

A RIGHT TO RECOGNITION:  
FREEDOM IN A DEMOCRATIC SOCIETY

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## **ABSTRACT**

### **A Right to Recognition: Freedom in a Democratic Society (Under the direction of Gerald Postema)**

The vocabularies with which we talk about freedom as a social and political ideal are badly distorted. They often focus our attention on generic capacities for choice and action, and on the ways in which others' interference (or our vulnerabilities to interference) threaten these capacities. But our agency does not consist only in a generic power to recognize the options available to us, and to choose from among these options which will become actual. It is essentially social, located in the structures of our interpersonal relationships. These relationships make us, not only persons in some abstract, generic sense, but particular kinds of persons: owners of various kinds of property, participants in various kinds of markets, members of particular neighborhoods, participants in various family structures, and so on. And there are a wide variety of subtly distinct ways in which our society can construct these relationships in ways that make us unfree. In order to respect this variety, we most usefully characterize freedom in terms of the just distribution of status relations: Free people enjoy the social standing to lay claim to those social statuses on which they have moral claims, commanding others' recognition of, and respect for, the various rights constitutive of these statuses. Freedom, so construed, requires a juridical community regulated both by an egalitarian deliberative culture, and by the kinds of democratic institutions that make law responsive to public argument.

*For Mom, Dad, Anna*

## **ACKNOWLEDGMENTS**

The most important thing that I have learned during my time at UNC is that philosophy is not, and never should be, an activity of pure reason. It is an essentially human activity, which must be informed by recognizably human concerns. This is a lesson that I learned over and over again, from various people in diverse contexts. I learned it from my advisor, Gerald Postema, whose infectious love of history illuminated for me the ways in which the shifting problems of passing centuries have kept philosophy dynamic and alive. I learned it from my committee: Their challenges, questions, and guidance helped me to keep sight of the value of philosophy and the possibility of progress, and never let me lose sight of philosophy's relevance to the things I most want to explore. I learned it from my peers – especially Vida Yao and Samuel Reis-Dennis, without whose support I would certainly have gotten lost in the tangled thickets of philosophical obscurity. And I learned it from the friends that I made in Carrboro and Chapel Hill, who helped me to remember which questions are worth asking. For this last, most important lesson, I am particularly grateful to Katie Landers, who reminds me every day of the importance of learning about the human world in which we live.

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## Introduction

“I am an invisible man. No, I am not a spook like those who haunted Edgar Allan Poe; nor am I one of your Hollywood-movie ectoplasms. I am a man of substance, of flesh and bone, fiber and liquids – and I might even be said to possess a mind. I am invisible, understand, simply because people refuse to see me.”

— Ralph Ellison, *Invisible Man*

Moral philosophy at its best aims at the construction of a vocabulary that affords us resources with which to make sense of and talk about our moral experiences, ideals, and concerns. Such a vocabulary should afford us resources with which to draw meaningful connections among diverse phenomena, while respecting the genuine differences that set these phenomena apart. It should allow us to make explicit the contours and boundaries of our social worlds.

In the following essays, I aspire to articulate a conception of freedom that deserves a place within our moral vocabulary: a conception of freedom worth invoking in the course of public discourse, in the evaluation of our interpersonal relationships and political institutions. Freedom in the sense that interests me here names something that we care about, and something worth caring about. In the following essays, I strive to articulate a conception of freedom informed most centrally by the concerns that underlie its deployment in moral and political theory. My primary goal is the construction of a vocabulary of freedom apt for the characterization of our moral experiences, ideals, and concerns.

This informs my method. Some argue that we ought to construct conceptions of freedom that match ordinary usage of the word “freedom,” before we ask when and why we might care about it. Those who take this approach rely primarily on thought experiments, that is, carefully constructed cases

designed to elicit particular intuitions about the ordinary usage the word “freedom.” They construct conceptions of freedom designed to capture our intuitions on these cases as best as possible, constrained by familiar concerns for simplicity and consistency. Armed with such conceptions, they argue, we can ask: When is freedom good for us? When is it morally insignificant, or even bad? But in the following essays, I make relatively little use of thought experiments. After all, our goal is not to grasp the patterns of usage in a particular linguistic community. It is to cultivate a vocabulary with which we can speak to our moral concerns, and a conception of freedom that perfectly captures ordinary usage does not automatically earn a place in our moral vocabulary. In the pursuit of this goal, I rely most significantly on moral argument, attempting to illustrate the work that particular conceptions of freedom can – and cannot – do the identification of morally significant phenomena.

The challenge for this approach is to distinguish freedom from other (possibly competing) moral concerns. Although I assume that we have reason to invoke freedom (in some sense) in our public discourse because freedom (in some sense) matters to us, I do not assume that freedom is the only thing worth caring about. Other things matter to us, as well, and in some cases our these diverse concerns might outweigh the concerns that underlie and motivate our talk of freedom. (Similarly, for instance, disrespect is an inherently morally significant phenomenon, but sometimes it is morally acceptable. Mockery, for instance, can help keep us humble, and can encourage us to develop a sense of humor about ourselves.) As a result, we should not be tempted to abandon particular conceptions of freedom simply on the grounds that, in particular cases, other concerns outweigh our concern for freedom, so conceived. But even in these cases, our conceptions of freedom ought to direct our attention toward phenomena worth our attention. That these phenomena will not be the only phenomena worth our attention should not show that we have a bad conception of freedom. But if these phenomena are not worth our attention at all, or if clustering these phenomena together under a single concept does not illuminate morally significant commonalities, then we should abandon this conception.

In order to specify the target of our analysis, we need to begin with at least a rough sense of the kinds of concerns at stake. And there are a number of data to which we might appeal as we construct our

starting point. For instance, we might appeal again to facts of ordinary usage, on the assumption that the ways in which people talk about freedom reflects the kinds of concerns at stake. Or we might appeal to the assumptions that underlie significant traditions in moral philosophy, on the assumption that these persistent assumptions manifest the insights of generations of experts. These various data push in a number of different directions. Some represent freedom (in some sense) in opposition with constraint; others, in opposition with psychological disorders like agoraphobia, or with vices like weakness of will; still others, as a matter of our rights and obligations. Some encourage us to cast freedom (in some sense) it as tied to a concern for our capacities for choice; others, as connected with our concern for equality. To a significant extent, these diverse manifest the ambiguity of the English word “freedom,” whose many different senses pick out many distinct concerns, several of which may be worth deploying in the course of moral and political discourse. If we are to proceed, we ought to pick one dominant theme within this cacophony, and ask: How ought we conceive of freedom in *this* sense?

