it is not clear what this entails for the theory of justice. It is not clear what this account involves with regard to the design of a just basic structure or the distribution of goods. The account seems to be addressing a somewhat different issue. In fact, Lippert-Rasmussen is clear that this is the case. He writes:

Take the principle of one person, one vote. Some relational egalitarians think that implementing this principle is crucial for citizens relating as equals in modern democracies. However, it would be odd

¹² *Ibid.*

¹³ See (Fricker 2007)

¹⁴ (Lippert-Rasmussen 2018a), p. 7; (Anderson 1999) p.335.

to say that the principle of one person, one vote is part of the very concept of relating as equals, since presumably, we could relate as equals even if there were no voting institution and we could relate as equals, politically speaking, even if we diverge from the principle of one person, one vote, e.g. if the weight people's vote has is graded on the basis of how affected they will be in terms of their interests on the issue being voted upon.¹⁵

This account, then, along with those given Scheffler and Kolodny, seems somewhat removed from the question of what kinds of institutions and distributions of goods are required by the just society. Perhaps it could be argued that justice requires whatever institutions and distribution of goods is most likely to cause or inculcate egalitarian dispositions of the relevant kind. This sort of account, however, would seem to have a somewhat strange implication. Suppose a society institutionalizes a kind of social hierarchy—perhaps some are given more extensive rights than others in a way that marks them out as superior to others. Suppose, then, that the consequence of this (an unlikely one, I admit) is that it causes people to have egalitarian dispositions of right sort: people are so offended by the institutional change that they take it upon themselves to make their interpersonal dealings with others as egalitarian as possible. It would be strange, however, for a social egalitarian to endorse the institutional hierarchy in question on the grounds it is an effective way (even if it is the best way) to promote egalitarian interpersonal relations.

I propose, then, that we separate two issues. On the one hand, there is an issue of what it means for interpersonal relations to have an egalitarian character; but on the other hand, there is an issue of what it means to have a 'society of equals' in the sense that institutions and the distribution of goods best express the social egalitarian ideal. The first issue involves what it means for people to 'relate as equals', whereas the second issue, we might say, involves the question of what it means for persons to be 'related as equals' under social and political institutions.

¹⁵ (Lippert-Rasmussen 2018a) p. 62

To be clear, I do not mean to suggest that understanding the nature of egalitarian interpersonal relations is unimportant. I think this project is indeed very important; and I regard each of the accounts just surveyed as making a valuable contribution. My concern is only that these accounts are somewhat peripheral to understanding the nature of social equality as it bears on the theory of justice. Perhaps we can see a division of labour here: social equality is a broad ideal, encompassing both moral and political aspects. While we may all be morally required to relate to one another as equals—e.g. in the ways Scheffler and Kolodny describe—it is not at all obvious that characterizing the nature of egalitarian interpersonal relations tells us what kind of basic institutional structure or distribution of goods is required by social equality.¹⁶

ii) The Institutional Conception

Rather than trying to generalize from pair-wise relations of equality to an account of justice, we can ask from the start what it means for persons to have a civic status as equals under social and political institutions. Of course, one might think that this would be nothing more than the aggregation or concatenation of so many pair-wise interpersonal relations of equality; but I think this thought is mistaken, as I will suggest in what follows.

Consider how the notion of an ‘institution’ is helpfully defined by as Rawls as

a public system of rules, which defines offices and positions with their rights and duties, powers and immunities, and the like. These rules specify certain forms of action as permissible, others as forbidden; and they provide for certain penalties and defences, and so on, when violations occur.¹⁷

¹⁶ Political philosophers disagree about whether justice has only an institutional site—e.g. Rawls’s ‘basis structure’—or whether justice also involves individual’s behaviour within the basic structure (Cohen 2008). It might be thought, then, that both institutional and interpersonal are part of what justice requires. Everyone agrees, however, that justice has an institutional site (whatever else the site includes).

¹⁷ (Rawls 1999), pp. 47-48.

It might be said that institutions in this sense simply ‘consist in human dispositions’, as Kolodny suggests. But I think this would give a bit of a distorted picture. Rules do involve a set of dispositions to comply with particular standards of conduct, as well as dispositions to impose costs on non-compliance. But rules also involve regard for the standard in question as having a kind of authority (i.e. what H.L.A Hart calls the internal point of view).¹⁸ *Public* rules, in addition, involve common awareness of the relevant standards and costs for non-compliance; and also common awareness that people regard the standard as authoritative. Legal institutions are even more complex, involving both rules and rules *about* those rules; e.g., rules about how to determine violations of rules and how to introduce or modify rules (more on this in Chapter Five).¹⁹ For these reasons, it does not seem very helpful (even if not entirely mistaken) to think of rules and institutions, especially legal ones, as simply ‘consisting in human dispositions’.

On the institutional approach I propose, relations of equality, in the relevant sense, consist in a civic status shared as equals that is conferred under social political institutions.²⁰ This account involves three components: one *objective*; another, *communicative*; and a third, *intersubjective*, outlined as follows.

Objective: This element specifies the distribution of goods that are constitutive of social equality, or necessary to confer the relevant kind of status as equal citizen. We can call these ‘status-conferring goods’, which are necessary for a person to be, regard oneself, and be seen by others as an equal citizen.²¹ While I will not attempt to give a complete account of this issue, I argue in Chapters Four and Five that the special priority of the basic liberties is among the necessary conditions. Further conditions may also be necessary—which I will

¹⁸ (Hart 1961)

¹⁹ *Ibid.*, Ch. 5.

²⁰ Elizabeth Anderson’s ‘democratic equality’ view, which requires that all have a sufficient set of capabilities to function as equal democratic citizens can be regarded as a variant of the institutional approach. (Anderson 1999).

²¹ Sophia Moreau develops a complementary account of what she calls ‘basic goods’. See (Moreau 2020) Ch. 4.

(unfortunately) not be able to resolve in this thesis—such as constraints on inequalities of income and wealth, or all enjoying certain capabilities, such education and health.²²

Communicative: It is not enough that people are given these status conferring goods on any basis (e.g., their being equally deserving, intelligent, and so on). Instead, these goods are given to people on the basis that they are antecedently equals; and their distribution publicly communicates respect for persons as equals.²³

Intersubjective. The distribution of goods to people as equals sets a standard for how people ought to regard each other as equal citizens. This will shape and constrain their dispositions and there will be public awareness of the kind of treatment and regard owed to others. Although justice may not be compromised by people failing to fully live up to the ideal in their personal lives in all cases, they will, however, be constrained in political and public forums.²⁴

On this account, then, social equality, as an ideal of justice, is not best understood as involving a two-place interpersonal relation, but instead involves a three-place relation between citizens and the state.²⁵ As it stands, this account is only a rough outline and will be further developed over the course of the thesis. I turn next to the question of the *importance* of social equality.

²²Status-conferring goods might helpfully be regarded as providing a way of working out what Daniel Weinstock calls a ‘platform’: a principle-guided “organized proposal...as to how different kinds of goods are to coexist within an overall scheme of public provision”. See (Weinstock 2015) p. 172.

²³ For a helpful account of the communicative function of political institutions (democratic law in particular), see (Shiffrin 2017).

²⁴ I am sympathetic to the idea that we should regard the site of social equality to be the basic structure, or something like it, at least insofar we are concerned with the implications of social equality for the theory of justice. Here I have in mind views characterized and defended in (Williams 1998) and (Shiffrin 2010). I will not defend this view here however; and this is not to say that the value social equality does not have broader moral significance beyond the basic structure.

²⁵ (Viehoff 2019) offers an interesting and complementary characterization of the difference between interpersonal and institutional conceptions of social equality.

2.2 Importance

Social equality may be taken to be important on several different grounds. To begin, we can distinguish two general categories of moral importance: *evaluative* and *normative*.²⁶ Evaluative claims specify what is *good*; normative claims, what is *required*. In other words, evaluative claims are about what makes states of affairs better or worse, whereas normative claims involve what agents ought to do. On a consequentialist view, normative claims might rest entirely evaluative claims—in the sense that what an agent ought to do is determined by what brings about the best state of affairs. On non-consequentialist approaches, however, the two claims may come apart: there may be cases in which an agent is required to do something that does not bring about the best state of affairs.

On evaluative grounds, social equality could have *personal* value, making people's lives go better. In addition, it could be that social equality has *impersonal* value, contributing to the goodness of states of affairs *independently* of making people's lives go better. By contrast, on normative grounds, social equality may simply be *required*. I will consider each of these possibilities in turn. While I find each plausible to a degree, I will raise some concerns about pinning the importance of social equality entirely on personal or impersonal value. In turn, I will argue that the most compelling case for the importance of social equality is based on normative grounds.

(i) Personal (dis)value

There are several possibilities to consider in connection with the idea that social equality has personal evaluative importance. In negative terms, we can ask whether and how social *inequality*

²⁶ (Tomlin 2014).

makes people's lives go worse. One possibility is that social *equality* matters just because it is the only way for everyone to be spared the evil of social *inequality*. But we might also wonder, in positive terms, whether social equality makes people's lives go *well* in some way; and indeed, we might wonder if there is any sense in that idea that those at the *top* of social hierarchies are in some way made worse-off as a result of being socially superior. Finally, we might want to know whether these claims are *instrumental* or *non-instrumental*: are we concerned with social (in)equality just because of its effects—e.g. on wellbeing, freedom, virtue, and so on—or is it (also) the case that social (in)equality, *in itself*, affects how well a person's life goes?

Writers on social equality have given diverse answers to these questions, supporting all the possibilities just mentioned. Consider the instrumental variation of the negative and positive claims. Negatively, several authors point out that being a social inferior may do “damage to individuals' sense of self-worth,” causing “feelings of inferiority and even shame resulting from the belief that one's life, abilities, or accomplishments lack worth or are greatly inferior to those of others.”²⁷ In a similar vein, Anderson suggests that being a social inferior threatens a person's autonomy.²⁸ She also notes that occupying a relatively low social position may cause one to have fewer resources and opportunities than others, as a result of being less powerful, taken less seriously, and looked down upon.²⁹ In addition, some social egalitarians cite empirical studies showing unequal societies tend suffer more problems in regard to health and crime.³⁰

²⁷ (Scanlon 2002), p. 51

²⁸ (Anderson 2008)

²⁹ (Anderson 2012)

³⁰ (Marmot, 2007) (Wilkinson and Pickett 2010)

Social inequality, then, might make people's lives go worse for several reasons. But most of these reasons seem only to apply to those who rank as inferiors. Those at the top of a social hierarchy would not seem to suffer any loss of self-respect, autonomy, resources, or opportunities. Some writers, however, contend that social inequality does indeed have harmful effects on superiors as well. Anderson says that occupying high social position can cause a person to develop bad character traits, such as vanity.³¹ Scanlon holds that social inequality detracts from the enjoyment of fraternity, by causing "damages to the bonds between people" and that "this is a loss *suffered* by the better off and worse off alike."³² Carina Fourie suggests being a social superior may cause one to suffer "severe emotional costs including heightened stress, anxiety and aggression," in part owing to social expectations prescribing their conformity to the roles associated with their privileged positions.³³ Others may claim that the socially superior suffer a loss of *freedom*. Rousseau, for instance famously wrote that "man is born free but is everywhere in chains'. But he continues (less famously) to say that "one believes himself the others' master, and yet is more a slave than they".³⁴ This remark may appear puzzling: how could the relatively powerful suffer a loss to freedom—especially a *greater* loss than their subjects? After all, they enjoy a more extensive range of options than others. Perhaps there is a bit of exaggeration for the sake of rhetoric here, but roughly, the thought seems to be similar to Fourie's claim about emotional costs just considered: superior social positions come with a set of responsibilities and

³¹ (Anderson 2012)

³² (Scanlon 2003), p. 51

³³ (Fourie 2012), p. 120

³⁴ (Rousseau 1988) p. 41 bk1 [1]

expectations that must be fulfilled to maintain them; and this one makes one less free than they might otherwise be.³⁵

There is widespread support, then, for these instrumental claims. Social hierarchy inhibits the enjoyment of a range of personal goods such as freedom, flourishing, fraternity/civic friendship, self-respect, virtue, happiness, and interest satisfaction. And at least some of these effects make those at the top of social hierarchy worse off.

While these instrumental claims seem quite plausible, are they enough to provide adequate support for the social egalitarian ideal? Are they enough to show that social equality is the fundamental, or even particularly important, component of justice? I worry they are not.

One problem is that at least some of the claims above seem to involve empirical conjectures about people's psychology that may be subject to doubt.³⁶ Is it really the case that social hierarchy causes damage to people's self-respect? Does social hierarchy really cause 'emotional stresses' and damage to 'fraternal relations'? While these claims appear plausible, it would seem they involve empirical speculation, and so stand in need of evidential support. Some writers suggest, for example, that for 'non-moderns' hierarchical social relations may have been consistent with self-respect and solidarity.³⁷ It is not entirely obvious that that is no longer true—at least, the issue depends on empirical facts.

³⁵ This kind of thought also seems to be at work in George Orwell's essay "Shooting an Elephant", where he writes "when the White man turns tyrant it is his own freedom that he destroys". (Orwell 1984)

³⁶ (Miklosi 2018), (Lippert-Rasmussen 2018a), p. 156.

³⁷ David Miller writes, for instance, that "[a]ssociating as equals provides us with a kind of recognition that is essential to the modern self." But that, [i]t is not a universal truth about human beings that they need recognition in this form". (Miller 1997), pp. 231-232.

A more troubling issue is what I will call the *fungibility* problem. This concern involves the thought that while enjoying equal social relations may be one respect in which a person's life might go well, there are surely other factors constitute or contribute to a person's wellbeing. Suppose people could be better off overall—happier, say, or in the possession of more resources—under social hierarchy. If social equality only has only instrumental personal value in the ways just identified, then it is not clear if there would be any basis to reject this kind of trade-off. Presumably, however, social egalitarians (myself included) want to make this kind of claim: there are reasons of justice to reject social inequality, even if people might be happier, better resourced, or otherwise better off under social hierarchy.³⁸ The fungibility problem, then, concerns the question of whether there is any basis to claim that social equality should not be traded off for increases in other aspects of wellbeing.

(ii) *Non-Instrumental Value*

In addition to instrumental personal value, some philosophers hold that social equality has *intrinsic* or *non-instrumental* value. It is somewhat less clear how to understand this claim. Again, we can distinguish two versions. Negatively, the idea could be that social hierarchy *in itself* makes a person's life go badly, independently of its effects on self-respect, autonomy, fraternity, and so on. Positively, the idea could be that social equality makes a person's life go well independently of any beneficial effects such as happiness, health, self-respect, fraternity, and so on.

It is generally accepted that there are three types of theories of wellbeing: objective list theories, hedonist theories, and preference-satisfaction theories. A helpful suggestion, to begin, is

³⁸ (Arneson 2010).

that if social equality is taken to be non-instrumentally valuable, then this account will most likely have to adopt the objective list approach, since the other alternatives seem unpromising.³⁹

On the one hand, a hedonist account of the issue would suffer from the following difficulty: even if people experienced more pleasurable mental states under hierarchy, social egalitarians would nonetheless object to that society.⁴⁰ On the other hand, preference-satisfaction accounts face the same problem. Some people prefer to be superior to others; and some may even prefer to occupy lower rungs in a social hierarchy.⁴¹

It would seem, then, that objective list account might hold more promise. If being social equal is taken to make a person's life go well non-instrumentally, then this claim, it would seem, must abstract from people's actual desires and what makes them happy. Perhaps it is objectively bad for a person to be a social inferior (or superior). Consider Derek Parfit's suggestion that "we may think it *bad for people* if they are servile or too deferential, even if this does not frustrate their desires, or affect their experienced wellbeing".⁴² Likewise, we might think it is objectively bad for people to be too haughty or supercilious. In the following passage, Scheffler seems to have a similar idea in mind:

'[L]iving in a society of equals is good both intrinsically and instrumentally. When the relationships among a society's members are structured by rigid hierarchical distinctions...the resulting patterns of deference and privilege exert a stifling effect on human freedom and inhibit the possibilities of human exchange. Because of the profound and formative influence of basic political institutions, moreover, patterns of deference and privilege that are politically entrenched spill over into personal

³⁹ (Lippert-Rasmussen 2018a) pp. 159-161.

⁴⁰ Lippert-Rasmussen puts the point as follows: "presumably relational egalitarians do not think that relational equality is valuable contingent only on people experiencing relating to others as equals as being pleasurable, in part because, as a matter of fact, it seems that some people derive pleasure from relating to others as superiors, and yet relational egalitarians do not think that relational equality is somehow not justifiable to such persons." *Ibid.*

⁴¹ Moreover, appeal to 'ideal preferences' would seem to presuppose that social equality objectively valuable. *Ibid.*

⁴² (Parfit 2002), p. 82. Cf. (O'Neill 2008) p. 130, n. 30.

relationships of all kinds. They distort people's attitudes toward themselves, undermining the self-respect of some and encouraging an insidious sense of superiority in others. Furthermore, social hierarchies require stabilizing and sustaining myths, and the necessity of perpetuating and enforcing these myths discourages truthful relations among people and makes genuine self-understanding more difficult to achieve. In all of these ways, inegalitarian societies compromise human flourishing; they limit personal freedom, corrupt human relationships, undermine self-respect and inhibit truthful living. ...[Whereas] an egalitarian society helps to promote the flourishing of its citizens...[and] to live in society as an equal is a good thing in its own right.⁴³

Scheffler seems to agree with Parfit about the badness of deference; and he adds a number of other concerns as well (freedom, self-understanding, truthful relations, and so on).

But do any of these considerations really support the claim about *non-instrumental* (dis)value? It's not clear that they do. Instead, it seems that these considerations are instead versions of the instrumental claim. After all, being too 'servile or deferential' or losing self-respect would appear to be a *result* of standing in an unequal social relationship, and not part of what is to stand in that kind of relationship. It seems possible to stand in an unequal relationship without exhibiting those traits or losing self-respect. And the same would seem to be the case for the other concerns Scheffler mentions. So, while Scheffler says that 'to live in society as an equal is a good thing in its own right', it's a bit mysterious why we should think that is so.

I do not mean to suggest that I find Scheffler's claim entirely implausible. I do find it plausible—and perhaps no less plausible than some other items that are commonly included as items on objective lists such as 'achievement' or 'loving relationships'. Nonetheless, the account does not seem entirely satisfactory. Even if one is happy to accept social equality as part of an objective list theory, the fungibility problem arises again: even if we could give people

⁴³ (Scheffler 2005), p. 19

much more of other items on the list under social hierarchy, social egalitarians would presumably—and should—hold that there are reasons not to do so. As I suggest in what follows, this thought is best worked out by appealing to *normative* rather than evaluative grounds.

(A) *Impersonal (dis)value*

Let us turn now to the notion of *impersonal (dis)value*. Some things, it is claimed, add value to the world that is independent from making people's lives go better. Typical examples used to motivate this idea are things like beautiful natural landscapes or great works of art. Of course, all these things may be personally valuable as well—e.g. they may make people happy, allow them flourish in particular ways, or develop virtues or valuable character traits. But, the thought goes, these effects of personal wellbeing do not fully explain the value of these objects or states of affairs. One way to test the relevant intuition here is to conceive of worlds which only contain the purportedly valuable things in question: e.g. a world that only contains the Grand Canyon, or the paintings of Monet. Do these worlds contain more value than empty worlds? Some suggest they do.⁴⁴

While these examples involve aesthetic value, some writers contend that there are analogues in the case of justice. David Miller, for example writes that concern with social inequality involves a concern that 'our society should not be like that'—a claim which might be construed as about impersonal disvalue.⁴⁵ Martin O'Neill has developed this thought, asking us to consider two possible distributions of wellbeing:

⁴⁴ Myself, I'm inclined to think that without agents around to *value* these objects, they are only so many atoms in the void. For my present purposes, we need not pursue the issue, however.

⁴⁵ (Miller 1997) p. 24; Cf. (Lippert-Rasmussen 2018a) p. 14.

(1) Half at 100, Half at 150

(2) Everyone at 99

O'Neill assesses these cases as follows:

Distribution (1) might represent an affluent but class-ridden society, marked by forms of servility, domination, and exploitation. The Non-Intrinsic Egalitarian should think it in one way preferable to move from such a society to a more egalitarian society (as in (2)) even if this adversely affected each person's level of all-things-considered wellbeing. This is because the Non-Intrinsic egalitarian can allow that *certain kinds of egalitarian social relations have a value that is not reducible to the effects on individual welfare* that those social relations may have. ...This may sound counterintuitive, but such a position is not at all mysterious. If we think that certain egalitarian values have a significance that is independent of the effects of equality on individual well-being, then we may think that the value of equality can sometimes trump the value of maximizing (or a fortiori of merely increasing) well-being.⁴⁶

This is an interesting analysis, but it is not clear that O'Neill really shows what he intends. Suppose we agree that there are reasons of justice to prefer Distribution (2) over (1). It is not obvious that this judgment is best explained by *impersonal value*. There are other ways we might account for this judgement. Consider that O'Neill points to a concern with 'servility, domination, and exploitation' in Distribution (1). One might be more inclined to think that these concerns are a particularly important part of a person's objective well-being—and would then take issue with the values O'Neill assigns to the distribution.⁴⁷ Alternatively, one might try to explain the case on normative grounds, which I do in the next subsection.

Thus, even if we agree that justice favours distribution (2) it is not clear that impersonal value is the best explanation. Indeed, many philosophers doubt the existence of impersonal value in

⁴⁶ (O'Neill 2008), p. 141. Numeration and emphasis mine.

⁴⁷ Of course the case is set up such that in Distribution (1) all persons have a great 'all-things-considered' wellbeing. My point here is just that a defender of an objective list approach to wellbeing might take issue with the coherence of this set up. They might claim that the avoidance of servility, domination, and exploitation are central or very weighty aspects of one's wellbeing, and that O'Neill's characterization of Distribution (1) ignores this.

general.⁴⁸ And even if for those who do accept impersonal value, there will be difficulties regarding how to weigh it against personal value. The fungibility problem returns, perhaps in an even more problematic way—insofar as it seems unlikely that impersonal value could outweigh personal value. Again, I do not mean to entirely reject the plausibility of impersonal value claim—but I doubt whether it is the most convincing or best way to capture the importance of social equality.

(B) Normative grounds

Now let us turn to examine *normative* grounds for the importance of social equality. Normative grounds concern whether something is *required*. On the one hand, some theorists—e.g., consequentialists, may explain normative facts in terms of evaluative facts: what is required is simply what brings about the most valuable state of affairs. On many others approaches, however, it might be the case that we ought to do something, or that we owe something to others, even if meeting these requirements does not bring about the best state of affairs. These kinds of examples are stock for deontologists: we ought, for instance, to refrain from harvesting organs of innocent people at random in order to save many lives.⁴⁹

In other cases, it may be that what is required and what bring about a valuable state of affairs coincide. Some theorists, however, claim that the evaluative facts do not *explain* the nature of or moral reasons in these kinds of cases. To this effect, Steven Darwall takes up Hume's example of stepping on another's (gouty) toe.⁵⁰ It might be thought that there are two kinds of

⁴⁸ See (Broome 1991), Ch. 9. See also (Temkin 1993), p. 256-258. For a response, see (Maclean 2015).

⁴⁹ (Harris 1975)

⁵⁰ (Darwall 2006)

reason to for one to take their foot off the other's toe. The first reason is based on an evaluative fact: to do so would reduce the amount of suffering in the universe. Darwall claims, however that this is a reason of the *wrong kind*. Instead, he points to a normative fact as grounding the right kind of reason: persons have a kind of 'second-personal authority' to make claims on each other. One is required to take their foot off the other's toe in virtue of the second-personal authority agents have in relation to one other.

Several philosophers have proposed that social equality is important on normative grounds. Martin O'Neill suggests, for example, that we might appeal to "what individuals might be owed by virtue of respecting the dignity of human agents"⁵¹ Christian Schemmel writes that '[r]elational egalitarianism...is a view about social justice; its aim is to specify rights and duties that individuals have as members of society, and which normally override other social values...The objection to [inegalitarian] relationships is not merely that they are, in some sense, bad for people, but that they constitute *unjust treatment*.'⁵² Anderson claims that "[e]galitarians base claims to social and political equality on the fact of universal moral equality...egalitarians seek a social order in which persons stand in relations of equality."⁵³

As these claims stand, however, they may seem question begging, or at least a bit mysterious—perhaps no less mysterious than the claims we saw earlier, that social equality is on the 'objective list' or that it is impersonally valuable. Why should social equality be simply required? Patrick

⁵¹ (O'Neill, 2008, 131)

⁵² (Schemmel 2011) p. 366

⁵³ (Anderson 1999) p. 313

Tomlin (though not unsympathetic to the idea that social equality has normative importance) characterizes the account as follows:

This normative formulation of relational egalitarianism sees the idea of egalitarian social and political relations as foundational. The point of equality, to use Anderson's terms, is to end oppression. Oppression is objectionable because the oppressor doesn't treat the oppressed as an equal. What is the point of treating a person as an equal? There isn't a point. It's just what we're supposed to *do*: we should treat each other as equals because we *are* equals. On this view, political theory must *proceed* from the ideal of relational equality, not explain why or how it is valuable or important.⁵⁴

Tomlin goes on to suggest that understood this way, the normative basis for the importance of social equality is perhaps no less mysterious than the ungrounded claim that distributive equality 'just matters' as well.

I contend, however, that Tomlin is not quite right to regard social equality as the foundational, ungrounded, commitment. Relational equality itself is not *quite* foundational. More plausibly, the foundational commitment is that the state respects its members as equals. In other words, 'expressive equality' is foundational, as we saw in Chapter One. This requirement is indeed highly abstract. But it is not so mysterious as to why it's important. As Dworkin puts it, we need some basis for thinking that it is not a 'terminal insult' for the state to coerce its members; especially when, as is inevitable, it coerces them to follow directives they do not agree with.⁵⁵

Respect for persons as equals is a minimum requirement of legitimacy; and whatever justice requires, it requires at least that. In this way, then, the importance of this foundational commitment is not all that mysterious. It does remain abstract, standing in need of further

⁵⁴ (Tomlin 2014), p. 18

⁵⁵ (Dworkin 2011)

specification. I submit, though, that giving a persons a civic status as equals is a very plausible interpretation of this requirement—and certainly no less plausible than libertarianism or utilitarianism, or any of the other theories surveyed in Chapter One. Social equality, then, is not itself a foundational commitment, but is instead a particular account of what is *required* by the foundational commitment of expressive equality.

2.3 Distinctness

Having now discussed the nature and importance of social equality, I want now to turn to the distinctness issue. It is not yet quite clear whether and in what sense the social concept of equality really is an alternative to ‘distributive equality’. One might think, for instance, that social egalitarians simply argue for the equal distribution of a ‘social’ or ‘relational’ good such as status, and for that reason, social egalitarianism is simply another version of the more familiar ‘distributive’ concept of equality discussed in Chapter One. This thought is a bit too quick, however, as I will demonstrate.

In what follows, I will consider two approaches to characterizing the distinctness of social equality. These two approaches reflect two questions we might have about any theory of equality. The first question is about what *kind* of equality is important, or the question of determining the dimension in which people should be equals. There is, however, a further question we might have of any version of egalitarianism: what justifies equality in the sense in which it is taken to be important? The first question, then, involves the content of egalitarianism, the other its justification. In line with these two questions, there are two strategies available to characterise the distinctness of social equality—either in terms of its content or justification.

First, I will evaluate the justification strategy. I focus on Elizabeth Anderson's claim that what is characteristic of social egalitarianism is that it adopts a 'second-person' mode of justification. I argue, however, that this kind of justification is neither necessary nor sufficient for social egalitarianism. I then consider in the following sections three progressively stronger versions of the content strategy, only last of which is satisfactory.

i) Second vs. third person justification

Anderson argues that what is distinctive of social egalitarianism is that it adopts the second-person, standpoint of justification. Distributive egalitarians such as luck egalitarians, by contrast, view justification from a third person standpoint. These notions are defined as follows:

In a third-person justification, someone presents a body of normative and factual premises as grounds for a policy conclusion. If the argument is valid and the premises are true, then the conclusion is justified. The identity of the person making the argument and the identity of her context are irrelevant to the justification. By contrast, most relational egalitarians follow a second-person or interpersonal conception of justification. This follows from their contractualism . . . In a second-person justification, a claim of justice is essentially expressible as a demand that a person makes on an agent whom the speaker holds accountable. Justification is a matter of vindicating claims on others' conduct. Vindication involves demonstrating that the claims are addressed to those properly held substantively responsible for the conduct in question, by persons entitled to the moral authority or standing to hold them to account.⁵⁶

Is second personal justification necessary for social egalitarianism? As Anderson writes, it may be that most social, or relational, egalitarians adopt a second-person form of justification. But it does not seem that anything *requires* social egalitarians to justify their view in second-personal terms. For example, one might claim that equal social relations are intrinsically good, and this fact alone gives us moral reason to bring them about. This kind of justification, however, need not appeal to people's authority to demand of one another equal social relations in a second personal way.

⁵⁶ (Anderson 2010) p. 2-3; (Anderson 1999) p. 322

Instead it might hold that equal social relations are valuable from a third personal perspective—from the ‘standpoint of the universe’, as it were. It is at least coherent for a social egalitarian view to be justified from a third person standpoint, however plausible such a justification may be. So, it seems, the second person standpoint is not strictly necessary for social egalitarianism.⁵⁷

Is adopting the second person standpoint sufficient? Again I believe the answer is no, since nothing seems to rule out justifying a distributive notion of equality from a second-person or interpersonal standpoint. In fact, Ronald Dworkin’s theory of equality of resources appears to offer such an example. At the same time, however, Dworkin has been targeted by social egalitarians as a case in point of the kind of distributive egalitarianism they reject.⁵⁸

Dworkin’s view fits the distributive paradigm as described above because he holds that people are owed an equal distribution of resources while allowing that inequality is justified when it results from voluntary choices. Dworkin justifies his view in a distinctly interpersonal way, however. In order to determine what makes a distribution of resources count as equal, Dworkin asks us to imagine a group of people shipwrecked on a desert island. He supposes that these people “accept the principle that no one is antecedently entitled to any of these resources, but that they shall instead be divided equally among them”.⁵⁹ If people recognize each other’s equal claims to the resources on the island, Dworkin argues that a justified distribution must pass what he calls the ‘envy test’. “No division of resources is an equal division if, once the division is complete, any immigrant would prefer someone else’s bundle of resources to his own bundle”.⁶⁰ Dworkin

⁵⁷ Cf. (Lippert-Rasmussen 2015)

⁵⁸ (Scheffler 2010)

⁵⁹ (Dworkin, 1981, p. 285)

⁶⁰ *Ibid.*

suggests we can think of how this might be achieved through the notion of a hypothetical auction of the island's resources along with hypothetical insurance markets for disadvantages due to lack of talent or handicaps. Starting with an equal number of tokens, each person can bid on the resources he or she wants, as well as pay into insurance schemes so they will be compensated for handicaps or low marketable talent. If through such mechanisms the people on the island reach a distribution such that no one prefers the resource bundle of another, the distribution is justified.

This theory seems to be very much a version of the distributive concept of equality, but in offering its justification Dworkin appeals to a kind of second personal test. The requirement that the distribution of resources be envy free is based on the idea the inhabitants recognize each other's authority to demand an equal distribution. Dworkin's idea is that each person has *claims* on the others that they do not appropriate a bundle of resources that would cause envy. The nature of their claims, in addition, depend on facts about their identities, such as facts about which resources, they need or value as an individual. It is not the case, then, that Dworkin's conception of resource equality is justified from a third personal 'standpoint of the universe' where the identity of individuals do not figure into the justification. Instead, his justification of equality of resources directly appeals to the kind of claims individuals can make on one another in virtue of their needs and preferences as individuals, on the one hand, and to their position of equal authority, or equal entitlement to the island's resources, on the other.

It appears, then, that adopting the second personal standpoint of justification is neither necessary nor sufficient for social egalitarianism. One might justify social egalitarianism in a third personal way, or one might justify distributive egalitarianism second-personally. So if there is indeed something distinctive of social egalitarianism, it seems worthwhile to consider other proposals.

ii) *Telic equality vs. relational effects*

Turning now to the content strategy, we might distinguish social egalitarianism on the basis that it involves a distinctive kind of ‘social’ or ‘relational’ concern. The idea is that social egalitarians might agree with distributive egalitarians that justice requires the equal distribution of something; put another way, both sides may agree that the metric of equality, or *equalisandum*, as it is sometimes called, needs to be specified. It might still be argued, however, that there is an important distinction in terms of the sort of metric or *equalisandum* social egalitarians favour.⁶¹ This claim comes in a variety of strengths, which we will consider in turn. The first idea is that whereas social egalitarians are concerned with equality of something that impacts social relations, distributive egalitarians care about equal distribution regardless of whether it occurs between people who stand in social relations. Anderson writes, for instance, that

equality in the distributive conception consists in the mere coincidence of what one person has with what others in the comparison class independently have and need not entail that the persons being compared stand in any social relations with one another. They might even live on different planets and have no interactions with each other.⁶²

On the view that Parfit describes as ‘telic egalitarianism’, for example, inequality is in itself bad regardless of the place or even time between the individuals subject to comparison.⁶³ It is bad, on this view, if an Incan peasant is worse off than someone today. Many egalitarians reject this view, however, and hold that inequality only matters between people who interact, or who are at least in

⁶¹ Some social egalitarians resist this approach and argue that social equality distinct conception of equality that is not adequately expressible in terms of the equal division of some good. For example, Scheffler proposes we understand social equality as kind of practice that can only be ‘artificially’ redescribed as involving the equal enjoyment of a good (Scheffler 2015). I don’t adopt this strategy here, however, even if a version of social egalitarianism can be felicitously described as involving the equal distribution of good,, but that good is distinctly social in an interesting important sense, I see no reason not to think it is not a distinct view of equality.

⁶² (Anderson 2012), p. 2

⁶³ (Parfit 1997), p. 29

a position to (people who share a society but who have never met, for example). The suggestion here, then, is that we can distinguish social from distributive forms of egalitarianism on this basis.

This is a very plausible necessary condition for an account to count as a kind of social egalitarianism. If, on the one hand, one is concerned, like a telic egalitarian, with the equal distribution of something independently of its impact on social relations, then it's hard to see why we would count them as endorsing a social conception of equality. On the other hand, however, distributive egalitarians are not necessarily committed to telic egalitarianism, or valuing equality regardless of whether it occurs between people who share social relations. For this reason, concern with something that impacts social relations is doubtful when taken as a sufficient condition for social egalitarianism. Nothing rules out valuing equality in the distributive sense, but also holding that it matters only between those who stand in social relations. Kok-Chor Tan's version of luck egalitarianism, for example, restricts the scope of the luck egalitarian principle to apply only to institutions.⁶⁴ Furthermore, 'statists' like Michael Blake and Thomas Nagel argue that the obligations of distributive justice only arise between people who share a coercive system.⁶⁵ These philosophers, then, are not concerned with the equal distribution of something independently of its impact on social relations; instead, their concern with an equal distribution only arises in the context of shared social relations of a certain sort. These views are still versions of distributive equality, however, and social egalitarians would reject them as versions of their view. For one, the idea that distributive equality only matters between those who interact does not capture the core

⁶⁴ (Tan 2008)

⁶⁵ (Blake 2001) (Nagel 2005).

idea of social egalitarianism: that the sense in which equality matters most involves spelling out what it means for a all to relate as equals, or have a status as equals.

In sum, while there is good reason to think that concern with something that impacts social relations is a necessary condition for social egalitarianism, this condition is unsatisfactory when taken as sufficient.

iii) *Social egalitarians are concerned with something that necessarily impacts social relations*

One might argue there is still something to the above distinction on the following grounds: it is not an inherent feature of the distributive conception that it is concerned with something that impacts social relations. An egalitarian who cares about welfare equality, for example, may or may not think it matters only between those who stand in social relations, since the enjoyment of welfare does not itself require social relations. Social goods like status, on the other hand, are inherently social: it is impossible to have a status of any sort and be alone on a planet. Concern with status, for this reason, necessarily involves concern with social relations. By contrast, concern with ‘distributive’ goods may or may not involve concern with social relations. “Within the distributive conception of equality”, Anderson writes, “the good to be distributed equally...is such that the amount that one person has is typically logically independent...of that person’s social relations with others”.⁶⁶

The revised suggestion, then, is that if a view is concerned with something that necessarily impacts social relations, then it is a version of social egalitarianism. The issue with this claim,

⁶⁶ (Anderson 2012)

however, is that it underestimates the extent to which the value of many ‘distributive’ goods do in fact depend on social relations. This is because many distributive goods have positional aspects.

A good is positional if its value for its possessor depends on how the possessor’s level of the good compares with others. A common example of this kind of good is the market value of education.⁶⁷ Having a master’s degree will likely be much less valuable, in terms of the job opportunities it provides, if the majority of your competitors have greater qualifications than you do. On the other hand, a master’s degree might be of greater value if your competitors have only a bachelor’s degree or less. In each case you have the same level of education, but its value to you in terms of the opportunities it provides is sensitive to how you compare with others.

Since education is positional in this sense, any egalitarian who is concerned with the distribution of education is necessarily concerned with social relations. Concern with the distribution of education, because it is a positional good, necessarily involves concern with the social relations that determine its value. On the suggestion here, then, an egalitarian concerned with the distribution of education would count as a social instead of a distributive egalitarian. Perhaps one might be happy with this verdict, but what is more problematic is that paradigmatically distributive goods like money and resources share this positional aspect.

Take money, perhaps the definitive ‘distributive’ good. In a significant sense, however, the value of money is positional, and thus depends on social relations. Money involves a certain type of power: ‘purchasing power’ to procure goods and services from others. The same amount of money can be of greater or less purchasing power, depending on how it compares to what others have: if others have much more money than you in society, for instance, the purchasing power of

⁶⁷ (Brighouse and Swift, 2006) along other philosophers, simply call this kind of good ‘positional’. In the next section, however, I distinguish a different kind of good that might also be called ‘positional’.

your amount of money is likely to be less than it would be under an equal distribution. If one takes the view that money is the subject of egalitarian concern, then, their view is necessarily concerned with something that impacts social relations, since the value of money for its possessor depends how it compares with others.

Now consider resources. There is, to be sure, a sense in which the value of resources is not positional. We can imagine people living on their own islands and having equal amounts of fresh water, food, and so on. But is this the sense in which resource equality matters to distributive egalitarians? A reason to doubt this is that many resources, such as oil and gold have an entirely different value under the presupposition of a social world like ours. So, when we think about how resources in the actual world ought to be distributed, it seems any plausible account will have to take into account how possible distributions impact social relations. Furthermore, the question of how resources are to be divided is itself in large part a question of how people are to relate to one another. Resource ownership involves a legal right against others interfering with your property. Dworkin is explicit that understands resources in this sense:

private ownership...is not a single, unique relationship between a person and a material resource, but an open-textured relationship many aspects of which must be fixed politically. So the question of what division of resources is an equal division must to some degree include the question of what powers someone who is assigned a resource thereby gains.⁶⁸

The question of how to distribute resources in a political community thus involves two salient social dimensions. First, they are 'position-sensitive'. The value of having any resource in society, for example, consists largely in the purchasing power it gives you, which in turn depends on how your share compares with others. Second, the value of resources in part

⁶⁸ (Dworkin 1981), p 283.

consists in rights you have in relation to others. On this basis, then, egalitarian concern with resources also necessarily involves concern with social relations.

In this section we considered the claim that what is distinct about social egalitarianism is that it is concerned with something that necessarily impacts social relations. Again this seems like a plausible necessary condition, since it we would not want to count a view that is not concerned with something that impacts social relations as a version of social egalitarianism. This account is unsatisfactory when taken a sufficient condition for social egalitarianism, however, because any egalitarianism concerned with positional goods also satisfies this condition; and as it turns out, this applies to paradigmatically distributive goods such as money and resources.

iv) Social egalitarians are concerned with something that is defined by social relations

I want now to introduce a distinction between what I will call ‘position-sensitive’ versus ‘position-defined’ goods. My claim is that concern with this second sort good is what is distinctive of social egalitarianism.

Whereas the value of a position-sensitive good for its possessor is causally sensitive to how their share of that good compares with others; position-defined goods are such that they *consist* in a particular position relative to others. To make this clearer, we can compare two ways to understand civic status. The first is position-sensitive, the second position-defined.

We might define status as involving two of the elements mentioned earlier: one objective, the other intersubjective. Status requires, objectively, that an individual has a certain level of rights and powers; and intersubjectively, that these rights and powers are known as a matter of common

awareness. Status on this definition might be understood as a kind of position-sensitive good, functioning much like education, resources, or money discussed above. For instance, if some enjoy more rights and powers than you, then your rights and powers will likely be less valuable to you than if all had the same rights and powers.

Alternatively, however, we can define status in terms of —or status as an equal—as a matter of having the same publicly recognized rights and powers as anyone in society. In this sense, the good of status as an equal is position-defined: it is not defined in terms of enjoying a good at a certain level, but enjoying it at a certain level in relation to others. On my account, social egalitarianism is best understood as involving the position-defined good of status as an equal. The kind of status that social egalitarians care about is not simply a matter having a certain level of rights and powers, but of having publicly recognized rights and powers equally with anyone in society as a basis to relate to anyone as a fundamental equal. Position-defined goods are thus in a sense more strongly social than position-sensitive goods. It is not just that their value may be greater or lesser depending how others compare in the distribution; instead, they *consist* in a person's relative position. In this sense the subject of social egalitarian concern—status as an equal—is distinct from concern other goods like welfare, resources, or money, some of which may be social in a salient but weaker sense of being position-sensitive.

So far, I have argued that what is distinct about the social egalitarian approach is that it is concerned with equality in the dimension of status, which is a position-defined good. Does anything interesting follow from this? One might worry that whatever equal status consists in, it will likely require equality in distributive dimensions, so it may seem doubtful that we need an account of status at all, or that the account simply collapses into a version of distributive equality.

In the next section, address several versions of this worry. In the next Chapter, I work out some further implications of the claim.

2.4 Some Concerns Addressed

Having now discussed the nature, importance, and significance of social equality, I want to address some concerns one might have about the account developed thus far.

i) Independence

The first worry is whether people's enjoying status as equals means anything in the absence of equality in more traditional distributive dimensions.

In response, I suggest it is true that we cannot entirely separate the value of social equality, or people having a status as an equal with others, from certain kinds of distributive equality. For example, I think that on any plausible account, social equality will require an equal distribution of basic rights (as I take up in Chapter Four). Social equality is thus partly constituted by certain forms of distributive equality. For this reason, then, social equality means little or nothing in the absence of certain forms of distributive equality.

This concession may lead one to think that social equality has no value of its own: once we have spelled out the distributive dimensions of social equality all the normative work will be done, and so the ideal of social equality is empty. I think this thought is mistaken, however, for several reasons. The first reason is that the value of social equality is not exhausted by the traditional kinds of distributive equality it involves; and, in special cases, social equality may justify a differential distribution of certain goods such as rights. The second reason is that social equality is multiply realizable.

What do I mean by the claim that social equality is not fully exhausted by distributive equality? There are several aspects to this thought. First, it seems reasonable to think that the value of social equality is not only about justice. It seems to me that social equality has a moral dimension as well: that is, there are things people can do to promote or diminish social equality in their moral lives which are not required by justice per se. Think of someone who tends to think of other races as inferior, but never acts on this in an overt way. Imagine, for example, someone who avoids cashiers that belong to racial minorities at grocery store checkouts.⁶⁹ So while I am primarily interested in the justice based implications of social equality, it also seems to me that there is a somewhat independent moral dimension of its value.

A second aspect of the thought that social equality is not exhausted by its distributive considerations is that although many issues involving social equality have a distributive dimension, they are not fully accounted for in these terms. Consider, for example, the following cases that are salient in many places today: informal differential treatment of racial minorities under law, or same-sex marriage. What is at issue in these cases, to be sure, in part involves traditional distributive concerns around rights and liberties. For example, Black people who get a more severe sentence than they would have if they were White suffer a loss of freedom, as do same-sex couples who wish to marry but cannot.

I do not think these cases are fully explained in these terms, however. There is a somewhat separate issue of ‘status harm’ involved: at issue in these cases is not just the reduction of liberty, but also what these practices express about the worth or value of the group to which the people being targeted belong. One way in which the status harms in these cases are distinct is that not only those whose freedom is directly reduced are affected. The idea is that through these practices,

⁶⁹ I borrow this example from (Mason 2015).

whether informally through differential enforcement of law, or formally through the denial of marriage rights, political institutions express attitudes toward the groups in question that are objectionable from a social egalitarian point of view. The expression of these attitudes, I think, can amount a status harm that affects anyone belonging to the group. For example, it seems to me that Black people who never get convicted of any crime still suffer a status harm if it is a matter of common awareness that Black people generally get worse treatment under the law. This is because, as contemporary social movements point out, these practices effectively express that black lives matter less. Likewise, same-sex couples might suffer a status harm even if they have no desire themselves to marry. The reason for this is that the denial of the right to marry might reasonably be taken to express that same sex relationships are less valuable or less worthy of recognition.

Another reason to think that social equality is not exhausted by distributive equality is that sometimes social equality might justify forms of distributive *inequality*. Although I think in most cases social equality will require an equal distribution of basic rights, there are some cases in which it is reasonable to think that certain differential rights will be necessary. I have in mind special rights for minority cultures. In Canada, for example, it is not uncommon for Indigenous groups to have exclusive hunting or fishing rights over certain areas. On its face, this could be seen as an affront to social equality, or all having a status as equals. Something to this effect was argued in the Canadian Supreme Court case *R. v. Kapp*, in which some white Canadians argued special fishing rights violated the anti-discrimination provisions in the *Charter of Rights and Freedoms*. In this case, the Supreme Court ended up ruling that differential rights were justified because they were intended to compensate for historical harms. This doesn't seem to me to be the best explanation, however, or at least not a complete one. For it seems that this goal may have been equally well met by cash transfers or some other benefit. What might justify granting exclusive

communal fishing rights, in particular, however, is that in doing so the state is recognizing and protecting a certain way of life, and affirming that those who value that way of life have equal status with others. In addition, it might be that the state has a special obligation to protect this form of life because of historical injustice. Thus, it seems to me that while the broad ideal of social equality will in most case require equal rights, it may in some special cases be better served by differential rights.

A final reason to think that social equality does not simply reduce to distributive equality involves the idea that social equality is multiply realizable in two different senses. The first sense involves context dependence. The idea here is that having a status as an equal with others will require different things in different communities. For example, by the public standards of certain societies it may be that having a certain kind of clothing, or knowing a particular language, is necessary to count as an equal in civic life. Thus, social equality may require different measures in different societies.

In addition, however, social equality may be realized through different means in the same society. If all had a sufficient level of income, for example, and money could buy only commodities; and further, that one's political influence, access to education, and access to healthcare, did not depend on one's financial position, then we may have little reason to object to inequalities of wealth from the standpoint of social equality.⁷⁰ If on the other hand, exchanges between these types of goods is impossible or undesirable to block, more economic equality may be necessary. This suggests there are multiple strategies to realize social equality within a given society or context.

⁷⁰ (Walzer 1983)

ii) *Extensional equivalence*

A variant on the worry addressed above is that it may be possible for two egalitarians to agree on what should be distributed equally, without one appealing to social equality at all. If this is so, it may seem that the social conception of equality is epiphenomenal. In response, I claim that justification matters.

Suppose two theorists both hold that people should be equal in their enjoyment of a set of basic liberties. We can now ask why the equal enjoyment of this set of liberties is taken to be important. We have to separate the question of what should be distributed equally from the question of the point or value of having that distribution. One general sort of answer available is in terms of what those liberties allow people to do—i.e. to influence politics, pursue their conception of the good, possess and exchange property, and so on. We may agree with this, yet also hold that there is a more particular answer that is characteristic of their view. A libertarian might hold, for instance, that the set of basic liberties is also valuable for the reason that they maintain a person's natural right to self-ownership.