In the following essays, I rely on the fact that, in the course of moral and political discourse, we often deploy at least one sense of “freedom” that names an essentially interpersonal concern, distinctively apt for the evaluation of our interactions and relationships with the other members of our communities. To show that we lack access to particular options is not yet to show that someone is unfree, in this sense. In order to do so, we would at the very least need to trace these limitations to certain facts about the distribution or abuse of power within our communities. Some theorists have named freedom in this sense “social freedom”; it contrasts, not with generic limitation or constraint, but with domination or oppression. Many long traditions in western political thought, including republicanism, liberalism, and libertarianism, invoke just such a conception of freedom. And much ordinary usage reflects preoccupation with something in this ballpark. Though this is hardly the only sense in which we use the word “freedom,” it is an important sense, one that names an apparently significant moral concern worth clarifying as we proceed with our defenses and critiques of various modes of social life.

I devote the following essays to the construction of a conception of social freedom that makes clear why it is worth caring about, even if it is not the only thing worth caring about; and that affords us



resources with which to recognize both meaningful connections across diverse species of unfreedom – for instance, across various forms of domination and oppression – and the significant differences between these species. I proceed by arguing that particular conceptions of social freedom prominent in the literature distract us from or misconstrue our underlying concerns, and so prevent the development of language with which to conceptualize and address genuine species of domination and oppression in our communities.

Some have argued that we should conceive of social freedom as non-constraint by other people. I critique these conceptions in “Gruesome Freedom,” arguing that they detach the vocabulary of freedom from – and even put it at odds with – the concerns that motivate its use in public discourse. I argue that a concern for social freedom reflects an underlying concern for other people’s recognition of, and respect for, our moral statuses as persons. But these conceptions of freedom direct our attention toward phenomena that are irrelevant to this concern. I sketch an alternative conception of freedom that makes this concern its architectonic principle, and that affords us better resources with which to make sense of paradigmatic instances of unfreedom than does a conception of freedom as non-constraint by others. This alternative conception focuses our attention the distribution of status relations – roughly, rights and obligations – within a community. This conception affords us language with which to recognize important differences between constraint and, say, social conditions of domination or oppression.

In the second and third essays, I critique approaches that rely on an underlying concern for our capacities for choice in the construction of a conception of social freedom. Philosophers typically represent this as a capacity to recognize and to evaluate a range of possibilities, to determine which possibilities will become actual, and so to narrow an open future into a single, coherent life history. By many accounts, it is this capacity that distinguishes us as people from inanimate objects, plants, and (many) non-human animals, making us agents in a world of cause and effect. This approach to freedom as a political ideal has attracted a broad following, underlying defenses of libertarianism and socialism alike, and structuring debate about the relationship between freedom and democracy.

In “A New Spin on Positive Liberty,” I critique conceptions of social freedom that represent particular interpersonal interactions or relationships as distinctively interpersonal threats to our capacities for choice. These conceptions typically focus our attention, in one way or another, around concepts like *limitation*, *constraint*, or *interference*. I argue that these conceptions ignore the inherently social nature of our agency. Our agency lies, not only in our capacities to determine an indeterminate future, but in our social standings to perform actions with publicly recognizable meaning. These standings emerge from our social statuses: as owners of property, as parents to our children, as members of various races and genders, and as citizens of our states. And these statuses are essentially interpersonal, constituted by the structures of our relationships with other people. Attending to the relationship between agency and social standing reveals the ways in which our agency depends on the relationships in which we find ourselves. In light of this dependence, I argue, first, that the vocabulary of “limitation,” “constraint,” and “interference” constructs unhelpful categories, clustering together phenomena that threaten agency with phenomena that underlie it; and second, that this vocabulary focuses our attention on localized interactions between particular people, and so obscures connections between coercion and domination (on the one hand), and the systematic social structures that constitute various species of oppression. By casting freedom in terms of the distribution of status relations within a community, we reveal important distinctions between vulnerability or dependence in general, and domination in particular; and we reveal important connections between localized domination and structural oppression.

But what kind of distribution of status relations should freedom require? Some argue that the standards by which we answer this question should make no appeal to moral considerations, or should at most invoke considerations of equality. But I critique these approaches in “Choices of One’s Own,” arguing that only by appeal to substantive moral considerations about the structures of our families, marketplaces, neighborhoods, and the like are we able to construct conceptions of the kinds of persons we are: neighbors, parents, spouses, employers, employees, and customers. Social conditions that hide our moral personalities from view constitute familiar conditions of domination and oppression. As a result, I argue that, on the most useful conception of freedom, we are free when social conditions make our moral

personalities concrete and accessible to the other members of our communities. In a slogan, freedom requires the just distribution of status relations. In this way, we reveal underlying connections between, say, the unjust distributions of property rights, and the unjust distributions of guardianship over children – both of which are apt to generate recognizable instances of domination or oppression.

Finally, I argue in “A Right to Recognition” that this approach affords us resources with which to rethink democratic legitimacy. I argue that certain social conditions represent our social standings as lenses through which others might represent our moral personalities, and so see us for the kinds of people we are. These social conditions make our current social standings responsive to evidence that current distributions of practical authority *misrepresent* our moral personalities; and, crucially, they afford us the standing to demand others’ attention and responsiveness to such evidence. The challenge for democratic theorists is to identify political institutions that distribute this standing to all moral persons within the legal community. But I argue that we should extend our concerns about democratic legitimacy beyond the political and into the informal domain, and this approach to legitimacy – unlike other approaches prominent in the literature – affords us just the resources we need with which to do so. In this way, we reveal underlying connections between freedom and democracy, and – perhaps more interestingly – connections between paradigmatically illegitimate governments, and the kinds of informal orders that constitute, for instance, recognizable forms of gender or race oppression.

The upshot of these essays is a new approach to social freedom, one that affords us a complex vocabulary with which to characterize a wide variety of distinct but related concerns. In particular, this approach allows us to connect our concern for freedom with a metaphor prominent in literary engagement with the experience of oppression: namely, oppression as *invisibility*. Invisibility is an inherently social phenomenon. Whether one is visible depends on the perceptual capacities of the beings with which one interacts. One need undergo no radical physical transformations in order to vanish or lose one’s voice. One need only live in a community in which others lack adequate resources with which to see or hear properly. And for this, one need not even leave the visible or audible spectrum. Invisibility and silence require only that those who would see one’s movements or hear one’s words lack the conceptual

resources with which to recognize them for what they are. In these conditions, however keenly they perceive color or sound, motion and change, they will never see or hear the people with whom they live. On the view I defend, freedom requires a social context that makes us visible to the other members of our communities, through the just distribution of the status relations that constitute us as particular kinds of persons in our particular social contexts.