On my view, what is characteristic of social egalitarians is that they endorse a different sort of answer. From a social egalitarian point of view enjoying a set of basic liberties in common with others is particularly valuable for the reason that this expresses people's equal rank, worth, or status in relation to one another. Rawls distinguishes between two reasons why basic liberties are valuable. He writes that people in the original position would not sacrifice the equal enjoyment of the basic liberties for gains with respect to the difference principle because “doing this would put them at a disadvantage and weaken their political position from a strategic point of view.”⁷¹ In addition, however, he says that this would also

⁷¹ (Rawls 1999), p. 544

have the effect of publicly establishing their inferiority as defined by the basic structure of society. This subordinate ranking in the public forum experienced in the attempt to take part in political and economic life, and felt in dealing with those who have a greater liberty, would indeed be humiliating and destructive of self-esteem.⁷²

So, a social egalitarian might in principle endorse the same set of basic liberties as another theorist such as a libertarian, but they would value them for different reasons. Of course, in practice, the different outlooks of these theories would likely lead to substantive differences as well. For example, some liberties might be counted as ‘basic’ by the social egalitarian but not the libertarian, and the libertarian may be more content with less substantive, and instead merely formal, equality with respect to the same liberties such as property ownership. These issues will be taken up in Chapter Four.

iii) *Innocuous differences in status?*

Another way to get at the worry that what really matters is equality in traditional distributive dimensions is to imagine scenarios in which people are equal with respect to these dimensions but where there are seemingly innocuous differences of status. If we do not find these societies objectionable, then this would suggest that what really matters is equality in the distributive dimensions. Consider the following kind of case:

Special Ceremonies: imagine a society in which there is an equal distribution of goods in traditional distributive dimensions. One group in this society, however, has a special right to perform a certain kind of cultural ritual. The ritual involves wearing a certain manner of clothing and doing a special dance.

There are other similar examples, however, in which the ‘status’ difference does not seem so harmless. Consider:

⁷² *Ibid.*

Public Honours: A nation gives out an award to recognize outstanding contributions from its citizens. The awardees are given the ‘order of the nation’, a publicly recognized title, along with \$50,000. Certain racial minorities are eligible to receive the monetary prize, but not the title, which is only awarded to white citizens.

Or consider:

Same-sex Marriage: same-sex couples are not allowed to have a ‘marriage’ but they are allowed to have a ‘domestic partnership’ or a ‘civil union’ which involves all the same legal powers as marriage in the society.

From a social egalitarian point of view, there is certainly something objectionable about the last two examples, if not the first. What explains this? Again, I think the issue is about what attitudes are expressed or symbolized by the practices in question. In the latter cases, what is objectionable is that the practices in question seem to mark out certain social groups as less valuable or worthy of recognition. In the first example, unless we describe the example further, it does not seem that permitting a certain group the right to practice a special ceremony expresses that they are superior to others in any way.

iv) *Measuring social equality*

I claimed we can think of the enjoyment of status as an equal with others as a matter of having the same status goods as anyone in a society. As such, it is a kind of *ungraded* or non-scalar good: one either has status-conferring goods in common with everyone, or they do not. A worry about this construal is that it fails to capture the obvious: that societies can realize social equality to a greater or lesser extent. For example, think of the United States in the time when slavery was legal, versus the time when slavery was abolished, but women did not have the vote, versus the present day. Surely there is a difference over the degree to which each time slice of the U.S realizes social equality. In response, I suggest we can maintain that social equality is an ungraded good, but still capture this thought by specifying various ways in which it can be approximated or impartially

realized, thus giving standards of measurement in graded or scalar terms. There are at least three forms of such measurement.

One kind of measurement is in terms how many out of the population have the set of status-conferring goods that, if everyone had them, would give all a status as an equal. A second kind of measurement is in terms of the size distance between people who enjoy status goods unequally. In a socially unequal society, we should want to know how many people have the bundle of status goods (the first measurement), but also how badly fail if they do not (the second measurement).

These two standards of measurement can come apart. For example, imagine two societies. In one society there are two classes, one higher one lower. Imagine the lower class is 80% of the population but there is only a small difference between what they have and what the higher class have. By contrast we can imagine a different two class society where there is a very small lower class, but they are much lower than the rest (imagine a very small slave class for instance).

The third kind of measurement is in terms of the quality or quantity of the bundle of status goods shared equally. We can imagine, for example, a society in which people equally have a very high level of status goods in contrast to a society in which people have a lower level, but still in equal measure. This might involve quantity: in the future for example, social equality may require a more expansive list of basic rights. For instance, it may become the case that the ability to genetically engineer your children becomes a salient marker of status, and if this were so, such a right may be added to the required set of status goods. Or the quality required of the same status goods may change. Consider that police forces have become more effective over time as a result of technological progress. A less extensive but equal level of protection may be required for social equality in one context; while a more extensive scheme would be required in more technologically advanced, or perhaps better resourced context. In each case, the equal level of protection has the

same value in terms of expressing people's equal status or rank, but a different value in terms of the protection people get.

3) Positional Goods and Social Equality

In the previous chapter, I surveyed existing accounts of the nature, importance, and distinctness of social equality. First, I argued that if we are interested in developing a conception of egalitarian *justice*, we should adopt an ‘institutional’ account of social equality, and I sketched the basis of the account what I will develop over the course of the thesis. Second, I argued that there are a range of grounds to think that social equality is important—including its contribution to personal and impersonal value—but that the most compelling case is based on the notion of expressive equality discussed in Chapter One. In the third part of the chapter, I examined existing accounts of what makes social equality a distinct approach and found none of them entirely satisfactory. I suggested, however, that social equality is distinct in virtue of being concerned with a ‘position-defined’, and I offered an initial characterization of that notion. In this chapter, I further explore the distinction between position-sensitive and position defined goods and their implications for distributive justice.

A range of goods—education, wealth, legal representation, political influence, prestige, among others—are often regarded as ‘positional’ or, in my terms, ‘position-sensitive’. What these goods have in common is that their value to their possessor depends, at least in part, on how much of them they have compared to others, or where they are positioned in the distribution. While the notion was originally introduced in economics, several philosophers argue that the nature of positional goods bears important implications for the theory of justice; in particular, for the choice

of distributive principle: i.e., deciding between equality, priority, sufficiency, and so on.¹ The suggestion is that the positional features of some goods supplies a new line of support for their equal distribution and a rejoinder to some of the critiques that argue for principles of priority or sufficiency over equality. These non-egalitarian views (priority and sufficiency), so it is argued, have reason to support equally distributing positional goods, on the grounds that doing so may be the best or only way to benefit those who are badly off in absolute terms, or give all ‘enough’ by the relevant criterion.² Call this the *convergence thesis*.

In this chapter, I examine this thesis and take up some concerns that suggest it may fail to hold in a range of cases. I argue that despite these challenges the convergence thesis is particularly compelling when applied to a case not previously considered: the distribution of goods of concern for social egalitarians. For most goods commonly regarded as positional, there is only a contingent connection between relative position and the good’s value to an agent. Greater education than others often provides an advantage on the job market—but only because of contingent factors such as the nature of existing hiring practices, as I will discuss in what follows.

By contrast, other goods are positional in a stronger sense. These goods are not just sensitive to position but *defined by*, or *consist in*, occupying a particular relative position. For example, the good of placing first in a race is defined by, or consists in, ranking above everyone else. Along these lines, I build on the distinction in the last chapter between what I call ‘position-sensitive’ and ‘position-defined’ goods. I show that the case for the convergence thesis is more compelling for

¹ For the original discussion of positional goods see (Hirsch 1995); for relevant work in the philosophical literature see (Goodin 1995), (T. M. Scanlon 2003b), (Brighouse and Swift 2006), (Satz 2007), (Ypi 2012), (Freiman 2014), (Halliday 2015), (Axelsen and Nielsen 2015), (Nielsen and Axelsen 2017), and (Harel Ben Shahr 2018).

² See (Brighouse and Swift 2006), (T. M. Scanlon 2003b), (Goodin 1995), (Satz 2007), (Ypi 2012), (Axelsen and Nielsen 2015), and (Nielsen and Axelsen 2017).

goods of the second kind. This claim is significant, I argue, because a person's civic status—which I characterize as the core concern of social or 'relational' approaches to equality—is a position-defined good. Moreover, since a range of other goods are *status-conferring*, in that they contribute to a person's civic status, these other goods have position-defined aspects as well.

The chapter is in three parts. In part one, I review the arguments on offer that goods such as education and wealth are positional and that, as a result, prioritarrians and sufficientarians have reason to support their equal distribution. In part two, I discuss how the significance of these arguments may be limited as a result of their position-sensitive nature. For position-sensitive goods, it may be that benefits to the worse off may be achieved in two ways other than equal distribution: by growing the overall supply of the good or mitigating or removing its positional aspects. Since these strategies may also benefit the worse off, they may be favoured by prioritarrians or sufficientarians, and so the convergence thesis will fail to hold in a range of cases. In part three, I propose an account of position-defined goods, and show that for goods of this kind, neither growth nor removal of their positional aspects is a possible strategy. I then offer a brief account of the nature and value of social or 'relational' equality, which I characterize as concerned with the distribution of a position-defined good, 'civic status'. Finally, I discuss the significance of the account developed for the convergence thesis.

3.1 The Convergence Thesis

Harry Brighouse and Adam Swift focus their argument for the convergence thesis primarily on education.³ Education is a positional good, they point out, because one's chances on the job market

³ (Brighouse and Swift 2006)

are largely determined by how educated one is relative to others. A bachelor's degree will serve as a better means to employment if others are less qualified, worse when others are more qualified, other things equal. To be sure, there are other valuable aspects of education that are not positional, such as the intrinsic value of learning a subject, which one could enjoy to a greater or lesser extent in isolation. More precisely, then, we can say education-as-a-means-to-employment is a positional good: its value to an agent depends on where they are positioned in the distribution.⁴

Next consider wealth. Philosophers at least since Adam Smith have noted that possessing a relatively low amount of material goods may cause one to suffer stigmatization and harm to their self-esteem.⁵ A particular absolute level of wealth may be adequate to maintain one's self-esteem in a context where it is not distributed too unequally. But in another context with greater inequality, one may suffer stigmatization, living with the common awareness that they are judged 'lower class' or inferior by others. Again it's worth noting that in another sense, as a means to resources, wealth is not positional, since more resources (i.e. those that provide food and shelter) are generally better

⁴ (Freiman 2014)

⁵ John Rawls, putting the point in terms of primary goods rather than wealth, writes "sometimes the circumstances evoking envy are so compelling that given human beings as they are, no one can reasonably be asked to overcome his rancorous feelings. A person's lesser position as measured by his index of objective primary goods may be so great as to wound his self-respect". (Rawls 1999) p. 535. Although in this passage Rawls speaks of self-respect and not self-esteem, I believe he conflates the two notions here.

Adam Smith notes the context sensitivity of the point:

The Greeks and Romans lived, I suppose, very comfortably though they had no linen. But in the present times, through the greater part of Europe, a creditable day-labourer would be ashamed to appear in public without a linen shirt, the want of which would be supposed to denote that disgraceful degree of poverty which, it is presumed, nobody can well fall into without extreme bad conduct. Custom, in the same manner, has rendered leather shoes a necessary of life in England. The poorest creditable person of either sex would be ashamed to appear in public without them. (Smith 1993) Bk. 5, Ch. 2.

in absolute terms, regardless of what others have.⁶ Bearing this in mind, it is again more precise to say that ‘wealth-as-a-means-to-self-esteem’ is a positional good.

These observations are taken to support the convergence thesis: the claim that one does not need to be an egalitarian to have reason to favour the equal distribution of positional goods. Since education and wealth are positional in the sense described, concern for the worst off, or giving all enough, provides a reason to favour an equal distribution of these goods. Allow one group in society a much higher level of education, and the job prospects of the rest will suffer. Allow one group in a society great wealth, and the relatively poor may suffer harm to their self-esteem. With respect to these positional goods, then, if we want to benefit the worse off, or give all enough, it may not be adequate to give them more of the good in question. What may also be needed is that the distance between them and others is not too great. On this basis, an equal (or not too unequal) distribution of these goods may be supported by prioritarrians and sufficientarians. Priority and sufficiency may even support a kind of ‘leveling down’. As Scanlon writes, “the aim of avoiding stigmatization can in principle provide a reason for eliminating the benefits of the better off (or for wishing that they had never been created) even if these cannot be transferred to the worst-off.”⁷ Similarly, the aim of improving the job prospects of the worse off, or giving them ‘enough’ of an opportunity to compete with others, may support eliminating benefits enjoyed by an educated elite, even when these benefits cannot be transferred. I say this is only ‘kind of’ levelling down for the following reason. In its strict sense, levelling down refers to removing advantages from the better off without benefitting anyone. But the convergence thesis does not hold that prioritarrians or

⁶ It is important not to overstate this point, however, since the overall value of most resources depends largely on what others will pay for them; and this is influenced by the amount others have.

⁷ (Scanlon 2003) p. 204.

sufficientarians have reason to favour levelling down in this strict sense. The claim, instead, is that they may support removing advantages from the better off, without transferring them, *because* this benefits the worse off or gives all enough.

This, then, is the argument that has been given for the convergence thesis. It holds that for positional goods, there is convergence between the distributions favoured by different principles of justice—equality, priority, and sufficiency—since all have reason to support equal distribution—even if, in some cases, this may involve a kind of leveling down. In this respect, the convergence thesis is ambitious, since the alleged perversity of leveling down has for many been a primary reason to abandon equality in favour of other principles like priority and sufficiency. In another respect, however the convergence thesis is modest. It does not hold that prioritarrians and sufficientarians have reason to favour an equal distribution of wellbeing, which is typically regarded as the fundamental metric or currency of prioritarian and sufficientarian principles of justice. Instead, the convergence thesis is ‘good-specific’, applying only to positional goods like education and wealth. This means that for prioritarrians and sufficientarians there is only a *prima facie* reason to support the equal distribution of positional goods, insofar as improving their enjoyment of positional goods improves their wellbeing. This leaves open the possibility that allowing inequalities of positional goods may be even better for the all-things-considered wellbeing of the worse off. This is an important limitation that will be taken up later in the chapter.

3.2 Growth and Depositionalization

The convergence thesis is significant because it suggests that, at least with respect to positional goods, there may be less at stake than is commonly thought between seemingly opposed principles of justice. This would appear to be good news for egalitarians if their favoured policies find support

on several different grounds; moreover, it might be thought to dispel the worry that a concern with equal distribution is irrational or based on envy. Equal distribution of positional goods is supported on the more widely accepted basis of concern for the worst off.

However, the convergence thesis may be significantly limited, at least for goods such as education and wealth. This is because these goods are only ‘position-sensitive’. There are two features relevant for our purposes that characterize position-sensitive goods. The first is that the supply of the good can be grown; the second is that there is only a contingent connection between relative position and their value, and so this connection can be weakened or eliminated entirely. Education and wealth share these features, as we will see, and this means that the convergence thesis may fail to hold in a range of cases.

A) Education-as-a-means-to-employment

In the case of education-as-a-means-to-employment, greater equality may be one way to benefit the worst off. But is it the only way? Not necessarily, Christopher Freiman argues, if permitting inequality creates growth, increasing the social product.⁸ Insofar as permitting inequalities of education increases the quantity and quality of jobs available to the worst off, the convergence thesis no longer holds. Priority for those badly off, or giving each enough, may in such cases be better served by allowing instead of removing inequality.⁹

To be sure, however, it seems unlikely that any degree of inequality will benefit the worst off, or that excessive advantages of a privileged elite will necessarily ‘trickle down’ to society’s

⁸ (Freiman 2014).

⁹ For similar reasons, Rawls prefers the difference principle over a strictly equal distribution of income and wealth (Rawls 1999).

poorest members. So, removing advantages from those at the top may still be the best way to improve the situation of the worst off or give all enough in some cases. But on the other hand, it is not implausible that *some* inequalities of education will allow for the creation of new industries, which will lead to the creation of more and better employment opportunities for the worse off.¹⁰ In cases in which this possibility holds, the convergence thesis does not, since prioritarrians and sufficientarians might favour an unequal distribution that provided even greater benefits for the worst off, and greater aggregate benefits, than equality.

In response, it might be argued that at any given point in time, the number of jobs available is fixed, so growth is not a salient strategy. While this makes sense, it may be replied that we ought to be more interested in principles of justice for political institutions persisting through time, and not only for fixed points or ‘time-slices’. Nevertheless, as a matter of non-ideal theory, the fixed supply of employment opportunities may be a durable feature of our societies for the foreseeable future. For that reason, then, the possibility of growth may not entirely undermine the significance of the convergence thesis.

While the convergence thesis may nonetheless hold in a range of cases, then, this range will also be limited to a certain extent by the possibility of growth. This exact range, however, cannot be determined by political philosophy alone, depending as it does on empirical facts. While the significance of the convergence thesis could thus be evaluated by engaging with the relevant empirics, I will not pursue that issue here. My aim, instead, is to show (in section 3) that there is a different variant of the convergence that bypasses this issue.

¹⁰(Freiman 2014).

In addition, there is a second way the convergence thesis may fail to hold, which involves what we might call ‘depositionalization’. It is not a necessary truth that having a better education relative to others gives one better prospects on the job market. Because of this, it may be possible to remove or mitigate education’s positional aspects. As Brighouse and Swift note:

it is not simply having more education that makes the person’s income prospects better. It is having more education in an environment in which that causal link holds. We could eliminate the causal link between relative education and absolute income by equalizing wage rates. We could reduce the causal link between relative education and absolute chances of getting interesting and responsible jobs by reducing the stigma attached to nepotism, by allocating jobs by lottery, or by reforming the job structure to make jobs more equally interesting and responsible.¹¹

While total wage equalization, nepotism, or the assignment of jobs through lottery are not likely to find much support in liberal democracies, they point toward a relevant possibility. There may be more desirable forms of depositionalizing education. For example, it may be possible to implement policies that require employers to take into consideration only educational qualifications that are necessary for the job, and to avoid assigning positive evaluation to those in excess.¹² We also might seek to implement policies or to encourage social practices that allow for other kinds of credentials to be evaluated positively. Along these lines Debra Satz notes that in places such as Sweden, it is possible “to rise to high political positions because of one’s experiences in the labor union movement”, for example, whereas in other places these positions may tend to be almost exclusively filled by those with elite educations.¹³

Policies that aim to implement these forms depositionalization may be favoured over equal distribution for a number of reasons, especially if the latter were to require removing

¹¹ (Brighouse and Swift 2006), p. 488

¹² (Goodin 1995), p. 257. (Harel Ben Shahar 2018), pp.111-113

¹³ (Satz 2007), p. 644

advantages from the better off without transfer. For one, removing educational advantages would remove the non-positional benefits of allowing high levels education in society such as the availability of expertise. Faced with a choice of removing the educational advantages of the better off versus mitigating the extent to which those advantages make labour market competition unfair for the worse off, prioritarrians and sufficientarians would likely favour the latter. So, the convergence thesis may also fail over a range of cases in which benefits to the worse off, and greater benefits on aggregate, are provided by depositionalization rather than equalization.

Again, I only mean to point out that depositionalization is a live alternative to equalization and I will not attempt any decisive claims about whether de-positionalization or equalization is more just, all-things-considered. These judgements would require a complex array of empirical and normative considerations that will vary in different contexts. And again, instead of taking up these issues, my aim is to show there is a version of the convergence thesis that is not subject to them.

B) Wealth-as-a-means-to-self-esteem

What about the case of relative wealth and self-esteem? Again, both the growth and depositionalization strategies are possible. Interestingly, they seem to overlap. To start, let's take the question of whether growth could benefit the self-esteem of the worst off. There are two possibilities here. First, we can ask whether growing the total amount of wealth in a society may

improve the self-esteem of the worst off, even despite inequality.¹⁴ Second, we can ask whether we can grow the supply of the social bases of self-esteem in other ways.

Considering the first possibility, it seems plausible that the self-esteem of the worse off in the distribution of wealth is influenced not just by relative position, but by absolute level as well. Suppose there are two societies in which there is the same distance between the poorest and wealthiest groups, but in the first society the worst off have far fewer resources, in absolute terms, than in the other. In the second society the relatively poor group may be much less likely to suffer a loss of self-esteem if they do well in absolute terms along key dimensions such as nutrition, housing, education, healthcare, and so on. The self-esteem of the worst off in the second society may be even more secure if the uses of wealth are limited. If having relatively more wealth does not allow one to influence politics to a greater extent, or afford far superior healthcare or education, then having relatively less than others may be unthreatening to one's self-esteem.¹⁵ So, if the worse off are well off in absolute terms, and the uses of money are limited, then wealth may be depositionsalized insofar as the self-esteem of the worse off would unlikely be threatened by relative scarcity alone.

Thus, if inequalities of wealth allow for an increase in the overall amount of wealth in a society, and if the uses of wealth are kept in check, this may improve the self-esteem of the worst off, as well as increase the overall amount of self-esteem in the society. This possibility, then, would be favoured by prioritarrians and sufficientarians over removing advantages from the better

¹⁴ To be precise, by 'growing wealth' here I mean growing the stock of end-use goods that wealth is used for.

¹⁵ (Walzer 1983).

off. Interestingly, here it seems that growth would also have a depositionalizing effect: self-esteem would attach more to absolute than relative levels of wealth.

A similar idea seems to be at work in Adam Smith's discussion of the commercialization that took place early in the industrial revolution. Smith saw commercialization as bringing growth and efficiency as certain benefits; but more important, he thought, was that it opened the possibility for the rich to convert their wealth into something other than power.

What all the violence of the feudal institutions could never have effected, the silent and insensible operation of foreign commerce and manufactures gradually brought about...All for ourselves and nothing for other people, seems, in every age of the world, to have been the vile maxim of the masters of mankind. As soon, therefore, as they could find a method of consuming the whole value of their rents themselves, they had no disposition to share them with any other persons. For a pair of diamond buckles, perhaps, or for something as frivolous and useless, they exchanged the maintenance, or what is the same thing, the price of the maintenance of a thousand men for a year, and with it the whole weight and authority which it could give them.¹⁶

However, these new uses of wealth could in turn be regarded by others as trivial:

Having sold their birthright, not like Esau for a mess of pottage in time of hunger and necessity, but in the wantonness of plenty, for trinkets and baubles, fitter to be the playthings of children than the serious pursuits of men, they became as insignificant as any substantial burgher or tradesman in a city. A regular government was established in the country as well as in the city, nobody having sufficient power to disturb its operations in the one any more than in the other.¹⁷

Since the new uses of wealth—diamond buckles, trinkets, baubles—could be regarded as childish, so Smith suggests, inequalities of wealth did not pose the same threat to the self-esteem of the worse off as before. The wealthy no longer commanded the same status as lords, but instead 'became insignificant as any burgher or tradesman'. On Smith's account, then, commercialization created growth; but at the same time, this had a depositionalizing effect. The wealthy no longer

¹⁶ (Smith 1993), bk. 3, Ch. 4.

¹⁷ *Ibid.*

used their wealth for obtaining power over others, but instead sought material vanities. Since these could be regarded as ‘childish’ by the worse off, their self-esteem was no longer under the same threat.

Of course, Smith’s view may not seem fully persuasive. Surely the superior relative status of the wealthy must have maintained *some* threat to the self-esteem of the worse off; and this may have been improved by a more equal distribution of wealth. My point here, however, is not that Smith is entirely correct about this example—much less that this kind of possibility applies to all instances of economic inequality today. Even if we doubt the force of Smith’s example, the point that survives is that the relation between wealth and self-esteem is somewhat malleable and subject to changing social forces. Smith’s example serves as one illustration, but there are other quite different examples. According to common standards in Maoist China, for example, great wealth marked one out for stigmatization, and poverty posed no threat to one’s status.¹⁸ Both this example and Smith’s involve changing attitudes toward wealth, demonstrating that there is only a contingent connection between relative position with regard to wealth and self-esteem; and this connection may be weakened in ways favourable to the self-esteem of the worse off.

Consider another kind of possibility as to how the connection may be weakened, or how the self-esteem of the worse off may be secured through means other than material equality. We can ask whether the social bases of self-esteem can themselves be increased in supply. Although often very salient, wealth is only one basis of self-esteem in our diverse societies. People also gain self-esteem through belonging to what Rawls calls ‘non-comparing groups’, or what sociologists

¹⁸ See discussion in (Ci 2013) and (Scanlon 2018) Ch. 3.

call ‘reference groups’. These include clubs, sports teams, families—even one’s social class.¹⁹ These different groups provide a source of self-esteem that is often somewhat insulated from other sources. For instance, a working-class person may gain a sense of self-esteem through membership in their local sports club, and this might have a kind of eclipsing effect over dimensions in which they do not compare favourably, as people tend to emphasize those domains in which they do well.²⁰

The effects of non-comparing groups actually suggest something surprising in connection with the convergence thesis: it may be that in some cases *increasing* inequality of wealth could promote the self-esteem of the worst off. The idea is that if the inequality between the wealthiest and least wealthy groups is of certain (not too large) size, then the worst off will compare themselves unfavourably with the best off, and this will harm their self-esteem. But let them become farther and farther apart, and the poor may no longer take the rich to be a salient reference group, which could enable them to turn successfully to other sources of self-esteem. In this sense, increasing inequality of wealth may actually be a way to depositionsalize it. In addition, the point holds in the other direction: the self-esteem of the worst off may be harmed by reducing inequality, if that causes them to compare themselves unfavourably to the better off when they otherwise would not have. To extent these effects of reference groups hold, then, the convergence thesis

¹⁹ “The plurality of associations in a well-ordered society, each with its own secure internal life, tends to reduce the visibility, or at least the painful visibility, of variations in men's prospects. For we tend to compare our circumstances with others in the same or in a similar group as ourselves, or in positions that we regard as relevant to our aspirations. The various associations in society tend to divide it into so many noncomparing groups, the discrepancies between these divisions not attracting the kind of attention which unsettles the lives of those less well placed.” (Rawls 1999), p. 536-7

²⁰ Here is Nozick on the issue: “Everyone might view themselves as at the upper end of a distribution through the perspective of the particular weights he assigns. The fewer the dimensions, the less the opportunity for an individual successfully to use as a basis for self esteem a nonuniform weighting strategy that gives greater weight to the dimension he scores highly in”. (Nozick 2013), p. 245.

backfires: concern for the self-esteem of the worst off would not ground a reason to favour a more equal distribution, but instead, greater *inequality* of wealth.

It seems, then, that the amount of self-esteem in a society may be grown by fostering, proliferating, and insulating ‘non-comparing’ or ‘reference’ groups. The more of these groups there are, and the more independent they are from one another, the more opportunity there will be to score well and gain self-esteem from any one of them. Here again it seems that the growth and depositionalization strategies overlap: by making many sources of self-esteem salient, we weaken the contingent connection between relative wealth and self-esteem. It also seems that the strategy of proliferating and strengthening non-comparing groups may be served by material growth, insofar as these groups depend on wealth to develop and function: think, for example, of the creation of the Special Olympics, or the recent growth of E-sports (competitive video games).²¹

3.3 Position-Defined Goods and Social Equality

To take stock so far, the convergence thesis holds that prioritarrians, sufficientarians, and egalitarians all have reason to support the equal distribution of positional goods. This thesis has been advanced with regard to education and wealth, but it is not clear that equalizing these goods will always be the only or best way to benefit the worse off or bring all up to a standard of sufficiency. In both cases, this can be explained in virtue of fact that the goods in question are (merely) ‘position-sensitive’. Position-sensitive goods possess two features, each of which corresponds to one of the strategies that might benefit the worse off instead of equal distribution. The first feature of position-sensitive goods is that they are a means to other goods which do not

²¹ (Freiman 2014)

have a fixed supply. As we saw, relative position in the cases of education and wealth are means to employment or self-esteem. But the overall supply of employment and the social bases of self-esteem can be grown in various ways, in some cases by permitting inequality. The second feature is that the value of position-sensitive goods to an agent only contingently depends on relative position. It follows from this feature that the situation of the worse-off can be improved by weakening or eliminating this link. As a result of these two features, the convergence thesis is limited for these goods. In a range of cases, prioritarrians or sufficientarians may favour growth or de-positionalization over equal distribution.

Does this mean the convergence thesis is unimportant? I do not think so. As I noted, it may still hold in many cases. I have not meant to suggest that prioritarrians or sufficientarians will never have reason to favour greater equality of education and wealth based on the above considerations. And in some cases, the convergence thesis may hold partially: priority or sufficiency may favour reducing inequality in combination with other strategies. What I want to stress, however, is that favouring the equal distribution of these goods does not follow just in virtue of their position-sensitive features. It must also be shown that neither de-positionalization nor growth can do better. Whether growth, de-positionalization, or equal distribution is best supported by a given principle of justice will involve complex and uncertain empirical considerations, such as how far inequalities really do create growth (perhaps a matter best left to economists) as well as how far groups really are ‘non-comparing’ (perhaps best left to sociologists). In addition, the issue will require further normative consideration (e.g. which kinds of de-positionalization would be favoured by justice) that I will not pursue here.

On the other hand, the convergence thesis would be of even greater interest if there are goods for which growth and de-positionalization are not just infeasible, but impossible. I will show

that this is the case for different class of ‘position-defined’ goods. This result is significant because people’s civic status is both position-defined and an important (even fundamental) concern of justice, as argued for by the social or ‘relational’ conception of equality. Moreover, a range of goods are ‘status-conferring’ in that they constitute a person’s civic status, so the version of the convergence thesis I propose bears on their distribution as well.

A) Position-defined goods characterized

What makes a good position-defined? We’ve seen that, for position-sensitive goods there is only a *contingent* connection between relative position and the good’s value an agent, as in the cases of education-as-a-means-to-employment and wealth-as-a-means-to-self-esteem. Position-defined goods, by contrast, are *defined by*, or *consist in* a particular relative position. Consider the good of ranking well in a competition; e.g., coming first place in a race. To enjoy this good *just is* to occupy a particular position relative to others—namely, performing better than them. While one might have an interest in performing well in absolute terms—by finishing the race in a certain amount of time, regardless of how others perform—this is not the same as the interest one might have in achieving a certain rank; e.g., taking home the gold medal.

This characteristic of position-defined goods bears on the applicability of the depositionalization and growth strategies. Notice, in the first case, that it would be simply confused to try to ‘depositionalize’ the value of coming first place in a race. Since the value of coming first consists in ranking above all others, an attempt to remove the positional aspect of this good would be to remove its value, or to replace it with something else. If gold medals in the Olympics were awarded on some other criteria, say through lottery, they would no longer be valued in the same way, if at all. The second possibility, growing the supply of position-defined goods, is also not

entirely coherent. To be sure, it might seem like the supply of first place finishes is enlarged when people tie for first. Following this thought, it might be suggested we can grow the supply of first place finishes by awarding a gold medal to anyone who achieves a certain threshold of performance, in absolute terms. (This may also be regarded as an attempt at mitigating positionality). But in the case of a tie for first place, or if ‘first-place’ were awarded on the basis of achieving certain threshold, it would no longer have the same value, since it would no longer mark one out as the uniquely top performer (which is, presumably, what many competitors are after).

In the case of position-defined goods, then, depositionalization and growth are not entirely coherent possibilities as they were for position-sensitive goods. This would be insignificant if all position-defined goods, like rank in athletic competition, were not central to the theory of distributive justice. I argue, next, however, that there is another position-defined good—the rank or status people have as citizens—that *is* of high, even fundamental, importance for distributive justice, as argued by social or relational accounts of equality.

B) Civic Status as a Position-defined Good

As I proposed in the previous chapter, social equality fundamentally involves a civic status shared as equals that is conferred under those institutions. Recall that this account is comprised of three elements: one *objective*; another, *communicative*; and a third, *intersubjective*, outlined as follows.

Objective: This element specifies the distribution of goods that are required to confer people a status as equal citizens. This may involve, for example, equal basic liberties; constraints on inequalities of income and wealth, and all enjoying certain capabilities, such education and health.

Communicative: It is not enough that people are given these status conferring goods on any basis (e.g., their being equally deserving, intelligent, and so on). Instead, these goods are given to people on the basis that they are antecedently equals; and their distribution publicly communicates respect for persons as equals.

Intersubjective. The distribution of goods to people as equals sets a standard for how people ought to regard each other as equal citizens. This will shape and constrain their dispositions and there will be public awareness of the kind of treatment and regard owed to others. Although justice may not be compromised by people failing to fully live up to the ideal in their personal lives in all cases, they will, however, be constrained in political and public forums.

I use the term ‘civic status’ to register that equal status in this sense is compatible with inequalities of social esteem or what might be meant by ‘social status’. Some may enjoy a high level of social status or esteem in virtue of their celebrity as actors, performance as athletes, or their possession of rare paintings. But this sort of local, domain-specific ‘social status’ inequality is compatible with all sharing a kind of global and domain-generic status as equal citizens. Someone being highly esteemed in a domain such as musical performance is no reason for them to be regarded as belonging to a fundamentally different class of citizens, provided all share the same basic liberties, if economic inequalities are not too large, and so on, however, the *objective* element of the account is determined.

Civic status is a position-defined good. One’s civic status, whether they are ranked as lower, higher, or as an equal to others, is defined by or consists in occupying the relevant position. It might be argued that the good of having a civic status *as an equal* should not be regarded as a positional good since, unlike other positional goods, one does not enjoy it to a greater degree by having more of it than others. This competitive aspect seems to be the hallmark of the goods that are commonly thought to be positional like education, wealth, and also legal representation or political influence. The good of having a civic status as an equal to others is different in that it is not competitive in this way—it depends on relative *equal* position. But it still depends on position,

and so is still positional.²² Thus despite the fact that economists and philosophers may tend to think of positional goods as rivalrous, I see no principled reason to adopt this narrow conception.

To be sure, there seems to be a sense in which a person's civic status may not be entirely determined by relative position. We can imagine two societies in which all enjoy a status as equals, but in one society the level of status-conferring goods—e.g., rights and liberties, income and wealth—is much higher or more extensive than the other. Here it seems we would want to say that the status people have as equals is 'higher' in the society in which the enjoyment of status-conferring goods is greater. In this case, however, what is greater is the enjoyment of non-positional goods. The position-defined good of civic status they confer is the same in each society. By analogy, all runners in a race may simultaneously achieve better scores while their relative ranks stay fixed.²³

C) The convergence thesis revisited

Since civic status is a position-defined good, growth and depositionalization are not viable—or even entirely coherent—strategies to benefit the worse off. It is not possible to reduce the extent to which the value of civic status depends on relative position, since its value is defined by or consists in relative position, just as in the case of rank in an athletic competition. Nor does it quite make sense to grow the supply of civic status. In general, the growth strategy relies on the possibility that the worse-off might enjoy a greater amount of a good under an unequal distribution than they would under equality. Benefitting the worse-off favours an unequally divided pie, if its

²² We may also say civic status is also a participatory or communal good: its value partly consists in co-enjoyment with others. See (Waldron 1987) and (Réaume 1988).

²³ This observation raises an important concern: is there any basis, on the social egalitarian approach, to prefer one society over the other? In other words, it appears that we need an account of the level at which people enjoy a status as equals, or the *kind* of status they ought to enjoy as equals. This issue is taken up in Chapter Four.

smaller slices are bigger than a smaller pie equally shared. As matter of definition, however, some holding a high civic status entails that others hold a low status.²⁴

It follows from its position-defined nature, then, that an equal distribution of civic status is better for the worse off than any other distribution (all else equal). For this reason, there would seem to be little reason to adopt any principle other than equality insofar as we are concerned with benefitting the worse off with regard to this good. Consider, for example Rawls's difference principle, which permits inequality when it provides the worst off more benefits than they would enjoy under equality. Such a principle applied to civic status would simply be confused, given the inapplicability of the growth strategy. It would also seem to make little sense to adopt a principle of civic status priority or sufficiency over equality, though there is more conceptual space for divergence in these cases. Perhaps a sufficientarian might count a particular low status as 'enough' if it's not too low. Or perhaps a prioritarian may permit a class of inferiors if they do not assign them a very high degree of priority, or if they judged there to be enough aggregate benefit from allowing a class of superiors. While divergence is still possible in this sense, these views are not likely to be widely supported.²⁵ Notice here that the common rationale for abandoning egalitarianism with regard to civic status in favour of prioritarian or sufficientarian principles loses its force. This rationale involves the anxiety that it is irrational, or an indulgence of envy, to be concerned with people's relative positions rather than how well off they are in absolute terms. However, the distinction that this thought relies on—between relative and absolute benefits—does not apply to position-defined goods like civic status. In the case of civic status, we are not

²⁴ Rawls notes this point as follows: "in a status system, not everyone can have the highest rank. High status assumes other positions beneath it; so if we seek a higher status for ourselves, we in effect support a scheme that entails others having lower status". (Rawls 2001b), p. 132. See also (Gheaus 2018).

²⁵ (Gheaus 2018).

concerned with relative position out of irrationality or envy; instead, we are necessarily concerned with relative position due to its position-defined nature.

On this basis, there is a compelling case for the convergence thesis when applied to the good of civic status. As mentioned at the outset, though, the convergence thesis is in a sense modest, making only a ‘good-specific’ and *prima-facie* claim. That is, it does not follow from the account given here that all prioritarrians and sufficientarians will endorse equality of civic status, since they tend to hold that their principles to apply to wellbeing. It remains possible that inequality of civic status may allow for greater enjoyment of wellbeing, such that it would be justified on prioritarian or sufficientarian grounds. I will not try to resolve this issue here.²⁶ Instead, I want to note that insofar as civic is taken to be an important dimension of justice, then the convergence thesis will apply across of range of goods. That is, the thesis will bear on the components of civic status, the ‘status-conferring goods’, whatever they are determined to be, such as the basic liberties, education, healthcare, income and wealth, and so on.²⁷

To illustrate the general point, I will focus on education, and discuss a kind of convergence argument not yet discussed in this chapter. Debra Satz argues for a standard of adequacy or sufficiency in the distribution of education where this threshold is specified by what a person needs to possess a status as an equal citizen. Satz is a sufficientarian, then, with regard to the good of education-for-equal-civic-status. She claims her conception of sufficiency converges with egalitarian requirements, though it does not require strict equality. For example, she writes her “conception of adequacy undercuts the sharp divide philosophers often draw between sufficiency

²⁶ I would however suggest that it might be adjudicated by considering which view best satisfies expressive equality, or shows equal concern and respect for all.

²⁷ Exactly which goods confer civic status is bound to be context-specific to some extent.

and equality”, and that “adequacy is not only a function of the bottom of the distribution but also of the top of the distribution”.²⁸ Furthermore, this conception of sufficiency may support removing advantages from top since “citizens are not equals when there is a closed intergenerational social elite with disproportionate access to society’s positions of political and economic power.”²⁹

These claims are substantiated by the position-defined nature of civic status. Whether one has an adequate level of education to possess the status of an equal citizen necessarily depends on how much they have compared to others, and whether the overall distribution of education is equal enough. By contrast, consider education-as-a-means-to-employment. Whether one has ‘enough’ of this good is in principle compatible with any range of inequality. For example, on sufficientarian (or prioritarian) grounds, the existence of a social elite may not be unjust if it were to improve the job prospects of the worst off from what they would enjoy under greater equality. This would be a case in which the convergence thesis no longer holds. Sufficiency or priority of education-as-a-means-to-employment would not require greater equality; and it would not be improvement of justice to remove advantages from the top. On the other hand, the convergence thesis would still hold in this case for sufficiency of education-for-equal-civic-status. While the existence of a social elite may not necessarily threaten the job prospects of the worst off, it would threaten their equal civic status. So, because civic status is position-defined, the convergence thesis holds more robustly (over a more extensive range of possibilities) for Satz’s education-for-equal-civic status than for Brighouse and Swift’s education-as-a-means-to-employment.

On a fully worked out account, this point could be generalized to other status conferring goods. For example, Brighouse and Swift note that healthcare is ‘latently’ positional, because

²⁸ (Satz 2007), p. 638.

²⁹ *Ibid.*

being healthier than others provides an advantage on the job market.³⁰ On approach taken here, we can point out a different position-defined aspect of healthcare. Insofar as one has access to much worse healthcare than others, it may preclude them being full civic equals. Thus, while the convergence thesis may fail to hold in a range of cases for the good of ‘health-as-a-means-to-employment’, it could be argued that it holds more robustly for health-for-equal-civic-status.

Conclusion

The category of positional goods warrants examination by political philosophers because they function differently than other goods in the theory of justice. The aim of this chapter has been to advance that project. I explored the claim that there may be less at stake than commonly thought between seemingly divergent principles of justice—priority, sufficiency, equality—with respect to positional goods. Although this idea was originally advanced in the cases of education and wealth, it may not work so well in those cases. But it works perfectly in a case not considered: that of civic status, the good of fundamental concern the account of social equality developed in this thesis. The difference hinges on the distinction between position-sensitive and position-defined goods.

³⁰ (Brighouse and Swift 2006)

4) Rawls Situated¹

So far, I have provided an initial characterization of the nature and importance of social equality, understood as involving the concern that persons enjoy a civic status as equals. I argued that this form of egalitarianism is distinct because civic status, unlike resources, welfare, or capabilities is a position-defined good. In the previous chapter, this is significant, because it provides a compelling defence for the ‘convergence’ thesis, and suggests that priority, sufficiency, or other principles are not plausible for the distribution of civic status.

I have not, however, developed the account of what constitutes civic status in any detail. I have said provisionally that civic status involves the distribution of ‘status-conferring’ goods. This notion, I suggested is more or less a placeholder, and calls for further development. In particular, we need to know how to fill in the content of civic status. In this chapter, I take up this task. My aim is to show that Rawls’s political conception of the person is a helpful way of working this out; and that this account provides the most compelling defence the priority of liberty thesis.

The lexical priority of the basic liberties is one of the most distinctive features of John Rawls’s theory of justice. While this aspect of his view has been widely critiqued, it has received less defence, from either Rawls or his supporters, than one might expect. This is surprising, both because of the vast literature on Rawls’s work, and because the issue of whether liberty is to be given some kind of special priority is of great significance for legal and political theory in general.

¹ This chapter is a version of a paper forthcoming in *Law and Philosophy*. I would like to thank Alec Walen and two anonymous referees for their helpful feedback.

Many theories of justice, including those of liberal, libertarian, and republican stripes, assign some package of liberties special priority.² If this widely shared approach is right, it is of great importance to determine *which* set of liberties should be given priority, what *kind* of priority they should be given, and *why*. We should want to know, then, what contribution Rawlsian theory might make to our understanding of these issues.

I believe Rawls does indeed offer useful theoretical resources for thinking about the nature and importance of the basic liberties, but that they have not yet been cast in the most plausible light. In this chapter, I examine three arguments in support of the priority of liberty that have been put forward by Rawls and his supporters. The first is based on the two ‘moral powers’; the second on the social bases of self-respect; and the third on a Kantian notion of autonomy. I raise some problems for these views, arguing that none of them adequately defends 1) the *distinct* claim of lexical priority, 2) for the *complete* package of basic liberties (including the fair value of the political liberties), on the basis of reasons that are appropriately public. I should note, then, that I am interested in how the priority of liberty might be defended in the spirit of Rawls’s later work, e.g., in *Political Liberalism*. I will assume that given facts about the diversity of worldviews among members contemporary societies, principles of justice ought to be justified by reasons that can be endorsed from the standpoint of any ‘reasonable’ comprehensive doctrine.³

² Indeed, Rawls claims that assigning a package of basic liberties special priority is characteristic of *any liberal* theory (Rawls 2005), p. 6.

³ Those who hold ‘reasonable’ comprehensive doctrines may disagree about fundamental moral or spiritual matters; but, being reasonable, they do not regard these commitments as appropriate grounds of justification in politics. The appropriate grounds of justification, instead, are ‘public reasons’, which, Rawls says “can be worked out from fundamental ideas seen as implicit in the public political culture of a constitutional regime, such as the conceptions of citizens as free and equal persons, and of society as a fair system of cooperation.” (Rawls 1997), p. 776.

In the final part of the chapter, I propose an alternative argument for the priority of liberty based on the social or ‘relational’ conception of equality. I characterize the function of the priority of liberty as one of giving people a certain kind of status as equals. The content of this status is developed in connection with the requirement of respecting persons as equal bearers of the moral powers, where this aim is distinguished from bringing about the state of affairs most favourable to the development and exercise of those powers. My account, then, plays two roles: it offers a useful way to characterize and develop social egalitarianism along Rawlsian lines; and in doing so, it provides a plausible defence of the priority of liberty.

4.1 The Priority Thesis

Rawls’s account of the priority of liberty changed over time, and examining its development elucidates how he thought the thesis could be best defended.⁴

In its original statement, the first principle is as follows:

- 1) Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.⁵

This principle is lexically prior to the second:

- 2) Social and economic inequalities are to satisfy two conditions: 1) They are to be attached to offices and positions open to all under conditions of *fair equality of opportunity*; 2) They are to be to the greatest benefit of the least-advantaged members of society.⁶

⁴ The most extensive treatment is found in Rawls’s Tanner Lecture (Rawls 1987), later reprinted as a chapter in his *Political Liberalism* (Rawls 2005).

⁵ (Rawls 2001), p. 42-43.

⁶ *Ibid.*

The lexical priority of the basic liberties means “they have an absolute weight with respect to reasons of public good and of perfectionist values”.⁷ Two examples illustrate and motivate the kind of trade-offs disallowed: “the equal political liberties cannot be denied to certain social groups on the grounds that their having these liberties may enable them to block policies needed for economic efficiency and growth. Nor could a discriminatory selective service act be justified (in time of war) on the grounds that it is the least socially disadvantageous way to raise an army”.⁸

While these examples have intuitive force, it is not clear that they generalize to the extent required to support the lexical priority thesis. Lexical priority is a very strong claim. Why would we not permit small sacrifices of liberty if the gains with regard to other goods were large enough? After all, most would agree that interests in non-liberty goods such as income and wealth also matter (to *some* extent) for assessments of justice, so wouldn’t we expect there to be some kind rate of exchange between the two?

On Rawls’s own admission, the account of the priority of liberty in the first edition of *A Theory of Justice* was a ‘serious fault’ of the theory.”⁹ Criticism from H.L.A Hart, Onora O’Neill, and others pointed out significant issues that led Rawls to revise the initial formulation.¹⁰ The language of a ‘most extensive total system’ of liberty invites several worries. It implies that we should evaluate a social order according to a notion of liberty in the abstract, such that we will judge a regime favourably over another if it provides more ‘liberty as such’. But the notion of

⁷ (Rawls 1987), p. 8-9.

⁸ *Ibid.*

⁹ (Rawls 2001), preface.

¹⁰ (Hart 1973), (O’Neill 1979).

‘liberty as such’ does not capture the importance we place on specific *kinds* of liberty. Moreover, for any given set of liberties, a ‘more extensive’ set can be invented by individuating options differently.¹¹

In response, Rawls changed the principle to read “each person is to have an equal right to *a fully adequate scheme* of equal basic liberties which is compatible with a similar scheme of liberties for all”.¹² Rawls’s ‘adequate scheme’ is a particular package of liberties as follows: “freedom of thought and liberty of conscience; the political liberties and freedom of association, as well as the freedoms specified by the liberty and integrity of the person; and finally, the rights and liberties covered by the rule of law.”¹³ Putting aside the question of which liberties are ‘basic’, we are left with the following question: just what are these liberties ‘fully adequate’ *for*?

The characterization of ‘full adequacy’ involves Rawls’s political conception of the person and its companion notion of social cooperation. On the latter idea, he writes “the notion of social cooperation is not simply that of coordinated social activity efficiently organized and guided by publicly recognized rules to achieve some overall end.”¹⁴ Instead, he claims, that since social cooperation is always for *mutual* benefit, it involves two elements, which he calls the ‘Reasonable’ and the ‘Rational’. The Reasonable involves a shared understanding of fair cooperation. “Fair terms of cooperation articulate an idea of reciprocity and mutuality: all who cooperate must benefit, or share in common burdens, in some appropriate fashion judged by a suitable benchmark of

¹¹ (O’Neill 1979).