## Gruesome Freedom: The Moral Limits of Non-Constraint

### I. INTRODUCTION

Our world does not gladly accommodate itself to our projects or relationships. We have to contend with unfriendly forces on every scale, from minor bacterial infections, to the vicissitudes of an unpredictable climate. And we have to do so with limited resources, while satisfying a range of unrelenting needs, in full view of our own inevitable bodily decay. But of all of the challenges we face, something sets apart those that manifest in our relationships with other people. Something seems to distinguish the interpersonal from the non-personal – to distinguish, for instance, coercion from mere constraint.

In analytic political philosophy, this commonsense distinction has played a significant role in the justification of a further distinction between freedom (as a social and political ideal) and generic ability.<sup>1</sup> This latter distinction manifests in intuitive interpretations of a host of cases. Consider two. Cliff fishes for a living, and so depends for his livelihood on his access to the sea. Lana recently moved her family to a new neighborhood, with good schools, good grocery stores, and good infrastructure. But both ultimately abandon their homes, in spite of the advantages that these homes seem to offer. Cliff does so in order to escape a punishing hurricane season. Lana does so because she has been receiving increasingly frightening notes that promise violence if

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<sup>1</sup> The distinction might be similar in certain respects to Philippe Van Parijs' distinction between *formal* and *real* freedom, but Van Parijs' account has enough idiosyncratic details that I am hesitant to say that the distinctions are one and the same. See (Parijs 1997).

she does not leave. While neither is able to remain safely in their home, by only Lana's choices manifest the malign influence of other people.<sup>2</sup> Intuitively, while a harsh climate might severely constrain our choices, this need not yet show that we are to any extent unfree. In order to show that, we would need to show something about Cliff's relationships with the other members of our communities: about their powers over him, about the ways in which they are likely to deploy these powers, or about the ways in which this deployment might affect his options.

Of course, there is significant disagreement among philosophers about *how* other people's powers or activities might compromise our freedom. But for many, this disagreement has played out against a backdrop of significant consensus: Many camps take it for granted that to be free is to be unconstrained in the choice and pursuit of one's projects.<sup>3</sup> On their views, the special significance of the interpersonal manifests in the kinds of obstacles that limit our freedom. We are made unfree, they argue, only when other people constrain our activities. Following Isaiah Berlin, we might name those conceptions of freedom that contrast with constraint by others "negative liberty."<sup>4</sup>

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<sup>2</sup> To be fair, Cliff's case may not be quite as clear cut as I claim in the main text, and may require fleshing out in a number of respects. For instance, his government may have failed to construct sea walls, levees, or protective dunes that might at least mitigate the damage that any one hurricane might impose; and his government might predictably fail to facilitate an evacuation in the face of particularly devastating storms. These failures might contribute to Cliff's decision, in ways that make his case *more* like Lana's than I suggest in the main text. But I assume that *some* version of Cliff's case should be unlike Lana's in the relevant respects – say, a case in which the state has done all that it can to protect the residents of Cliff's seaside town, but it remains a dangerous place to live.

<sup>3</sup> There are notable exceptions, of course. For instance, neo-republicans like Quentin Skinner and Philip Pettit have been particularly vocal in their critiques of this kind of conception of freedom. While I do not provide a full-throated defense of republicanism in this paper, my conclusions are at least broadly compatible with the spirit of republicanism.

<sup>4</sup> As I will emphasize in a moment, "negative liberty" is a term of art which we might attach to any number of distinct families of conceptions in order to call our attention to a variety of shared commitments. And the particular family to which I call our attention is not the only family of conceptions that has enjoyed the name "negative liberty."

For instance, in "Two Concepts of Liberty," Berlin defined negative liberty in part by associating it with the experience of coercion; in part by contrasting it with *self-mastery*. G. A. Cohen rejects the focus on the interpersonal, but still characterizes himself as a proponent of *negative* liberty on the grounds that he distinguishes *external* limitations (imposed, for instance, by an impersonal economic system), and those psychological conditions

In this paper, I argue that a commitment to the distinctive significance of the interpersonal stands in tension with the construal of freedom non-constraint. Properly understood, each derives from one of two distinct senses of freedom: one, which does contrast with constraint; the other, which contrasts with conditions of domination, subjugation, or oppression (for instance). Our interpersonal relationships matter to freedom in this latter sense, because our concern for freedom in this sense derives from our concern for one others' respect. The focus on constraint, however, directs our attention away from those aspects of our relationships that bear on this concern. In shoehorning both of these commitments into a single concept, proponents of negative liberty unify these separate senses of freedom, carving away significant aspects of both while yielding no clear conceptual payoff. They offer us a gruesome conception of freedom.

In Section 1, I clarify the boundaries of negative liberty, and highlight its special concern for the interpersonal. In Section 2, I argue that the best explanation for this concern is that only people enjoy capacities for practical reasoning, and obligations to deploy these capacities in particular ways. Crucially, only people can disrespect one another, either by failing to recognize one another's statuses, or by failing to regulate their activities appropriately on the basis of this recognition. Finally, in Section 3 I argue that a concern others' respect, unqualified by a concern for non-constraint, would focus our attention on the social conditions of our interactions – in particular, on the social norms that confer on us various social statuses, and which make us (for instance) owners of property, employers, employees, spouses, guardians over children, and voters. A concern for negative liberty would distract us from these social conditions in ways that

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which limit individuals' capacities to express their "true selves" (see Carter 2016). On the vocabulary that I will provide, however, only conceptions of freedom that take seriously a distinction between the interpersonal and the non-personal, and that focus on the interpersonal, count as conceptions of negative liberty.

But this stipulative approach means that, if you consider yourself a proponent of negative liberty, but do not recognize your view appropriately located in the taxonomy I provide, that only means that you and I use taxonomies that emphasize distinct characteristics – perhaps because we are trying to address different questions.

would distort both our concerns, and our judgments about familiar cases of domination, subjugation, and oppression.

## II. NEGATIVE LIBERTY

The term “negative liberty” has proven remarkably evocative, and so has gained something of a foothold in popular discourse. But as evocative as it may be, it is a term of art that theorists have attached to diverse families of concepts or conceptions. And the ways in which these theorists carve up these families depends significantly on which aspects of these concepts or conceptions they wish to highlight. In this section, I clarify the ways in which I will be using the term in my discussion: A conception of freedom counts as a version of negative liberty if and only if it both contrasts freedom with *constraint*, and focuses our attention *specifically* on those constraints that are in some way the product of human activity.

I should emphasize, first, that I do not mean to be doing any analysis in this section. In particular, I do not mean to make any claims about our ordinary usage of the word “freedom,”<sup>5</sup> or to make any moral claims about the concepts that best pick out our concerns. All I mean to do is to characterize a very broad way in which we might choose to structure our language, so that in later sections I might explore the implications and underlying assumptions of this choice.

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<sup>5</sup> In fact, I resist appeals to ordinary usage throughout this paper. This is in part because, on this point, my interlocutors and I find ourselves at an impasse. What they call “ordinary usage” strikes me as odd and artificial. Kristjánsson, for instance, claims that, when one runner intentionally trips a competitor in order to win a race, “there is no denying” that the former constrains the latter’s freedom to finish the race as the winner (Kristjánsson 1996, 14). But this actually strikes me as a strange thing to say in the circumstances. I would be fully prepared to agree that the first runner assaults (and so wrongs) the second runner, and that she cheats (and so wrongs all of the participants in the race). And I can imagine people angrily confronting her with these charges. But imagine the second runner picking herself up, approaching her assailant, and insisting: “You constrained my freedom to finish the race!” This may be ordinary usage of a concept common in academic political philosophy. But it is not one with which I am much acquainted, and I doubt that the members of our wider communities would find it any less alien.

Even once we set this disagreement aside, I am skeptical of a general methodology that relies too heavily on facts about ordinary usage. Of course, we cannot do extraordinary violence to ordinary usage if we wish to remain intelligible to our wider communities. But philosophical reflection at its best helps us to identify both the characteristics that diverse cases share, and the ways in which they differ. Ordinary usage is not often the best guide on these matters.



Moreover, the family in which I am interested is remarkably diverse, and the unifying features on which I focus provide us with at most the barest skeletal structure for a conception of freedom. We would need to address a number of pressing questions in order to make any member of this family viable. The diverse possible answers we might give generate the branches of negative liberty's formidable family tree. While I mention some of these questions in the main text and allude to others in footnotes, they will not be relevant to my argument in Sections 2 and 3. I target the family as a whole.

(a) *The primacy of the particular.* All versions of negative liberty take on a common structure. They begin with the analysis of claims about *particular* freedoms or unfreedoms – that is, claims of the form “S is free to  $\phi$ ” or “S is unfree to  $\phi$ .” This might seem a natural enough place to begin. After all, we might think that if either Cliff or Lana are unfree, it is because there is something in particular that they are unfree to do – for instance, to remain safely in their homes.<sup>6</sup> On these frameworks, whether someone is free or unfree to engage in some activity<sup>7</sup> depends, not on whether authoritative norms like morality or law permit her to do so (Kramer 2003, 31), but on whether she is prevented from doing so. (This might seem appropriate, especially in light of cases like Lana's or Cliff's. After all, no authority forbids them to remain in their homes. Diverse factors merely prevent them from doing so.) In order to talk of freedom in

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<sup>6</sup> There is some debate among proponents of negative liberty over whether the constraint must make  $\phi$ -ing *impossible* (Steiner 1974; see also Day 1977, 259; Kramer 2003, 404–414), “*ineligible*” (Benn 1988, 146–8), or simply more difficult (Miller 1983, 80; Kristjánsson 1996, 45–6). Again, this is a controversy on which I wish to remain neutral.

<sup>7</sup> Though I talk exclusively of particular freedoms and unfreedoms “to engage in an activity,” I do not mean to imply by this language that I take any stance on a controversy among partisans of negative liberty over the appropriate objects of particular freedoms. Carter, for instance, argues that we can be free or unfree only to perform particular actions, provided those actions are not merely mental (Carter 1999, 16, 206; see also Steiner 1994, 16–21); Kramer argues that we can also be free or unfree to undergo various processes (Kramer 2003, 160–3) or to perform some merely mental actions (Kramer 2003, 163–6). While talk of “engagement in an activity” may not be neutral among these (or other possible) positions, I fear that no locution would better serve to keep me out of this family feud.

general terms, we simply aggregate over these particular freedoms or unfreedoms.<sup>8</sup> If Cliff or Lana were to object that they are unfree (full stop), we might read this as shorthand, say, for the claim that they enjoy fewer aggregate particular freedoms than they ought.

Now, in principle, we could elaborate a construal of freedom as generic “unpreventedness” (Kramer 2003, 31) or generic non-constraint. On the crudest version of this construal, we might say that a person *S* is free to  $\phi$  if only if nothing prevents *S* from  $\phi$ -ing – that is, if and only if *S* is able to  $\phi$ .<sup>9</sup> In order to measure someone’s freedom, we simply would need to gauge the scope of her abilities. Roughly put, the more things she is able to do, the freer she would be.

I expect that this language, when suitably developed, could be quite useful to us. To be sure, we may want to tailor this language in various ways in order to focus more precisely on our specific concerns. We may want to distinguish “internal” constraints – the products of psychological conditions like addiction, or of our own vices or virtues – from “external” constraints like hurricanes or droughts. And we may wish to pay attention to the quality of our options, as well as to their breadth.<sup>10</sup> But setting these questions aside, something in this ballpark is of obvious importance. Nevertheless, the construal of freedom as generic ability may not be adequate to all of our purposes. We need language with which to recognize the things that cases

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<sup>8</sup> This structure seems to strike many theorists as so natural that they neither defend it, nor even explicitly acknowledge it. But Ian Carter, for instance, characterizes the structure quite clearly: “...when one is talking of an agent’s ‘freedom’, rather than (at least implicitly) of her ‘freedom to do *x*’ or her ‘freedom to do *y*’, one is referring to some kind of *aggregation* over her specific freedoms” (Carter 1999, 13).

<sup>9</sup> In fact, G. A. Cohen seems to defend just such a view. “Who could deny, other than someone in the grip of an ill-considered philosophical theory, that having a car at my disposal that I know how to drive enhances my freedom to get around London, and that lacking one, or lacking the ability to drive one, diminishes it? ...So the contrast between means and ability, in general, on the one hand, and freedom on the other, is a right-wing myth” (Cohen 2011b, 196–7).