¹² (Rawls 1987), p. 5.

¹³ Ibid.

¹⁴ Ibid., p. 14.

comparison.”¹⁵ The Rational element of cooperation involves the thought that while social cooperators share common standards of fairness, each may differ with regard to the conception of the good that they are trying to advance. The idea of social cooperation thus attributes to people two capacities, or as Rawls calls them, two ‘moral powers’. Corresponding to the Reasonable, people are viewed as having a capacity for a conception of justice. Corresponding to the Rational, they are regarded as having a capacity for a conception of the good.¹⁶ Rawls’s argument, we will see, is based on the idea that the basic liberties are necessary to ensure ‘fully adequate’ social conditions for the development and exercise these two moral powers.

Before proceeding, though, it is worth briefly noting how Rawls’s notion of the person-as-social-cooperator differs from alternative conceptions of the person that figure in other theories. Rawls does not view the person as *Homo economicus*, or as solely concerned with their rational self-interest. As he acknowledges, this conception of the person would not adequately support the priority of liberty.¹⁷ Nor does Rawls adopt a conception of the person as having pre-political rights over themselves and their labour. Such a conception may underpin other theories of justice, as found in Locke and Nozick, for instance, but it is rejected by Rawls. Understanding Rawls’s view

¹⁵ *Ibid.*

¹⁶ “In greater detail, the capacity for a sense of justice is the capacity to understand, to apply and normally to be moved by an effective desire to act from (and not merely in accordance with) the principles of justice as the fair terms of social cooperation. The capacity for a conception of the good is the capacity to form, to revise, and rationally to pursue such a conception, that is, a conception of what we regard for us as a worthwhile human life. A conception of the good normally consists of a determinate scheme of final ends and aims, and of desires that certain persons and associations, as objects of attachments and loyalties, should flourish. Also included in such a conception is a view of our relation to the world - religious, philosophical or moral - by reference to which these ends and attachments are understood.” *Ibid.*

¹⁷ In the preface to (Rawls 2001) Rawls notes that were he to endorse this conception of the person, then Harsanyi’s criticisms of the original theory would hold (Harsanyi 1975).

on the priority of liberty, then, requires understanding its connection to his particular political conception of the person as a bearer of the two moral powers.

Along with the view that the basic liberties are to be understood in connection with his political conception of the person, Rawls adopts what we might call a ‘rule-dependent’ conception of freedom. In rejecting the idea that people have rights to liberties that can be specified pre-politically, or that we are interested in liberty ‘as such’, Rawls holds that the liberties to be protected as a matter of justice must be defined by particular rules, regulations, or conventions.

The following passage (which is much indebted to Hart’s critique) helpfully illustrates the idea:

The priority of [the basic] liberties is not infringed when they are merely regulated, as they must be, in order to be combined into one scheme as well as adapted to certain social conditions necessary for their enduring exercise... For example, rules of order are essential for regulating free discussion. Without the general acceptance of reasonable procedures of inquiry and precepts of debate, freedom of speech cannot serve its purpose. Not everyone can speak at once, or use the same public facility at the same time for different ends.¹⁸

In order to serve their purpose, the basic liberties need to be regulated and defined into a coherent scheme. The nature of this scheme is specified by the political conception of the person in possession of the two moral powers. On this picture, what may seem like an infringement of liberty by other’s lights, is for Rawls a regulation, or definition, of the kind of liberty that matters. Rules that facilitate scheduling and organization—e.g. Robert’s Rules of Order—do not count as infringements of liberty, but only regulations, since they are required for the basic liberties to serve their function. They serve to constitute, not downsize, the liberties they regulate.

There is room on this ‘rule-defined’ conception of liberty to regard even controversial rules as regulations and not infringements. Take for example laws of taxation or those that restrict certain forms of speech (e.g., racial slurs or defamation). On many conceptions of freedom, these cases

¹⁸ (Rawls 1987), p. 9-10.

would count as infringements of liberty, which may be all-things-considered justified in order to better promote liberty overall. On the rule-defined notion of liberty taken by Rawls, however, we may view these policies as regulating, or defining, the content of a ‘fully adequate scheme’ of liberties. For Rawls, people must enjoy a set of liberties that are fully adequate for the development and exercise of the two moral powers. And if this is the point of the basic liberties, we can notice that certain policies that ostensibly infringe on liberty—taxation necessary to allow the worst-off a decent socio-economic minimum, or prohibitions against hate speech that may undermine people’s self-respect—may be required for the basic liberties to serve their purpose. These policies may not count as infringements of liberty, then, insofar as they do not interfere with the fully adequate realization of the relevant liberties.

We can thus identify two roles played by the political conception of the person on Rawls’s view. First, as we will see, the moral powers figure centrally in the justification for the priority thesis; but they play a second role, as we’ve just seen, in *delineating* which liberties count as ‘basic’. Interestingly for Rawls, “the rights of acquisition and bequest, as well as the right to own means of production and natural resources’ are not basic liberties, because “they cannot be accounted for as necessary for the development and exercise of the moral powers.”¹⁹

One might wonder, however, whether the liberties Rawls *does* count as ‘basic’ are truly necessary for the development and exercise of the moral powers. Taken on its face, this claim seems false, since these powers seem to be realized in many societies that fall short of realizing Rawls’s first principle. Perhaps what Rawls means is that the first principle is necessary for *all* to develop and exercise the moral powers, or to have the best chances of doing so. The next section of

¹⁹ Ibid., p., 12. For an account of why the economic liberties *should* be counted as basic on a Rawlsian view see (Tomasi 2013). For criticism see (Patten 2014) and (Melenovsky and Bernstein 2015).

the chapter evaluates several ways in which this argument has been clarified and defended. But before proceeding we should note two further important clarifications of the priority of liberty thesis.

The first concerns whether the priority of liberty is a merely formal guarantee. In response to this issue, Rawls distinguishes between the basic liberties and their *worth* as follows:

the basic liberties are specified by institutional rights and duties that entitle citizens to do various things, if they wish, and that forbid others to interfere. The basic liberties are a framework of legally protected paths and opportunities. Of course, ignorance and poverty, and the lack of material means generally, prevent people from exercising their rights and from taking advantage of these openings. But rather than counting these and similar obstacles as restricting a person's liberty, we count them as affecting the worth of liberty, that is, the usefulness to persons of their liberties.²⁰

The priority of the basic liberties does not require their equal worth or value across persons, but Rawls makes an exception for the political liberties. The political liberties are required to have 'equal' value, in the sense people have 'fair' opportunity for political office and influence: "the worth of the political liberties to all citizens, whatever their social or economic position, must be approximately equal, or at least sufficiently equal, in the sense that everyone has a fair opportunity to hold public office and to influence the outcome of political decisions."²¹ An opportunity is fair, for Rawls, when similarly talented and motivated people have an equal chance of success.

²⁰ *Ibid.*, p. 4.

²¹ *Ibid.*, p. 42. In addition, the priority of liberty seems to be more than merely formal because of Rawls's insistence on 'legally protected paths' and 'institutional rights and duties'. This might be taken to mean that the priority of liberty requires a certain kind of robust protection over a range of possible interferences. Along these lines, some have argued that Rawls's conception of freedom is closer to freedom as non-domination rather than as non-interference. See (Costa 2009). Others have remarked that it is unclear (Larmore 2003): for the distinctions between the two conceptions of liberty were not worked out in Rawls's time of writing. See also (Besson and Marti 2009).

The second clarification is that the priority of liberty only applies once a society enjoys the level of economic development necessary for all to enjoy the basic liberties. If a society were too poor to provide the basic liberties, then justice may allow restricting liberty, if it were to enable means for their future provision. In this sense, Rawls allows that there are conditions under which justice does not require the lexical priority of the basic liberties. This distinguishes what he calls the ‘special’ conception of justice—when the first principle is given lexical priority—from the general conception, according to which all primary goods are governed by the second principle.²²

4.2 Three Arguments for the Priority Thesis

As we have seen, the first principle is not concerned with the enjoyment of liberty in the abstract, but instead involves a concern with the basic liberties as a package in connection with Rawls’s political conception of the person. This conception regards persons as in possession of two capacities or ‘moral powers’: first, a capacity to develop, exercise, and revise a conception of the good; second, a capacity to develop, exercise, and revise a conception of justice. This conception of the person is central, not just to Rawls’s account of which liberties are ‘basic’, but also to his defense of the priority of liberty. In this section, I evaluate three variations of the argument put forward by Rawls and his supporters. The first claims that the priority of liberty is necessary to protect the social conditions necessary for exercise and development of the two moral powers. The second is closely related, holding that the priority of liberty is necessary to protect the social bases of self-respect; self-respect being in turn necessary for the development and exercise of the moral powers. The third argument invokes a notion of Kantian autonomy in place of the political conception of the person.

²² (Rawls 1999), p. 54-55.

For any defense of the priority thesis to be successful, two conditions must be met. These conditions are essential, because they define the thesis. They are as follows:

Lexicality: the argument must support the distinct claim of *lexical* priority. It would not be enough to show that the basic liberties have high priority. It must be shown, further, that no trade-offs are permitted between the basic liberties and other goods such as income and wealth.

Completeness: the argument must support the package of basic liberties and not just one or another member. This includes the special treatment of political liberties—requiring their value to be ‘equal’ in the sense that people have fair opportunity to hold public office and influence political decisions. It would clearly not be enough to provide an argument, say, for freedom of conscience, and to simply stipulate that the argument carries over to the other basic liberties.

I am particularly interested, as I mentioned above, in how the priority of liberty might be defended in the spirit of *Political Liberalism*. I will assume that we have reason to prefer a justification that is appropriately public in the sense that it may be endorsed from the standpoint of a wide range of worldviews.²³ In what follows, I show that the three arguments offered by Rawls and his supporters fail to satisfy these conditions.

I. The argument from the moral powers

As noted in passing, the idea that the basic liberties are strictly *necessary* for the development and exercise of the moral powers appears to be false. But this is not quite Rawls’s claim. Instead, he says the basic liberties are needed to ‘secure’ the social conditions necessary for the ‘full and effective’ exercise of the moral powers. In more detail, Rawls makes the following three claims:

- (1) The equal political liberties and freedom of thought are to secure the free and informed application of the principle of justice, by means of the full and effective exercise of a citizen’s sense of justice, to the basic structure of society...

²³ Publicity in this sense may be taken to be important for several reasons. I view it as a requirement of communicating respect for persons as equals under conditions of pluralism. Publicity may also be important because it supports stability, civic friendship, or autonomy. See (Rawls 1999) at pages 140-144, 202, and 402, respectively. See also Williams (1998).

- (2) Liberty of conscience and freedom of association are to secure the full and informed and effective application of the citizens' powers of deliberative reason to their forming, revising, and rationally pursuing a conception of the good over a complete life.
- (3) The remaining (and supporting) basic liberties—the liberty and integrity of the person ... and the rights and liberties covered by the rule of law—can be connected to the two fundamental cases by noting that they are necessary if the preceding liberties are to be properly guaranteed.²⁴

To assess these claims, we need an account of how exactly particular basic liberties secure or protect conditions necessary for the development and exercise of the moral powers, and what it means for these liberties to be 'properly guaranteed' by the others.

Although Rawls does not fully provide this account, Chris Melenovsky offers a helpful reconstruction in a recent paper.²⁵ On the first claim, he argues that the first two basic liberties—political liberty and freedom of thought—are necessary to secure what he calls 'conditions of understanding' and 'conditions of expression'. These conditions are in turn necessary for the development and exercise of people's capacity for a sense of justice. The 'conditions of understanding' refer to circumstances that allow citizens to understand the perspectives of others. Understanding the perspectives of others is required for people to act on fair terms, which is central to what it means to have a sense of justice. It is not enough to merely understand the views of others, however. Conditions of expression must also be met in that one must be able to voice one's own view in public. Freedom of thought and the equal political liberties are required to meet these conditions, Melenovsky argues, because they protect people's ability to form their own views and have them heard by others in the political process.

²⁴ (Rawls 1987), p. 49-50 (numeration mine).

²⁵ (Melenovsky 2018), see also (Freeman 2007), p. 55-57.

On the second claim, Melenovsky argues that freedom of conscience and association protect two further conditions: ‘comparison’ and ‘guidance’. These conditions, he claims, must be met for all to develop and exercise a capacity for a conception of the good. Conditions of comparison require that people are able to examine their conception of the good against a plurality of others in a kind of ‘marketplace of ideas’. In addition, conditions of guidance are required: one needs opportunities for joint activity since people do not develop a conception of the good in isolation. Instead, they do so in coordination with others, drawing from the resources of existing conceptions. On Melenovsky’s account, then, by protecting people’s ability people to think what they like, and to associate with others, the conditions of comparison and guidance are met.

Finally, consider the third claim. On the one hand, Rawls and Melenovsky hold that the first four basic liberties—the equal political liberties, and freedoms of thought, conscience, and association—have special significance because of their close connection with the moral powers. On the other hand, freedom of the person and the rule of law are needed to ‘properly guarantee’ these basic liberties. This means that they protect people from forms of interference which, if unchecked, may impair their enjoyment of the other basic liberties.

This account plausibly motivates the idea that the basic liberties are important for the development and exercise of the moral powers. It remains unclear, however, exactly what it means to ‘protect’ or ‘secure’ the relevant social conditions. Rawls clearly does not think that this involves maximizing the development and exercise of the moral powers on aggregate; instead, he is concerned with the *equal* enjoyment of the moral powers.²⁶ But this leaves room for other

²⁶ (Rawls 1987), p. 47. It is worth noting here that ‘equal enjoyment’ here does not mean that everyone is equally able to pursue their given conception of the good or sense of justice; instead, the idea is that everyone equally has the *capacity* for a conception of the good and sense of justice. Moreover, ‘everyone’ only includes “normal and fully cooperating member of society over a complete life”. (Rawls 2005), p. 18.

interpretations. The claim could be that the priority of liberty makes it *most probable* or empirically likely that everyone will be able to exercise and develop the moral powers. Or it could be a matter of ‘reasonable’ expectation. Alternatively, it might mean that the priority of liberty secures these social conditions *robustly* for everyone, over a range of possible worlds.

On whichever interpretation, though, I contend that the priority thesis is not adequately supported by the considerations above. Insofar as there are *other* effective means to support the moral powers, it is unclear why trade-offs between these other measures and the basic liberties would be disallowed.

All of the conditions Melenovsky describes—understanding, expression, comparison, guidance—are supported by material resources.²⁷ Sensitivity to the viewpoints of others, self-expression, and exposure to different conceptions of the good—all are advanced by resources that provide various opportunities: e.g., to appreciate culture, learn new languages, travel, support political causes, lobby government, and so on. In some cases, material resources may be *relatively more useful* for the moral powers. This seems particularly true of political liberty. Given the extreme improbability of any person exercising decisive influence over democratic political outcomes,²⁸ it may make sense to give up the fair value of the political liberties in exchange for greater economic means, at least insofar as one is interested only in securing favourable social conditions for their moral powers. Put another way, suppose a society, or fiduciaries in the original position, can choose to adopt a scheme of less than equal political liberty. Perhaps the option is along the lines of Mill’s plural voting proposal, where the educated receive more votes. Suppose,

²⁷ Cf. (Eyal 2005).

²⁸ Here I take ‘decisive’ to mean that one’s vote determines who is elected, or which policy is adopted, as in a tie-breaking situation. See, for instance, (Lomasky and Brennan 2000), p. 65.

further, that this policy would create a significant surplus of material resources to be fairly distributed. It's not at all clear why this option would be refused. Since equal political liberty seems relatively less useful than material means, giving up on the fair value of political liberty in exchange for greater material means may provide *even more* favourable conditions for the equal enjoyment of the moral powers.

One may respond in support of Rawls that without enjoyment of the basic liberties, material resources are of limited use for the moral powers. Extra material resources may mean little to a religious person who lacks the liberty to practice their faith. Many people would not give up their religious freedom for any amount of material compensation.²⁹ But these cases do not generalize to cover the full range of choices required by the priority of liberty. It still remains unclear why *some* restrictions—i.e., giving up the fair value of liberty to a degree—would not be permitted in exchange for a higher level of material resources.

In sum, then, this argument from the moral powers falls short of satisfying the two conditions, *lexicality* and *completeness*. First, it does not justify the particular claim of special priority, because it does not provide an account of why there is no rate of exchange between the basic liberties and other goods. Second, the argument does not satisfy completeness, since it is unclear why the fair value of the political liberties is required.

II. The argument from the social bases of self-respect

A second argument, also found in Rawls's work and developed by others, appeals to the role of the basic liberties in securing the social bases of self-respect. This argument is closely connected to the moral powers and may be best regarded as a way of amending or strengthening the

²⁹ (Rawls 1999), p. 131.

considerations just discussed. I will distinguish and evaluate two versions of the argument. The two variants adopt different understandings of self-respect: what I will call ‘confidence-self-respect’, on the one hand, versus ‘standing-self-respect’, on the other. These two conceptions reflect an important contrast that has been drawn in the literature on self-respect, and, some writers suggest, both conceptions are present in Rawls’s thought as well. I argue, however, that neither variant provides a fully satisfactory defence of both the *lexicity* and *completeness* conditions.

Rawls tells us that self-respect has two components: first, “a person’s sense of his own value, his secure conviction that [...] his plan of life [...] is worth carrying out.” Second, it involves “a confidence in one’s ability [...] to fulfill one’s intentions”.³⁰ The reason self-respect understood this way is important—indeed, is “perhaps the most important primary good”—is that without it we do not see our plans and projects as worthwhile. We fall into ‘apathy’ and ‘cynicism’, and so are unable to realize our moral powers.³¹ For convenience, we can call this conception ‘confidence-self-respect’. From most of what he says, it would seem that Rawls thinks of self-respect in this way, and this is how his view standardly characterized.³²

It may be thought, then, that the priority of liberty is necessary to secure the social bases of confidence-self-respect. In support of this claim, Rawls and some supporters emphasize the importance of the *status-conferring* role of the basic liberties. Confidence-self-respect, it is said, involves a social or recognitional aspect, depending in part on respect or recognition from others.³³

³⁰ (Rawls 1999) p. 386.

³¹ *Ibid.*

³² See, for example, discussion in (Whitfield 2017), (Doppelt 2009), and (Taylor 2003).

³³ (Cohen 1989), p. 737, (Zink 2011), p.332.

A person's status as a citizen, defined by their enjoyment of the basic liberties, is particularly salient in this regard. An unequal distribution of basic liberties threatens people's confidence-self-respect, Rawls argues, by "publicly establishing their inferiority as defined by the basic structure of society".³⁴ By contrast, the basic liberties give everyone a 'similar' and 'secure' status, which works to mitigate harm to people's self-respect that might otherwise result from economic inequalities permitted by the difference principle.³⁵ Conferring citizens an equal status through the assignment of the equal basic liberties 'secures' or 'protects' the social bases of self-respect in that it renders the equal enjoyment of self-respect empirically likely, or a matter of 'reasonable' expectation.³⁶

Does appealing to the role of the basic liberties in securing confidence-self-respect do a better job of satisfying the *lexicality* or *completeness* desiderata? With regard to *lexicality*, the argument would seem to suffer from same problem as the argument from the moral powers previously considered: income and wealth also support confidence-self-respect, and so it is not clear why we would give the basic liberties priority, and not instead favour trade-offs.³⁷ In addition, confidence-self-respect may derive from many sources, such as membership in groups such as families, religions, universities, networks of friends and colleagues, and so on. These are examples what Rawls calls 'non-comparing' groups: they provide a source of confidence-self-respect for their members that is more-or-less insulated from the effects of other status hierarchies—say, in the way that being a valued member of one's football club may provide a source of confidence-self-respect

³⁴ (Rawls 1999), p. 477.

³⁵ *Ibid.* See also (Stark 2012) and (Zink 2011).

³⁶ (Whitfield 2017)

³⁷ (Taylor 2003), (Eyal 2005), (Doppelt 2009)

that is not undermined by exclusion from the yacht club in the other part of town.³⁸ These sources of confidence-self-respect may be supported and proliferated by a greater level of wealth in a society.³⁹ So it seems, then, to be an open possibility that self-respect may be better secured by permitting trade-offs between the basic liberties and economic gains.⁴⁰

In response, however, it might be argued that there is a stronger version of the argument from confidence-self-respect that survives scrutiny. The reply concedes that the priority of liberty is not strictly the *only* or even *best* way to secure the social bases of confidence-self-respect. The claim, instead, is that it is the only *just* way, or the best way given the overall balance of reasons of justice.⁴¹ One may concede Nir Eyal's point that assigning liberty no priority and equally distributing income and wealth may indeed be the best way to secure the social bases of confidence-self-respect.⁴² However, it might be claimed further, that there are other reasons of justice not to secure the social bases of confidence-self-respect in this way. Indeed, Rawls would say this policy would be inefficient and so 'a great misfortune'.⁴³ Suppose, as Rawls does, that permitting inequality with regard to income and wealth allows for an increase in the overall social product (for example, by providing incentives for the talented to take on difficult but socially useful

³⁸ (Rawls 1999), p. 536-7.

³⁹ (Freiman 2014)

⁴⁰ Some philosophers argue that the argument from confidence-self-respect actually commits Rawls to a range of unattractive positions. Nir Eyal argues the argument proves too much, requiring 'illiberal' redistribution (Eyal 2005). By contrast, Jeanne Zaino argues the argument proves too little, justifying a 'bourgeois' social order (Zaino 1998). This issue would seem to turn on empirical facts about the extent to which groups really are 'non-comparing' and about the relative social significance of income and wealth versus the basic liberties.

⁴¹ I would like to thank an anonymous reviewer for *Law and Philosophy* for suggesting this variation of the argument.

⁴² (Eyal 2005)

⁴³ (Rawls 1999), p. 478

work). Suppose, further, that the enlarged social product benefits everyone and gives the worst off more income and wealth than they would have under an equal distribution, as the difference principle requires. Since there are reasons of justice to give all more material means, one may argue that if there is a way to secure the social bases of confidence-self respect that is consistent with allowing growth-producing inequality, then we should favour that solution. Such a solution exists, fortunately, in the form of conferring people a status as equal citizens through the priority of the basic liberties: “the basis for self-respect in a just society is not...one’s income share but the publicly affirmed distribution of fundamental rights and liberties.”⁴⁴

Suppose for the sake of argument that this reply satisfies the *lexicality* condition. Nonetheless, I doubt it satisfies the *completeness* condition. It remains far from clear why the *particular* status conferred by Rawls’s *particular* list of basic liberties is necessary to secure the social bases of confidence-self-respect. It seems to remain an open possibility that a different package of basic liberties could do an as-good or even better job.

Again, it seems especially hard to establish the importance of fair value of political liberty. It is doubtful whether *any* departure from the fair value of the political liberties would really fail to provide a secure basis for people’s confidence-self-respect. Steven Wall raises this doubt as follows: “for a society like the United States, if it does not provide substantial public funding for political campaigns, then the fair value of the political liberties will not be achieved”; however, he continues, “it stretches all credulity to suppose that if it does not do so, then this predictably will express a public message that will wound the self-respect of citizens.”⁴⁵ If Wall is right, then

⁴⁴ *Ibid.*, p. 477

⁴⁵ (Wall 2006), p. 261

perhaps confidence-self-respect would be even better secured by giving citizens more money (or lowering taxes) instead of funding political campaigns to the extent required by the fair value the political liberties. People may simply not care enough about political equality for their confidence-self-respect to hinge on it.