<sup>10</sup> Compare (Arneson 1985; Taylor 1985; Sen 1990; Sen 1991); contrast (Carter 1999, chap. 5).

like Cliff's and Lana's have in common, and the ways in which they differ. The question is, how – if at all – should these differences manifest in our conceptions of freedom?

(b) *A focus on the interpersonal.* Proponents of negative liberty propose an answer, arguing that we should focus specifically on the ways in which *other people's* activities constrain our own. A concern for negative liberty differs from a concern for generic ability, not in substance, but in scope: We still focus on *constraints*, but on a particular *subset* of those constraints under which we live and labor.

On the crudest version of negative liberty, we might say that a person S is unfree to  $\phi$  if and only if another prevents her from  $\phi$ -ing (or *would* prevent her from  $\phi$ -ing, were she to attempt to do so).<sup>11, 12</sup> And we might construe the extent of S's *overall* freedom as inversely related to the quantity of her particular unfreedoms. Roughly put, she is *unfree* to the extent that other people constrain her activities, and she is *free* to the extent that she is not unfree. If her

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<sup>11</sup> For the classic statement of this view, see (Berlin 1997). For more contemporary articulations, see (Kramer 2003; Kramer 2008; Carter 2008).

Actually, although I characterize Kramer as a proponent of negative liberty in the main text, he develops a unusual *hybrid* account. On Kramer's characterization, freedom is not bivalent: For any action we might perform (or process with might undergo)  $\phi$ , one can be free to  $\phi$ , unfree to  $\phi$ , or *not* free to  $\phi$ , and each of these possibilities has different truth conditions. That is, one may be *not free* to  $\phi$ , and yet not *unfree* to  $\phi$ . As for the proponent of negative liberty, a person is *unfree* to  $\phi$  if and only if other people by their actions (or dispositions to act) prevent her from  $\phi$ -ing (Kramer 2003, 3). But she is *not* free to  $\phi$  if and only if she is unable to  $\phi$  for *whatever* reason (Kramer 2003, 42), and she is free to  $\phi$  if and only if she is able to  $\phi$  (Kramer 2003, 3) (as for the proponent of generic ability). Kramer's measure of *aggregate freedom* involves two variables F and U, referring (respectively) to the range of individuals' particular freedoms and to the range of individuals' particular unfreedoms.

Acknowledging these nuances would unhelpfully complicate the presentation in the main text, since (for instance) Kramer *will* agree that a punishing hurricane season compromises Cliff's overall freedom (though it does not obviously make him to any extent unfree). But I will ignore these complications in the main text. In spite of the unusual complexity of his theory, Kramer remains committed to a construal of freedom as non-constraint, and to a distinctive focus on the interpersonal. He signals this latter focus, not by ignoring altogether all *non-personal* limitations on our actions, but by developing a distinctive variable (U) that picks out only those constraints that other people by their actions (or dispositions to act), impose on us; and by assigning a distinctive role to this variable in his measure of overall freedom (Kramer 2003, 359–379). Since he takes on these two commitments, his conception of freedom remains within the scope of my arguments in Sections 2 and 3.

<sup>12</sup> I start with a characterization of particular *unfreedoms*, rather than of particular freedoms, because there are several ways in which the proponent of negative liberty might construe particular freedoms, and because the choices that she makes on these matters are not relevant to the argument that I advance in this paper. For instance, she might say that someone is free to  $\phi$  whenever others *do not prevent* her from  $\phi$ -ing, whether she is *able* to  $\phi$  or not. Alternatively, she might say that someone is free to  $\phi$  whenever she is *able* to  $\phi$ , as Kramer does (see n. 11).

neighbors force her out of town, then Lana will be unfree to live there, or to reap the benefits that a safe life in that town might offer. This will (probably severely) compromise the extent of her overall freedom. On the other hand, while the persistent threat of devastation by hurricane renders Cliff *unable* to remain safely in his home, he is not *unfree* to do so.

As I have said, this is a skeletal construal of negative liberty. Any workable version will need to focus our attention further, not on *any* constraint derivable from other people's diverse actions and omissions, but on those constraints traceable to some limited *aspect* of their activities. Otherwise, the distinction between generic ability and negative liberty would lose its practical significance. Those constraints to which our interpersonal relations are entirely irrelevant would be precisely those inevitable limitations about which nothing can be done. In narrowing their focuses, many theorists direct our attention toward other people's *active interference* (or dispositions to interfere) in our activities (Steiner 1994; Kramer 2003; MacCallum 1967, 320–1). They set aside as irrelevant those constraints which others only by their *omissions* allow us to bear. But the generic focus on the interpersonal does not entail this more precise focus, and some have defend alternatives. For instance, some argue that we should focus on those constraints for which other people are *morally responsible*, including those which result from certain omissions (Benn 1975, 111; Miller 1983; Kristjánsson 1996). In taking the *generic* focus on the interpersonal (rather than a focus on any particular *aspect* of the interpersonal) as my standard, I hope to target conceptions lying on all sides of this internecine feud.<sup>13</sup>

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<sup>13</sup> It is worth noting that a focus on active interference does not logically entail a concern for classically liberal or even libertarian rights to private property from the focus on interference (at least, not obviously). The two are not even obviously *compatible*. If a woman boards a train hoping to travel to Glasgow without paying for a ticket, the law may license police officers or employees of the railroad to force her off the train, to fine her, or to arrest her. That is because a distribution of property rights is to *some* extent a distribution of licenses to interfere in others' activities. (It would be too strong to *equate* these, as Cohen does, but we should not deny the connection.) And people tend to make uses of these licenses, at least to some extent. So no distribution of rights to private property

Since freedom and constraint seem to contrast so naturally, many theorists seem to have taken it for granted that we can use this contrast as a starting point. As such, they have assumed that the construal of freedom as negative liberty, which folds a distinctive focus on the interpersonal *into* a conception of freedom as non-constraint, stands or falls with the distinctive significance of the interpersonal. Where else could this distinctive significance manifest if *not* in set of constraints that compromise individual freedom? But in the next two sections, I argue that negative liberty does not stand – not even with the distinction between the interpersonal and the non-personal. In order to show this, I first argue that the distinctive significance of the interpersonal manifests a moral concern for other people’s *respect*, before driving a wedge between a concern for *respect* and a concern for non-constraint.

### III. EXPLAINING THE SIGNIFICANCE OF THE INTERPERSONAL

Those who argue that we should construe freedom as negative liberty, rather than as generic ability, bear an explanatory burden: They must explain why we are licensed to focus exclusively on those constraints that other people impose on us. In this section, I argue that the best explanation is that only other people bear capacities and obligations to regulate their interactions with us on the basis of our status relations. Only other people disrespect us when they fail to do so. I argue by what we might call “inference to the best justification,” so I begin and end with brief discussions of alternative justifications.