More strikingly, there seems to be insufficient reason to reject as a matter of principle that confidence-self-respect could be secured under a plural voting scheme.⁴⁶ It may be, as Mill writes, that

entire exclusion from a voice in the common concern is one thing: the concession to others of a more potential voice on the ground of greater capacity for the management of joint interests is another . . . Everyone has a right not to feel insulted by being made a nobody and stamped as of no account at all. No one but a fool, and only a fool of a peculiar description, feels offended by the acknowledgement that there are others whose opinion, and even whose wish, is entitled to greater amount of consideration than his.⁴⁷

To be sure, we have reason to be much less optimistic than Mill seems to be; we may regard this as close to a wholly theoretical possibility. In most societies we are familiar with being less educated is strongly correlated with belonging to an ascriptive category: e.g., race, ethnicity, gender, or social class. Under these conditions it seems nearly impossible that Mill's proposal could count only as an acknowledgement that some may make wiser political choices to the benefit of all. It would seem plausible, then, as some of Rawls's supporters have pointed out, that equal political liberties may by contrast be effective in providing a basis of confidence-self-respect for everyone.⁴⁸ This would seem especially true for societies that have a history of a one-person-one vote rule.⁴⁹ But this falls short of showing that it is the *best* way. We might

⁴⁶ *Ibid.*

⁴⁷ (Mill 1861)

⁴⁸ (Krishnamurthy 2013)

⁴⁹ (Dworkin 2000), p 201, (Wall 2006)

imagine, for instance, a different kind of plural voting scheme, where the worst off (in the overall distribution of primary goods) are given more votes, and the better off are given fewer. Such a policy might provide even better support for the self-respect of the worse-off, without jeopardizing that of the better-off (they remain better-off, after all). Rawls's suggestion above is that political equality provides a non-rivalrous basis of comparison, blocking damage to confidence-self-respect that might otherwise be caused by economic inequality. But why not go a step further and provide *compensation*, in the form of greater political influence, to the economically worse off? Perhaps by making everyone a 'winner', in one or the other domain, confidence-self-respect could be even better secured than under political equality.

I conclude, then, that the argument from confidence-self-respect fails to satisfy both the *lexicity* and *completeness* conditions. It might be argued, however, that there is an alternative conception of self-respect that offers a more compelling defense.⁵⁰ In the recent literature on self-respect, several philosophers have distinguished an important kind of self-respect that is distinct from confidence-self-respect. Call it 'standing-self-respect.'⁵¹ This alternative conception regards self-respect as a matter of regarding oneself as a possessor of a particular standing or set of entitlements—as a person who is owed certain forms of treatment.⁵² A person who lacks standing-self-respect will not be disposed to demand of others the treatment they are owed in virtue of that standing. They will allow others to 'walk all over them' and they may

⁵⁰ Some claim what I call confidence-self-respect is not a kind of self-respect at all, but a notion of self-esteem, and that Rawls equivocates between self-respect and self-esteem. For discussion, and a response, see (Stark 2012).

⁵¹ (Schemmel 2018), (Bird 2010), (Dillon 1997).

⁵² Rawls is not so commonly thought to have this notion of self-respect in mind, but see (Schemmel 2018), p. 14, fn 15. Nir Eyal suggests there are two different notions of standing-self-respect in Rawls's early and later thought: a Kantian notion and a political notion. See (Eyal 2005) at p. 202 and p. 205, respectively.

regard that treatment as appropriate to them. It might be argued, then, that the priority of liberty is required on the basis that it provides the social basis of an important kind of standing-self-respect.

This argument, however, at least without further development, stills leave us without a satisfactory account of the *completeness* condition. The category of standing-self-respect is quite general, and in need of specification. Supposing that Rawls's list of liberties secures a particular kind of standing-self-respect, we are left with the question of why that particular kind matters. It may be argued that a less extensive package of liberties would secure the kind of standing-self respect required by justice. For example, suppose one thought that persons ought to have standing-self-respect for themselves as Kantian ends.⁵³ This kind of self-respect would plausibly require *some* of the basic liberties, such as rights against harm. But it would not seem to require Rawls's particular list. We might wonder, for example, why respect for oneself as a Kantian end requires equal political liberty. Alternatively, one might argue that people ought to have a secure basis for a kind of standing self-respect that requires liberties not included on Rawls's list. One might insist, for example, that people ought to enjoy standing-self-respect as bearers of economic rights, such as freedom of contract.

It may be argued, then, that once we properly understand the nature and importance of standing-self-respect, we will realize we ought to prioritize a different list of liberties than the one favoured by Rawls. It is not at all self-evident how to resolve this issue, however. What this shows is that appealing to standing-self-respect in order to defend Rawls's thesis is incomplete at best. Without begging the question, we need an account of the importance of the

⁵³ See discussion in (Eyal 2005).

specific kind of standing-self-respect conferred by Rawls's list of liberties. One way to do this would be to give an account of why persons are owed that specific kind of standing. The argument I give in section 3 can be regarded as a way of working this out.

III. The argument from Kantian autonomy

Turning now to the third account, Robert Taylor argues we can satisfy the *lexicity* condition by appeal to a Kantian notion of autonomy that Rawls invokes in the original version of *A Theory of Justice*.⁵⁴ On this account, autonomy is regarded involving freedom from our choices being determined by natural and social contingencies.⁵⁵ This involves *rationality*, understood as the ability to exercise authority over one's desires—resisting some, prioritizing others, and combining various ends into a coherent plan.⁵⁶ Rationality in this sense is regarded as a person's *highest-order interest*. The ability to alter, revise, and coordinate one's ends has lexical importance over any interest in pursuing any specific end. Taylor understands this as a kind of lexical priority of interests, of rationality over pursuit of particular ends, and argues it requires the lexical priority of the basic liberties. "If the parties were to sacrifice the basic liberties for the sake of other primary

⁵⁴ (Taylor 2003).

⁵⁵ Rawls puts the thought in Kantian terms as follows:

My suggestion is that we think of the original position as in important ways similar to the point of view from which noumenal selves see the world. The parties qua noumenal selves have complete freedom to choose whatever principles they wish; but they also have a desire to express their nature as rational and equal members of the intelligible realm with precisely this liberty to choose, that is, as beings who can look at the world in this way and express this perspective in their life as members of society. They must decide, then, which principles when consciously followed and acted upon in everyday life will best manifest this freedom in their community, most fully reveal their independence from natural contingencies and social accident. (Rawls 1999) p. 225.

⁵⁶ (Taylor 2003), p. 259.

goods,” he claims, “they would be sacrificing their highest-order interest in rationality and its preconditions, and thereby failing to express their nature as autonomous beings”.⁵⁷

As it stands, this argument appears to appeal to a similar sort of interest appealed to in the argument from the moral powers, namely, the capacity to reflect on and endorse a conception of the good. We may worry, then, that it is not any more promising: i.e., given that income and wealth also matter greatly for the interest in rationality so understood, it is not clear why we would not allow trade-offs between some of the basic liberties in exchange for economic gains. Sensitive to this concern, Taylor introduces a final step in the argument. He proposes a more comprehensive notion of what it means for the priority of liberty to ‘express [people’s] nature as autonomous beings’, which appeals to other kinds of lexical priority in Kantian thought—e.g., the doctrine of the right over the good, and the claim that the good will is lexically more valuable than its complements such as talents, excellences of character, or happiness. Understanding the higher-order interest in rationality in the broader context of this more comprehensive set of Kantian commitments, Taylor argues, provides the needed justification for the distinct claim of lexical priority.

But even if this more comprehensive Kantian view can successfully argue for *lexicity*, it comes at a high cost: it does not appeal to public reasons, as Taylor himself notes.⁵⁸ This justification for the priority of liberty would not be endorsable by people who held incompatible conceptions of the good; e.g., those that did not “elevat[e]...rationality over the satisfaction of

⁵⁷ Ibid. p. 261.

⁵⁸ He also notes that the argument does not require the equal political liberties, and so it fails the *completeness* condition as well.

desire”.⁵⁹ For this reason, Rawls in the later work moved away from the Kantian idea of autonomy and developed the argument in terms of the political conception of the person previously discussed.⁶⁰

4.3 The Argument from Social Equality

None of the arguments put forward by Rawls and Rawlsians, then, provide an entirely satisfactory defence of the distinct claim of *lexical* priority, for the *complete* package of basic liberties, on the basis of reasons that are appropriately public. In what follows, I propose an alternative account that focuses on the status conferring role of the basic liberties previously discussed. On the approach developed here, however, the requirement that citizens enjoy the status as equals conferred by the basic liberties is not justified by appeal to their being necessary to secure social conditions for the moral powers or self-respect. The requirement of equal status is instead regarded as an independent requirement of justice.

I. The nature and value of social equality

As we have seen, the social or relational conception of equality has been put forward as account of what is required for the state to express respect for its members as equals.⁶¹ This requirement, it is argued, is best understood as specifying the kind of social relations people ought to stand in, and not only how goods such as resources, wellbeing, or capabilities ought to be distributed.⁶²

⁵⁹ (Taylor 2003), p. 268.

⁶⁰ (Scanlon 2002)

⁶¹ (Anderson 1999).

⁶² Some social egalitarians seem to suggest that the distribution of goods must be entirely determined by the account of the kind of social relations people ought to stand in; others however, regard these as (at least partially) separate

The significance of Rawls's work to social egalitarianism is not yet entirely clear. While prominent social egalitarians such as Elizabeth Anderson and Samuel Scheffler cite Rawls as a proponent of the view, it's not obvious what, if anything, in Rawls's view is distinctly 'social' or 'relational'. It may seem that his view can be perfectly understood in more familiar 'distributive' terms. Nor is it clear the extent to which we should regard Rawls as giving a satisfactory account of social equality. I aim to make progress on this issue in what follows.

In the recent literature, it is suggested we view social equality in terms of the kinds of dispositions people bear toward one another. People relate as equals, some theorists suggest, insofar as they possess dispositions of a certain kind. On Samuel Scheffler's proposal we saw, for example, they are disposed to take each other's interests into account equally; on Niko Kolodny's proposal, they are 'resolutely' disposed not to interfere with one another.

On the account I favour, social equality involves a somewhat more complex relationship than the kind of interpersonal relations described by these accounts. On the view defended in Chapter Two, social equality is better thought of as a relation between people and political and social institutions.⁶³ Relations of equality, in the relevant sense, consist in a civic status shared as equals that is conferred under those institutions. This account, recall, involves three components: one *objective*; another, *communicative*; and a third, *intersubjective*, outlined as follows.

Objective: This element specifies the distribution of goods that are constitutive of social equality, or necessary to confer the relevant kind of status as equal citizen. While I will not attempt to give a complete account of this issue, I argue in what follows that the priority of the basic liberties is among the necessary conditions. Further conditions may also be

concerns. See (Lippert-Rasmussen 2018b) and (Moles and Parr 2019). For our purposes here, though, we need not take a stand on this issue.

⁶³ In this sense, the view may be regarded as having a kind of Rawlsian institutional focus.

necessary—which I leave open here—such as constraints on inequalities of income and wealth, equality of opportunity, and all enjoying certain capabilities.

Communicative: It is not enough that people are given these status conferring goods on any basis (e.g., their being equally deserving, intelligent, and so on). Instead, these goods are given to people on the basis that they are antecedently equals; and their distribution publicly communicates respect for persons as equals.

Intersubjective. The distribution of goods to people as equals sets a standard for how people ought to regard each other as equal citizens. This will shape and constrain their dispositions and there will be public awareness of the kind of treatment and regard owed to others. Although justice may not be compromised by people failing to fully live up to the ideal in their personal lives in all cases, they will, however, be constrained in political and public forums.

While social equality, understood this way, may be taken to be normatively important on several different grounds, I argued in Chapter Two that the concern with equality of civic status is fundamentally grounded in the requirement that the state respect its members as equals. No state can be said to show respect for its members as equals if it assigns some, explicitly or implicitly, an inferior status to others in the community. Even if people may be happier, or better-off in some other respect in a hierarchical society, that society would be objectionable on the grounds that it failed to respect its members as equals.

This requirement that the state show respect for its members as equals is of course not foreign to Rawls's theory. Indeed, Ronald Dworkin argues that it is Rawls's fundamental concern, pointing to the following passage:

Some writers have distinguished between equality as it is invoked in connection with the distribution of certain goods, some of which will almost certainly give higher status or prestige to those who are more favored, and equality as it applies to the respect which is owed to persons irrespective of their social position. Equality of the first kind is defined by the second principle of justice...But equality

of the second kind is fundamental. It is defined by the first principle of justice and by such natural duties as that of mutual respect; it is owed to human beings as moral persons.⁶⁴

This equality of respect that Rawls distinguishes from distributive equality is, however, as Dworkin points out, highly abstract. A wide range of social and political arrangements may be argued to best satisfy it, and one may wonder whether any specification will have to take the form of specifying some equal distribution of goods. The distinctive move made on the social egalitarian approach, on my understanding of the view, is to propose the ideal of equality of status as a particularly plausible interpretation of what the requirement of respect for persons as equals involves.

III. A Rawlsian Conception of Social Equality

The account developed so far leaves open the central question of what *kind* of status ought to be given to people as equals. It may seem that social egalitarianism is neutral between more versus less demanding conceptions of status. Suppose we were to compare a society in which everyone is equally denied freedom of speech to a society in which all enjoy that liberty. As far as we are concerned only with *equality* of status, the two societies would seem to be on a par, all else being equal. After all, in both cases, all enjoy freedom of speech equally, and so no person is inferior or superior to others on that basis. Nevertheless, we would judge the second society more just (all else being equal). A satisfactory account of social equality, then, must specify the content of the status to be shared as equals.

How can the content of this status be specified? The idea I want to pursue is that Rawls's conception of the moral powers offers a plausible solution. We can develop the account of social

⁶⁴ (Rawls 1999), p. 447, Cf. (Dworkin 1978), p. 180.

equality by asking what kind of status communicates respect for people as equal bearers of the moral powers. In this way, the delineating role of the moral powers is maintained, but in manner different from the accounts suggested by Rawls and his supporters.

What, exactly, is required to give people a status that expresses respect for them as equal bearers of the moral powers? One response might involve considerations considered earlier; namely, that this would require bringing about the social conditions most favourable to the equal enjoyment of the moral powers or the social bases of self-respect. If this were right, then the account I wish to propose would suffer from the same problems as the arguments previously considered. There is, however, an alternative (and more plausible) way in which we can characterize the relevant requirements of respect.

This alternative characterisation invokes a general distinction between the requirements of respect and the goal of bringing about valuable states of affairs.⁶⁵ This distinction bears on a range of values such as human life, friendship, and autonomy. In these cases, the requirements of respect diverge from what would best promote the value in question. Consider the ‘survival lottery’, where healthy people are randomly selected and killed to have their organs distributed for transplant, thereby saving several lives.⁶⁶ This kind of policy may be a good way to promote human life—bringing about more healthy humans—but it would come at the cost of failing to exemplify adequate respect for persons. In a similar way, it may be that in certain cases one can bring about more instances of friendship by failing to respect their existing friends; say, if breaking a promise to a friend allowed one to attend a social event where they will make several new friends. In both

⁶⁵ I intend this distinction to be neutral between non-consequentialist and consequentialist approaches. Cf. (Pettit 1989) and (Scanlon 1998), Ch. 2.

⁶⁶ (Harris 1975)

these cases, the value in question may be promoted, but doing so involves a failure of respect. While these cases involve *interpersonal* trade-offs, we can imagine *intrapersonal* cases as well. Interfering with someone's body—e.g. forcing amputation of Bob's cancerous toe, against his will, in order to save his life—may promote their life at the cost of failing to show them appropriate respect. Likewise, it may be possible to promote someone's capacity for autonomy in the long run by forcing them to make good choices; but doing so would fail to respect them as autonomous agents.

This difference between the requirements of respect and bringing about valuable states of affairs has intuitive force, and as we will see shortly, it bears on what it means to respect persons as equal bearers of the moral powers. Before proceeding, though, it will be useful to further characterise the notion of respect at issue. What, in general, characterizes the requirements of respect? As a useful starting point, we can think of the kind of respect at issue as a kind of 'recognition' respect. Recognition respect, on Stephen Darwall's classic formulation, consists in "giving appropriate consideration or recognition to some feature of its object".⁶⁷ This is a very abstract notion, leaving open both what counts as 'appropriate consideration', and what is to be taken as the relevant object. Sentience, rationality, or some other property of persons are possible objects of recognition respect, as are (arguably) non-persons such as the rule of law. For our purposes, we can regard persons as equal bearers of the moral powers as the relevant object.

This leaves us with the question of how to construe what counts as 'appropriate consideration', which admits of many interpretations. An act utilitarian may argue that respect for persons consists in nothing more than treating no one as more important than others in maximizing

⁶⁷ By contrast, we are not concerned with 'appraisal' respect, which is given in degrees according to differences in merit. (Darwall 1977).

the amount of aggregate utility. But this is far from being the only or most obvious interpretation.⁶⁸ On many other approaches, this interpretation would fail to capture the kind of ‘appropriate consideration’ that respect requires. After all, this interpretation does not capture the intuitive difference between respecting and promoting valuable states of affairs in the examples just discussed involving human life, friendship, and autonomy. These examples suggest, instead, that the ‘appropriate consideration’ that respect involves requires *constraints on interference*.⁶⁹ As a general matter, I contend, one may fail to give another recognition respect by interfering with or impairing those capacities in virtue of which a person is owed respect. If I owe another respect based on their sentience, I fail to deliver it if I unnecessarily cause them pain; if I owe another respect based on their rationality, I fail to give it if I force my judgement on them.

On the account developed here, then, respect involves two components. First, a specification of the relevant respect-worthy property of persons; and second, an account of what it means to give ‘appropriate consideration’ to persons as possessors of that property. In many cases, we have seen, ‘appropriate consideration’ requires constraints on interfering with the relevant properties of persons. This characterisation distinguishes the requirements of respect from the goal of bringing about valuable states of affairs, since the two aims may be cross purposes—e.g., in the way that respecting a person’s life requires constraints on harvesting their organs for donation, even if doing so would bring about more instances of human life.

Having clarified the requirements of respect as distinct from bringing about valuable states of affairs, we are now in a position to see that it applies perfectly well to the case of persons as bearers

⁶⁸ See discussion in (Kymlicka 1988).

⁶⁹ In both the actual world, and a range of possible ones too, we might add. See (Pettit 2015).

of the moral powers. ‘Promoting’, ‘securing’, or ‘protecting’ the social bases of self-respect or the moral powers may be a matter of bringing about the state of affairs most favourable to their equal enjoyment, as on the arguments previously considered. By contrast, respecting persons as equal bearers of the moral powers requires constraining interference with or impairment of those capacities.

What might it mean for the state to impose constraints on interference with people’s moral powers? The natural suggestion, at this point, is that the state imposes such constraints by protecting the basic liberties. The protection of the basic liberties—the ability of its members to think and say what they like, associate with others, to participate in the political process—allows for the unimpaired exercise of the moral powers. But this is not to say that protecting the moral powers from interference is the best way to bring about the state of affairs most favourable to their equal enjoyment. As we saw previously, this aim might be better supported by trading-off the basic liberties for gains in other goods. Instead, protection against interference serves a different aim: it communicates the appropriate kind of respect for persons; and since this respect is given publicly on the basis of the equality of persons, it confers on them a status as equals.

IV. The conditions satisfied

Now I will consider the issue of how the argument from social equality satisfies the *lexicality* and *completeness* conditions. As noted previously, satisfying the *lexicality* condition requires an account of why the basic liberties have high importance and are not fungible with other goods such as income and wealth. The argument from social equality provides this account where the others have failed; and while lexical priority is a very strong claim, I will offer a suggestion why it might

not be as implausible as some may think, in virtue of its specific role of regulating the basic structure.

First, the basic liberties have high importance because, I have argued, they give persons a status as equals which is necessary for the state to meet the fundamental requirement of respecting its members as equals. Second, the basic liberties are not fungible with other goods because to infringe on them is to fail to give the respect and status appropriate to persons as equal bearers of the moral powers. Notice that if the aim is *promotion* of favourable conditions for the moral powers or self-respect, there is no genuine trade-off or sacrifice between different aims of justice: infringing on liberty for material gain may simply *better promote* those conditions. By contrast, there *is* a genuine sacrifice of people's status as equals if liberty is restricted for material gain. Consider again Rawls's example "that the equal political liberties cannot be denied to certain social groups on the grounds that their having these liberties may enable them to block policies needed for economic efficiency and growth". Even if we suppose further that the social groups whose liberty is restricted are compensated by a share of the increased social product, this would not be enough to give them the respect and status due to them as equal bearers of the moral powers. While this example gains some of its force from the fact that there is an *unequal* restriction of liberty, there would be a similar objection to an *equal* restriction of liberty. Suppose, for example, that everyone's liberty to criticize the state were restricted because it would hinder efficiency and growth of the social product. Even if *everyone* were compensated with a share of the increased supply of material goods, this would come at the cost of the state failing to show respect for *any* of its members as a bearer of the moral powers. On this basis, if the basic liberties are important in virtue of their status-conferring function, there is a clear rationale for why the basic liberties are not fungible with income and wealth.

It is worth noting, however, that it nevertheless may be consistent with the priority of liberty thesis to restrict various basic liberties when they come into conflict with one another. As we saw earlier, “the institutional rules which define these liberties must be adjusted so that they fit into a coherent scheme of liberties.”⁷⁰ On the account developed here, we can ask how the various basic liberties can be regulated into a coherent scheme that gives persons a status as equal bearers of the moral powers. So, for example, certain forms of speech—e.g. racial slurs or defamation—may be restricted because they are at odds with all enjoying a set of basic liberties that is adequate for that purpose. Likewise, restrictions on particular religious practices may be justified on the same grounds. Such regulations of the basic liberties in these kinds of cases do not violate the priority of liberty; instead, they ‘adjust’ the basic liberties into a coherent scheme.

One may still wonder, however, why we should assign the basic liberties *lexical*, and not just high priority. Many may judge that if the gains in terms of other goods were great enough, we would have an all-things-considered reason to restrict liberty, even if that would involve a failure to give respect and status to people as equals. In other words, the relative importance of the concern with respect and status I have suggested, versus the concern we may have with people’s interests in having more material means, is open to doubt. However, if the concern with social equality along the lines characterised is taken to be of high importance, it may make sense to assign the basic liberties lexical priority, given the principle’s particular role: regulation of the basic structure. The lexical priority thesis is not intended, by contrast, as a characterization of the morally best state of affairs. This is significant, because there may be particular considerations that pertain to the former but not the latter kind of account. We may be cautious about whether the principles regulating the basic structure are prone to abuse, taking people as they are. We may want to prevent

⁷⁰ (Rawls 1987), p. 9.

abuses of restricting liberty for other aims, even if we believe there are limit cases where it may be morally best. If, for example, one could press a button that slightly restricted their neighbour's liberty for a day, but as a result made everyone in their society extremely well-off, one might think they morally ought to do so. But it does not follow that the priority of liberty should be rejected as a principle that regulates the basic structure. In a similar way, it may make sense to adopt absolute prohibitions against torture, as a matter of policy, even if we believe there to be limit cases where torture is all-things-considered justified.

Turning now to the *completeness* condition, I argue that the social egalitarian account developed here supports the package of liberties Rawls recommends; and importantly, it provides an explanation why the political liberties are required to have equal value across persons. On Rawls's original account, as we saw, he suggests a connection between certain basic liberties and the moral powers. Freedom of thought and the political liberties secure the social conditions for a capacity for a sense of justice; freedom of conscience and freedom of association secure the social conditions for a capacity for a conception of the good. On the social egalitarian account, we've substituted the aim of 'protecting', 'securing', or 'promoting' with the aim of respecting. But the connection suggested by Rawls remains plausible. Preventing interference with people's capacity to think and say what they like and participate in the political process expresses respect for their capacity for a sense of justice; and letting people hold whatever beliefs they like, and to associate with whomever they like, expresses respect for their capacity for a conception of the good. The remaining basic liberties—liberty of the person and the rule of law—further constrain interference with the moral powers, and so serve to express this respect as well.

In addition, the argument from social equality does better than the other arguments previously considered along a key dimension: accounting for the equal value of political liberty requirement. We saw that the arguments from the moral powers and self-respect have an especially hard time defending this aspect of *completeness*. This is because while equal political liberty may to some degree support self-respect or the moral powers, it is by no means necessary, and both interests may be better supported by material goods in a range of cases. By contrast, it is plausible that equal political liberty is necessary for social equality. Several philosophers have in recent work argued for this claim at length.⁷¹ Here I want to focus on one consideration in particular. Recognizing the status-conferring role of political liberty points to a reason why we would require its equal worth, but not the equal worth of other basic liberties. This is because the status-conferring value of political liberty is strongly *positional*.⁷² What I mean by this is that the extent to which political liberty confers status on a person strongly depends on the kind of political liberty others have.