(a) *Doing without an explanation.* First, some theorists who construe freedom as negative liberty deny that we need any justification for our focus on the interpersonal. They argue that a concern for the ways in which other people constrain our activities is essential to the context of

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will render us invulnerable to those preventing conditions produced or constituted by other people’s actions. And it becomes an open question *which* distribution of property rights will render us *least* vulnerable to these preventing conditions. It could be that classically liberal or libertarian property rights will do so, but that would take some argument. See (Cohen 2011a; Cohen 1995, 55–6).

social and political philosophy, and so needs no further defense within this context. Kramer, for instance, claims that social and political philosophy “is in part distinctively about the extent to which the latitude of [human activity] is hemmed in by constraints that are attributable to the actions of other people” (Kramer 2003, 368). It is (he alleges) “[p]recisely because our ‘how free’ question” assumes a distinction between the interpersonal and the non-personal that “it arises within the realm of social and political philosophy rather than solely within the realm of physics and engineering” (Kramer 2003, 367).<sup>14</sup> And he concludes on this basis that this licenses practitioners of social and political philosophy to distinguish humanly-imposed constraints from natural constraints.

But the context of social and political philosophy does not appear *ex nihilo*. It reflects our sense of what matters. I expect that, for the most part, we social and political philosophers take up our distinctive focus on the interpersonal only because we think that human interaction is of distinctive significance. If it were to turn out that we were wrong, then surely we ought not rest content with our idiosyncratic preoccupations, or to invoke these preoccupations in the defense of, say, in the elaboration of a conception of justice that takes negative liberty seriously. Rather, we should revise our practices to focus on what is significant and meaningful. We resist this revision because we believe that the interpersonal is of distinctive significance.

And if we are right, then the concepts that we deploy within social and political philosophy should reflect the nature of that significance, and not just the bare fact of it. The particular constraints that people impose on one another’s activities hardly exhaust the material

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<sup>14</sup> Carter echoes this suggestion in his entry on capability and negative liberty for the *Stanford Encyclopedia of Philosophy* (Carter 2016), as does Hillel Steiner (Steiner 1983, 74–5; Steiner 1994, 44). But it is hard to know what to make of these claims about the context of social and political philosophy. They seem to be taxonomical theses about the ways in which one domain of inquiry stands apart from others. But the contrast with physics and engineering puzzling, to say the least – neither informative as an elaboration nor compelling as a defense. It is hard to imagine domains of inquiry less alike than social and political philosophy, on the one hand, and physics or engineering, on the other. Abandoning the focus on the interpersonal would hardly suffice to turn the latter into the former. What, exactly, is this contrast supposed to tell us?

of social and political philosophy. Nor is there any obvious reason to lump these phenomena together into a single set: In their contexts, these constraints vary along so many dimensions that it is hardly clear that we should take an interest in all of them, or that any two constraints should interest us in the same way. In order to defend the deployment of a concept like negative liberty, we need to think about why the interpersonal matters, both in order justify our focus on the interpersonal, and to ensure that the significance of the interpersonal guides our elaboration of that focus. Kramer's brute insistence that a focus on the interpersonal needs no justification in the context of social and political philosophy affords us none of the resources we need for this task.

(b) *Toward an alternative.* Kramer argues that we must appeal to the context of social and political philosophy in order to justify our focus on the interpersonal because he denies that we can find any independent justification (Kramer 2003, 362). He reaches this conclusion after a survey and critique of alternative proposals, one of which, while false, suggests a more productive possibility.

We might think (Kramer suggests) that we resent all and only other people's interference, and that this difference grounds a distinctive focus on the interpersonal. Kramer successfully dispatches this proposal. He observes, first, that we do not always resent human interference – in fact, we are sometimes positively grateful for it. We might be glad of the railing that prevents us from tumbling over a cliff. And second, we sometimes resent non-human animals' activities (or inactivity), or the forces of nature themselves (Kramer 2003, 365–6). Since we do not resent all and only human interference, facts about who (or what) we do and do not resent cannot help us to justify the distinction the interpersonal from the non-personal.

As implausible as the proposal is, there is a kernel of truth in it. Kramer goes wrong by focusing on epiphenomena. We should be asking, not (only) toward what or whom do we direct our resentment, but: Why are people particularly apt objects of resentment?

Resentment is what P. F. Strawson called a “reactive attitude”: Unlike, say, sheer disappointment or frustration – but like admiration, indignation, gratitude, or forgiveness – resentment finds its natural home in our evaluations of one another’s characters and actions in the course of our interpersonal relations. Typically, these attitudes manifest our judgments about the ways in which people measure up by the standards relevant to these relationships (Strawson 1968, 75–6). In expressing our resentment, we typically communicate a judgment that another person has failed by the standards associated with our relationship, say, by violating a claim we have against her. Often, the expression of resentment is a way of influencing another’s behavior “indirectly,” through a particular kind of engagement with her capacities for practical reason: We call on her to recognize that she has wronged us, and to make amends (if possible). This suggests a crucial distinction between the interpersonal and the non-personal: Those possessed of practical reason can bear *status* relations with one another, because they are able and obligated to recognize these relations, and to regulate their interactions appropriately.

(c) *Status and respect as moral concerns.* Statuses in general consist in complex bundles of normative (Hohfeldian) properties, which relate status-bearers to one another. For instance, legal ownership standardly consists of variable constellations of claims against others’ use (or abuse) of the goods we own; prerogatives to use these goods; powers to lend, sell, rent, or bequeath them to others; liabilities to taxation or to eminent domain; and so on. People can recognize and respect our rights of ownership, or they can disrespect them. Hurricanes, which



lack the relevant capacities and obligations, just tear through everything in their path. That is why other people can commit theft, while hurricanes, for all their destructive force, cannot.

To be sure, not all forms or instances of disrespect merit our concern. Countless social statuses have manifested in particular legal and social contexts, arising and vanishing in the course of history. Most have been morally illegitimate. Eighteenth century contempt for the aristocracy in Europe may have manifested an admirable, revolutionary commitment to the moral equality of all. Those who worked the Underground Railroad heroically disrespected American slave owners' legal property rights. Nevertheless, many moral frameworks distinguish our actual social statuses from our moral statuses, or from those social statuses to which we are morally entitled. And these frameworks cast respect for *these* statuses as a fundamental moral concern. This concern provides a wedge with which we might drive apart cases like Lana's and Cliff's: Unlike Cliff,<sup>15</sup> Lana is vulnerable to violations of her moral claims – to assault, theft, property damage, even murder. And it is in virtue of these vulnerabilities that Lana decides she must leave town. Which further cases are like Lana's, and which are like Cliff's, will depend on the structures of our moral statuses. There is significant disagreement on this front (and the resolution of this disagreement would lie well beyond the scope of this paper). To ease the rest of the discussion, then, I call our total moral statuses our *personhood*.

So the fact that only persons can bear obligations to recognize and to respect one another's moral statuses licenses us to focus, in at least some contexts, on certain facts about our interpersonal relations – and not on facts about superficially similar non-personal conditions under which we live and labor.

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<sup>15</sup> Though see n. 2. Once we turn our attention toward a concern for respect, the natural question is: What are Cliff's moral rights? Does he have any claim on our aid in the face of his particular vulnerabilities? Once we address these questions, depending on the details of Cliff's case, we may discover that, in certain respects, Cliff's case is more like Lana's than we initially thought.

It also affords us resources with which to ameliorate Kramer's concerns. As I said earlier, resentment is a particularly apt response to another's alleged violation of a claim that we take ourselves to bear against her. But our concern for others' respect establishes room for the complex patterns of human resentment to which Kramer calls our attention. First, we do not have claims against all kinds of interference, and when we have no claims, it is typically appropriate that we do not resent the interference. Sometimes, much to our chagrin, all of the tables at our favorite restaurant are reserved. But we have no claims against this interference in our dinner plans.<sup>16</sup> Second, we need not even resent the violations of our claims. Resentment is only one (often appropriate) response available to us, and we often get to decide whether to deploy it. Third, when we resent uncooperative animals or natural phenomena, that is sometimes because we represent these phenomena as though they could respond to our resentment – as though the animals were sentient, or the natural phenomena manifested the will of a god who might stand in *some* kind of status relation with us. And fourth, even when we do not consciously represent the natural world as possessed of a mind of its own, we might sometimes construe resentment at the world's obstructions as a particular kind of arrogance, in which we inappropriately construe an indifferent world as though it were somehow “for us” (Frye 1983a, 67–72). When we curse the insubordination of our faulty appliances, it can sometimes help to remind ourselves that, after all, these gadgets owe us nothing. Sometimes, things just go wrong.

So although we aptly direct our resentment only toward those with whom we stand in interpersonal relations, it should be no surprise that we do not resent all or only other people's interference in our activities. In spite of Kramer's concerns, it remains plausible to justify our focus on the interpersonal by appeal to our concern for others' recognition and respect.

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<sup>16</sup> Of course, many arrogant people have an inflated sense of their own status, and so would readily resent those who get in their way – even when they have no claims against the putative offenses.

(c) *A prominent competitor*. Finally, this conception of the distinctive significance of the interpersonal affords us some resources with which to critique further proposals which put the horse before the cart, in a way. These proposals strive to justify negative liberty's focus on the interpersonal by appeal to particular conceptions of our personhood, which typically emphasize our natures as *actors* who chafe at certain on our activities. But in deploying a concern for personhood (as they construe it), first, they implicitly invoke a concern for others' *respect*; and second, they append to that implicit concern extraneous details about our moral statuses. These latter details are extraneous in the sense that we do not need to invoke them in order to justify a focus on the interpersonal. As we have seen, a concern for respect does that on its own. That does not mean that these theorists' conceptions of personhood are wrong. It only means that we cannot earn them by an inference to the best explanation where the explanandum is our focus on the interpersonal.

I will illustrate the point by examining one relatively prominent tradition in the literature. Theorists like S. I. Benn and W. L. Weinstein (Benn and Weinstein 1971; Benn 1975), David Miller (Miller 1983), and Kristján Kristjánsson (Kristjánsson 1996) have argued that our language<sup>17</sup> affords us resources with which to distinguish *constraints on our freedom* from *constraint in general*, because (they claim) there is a general presumption against limiting other people's options. As these theorists are quick to point out, it may be easy to find compelling justifications that defeat this general presumption. Theirs is, first, a claim about the default; and second, an assignment of the burden of proof: In advancing the charge that some person S is unfree to  $\phi$  (rather than merely unable to  $\phi$ ), we point out that someone else has prevented her  $\phi$ -ing, and demand a justification from the apparent transgressor (Benn and Weinstein 1971, 199; Benn 1975, 109; Miller 1983, 69; Kristjánsson 1996, 14, 74).

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<sup>17</sup> I should express some reservations about the linguistic data to which these theorists appeal; see n. 7.

In its best form, this proposal constitutes a particular version of the proposal I offered above, packaged together with a particular construal of personhood. On this reading, the general presumption against interference derives from our general, though defeasible, claims against constraint.<sup>18</sup> Two considerations tell in favor of this reading. First, Benn (who in many ways inaugurated this theoretical tradition) invites it relatively explicitly, framing his conception of freedom around a concern for “respect for persons,” and casting personhood (in the relevant sense)<sup>19</sup> in terms of (defeasible) claims on others’ forbearance (Benn 1975, 120–1).<sup>20</sup> And second, this would be the most plausible interpretation of a general presumption against interference, especially if that presumption serves to distribute the burden of proof among interacting agents. After all, claims travel with the power to *make* claims, to demand one’s due in the face of disrespect (see Feinberg 1970). And this power typically involves the standing to demand that those who trespass against us account for themselves. If we have defeasible claims against interference, it might not seem too much of a stretch to construe claims of the form “S is unfree to  $\phi$ ” as the speech act through which we make these demands, and so impose burdens of proof on those who (seem to) violate our claims by preventing us from  $\phi$ -ing. Again, Benn

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<sup>18</sup> I should mention that I find this an implausible conception of personhood. A significant aspect of the case *for* this conception of personhood depends on unattractive interpretations of ordinary language (see n. 7). Benn’s defense of the principle of non-interference in “Freedom, Autonomy, and the Concept of a Person” consists entirely in a critique of amorism (Benn 1975, 117–21), suggesting that he has ignored the possibility that his substantive conception of morality stands in need of defense. So, as far as I can tell, none of the authors in question have provided compelling arguments in defense of their most central claim.