To illustrate, consider again Mill's plural voting scheme, in which educated people are given more votes than others. Greater influence for the educated has in this case a zero-sum aspect. Having one vote in a society in which others have more does not confer the same status as it does in a society in which all have one vote. In Mill's scheme of plural voting, having only one vote signals that one is judged to have an inferior capacity for judgement in a way threatens their status as an equal bearer of the moral powers. And a similar issue would hold, even if plural votes were allocated for different reasons—suppose again more votes are given to worse off socio-economic

⁷¹ (Kolodny 2014), (Viehoff 2018), (González-Ricoy and Queralt 2018)

⁷² Harry Brighouse makes a similar argument to the one given here (Brighouse 1997). His argument, however, focuses on *political influence* being positional, and not status.

groups. While this scheme would intuitively be less objectionable than Mill's, it would nevertheless be problematic from the standpoint of social equality. The scheme may serve to make a de facto hierarchy more explicit—the message is that they are, after all, in a lower class than others.

By comparison, the other basic liberties are not positional in the same way. Consider an inequality with regard to the worth of a different basic liberty: freedom of conscience. Suppose two persons have this liberty but at different levels of worth. One person is relatively poor and can only attend their local church and worship in private, but the other person is wealthier and can afford to go on distant pilgrimages, to make large donations, and so on. Provided that the difference in the value of their liberties is not too great (supposing it is regulated by the difference principle, or in some other way) this inequality would not necessarily fail to express respect for people as equal bearers of the moral powers. It would not send the message that some are inferior with regard to their capacity for a conception of the good. This thought generalizes to freedom of thought and freedom of association. Provided one has adequate means to exercise these liberties, and that inequalities of their worth are kept within limits, we need not require their equal value to respect people as equal bearers of the moral powers.

If the argument of this chapter is successful, then, I have given an adequate account of *lexicity* and *completeness*. But I have also done so in a suitably public way. This is not to say that the account is entirely value free—we have appealed to the value of social equality and a specific interpretation of respect for persons as equal bearers of the moral powers. However, unlike the argument from Kantian autonomy previously discussed, this justification may find support from a wide range of conceptions of the good. It does not appeal to reasons that are bound to be controversial among those with diverse conceptions of the good, unlike the way people are bound

to disagree about whether rationality is our highest-order interest. The argument from social equality is ecumenical in this sense, claiming that people's diverse conceptions of the good are entitled to respect. People with disparate conceptions of the good can agree that as a matter of justice each person is an equal with regard to their having a capacity for a conception of the good and a sense of justice; and furthermore, each person is owed respect and a status as an equal on this basis.

Conclusion

This chapter has had two complementary aims. On the one hand, I argued that social egalitarian considerations provide better support for the priority of liberty than the arguments offered by Rawls or his supporters. On the other hand, I demonstrated how Rawlsian considerations—a concern with the moral powers—are helpful for filling in the content of social egalitarianism. I have argued that the priority of liberty is a plausible necessary requirement of social equality. This contribution, of course, leaves unsettled the issue of what a fully worked out account of social equality would involve. For example, it remains to be determined exactly how to regulate the value of the basic liberties. We should want to know, for instance, whether the difference principle is satisfactory, on a social egalitarian account, or whether some other principle is required. I hope to have provided, however, a plausible construal of social equality along Rawlsian lines that may be able to address these issues with further development.

5) Republicanism Situated

This chapter aims to make further progress on the question of how social equality is related the protection of people's basic liberties. The previous chapter focused on the *importance* of liberty, where I argued that appealing to social equality provides a compelling defense of the priority of liberty. This chapter, by contrast, will focus on the *nature* of liberty—in particular, I will focus on claims about the nature of liberty defended in the republican tradition. The republican tradition of political thought is characterized by the following distinctive claims:

- 1) *Insufficiency*: goodwill and virtuous self-restraint are insufficient to realize justice.
- 2) *Constitution*: the law is constitutive of justice.¹

The first of these claims has received the most attention and is often used to motivate the republican view. A slave with a kindly master is unfree, no matter how unlikely their master's interference. Thus, republicans argue, the absence or low probability of others' interference is not enough for freedom. Instead, non-interference must be enjoyed *robustly* across a range of possible worlds, with no agent having an uncontrolled capacity to interfere. To be free in this sense is to enjoy *freedom as non-domination*.

¹ While these claims are typically cast in terms of *freedom* rather than *justice*, I choose the general term for reasons that will soon become clear. In the contemporary literature, these claims are developed and defended by neo-republican theorists such as Philip Pettit, Frank Lovett, and Quentin Skinner; in addition, these claims are defended (on different grounds) by Kantians such as Anna Stilz, Arthur Ripstein, Japa Pallikkathayil, and Thomas Sinclair. See, for example, (Pettit 2012), (Lovett 2010), (Skinner 2008), (Stilz 2009), (Ripstein 2009), (Pallikkathayil 2010), (Sinclair 2018). In the canon, these claims have been defended by both 'Italian-Atlantic' and 'Franco-German' republican traditions. See (P. Pettit 2013). In this paper, I focus on the neo-republican account, and from here on, for the sake of simplicity, I will use the term 'republican' to refer this camp, and not the Kantians.

Against the republican conception of freedom as non-domination, two objections have been persistently raised: first, that it problematically *moralized*;² and second, that it *impossible* to realize.³ These concerns have led to skepticism about whether republicanism's distinctive claims—about the insufficiency of goodwill and constitutive importance of law—can be adequately defended.⁴

I believe these concerns with *impossibility* and *moralization* are indeed forceful. But at the same time, I think critics have risked obscuring insights of the republican approach, insofar as they doubt whether the *insufficiency* and *constitutive* claims may hold on other grounds. My aim in this chapter, then, is defend these claims while avoiding the *moralization* and *impossibility* objections. I do so by examining the point or purpose of protecting persons from domination. On the standard view, non-domination is regarded as a conception of negative liberty, in competition with others in the literature such as the so-called liberal 'non-interference' view. On the account I develop, however, a different concern is at stake: that persons have a civic status as equals, which realizes an important form of social equality.⁵ Protection from non-domination—more precisely, the provision of robust non-interference through law—is an important part of what this status involves.

² See (Dowding 2011), (Kramer 2003), (List and Valentini 2016), (McMahon 2005), (Waldron 2007).

³ (Simpson 2017), (Kolodny 2019), (Sharon 2016), (Dowding 2011).

⁴ It is worth noting that several critics of republicanism do not wholly reject the view, but instead aim to capture some of its distinctive features on the terms of their own theories. Christian List and Laura Valentini, for example, propose a conception of freedom which maintains the *robustly demanding* aspect of republican freedom, while at the same time jettisoning what they regard as its *moralized* aspect. See (List and Valentini 2016). Ian Carter argues that the so called 'liberal' conception of freedom as 'non-interference', when properly understood, is able to vindicate republicanism's central motivating intuitions, such as the unfreedom of the slave with a kindly master. See (Carter 2008)

⁵ Niko Kolodny has also suggested that the concern with domination may be better understood as a concern with social equality. However, in doing so, he rejects the *insufficiency* and *constitution* claims. I think this leaves him with a problematic account of social equality, as we will see below. See (Kolodny 2019).

To be sure, the notion of equality of status is not foreign to republicanism. But as I will make clear over the course of the chapter, it is useful to more carefully distinguish the concern with equality of status from the concern with non-domination than is typically done. And when the two concerns are adequately distinguished, we are in a better position to appreciate the nature and importance of republican commitments.

The chapter proceeds as follows. In section 2), I explain the notion of freedom as non-domination, how it forms a theory of justice, and how the *insufficiency* and *constitution* claims are defended. In section 3), I discuss the *impossibility* and *moralization* objections, evaluating and critiquing the responses recently made by republicans. In section 4), I characterize what I call the ‘status-conferring’ function of protecting persons from domination and contrast it with the standard ‘freedom-realizing’ account. I argue that the proposed status approach provides a convincing defence of the *insufficiency* and *constitution* claims and a resolution to the *moralization* and *impossibility* objections. In section 5), I conclude by exploring some other advantages of the status approach.

5.1 Non-domination and Social Justice

A person is free from domination with regard to a choice if no agent has an ‘uncontrolled’ capacity to interfere with that choice. While there is room for republicans to differ over what exactly is required for the relevant kind of control, Lovett and Pettit write that “there is widespread agreement...that control must robustly protect A against interference: that is, protect them across possible variations in A’s own preference in the choice and, more importantly, across possible variations in B’s preference as to how A should choose.”⁶ A slave may enjoy non-interference in

⁶ (Lovett and Pettit 2018a), p. 365.

the actual world under a benevolent master. But the slave is not free from domination, since they do not enjoy non-interference in the relevant range of possible worlds; e.g., those in which the master is no longer benevolent. The slave remains subject to the master's uncontrolled capacity to interfere. Thus, the *insufficiency* claim: no amount of goodwill or virtuous self-restraint is enough to realize justice.

The *constitution* claim follows almost immediately, to the extent that law is the best means we have available to make non-interference robust.⁷ On the republican account the law is constitutive of freedom because what it is—or at least part of what it is—to be free involves being protected from interference in possible worlds where the goodwill of would-be interferers breaks down. This contrasts with the ‘liberal’ view of freedom, on which, as Bentham says, “all coercive laws are, as far as they go, abrogative of liberty.”⁸ Spelling out the contrast, then, Pettit writes that

Republicans do not say, in the modernist manner, that while the law coerces people and thereby reduces their liberty, it compensates for the damage done by preventing more interference than it represents. They hold that the properly constituted law is constitutive of liberty in a way that undermines any such talk of compensation.⁹

We can say, then, that on the republican view law is ‘freedom-realizing’: when suitably designed and implemented, law brings freedom into existence. By contrast, on the liberal view the law is ‘freedom-promoting’: law limits freedom the first instance but brings about more of it overall. On the freedom-promoting view, law is a causal means to non-interference in the actual world; on the freedom-realizing view, law is a constitutive means to *robust* non-interference. While the best

⁷ To be sure, other ways of making non-interference robust are conceivable. Imagine a new technology is invented—a brain chip that gives one a shock if they form the intention to interfere with another.

⁸ (Bentham 2010)

⁹ (Pettit 1999), p. 35

system of law will interfere in the actual world (and so be ‘abrogative’ of liberty in that sense, as Bentham says), it will not interfere in an uncontrolled or arbitrary manner—and thus will not reduce freedom as non-domination.

Republicans not only hold that non-domination is the correct understanding of freedom; they claim, further, that freedom as non-domination is the fundamental concern of justice. Thus, there is a second respect in which the republican approach differs from the so-called ‘liberal view’, since liberals tend to see justice as involving a plurality of concerns—a balance of freedom and equality, for example. But in order to develop the general account of non-domination into a theory of social justice, we need an account of three issues: 1) the *domain* of choices that require protection from domination; 2) the *manner* in which those choices are to be protected; and, 3) the nature of the *distribution* of undominated choice across persons.¹⁰ On Pettit’s account, a theoretical device known as the ‘eye-ball’ test, is used to fill in these details, on the assumption of expressive equality: the provision of non-domination is required to express, borrowing Dworkin’s phrase, ‘concern and respect for persons as equals’.¹¹ The eye-ball test invokes the republican notion of the free-person or *liber*, who can walk tall without reason for fear or deference.¹² When the test is passed, each person can “look others in the eye” without having to “bow or scrape, toady or kowtow, fawn or flatter”.¹³

¹⁰ Cf. (Southwood 2015)

¹¹ (Pettit 2012), at p. 78.

¹² (Pettit 2007b) (Pettit 2008a)

¹³ (Pettit 2012), at p. 88.

First, consider the *domain* issue. Pettit holds that not every choice must be protected for justice to be realized. Instead, justice concerns non-domination in the domain of the *basic liberties*.¹⁴ The ‘basic liberties’ are a package of liberties, familiar to both liberal and republican traditions, which include ‘those of speech, association, residence, employment, ownership, and exchange.’¹⁵ Intuitively, even if you dominate a trivial choice of mine, such as my using your pool, that is not enough for me to fail to pass the eye-ball test: I can still look you in the eye without reason for fear or deference.¹⁶ But if you dominate my *basic liberties*—my ability to speak in public or my ability to move freely and so on—then I would seem to have good reason to avoid any eye-contact that might invite you to exercise your dominating power; and I may have reason to ingratiate myself to you, ‘keeping you sweet’, such that I might continue to enjoy non-interference.

Second, consider the issue of the *manner* in which non-domination is realized. In principle, people’s basic liberties could be protected from domination in a range of different ways. Suppose, for example, that the a technologically advanced state has a secret police force that prevents violations of people’s basic liberties before they happen.¹⁷ This may be enough to make this state’s citizens free from domination; but it might not be enough for them to pass the eye-ball test. For instance, if this police force is indeed secret (as stipulated) it may not be a matter of common awareness that each citizen is protected, in the sense that each citizen knows they are protected,

¹⁴ In more detail, Pettit identifies the basic liberties with those that are both ‘co-exercisable’ and ‘co-satisfiable’. See (Pettit 2012), at p. 94 and 98

¹⁵ (Lovett and Pettit 2018) at p. 366.

¹⁶ I borrow this example from (McCammon 2015)

¹⁷ À la *The Minority Report*. (Dick 2009)

knows that others know they are protected, and knows that others know that they know that others know, and so on.¹⁸ By contrast, however, Pettit maintains that non-domination of persons, in order to realize justice, must be realized through a system of *public* laws and norms. Public laws and norms provide protection, objectively, which, intersubjectively, are a matter of common awareness such that persons enjoy ‘a publicly established and acknowledged status in relation to others’.¹⁹

Finally, consider the *principle* question. We have identified the basic liberties as the relevant domain, but this leaves open the question of how non-dominated choice ought to be distributed across persons within the basic liberties.²⁰ One could hold a view, for example, that non-dominated choice should be strictly equally distributed, such that each person has the same or roughly similar choices with regard to ‘speech, association, residence, employment, ownership, and exchange’. Unsurprisingly, Pettit’s adopts a less demanding principle than this. His preferred principle is *sufficientarian* ‘in the currency of free or undominated choice’, requiring that all have resources and protection to meet ‘a certain threshold ... of free choice’ required for them to pass the eye-ball test.²¹ While sufficientarian in this sense, this principle is egalitarian in another: when all possess the resources and protection needed to pass the eye-ball test, Pettit claims, persons will have an *equal* status as non-dominated. Intuitively *some* degree of inequality with regard to choices within the basic liberties—some have more choices of employment, or can acquire more property—need not make some fail the eye-ball test or fall short of having a status as non-dominated along with others.

¹⁸ (Lewis 1969)

¹⁹ (Pettit 2012), at p. 88.

²⁰ More precisely, there remains a question about how to distribute non-dominated choice within the basic liberties, consistent with equal concern and respect. *Ibid.* p. 78.

²¹ *Ibid.*, p. 88.

In sum, then, this is the contemporary republican account: justice holds that each person has a public status as non-dominated, in virtue of no agent having the uncontrolled capacity to interfere with their basic liberties, achieved through a system of public laws and norms.

5.2 The Moralization and Impossibility Objections

I now turn to examine the *impossibility* and the *moralization* objections. I will explain both concerns in turn and evaluate the responses that republicans have given in the recent literature, drawing the conclusion that the objections raise substantial problems for the republican account.

i) *Moralization*

A conception of freedom is moralized if its definition involves other moral notions. On a moralized conception of freedom, certain forms of interference—taxation, imprisonment—may not count as infringements of freedom if they are *justified*. If there is disagreement about what counts as appropriate justification, then, there will be disagreement about whether certain forms of interference count as restricting freedom. Suppose we disagree about whether it is just to incarcerate someone for recreational drug use. If we adopt a moralized conception of freedom, then we will disagree about whether incarceration on these grounds makes a person unfree. In a similar way, people might disagree about whether a system of private property restricts or protects freedom: protecting one person's freedom to own several homes removes others' freedom to live in them.²²

²² G. A. Cohen, "Capitalism, Freedom and the Proletariat," in (Cohen 2011)

Moralized conceptions of freedom are typically regarded as problematic for several reasons.²³ For one, they seem to violate a kind of ‘ordinary language’ desideratum that “the conception displays adequate level of fidelity to ordinary-language use”.²⁴ This desideratum would be violated, for instance, by moralized conceptions of freedom that count the guilty prisoner as perfectly free, despite being locked up.

But there is another reason why the issue of moralization is troubling for republicanism in particular. As we’ve seen, the project of contemporary republicanism is to take freedom as the foundational political concern. For this reason, it would be especially problematic for the approach if freedom as non-domination involved other moral notions. It would then be these other (unexplained) values, and not just freedom as non-domination, that is at the foundation of the theory.

It is no surprise, then, that Pettit resists the moralization charge, and has given the following reply.²⁵ There is simply a matter of fact whether people have a capacity for uncontrolled interference. For example, it is either true or false whether a person enjoys non-interference robustly, in possible worlds where goodwill breaks down, and so on. If true, then as a matter of fact

²³ But for a recent argument in opposition to the commonly held view, see (Bader 2018)

²⁴ (List and Valentini 2016)

²⁵ Pettit says “Unlike ‘legitimate,’ ‘non-arbitrary’ is not an evaluative term but is defined by reference to whether as a matter of fact the interference is subject to adequate checking. Interference will be non-arbitrary to the extent that, being checked, it is forced to track the avowed or avowal-ready interests of the interferee; and this, regardless of whether or not those interests are true or real or valid, by some independent moral criterion.” (Pettit 2008c) I’ve adapted the point in terms of ‘control’ rather than interest-tracking, since the former notion has replaced the latter in the more recent work.

freedom of non-domination will be realized; if false, then not. Whether non-domination is realized in a given case depends only on descriptive facts about the presence of control.

Does this reply succeed? List and Valentini argue it does not, since it has unacceptable implications. They ask us to consider a democratic decision which involves a conflict of interest between different members of society (as is almost inevitable). Consider the decision whether to introduce a new inheritance tax. While the rich do not support the introduction of this new tax, everyone else does, and so the tax is introduced. Are the rich dominated? While it is true that each person exercises an equal share of control over the decision, this does not seem to give them ‘control’ in any sense that would preserve their freedom.²⁶

A natural response would be to say that since the procedure was fair, or something else, it should not be regarded as involving domination. Or one could say this with respect to the outcome. But in either case, we would be invoking fairness, or some other value, and so the judgement would be moralized.

A more plausible and more likely republican response (one that List and Valentini do not consider) might draw on the distinction between free-persons and free choices. The inheritance tax does not bring the rich below the threshold of sufficiency needed for them to enjoy a status as free-persons. Although the rich may be dominated with respect to their choice to keep their inheritance free from taxation, this is not enough for them to be dominated *as persons*. Having less inheritance does not threaten their ability to look anyone in the eye ‘without reason for fear and deference’.

²⁶ Unlike, perhaps, when you ask your partner to lock up the keys to the liquor cabinet, which later frustrates your akratic desires. (Pettit 2007a) p. 6.

This response, however, only pushes back the moralization concern without resolving it. Invoking the notion of the ‘free-person’ along with the eye-ball test, I contend, involves a kind of moralization.²⁷ The notion of the ‘status of a free-person’ is not wholly descriptive, but instead (tacitly) involves moral commitments. As we saw previously, having the status of a ‘free-person’ involves meeting a particular threshold of undominated choice within the basic liberties. But this invites the question of why the relevant ‘status as free-person’ does not consist in a different set of liberties, or a different principle of distribution. Some might argue, for example, that the economic liberties should be counted as ‘basic’.²⁸ Others might argue that the sufficientarian principle is far too permissive for the relevant kind of equal status required by justice. Thus, both elements of what it is to be a free person—the delineation of which liberties are ‘basic’, as well as how undominated choice is to be distributed across persons—involve a choice among a range of options. Moreover, it would appear to be exactly the kind of choice that calls for resolution by appeal to moral argument.

ii) *Impossibility*

The *impossibility* objection claims that as a matter of living in society, people will inevitably be subject to others’ uncontrolled ability to interfere, if not on the part of individuals, then by *groups*, whether these groups are actual or merely possible agents.

Consider the following cases put forward by Thomas Simpson:

²⁷ Republicans may acknowledge that the eye-ball tests involves a commitment to basic moral equality (Besson and Martí 2009). My claim here, however, is that it involves more than that.

²⁸ For such an account, see (Tomasi 2013)

Nearly coordinated masters: There are three masters and a slave. No one master is strong enough to interfere in the slave's choices, but any two can do so by coordinating their efforts. Master 1 is ready to coordinate with either master 2 or master 3, but the latter are both benevolent and do not.

Uncoordinated masters: There are three masters and a slave. No one master is strong enough to interfere in the slave's choices, but any two can do so by coordinating their efforts. All three masters are benevolent.²⁹

In both cases, the slave appears to be dominated, or so Simpson argues. The slave does not enjoy non-interference robustly: if the masters no longer remain good-willed, then they will coordinate and interfere with the slave. As such, the slave will have reason to 'keep them sweet' and would fail the 'eye-ball test'.

The next, and crucial, step in Simpson's argument is to claim that in *any* society, there are possible groups that are relevantly similar to the uncoordinated or nearly coordinated masters. In any society, for any person, he claims, there will inevitably be

a collection of agents who have an uncontrolled power to invade her, by coordinating. It does not matter how improbable it is that they will do so; the possibility that they may makes her unfree. No one can protect her from this interference except other people. But they too have the same power to coordinate, so the same danger arises again.³⁰

Domination between *individuals*, Simpson agrees, or between individuals and small groups, might be removed through suitable laws and norms. However, this will not be enough to remove the dominating ability of every group. Republican justice, he reminds us, requires popular control of

²⁹ (Simpson 2017). Cf. (Kolodny 2019)

³⁰ (Simpson 2017), p.37.

government. And if ‘The People’ can control the government, they surely can interfere with any individual. Thus, Simpson concludes “just by living among other people...one is dominated”.³¹

Lovett and Pettit are not convinced by this argument, however. In response, they identify a salient difference between the nature of the ability of “The People” to control government as opposed to the ability, or lack thereof, of the “The People” or other potential groups to interfere with an individual citizen’s basic liberties. The difference is what it takes for a group to be *capable* agent as opposed to a merely *potential* one. In order for a group to be capable, three conditions must be met by its members: “first, they must each desire that they together interfere; second, they must be aware in common of their mutual desire; and, third, they must be aware in common of a strategy whereby they can act on that desire.”³² Call the latter two conditions the *awareness* and *strategy* conditions.

In a just republic, these conditions will not be met by potential groups that might otherwise interfere with an individual’s basic liberties. When republican laws and norms obtain, it will be incredibly costly for a person to signal a willingness to form such a capable group, as doing so would make one liable to punishment by law, ostracism, and other forms of social sanction. Thus, even if the members of a potential group wish to interfere with one another, they will be prevented from making those intentions known, and forming a joint strategy—so the *awareness* and *strategy* conditions are not met. By contrast, Lovett and Pettit hold these conditions may be met by ‘The People’ acting to control the government, if the right laws and norms are in place, if citizens are not too apathetic, and so on.³³ In a just republic, laws and norms allow citizens to make their

³¹ *Ibid.*

³² (Lovett and Pettit 2018), p. 377.

³³ *Ibid.*, p. 381

intentions to team up against abuses of government power publicly known, and put together a joint strategy. ‘The People’, then, are capable of controlling government, but they do not dominate.

My aim here is not to evaluate whether this response is successful in rebutting the impossibility objection.³⁴ I argue, instead, that even if the response succeeds, it comes at a cost that republicans should not be willing to pay. The response, I contend, undermines the ability of the republican view—so defended—to vindicate the *insufficiency* and *constitution* claims. To see this, we need to take a small step back. Along with drawing the distinction between capable and merely potential teams, Lovett and Pettit, *pace* Simpson, argue that the slaves in what he describes as the *Nearly* and *Uncoordinated* cases above are *not dominated*. They claim that

for all that Simpson’s descriptions of the scenarios imply, the awareness and strategy conditions might not be satisfied. If they are not, the masters will not have the capacity to interfere, and thus not constitute a capable team holding sway over the slave. Thus, it is false to claim, as he does, that necessarily the nearly coordinated and uncoordinated masters dominate the slave.

Lovett and Pettit, to remain consistent, must deny that that the slave is dominated in these cases; otherwise, they would be unable to maintain that ‘The People’ do not dominate as well. But for several reasons, this is problematic.

Consider, first, the *insufficiency* claim. This claim involves the thought, as Pettit puts it, that you “cannot make yourself free...by cozying up to the powerful and keeping them sweet.”³⁵ But this thought would seem to be contradicted by Lovett and Pettit’s analysis of *Nearly* and *Uncoordinated* cases. In either of these cases the slave, to remain free from domination, need only ‘cozy up’ to one or two masters, and thereby prevent the formation of a capable team. This is a

³⁴ For a reply, see (Simpson 2019)

³⁵ See (Pettit 2011), at p. 705; and (Pettit 2008b) , at p. 216.

strange result. On the one hand, the goodwill of a lone slave master who might otherwise interfere is insufficient for freedom. But on the other hand, the goodwill of one or two masters, who prevent the formation of a capable team, *is* sufficient for freedom. It is not clear, then, if freedom as non-domination as it has been clarified in response to Simpson, remains able to defend the *insufficiency* claim.

Similarly, it is no longer quite clear why the law has *constitutive* importance. If the slave is free from domination in both *nearly* and *uncoordinated* cases, what further role is there for legal protection (*qua* freedom-realizer)? Lovett and Pettit would, rightly, point out that there is a high probability that in either case the slave would come to be dominated, and that legal protection would remove this threat.³⁶ But this response only shows that law may make the slave more likely to continue to enjoy freedom as non-domination, not that the law is constitutive of that freedom.

It might be replied that we need to again appreciate the distinction between free persons and free choices. Even if the slave is not dominated in the *nearly* and *uncoordinated* masters cases, the slave does not have the status of a free person. Introducing legal protection, then, would constitute that status. While this response is promising, it does not quite seem to be available on the approach that Lovett and Pettit have taken. On their approach, what it is to have a status as free person is nothing more than being free from domination as a matter of common awareness. If this is what it is to have the status of a free person, then that status might well be possessed by the slaves in *nearly* or *uncoordinated* or a suitably specified variant. Imagine, for example, the following case:

The Society of Kindly Masters: There are two classes: one comprised of benevolent masters; the other, physically powerful slaves. The slaves are much more physically strong than the weakly masters,

³⁶ (Lovett and Pettit 2018) at p. 379.

such that it would take a group of masters to interfere any one slave. No master wishes to interfere, however. Further, there are entrenched and public social norms that forbid ganging up on any slave, as doing so violates the demands of a kind of ‘noblesse oblige’. To do so would tarnish a master’s virtue.

This case is stated such that it is incredibly improbable that any slave would suffer interference. Further, the strategy and awareness conditions are not met, and so there is no capable team of masters. No slave suffers domination, and this is matter of common awareness, given the nature of the norms in the society. These conditions, then, may be enough for the slaves—and, for that matter, *everyone* in the society—to have a kind of public status as non-dominated.

We have every reason, however, to think that this society would nonetheless fall short of realizing justice, though the standard republican account seems ill-equipped to tell us why. Even if all might be free from domination, there nonetheless remains an objectionable kind of social hierarchy. The masters’ good will and lack of coordination is not enough for the slaves to be their social equals—and this is not quite captured by the republican view. And it is this problem that a suitable system of law might remedy. What this suggests, then, is that the distinctive republican claims *insufficiency* and *constitution* might be better explained and defended by examining the relationship between legal protection and social equality or equality of status. I pursue this idea next.

5.3 The Status-Conferring Function of Legal Protection

On the standard republican view, we have seen, a person is free if no other agent has an uncontrolled ability to interfere with them. By inhibiting interference, legal protection makes the enjoyment of non-interference *robust* and so *realizes* freedom. By contrast, we saw that on the

view of freedom as non-interference, the inhibiting function *promotes* freedom—in the way that restricting some choices (to kill, to steal, and so on) gives people more freedom overall.

In addition to inhibiting behaviour, however, law is widely regarded as having an *expressive* or *communicative* function.³⁷ It is this function, or rather an aspect of it, that I now wish to explore. An important aspect of this communicative function concerns the kind of status people hold under political institutions, or how they are *ranked*: e.g. as inferior to others, or as equals.

My claim is that the equal provision of robust non-interference through a system of law functions to give persons a civic status as equals, thus realizing an important form of social equality. It may be that it is impossible for the law—or any other social or political institution—to entirely remove the uncontrolled ability to interfere from all actual or possible agents (such as ‘The People’), as critics maintain. But this does not undermine the significance of the law’s status-conferring function. Recognition of this function, I will argue, provides a compelling defense of the *insufficiency* and *constitution* claims; moreover, it does so in a way that avoids the *impossibility* and *moralization* objections.

To begin, recall the three cases considered previously: *uncoordinated*, *nearly coordinated*, and *society of kindly masters*. We saw that in each of these cases republicans hold that the slaves are not dominated, although the cases differ in terms of the probability of the slaves becoming dominated. And they may even enjoy a kind of ‘status as non-dominated’ as a matter of common awareness. Certainly, however, in each case the ideal of social equality is not realized. The slaves do not enjoy a status as *civic equals*. The goodwill of the masters, or their lack of coordination, is

³⁷ See (Anderson and Pildes 2000) (Sunstein 1999) (Shiffrin 2017) I follow Shiffrin in preferring the term ‘communicative’ over the more commonly used ‘term’ expressive, for the following reason. The former term, unlike the latter, implies not only the sending of a message (by the state, say) but also the receipt, or uptake, of that message (by the people). Further we might want to take the term to imply common awareness of the message.

in no way sufficient to realize social equality, even if it is thought to improve the freedom of the slaves. The fact that there are legal permissions to interfere with the slaves is enough to mark them out as inferior, despite there being no group willing and capable to act on those permissions.³⁸ The slaves are not protected as equals by a shared law, and for this reason, there remains an important sense in which they are subordinate to their masters, even if not dominated. So, I contend, as argued in the previous chapter, that in a society where some member's basic liberties are protected by law, then that protection must be given to persons as equals for them to enjoy a civic status as equals.

To realize social equality, it is important that people are protected *as equals*, and not merely equally. To see this, suppose that in the *Society of Kindly Masters*, the masters decide to legally entrench what they perceive as the requirements of 'noblesse oblige'. The slaves are given equal legal protection, not *as equal members* of the community, but instead on the basis of the masters' desire not to tarnish their virtue. Although the slaves may come to enjoy equal protection in such a way, this would not, intuitively, be enough to realize social equality. Equal protection must communicate respect for persons as equals. While this example is somewhat fanciful, there are real world analogues. Think, for example, of the issue of whether same-sex couples should be given the legal power to *marry* and not just enter civil partnerships. Even if both arrangements grant the same legal powers, some may argue that the ability to marry should be extended on the grounds that is necessary for same-sex persons to fully enjoy a status as civic equals.

There are, then, two ways to understand the importance of legal protection and the robust non-interference it provides. On the standard republican view, such protection realizes freedom by virtue of removing others' uncontrolled capacity for interference. By contrast, on the account

³⁸ A different concern, raised by Fabian Wendt, is that slaves are denied self-ownership. See (Wendt 2011).

developed here, such protection given to persons as equals, is required to realize social equality. This approach is perhaps not so far off from the standard view, one might think, given that the goal of republican justice is sometimes framed as one of giving persons a status as free persons. But there is an important difference to highlight. On the standard republican account, one enjoys a status as a free person in virtue of enjoying freedom as non-domination (over the basic liberties). By contrast, on the account I propose, being free from domination is neither necessary nor sufficient for a person to have the kind of status an equal relevant for the realization of social equality. On the one hand, non-domination is not sufficient because, as we saw in the *nearly, uncoordinated*, and *society of kindly masters* cases, one can be free from domination yet fail to have an equal civic status. On the other hand, even if Simpson and others are correct that domination from possible teams such as ‘The People’ is inescapable, this need not undermine persons enjoying equality of status. Borrowing a line from Rousseau, we might say that social equality can be realized when "each citizen is in a position of perfect independence from all the others and of excessive dependence upon the city."³⁹

In this way, my account avoids the impossibility objection. Justice forbids agents having a capacity for uncontrolled interference when, and because, it marks persons as inferior or second-class citizens. However, domination by ‘The People’ or possible group agents need not manifest social hierarchy.⁴⁰

³⁹ (Rousseau 1988), 2.12.3.

⁴⁰ Cf. (Kolodny 2019) notes an interesting point in this regard: it’s not clear that it’s even intelligible to think of social hierarchy between an individual and a group agent. He asks “what would it even mean for me to be the “equal” of Indonesia, say, or the Roman Catholic Church?” p. 25.

What about the *moralization* objection? The account I propose actually embraces moralization; and indeed, requires it. This is because the ideal of people sharing a status as equals is incomplete and need of specification. We require an account of the *kind* of status to be shared as equals. One way this account can be filled is in connection with a particular conception of the person. In the previous chapter, for instance, we saw how Rawls's conception of the person as a bearer of the two moral powers might work to delineate a set of basic liberties, the protection of which is constitutive of a kind of equality of status. Alternatively, we could invoke the conception of the free person or *liber* found in the republican tradition. Taking this route would take us closer to the approach taken by contemporary republicans. But we would not be regarding non-domination, a conception of the freedom, as the fundamental principle of justice; instead, we would be working with the ideal of social equality and a moral conception of the person.

For our purposes here, however, we can leave this issue open, and instead focus on how the proposed account vindicates the *insufficiency* and *constitution* claims. Based on the account thus far, one may remain doubtful: it might be thought that the legal provision of robust non-interference to persons as equals is *one* way to realize equality of status, or social equality. But perhaps its not the *only* way. If people have the right dispositions toward one another, or if the right kinds of social norms obtain, then one might think that we would have all the social equality we could want, and introducing law would not provide any further enhancement. This kind of picture seems to be suggested, for instance, by Niko Kolodny's characterisation of social equality as involving people having 'resolute dispositions' not to interfere with one another, as 'something to which they are entitled'.⁴¹

⁴¹ (Kolodny 2018). Niko Kolodny does not mean this to be a complete account of social equality, so he could principle agree with the account I give. But nothing he says suggests he would support the republican claims I aim to defend.

I contend, however, that there is reason to think that any set of interpersonal dispositions or social norms will fall short of fully realizing social equality. Interpersonal dispositions and social norms, however specified, will be deficient in several respects. These defects are that the *importance* and *basis* of people's entitlement to non-interference are uncertain and may fail to be matter of common awareness; further, people will not have the power to make *claims*. The introduction of law, then, is required to remedy these defects and fully realize social equality.⁴² I will explain each defect and their solutions in turn.

First, consider the issue of *importance*. In any community, there are bound to be a range of esteem-hierarchies that rank people unequally along various dimensions. Some will rank highly in athletics, business, the arts, politics, and so on. And different communities will place more or less importance on some domains over others. Given these kinds of facts, a shared commitment to non-interference may not be enough to manifest social equality. To illustrate the point, consider a community in which all members place the utmost importance on one domain of achievement or another—skill in combat and athletics, say. If, as is inevitable, people perform unequally in this domain, then people will come to have an unequal status in a significant sense. Given that there is a particularly salient domain of esteem, those who perform especially well in that domain are likely to be regarded as 'better-than', or superior; and those who perform poorly, as inferior. In a community such as this, it's not clear that a shared commitment to not interfere would make much of a difference to the presence of an otherwise pervasive social hierarchy.

The protection of people's basic liberties as equals through law provides a remedy to this problem. The basic liberties assign people a status as equal citizens, and this status may have a

⁴² My account draws on (Hart 1961).

kind of ‘eclipsing’ effect over various esteem hierarchies.⁴³ Though esteem-hierarchies may provide some reason for people to regard others as superior or inferior, it might be said that that legal protection can give people an ‘exclusionary reason’ to regard one another as equals.⁴⁴

Next, consider the issue of the *basis* of people’s enjoyment of non-interference. As we’ve seen, social equality concerns not just that people enjoy non-interference robustly, but that they do so as equals. Without law, however, it may remain uncertain whether people are entitled to non-interference on the basis of their equality and not on some other basis. In this regard Kolodny’s locution that social equality involves non-interference as ‘something’ to which others are entitled is problematic. There is a range of possibilities here. A slave master could be disposed to not interfere with their slave, not because the slave has any moral standing, but because it shows a bad character to do so. The powerful might be disposed not to interfere with the weak based on a kind of perceived moral standing—but it may not be an *equal* moral standing: perhaps they regard them inferior, though still worthy of some moral concern, but they may not regard them as equals. Again, the introduction of an equal civic status conferred by legal protection provides a remedy to this problem, making it explicit, and a matter of common awareness, that people are entitled to non-interference on the basis of their equality.⁴⁵ Legal norms make possible a kind of ‘mediated accountability’,⁴⁶ such that people may come to owe each other non-interference on the basis of an institutionally defined status as equal citizens.

⁴³ This thought bears similarity to Rawls’s discussion of the basic liberties and self-esteem discussed in Chapter Four.

⁴⁴ On this notion, see (Raz 1975)

⁴⁵ Some Kantians argue for a complementary idea. They claim that without a suitable system of law, any enforcement of one’s rights amounts to arrogating authority in a problematic way, imposing one’s will *unilaterally*. A shared system of law, by contrast, subjects all equally to an *omnilateral* will. See (Sinclair 2018). Again, however, this concern is framed in terms of freedom rather than equality.

⁴⁶ (Brennan et al. 2013), Ch. 3

Finally, consider the capacity of persons to make *claims* under law. A slave-master may regard their slave as being entitled to non-interference, but the slave would nonetheless not be able to *claim* non-interference. In order to make a claim, there must be procedure and set of rules in place by which a person can have any violations adjudicated and remedied.⁴⁷ Even if people are disposed not to interfere with one another, and non-interference is widely supported by social norms (think again of the Society of Kindly Masters), this would not be enough to give persons the power to have their entitlement to non-interference upheld. Even if claims are exceedingly unlikely to be exercised, their possession nonetheless makes a difference for the kind of status people have: it will be common-knowledge not only that people are owed certain forms of treatment, but also that they have the power to guarantee that treatment or demand compensation for any violation. Suitable law gives persons a forum to enforce and challenge norm violations on their own behalf; by contrast, social norms tend to be enforced by the judgements and opinions of the community at large.⁴⁸ Thus legal protection, by giving people the power to make claims, provides a status-benefit that interpersonal dispositions and social norms do not.

One might argue that the points I have raised do not show that law is required to solve the problems raised; instead, it might be claimed we need to more carefully specify the relevant kinds of dispositions or social norms needed. For instance, we can imagine a community in which everyone is resolutely disposed not to interfere with one another on the basis of each person's equal standing; and further, we can imagine that this standing is taken to have a kind of priority

⁴⁷ (Feinberg 1970)

⁴⁸ (Brennan et al. 2013)

over unequal rankings in various domains of esteem. And we might imagine that there are social norms in place that allow persons to make claims.

This community, however, would in effect have a system of law, on a widely accepted account of what law is. On H.L.A Hart's conception, to have a legal system just is to have a union of primary and secondary rules, where primary rules are social norms, and secondary rules are rules about those rules.⁴⁹ The primary rules at issue are those that specify that people should not be interfered with. But notice that the line of argument just considered effectively stipulates that there are rules about those rules in place. There are rules specifying the basis and importance of the primary rule prohibiting interference; and there are rules for how to resolve possible disputes, thereby giving people claims.⁵⁰ This is enough, on a Hartian picture, for that community to count as having a legal system. A system of law need not be written and codified (though this will likely be needed in a society of any reasonable size).

This account, then, provides a defence of the insufficiency and constitution claims that differs from the standard republican line. The account I propose points to three defects that law remedies. Legal protection defines the importance and basis of non-interference, and gives all claims as civic equals. Goodwill and virtuous self restraint, and whatever associated dispositions or social norms, are insufficient to solve these problems. But law is uniquely suited to do so.

⁴⁹ More precisely, on Hart's view, secondary rules "specify the ways in which the primary rules may be conclusively ascertained, introduced, eliminated, varied, and the fact of their violation conclusively determined". (Hart 1961), p. 92

⁵⁰ Thus, the imagined community seems to have something like Hart's rule of recognition and rules of adjudication.

Conclusion

I have argued that the importance of protection from domination—more precisely, the provision of robust non-interference to persons as equals through law—is better understood in terms of its status-conferring function as opposed to its freedom-realizing function. This account proposes to vindicate republicanism’s distinctive commitments while at the same time avoiding the moralization and impossibility worries that have long bothered critics. In conclusion, I want to consider two further possible advantages of the account developed here.

The first advantage is that my account is ecumenical. Unlike the standard republican account, I do not claim that negative liberty must be regarded in terms of non-domination, and so my account is compatible with other conceptions of freedom. This might be an advantage insofar as we might want different notions to play different theoretical roles. This may prove important in order to assess cases where concerns with status and freedom come apart in interesting ways. Consider, for example, the Patriot Act, which to oversimplify, gave government a wider range of permissions to monitor, search, and detain persons suspected of terrorist activity.⁵¹ Although the Act granted the government the capacity to interfere with *anyone*, one might think that those for whom freedom was most reduced were those that were most likely to be searched or detained.⁵² In addition, however, we might think that these kinds of policies can affect the status of certain groups *as a whole*—in this case, Muslims—even if particular members of those groups suffer more than others with regard to a loss of freedom. Similarly, policies such as ‘stop and search’ may have

⁵¹ Several writers on freedom are skeptical that the conception of freedom as non-domination can adequately capture what is of significance in our thinking about conflicts between liberty and security. See (Goodin and Jackson 2007)

⁵² Carter and Shnayderman give the hypothetical example of “Musa—a young, single, devout Muslim student from Pakistan who studies nuclear physics in the United States.” See (Carter and Schnayderman 2018), p. 144.

harmful status effects for entire groups, even if there are unequal effects on freedom with regard to individual members of those groups (e.g. poor versus wealthy Black Americans). I do not mean to say there are crystal clear judgements here, only that there appear to be different dimensions of assessment, and it's a benefit of my account that it can capture these dimensions.

The second advantage involves the implications of my account for distributive justice. The contemporary republican account is often critiqued for being too permissive. For instance we might think it is unjust for if some people barely reach Pettit's sufficiency threshold, while others greatly surpass it.⁵³ On the status-based approach I've proposed, there is room to develop a more demanding account. Consider, for instance, what it would take for people in a society to pass the eye-ball test versus what would be required for persons to regard each other *as equals*. Among other things, this would require that the difference between those at the top versus those who barely pass the threshold is not too great, suggesting the addition of range-constraints. Again, clear answers are not immediately obvious, but working out the details may be fruitful.

⁵³ (Southwood 2015)

6) Conclusion

The aim of this thesis has been to develop social egalitarianism. I have put forward an *institutional* approach, focusing on the question of what it might mean for persons to enjoy a status as equals under the polity. This approach differs, we saw in Chapter Two, from the approach taken by several theorists who focus on the question of what it means for interpersonal social relations to have an egalitarian character. I argued, also, that civic status is a distinctive kind of concern because it is what I called a ‘position-defined’ good. This distinguishes social egalitarianism from other forms of so-called ‘distributive’ egalitarianism, even if it does not vindicate a claim sometimes made: that social egalitarianism involves a fundamentally different conception of equality, not even expressible in the ‘equality of what’ formula, or in terms of the equal distribution of a particular good.

Nonetheless, I argued that the distinctness of social equality on these grounds is hardly insignificant. I demonstrated, in Chapter Three, that the nature of position-defined goods bears importantly on debates over the choice of distributive principle—whether equality, priority, sufficiency, or something else. Some theorists have proposed a ‘convergence thesis’ for positional goods like education and wealth, suggesting that prioritarrians and sufficientarians might have reason to support the equal distribution of these goods. While this thesis faces significant limitations with regard to goods like education and wealth, I demonstrated that it is more compelling when applied to civic status.

While I did not attempt to give a complete account of social equality, I argued that a concern with equality of civic status provides a compelling defence of two particularly important and influential theses in political thought about the nature and importance of liberty. In Chapter Four, I examined the Rawls's defence of the priority of liberty. I argued, on the one hand, that my account of social equality provides a compelling defence of that thesis. And on the other hand, I proposed that Rawls's political conception of the person—as a bearer of two moral powers—provides a helpful way to work out the content of civic status.

In Chapter Five, I examined the neo-republican approach to the theory of justice which focuses on freedom as non-domination. There I developed the account of how legal protection of people's basic liberties functions to give them a status as equals. This account, I argued, is able to vindicate core republican commitments—about the insufficiency of goodwill and constitutive importance of law—while at the same time avoiding some central objections raised against the approach.

My aim has mainly been constructive—to characterize social equality as a requirement of justice in the most compelling way. I have offered ways to resolve a number of issues internal to the social egalitarian project, involving the nature, value, and distinctness of the view. But I have not at any length *defended* social egalitarianism. I have not argued in any detail that social egalitarianism is more compelling than other egalitarian approaches, nor have I argued, more broadly, that it is more compelling than other non-egalitarian accounts.

By way of conclusion, I want to offer some (admittedly limited) remarks in defence of my conception of equality. In defence of my account, I want to point out that it provides responses to several of the most common concerns with egalitarian theories in general. Against

distributive conceptions of equality, and especially ‘telic’ conceptions of equality, some worry that it is not clear why equality in that sense matters. As Martin O’Neill puts the objection “the ideal of equality can seem merely *arithmetic*, instead of being a properly intelligible political value. It is difficult to understand why this ‘merely arithmetic’ idea of equality should be so important”.¹

On my account of social equality, however, I hope it is quite clear that it is a ‘properly intelligible political value’, and not mysterious why it matters. If we grant that the state ought to respect its members as equals, I argued, it follows quite naturally that none should be second-class citizens and that all should share a status as equals.

A related doubt about the importance of equality is the levelling down objection: it is perverse to think there is any reason to remove advantages from some while benefitting none. One of the results of the argument in Chapter Three, however, is that the levelling down objection does not apply to the good of civic status, due to its position-defined nature. It is impossible to remove the advantage of a superior civic status without benefitting anyone, since doing so necessarily improves the status of inferiors, by making them equals, (or at least less inferior).

A final objection I want to mention involves a perceived conflict between equality and liberty. Robert Nozick famously argued, for instance, that insisting on a pattern of equal distribution ‘upsets’ liberty.² Free-market transactions will inevitably result in an unequal distribution of resources, welfare, or capabilities. The account of equality I have put forward, however does not require a pattern of distribution in the sense supposed by the objection. By contrast with other egalitarian views social equality may be fairly permissive with regard to the

¹ (O’Neill), p. 139

² (Nozick 1974)

distribution resources, welfare, or capabilities. Though, of course, a fully worked out account would likely put more stringent limitations on material inequalities than a libertarian like Nozick would allow! So it may be maintained that there is nonetheless a conflict with liberty (at least in the sense prized by libertarians). On the other hand, however, an interesting result of this thesis (Chapters Four and Five in particular) has been that in another respect, far from being at odds with one another, there is a close relationship between social equality and liberty. If I am right that social egalitarianism provides the best way to account for the priority of liberty as well as republican commitments, the relationship between freedom and equality may be less tense than commonly thought.

Finally, I would like to mention some directions for future work. I have not developed a complete account of social equality—let alone a complete account of justice. There are, however, a number of promising directions in which I think my account could be taken. One possibility is to explore a pluralist, or hybrid view. While some social egalitarians think of their view as alternative to and incompatible with distributive conceptions of equality, others have suggested that the two kinds of account might be compatible, and work together in an overall, pluralist, theory.³ Nothing in my account rules this out. Alternatively, a detailed examination of what an equal distribution of status-conferring goods involves might be enough to generate a satisfactory account of egalitarian justice on its own, making the appeal to pluralism unnecessary.

³ (Lippert-Rasmussen 2018b), (Lippert-Rasmussen 2015), (Moles and Parr 2019).

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