To be sure, I suspect that a concern for certain kinds of independence should play some limited roles in the ways that we structure these statuses, and that this earns for us claims against *certain forms* of interference. But this would not earn for persons *general* (even if defeasible) claims against interference (see Ripstein 2009). And second, I suspect that we are morally entitled to a complex array of social statuses, relating to the structures of our families, of our markets, of our public spaces, and of our political systems. Once we take all of these complex statuses into account, it is hard to know what work would be left for a general claim against interference. Nor is it obvious that we would want it to do that work. For a more complete defense of the point, see Chapters 2 and 3.

<sup>19</sup> Benn distinguishes “natural personhood” from “moral personhood.” Natural personhood picks out our psychological capacities for choice and action; moral personhood picks out our status as bearers of defeasible claims against interference.

<sup>20</sup> Strictly speaking, Benn writes of “entitlement” rather than of “claims,” but I think that we can substitute the one for the other in his framework without conceptual loss.

invites this interpretation relatively explicitly: “Claims that a person is/was free, or is/was not free to act occur characteristically in speech-acts like expressions of grievance or resentment, giving or seeking justifications, making or rebutting excuses, fixing or denying responsibility” (Benn 1975, 109).

But if this approach packages a concern for respect with a particular conception of personhood, then its additional commitments are extraneous – at least, to the task at hand. In order to explain the distinctive significance of the interpersonal, we need only invoke a concern for respect in general. We do not need to invoke any particular conception of personhood. The account that I characterize above, then, provides a more parsimonious explanation for the practical distinction between the interpersonal and the non-personal, one compatible with various subtler and more complex conceptions of personhood.<sup>21</sup>

There may be further possible justifications for a focus on the interpersonal, and we will need to evaluate each as it comes along. For practical purposes, I have focused here on those proposals advanced by proponents of negative liberty. The burden is now on the proponent of negative liberty to critique the proposal that I offer here, or to advance another that is more plausible. I am skeptical that she can do so. So in Section 3, I take it for granted that we should justify the practical distinction between the interpersonal and the non-personal by appeal to our moral concern for one another’s respect. We have saved negative liberty from the charge that it distinguishes the interpersonal from the non-personal arbitrarily. But in doing so, we have made it vulnerable to another, more damning critique: Its two core commitments are at war with one another.

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<sup>21</sup> This is for the best, since, as I have mentioned, the conception of personhood they invoke is not very plausible (n. 18).

#### IV. AGAINST NEGATIVE LIBERTY

In Section 1, I characterized a cluster of conceptions of freedom that share two core commitments: to a construal of freedom as non-constraint, and to a distinctive focus on the interpersonal. In Section 2, I argued that this second commitment likely derives from our concern for respect. But in this section, I argue that the construal of freedom as non-constraint stands *at odds* with our concern for respect, and that we have no good reason to unite these commitments into a single concept. Rather, these commitments manifest two distinct concerns that do not fit naturally together.

(a) *The social conditions of personhood.* To a significant extent, our concern for respect focuses our attention on particular interactions, including (for instance) violations of our claims, or failures to recognize our prerogatives and powers. And to be sure, a concern for negative liberty tells us very little (if anything) about these particular instances of disrespect. Negative liberty directs our attention exclusively toward the range of activities that these interactions close off to us, and not on the interactions themselves. But “theft” and “assault” name particular modes of interaction, instances of which may share some typical range of effects, but which are not cleanly reducible to these effects. It is true that acts of disrespect like assault or theft can, and typically do, impose new constraints on our activities. But the conflation of the interactions with the effects would do serious damage to our conceptual vocabularies.

But a concern for respect does not *only* direct our attention toward these particular interactions. It focuses our attention to some extent on the social conditions within which these interactions occur. In particular, it should focus our attention on the social norms (including legal norms) that are effective in our communities, and which confer on us various social statuses (including our legal statuses).

These norms arise from the practices and conventions of our particular communities, and structure the ways in which the members of our communities represent their status relations with one another. They organize a group of people into a *normative community*, rather than an anomic mass. Legal norms are among the most visible social norms, defining and distributing a wide variety of legal statuses. In defining and distributing these statuses, law confers on us complex bundles of legal obligations, legal prerogatives, legal powers, legal liabilities, and legal immunities. In virtue of these relations, legal subjects may be owners of property, members of legally recognized families, and participants in a legally structured economy. But legal norms hardly exhaust the genus. Another class of norms, which we might call *informal norms*, arise over the course of myriad interactions from the representations that we express *though* these interactions. Some informal norms come to count as *law*, at least in the sense that courts invoke them in their interpretations of law. Others remain external to law, and yet give significant and pervasive structure to many aspects of our lives. These norms confer on us the standing to claim a spot in line, or to store goods in our shopping carts before we pay for them. They extend family relations beyond their legal forms and construct market relations in extralegal economies.

Social norms satisfy necessary conditions on people's *recognition* of one another's personhood, and afford us resources with which to regulate our interactions on the basis of this recognition. First, social norms provide necessary conditions on people's recognition of one another's personhood. I have remained agnostic about the structure of personhood, but *whatever* it looks like, it is likely far too abstract on its own to pick out precisely which actions or omissions count as disrespectful *of* our personhood – for instance, which acts will count as *trespass* or *theft*. There is only so much that moral considerations on their own can tell us about how we should structure (for instance) our property rights, our rights to the public provision of

basic goods, parents' relations with their children, spouses relations to one another, the various relations that structure our marketplace, or the rights of citizenship. We need concrete standards by which to regulate our interactions.

Social norms are particularly apt to provide these standards, because the indeterminacy of personhood creates a kind of coordination problem: There may be a variety of determinate standards we might adopt, but which standard each of us *should* adopt depends to some extent on which standards the other members of our communities *do* adopt. If you and I were to adopt two distinct standards, either of which could in principle render our personhood determinate, there could be cases in which our distinct standards would grant us conflicting claims against each other. In the absence of some independent standard, our claims against one another will remain indeterminate. (This is the core of Kant's defense of an obligation to join a civic community in the Doctrine of Right (Kant 1996): When we are apt to make competing claims against one another, we are in a state of war. Our duty to seek peace requires that we exit this state of war by accepting some common, public standards that obviate the danger (Waldron 2013).)

Moreover, the particular coordination problem that we face concerns our abilities to *communicate* facts about our personhood with one another in order to earn their recognition. Social norms are apt to provide us with resources appropriate to our task; they construct something like a public language for our community, providing us with common standards and principles by which to explain ourselves to one another. They allow us to express to one another the limits of their prerogatives, the facts of their obligations, and the extents of their powers, and so to engage with their practical reasoning in order to regulate their interactions with us.<sup>22</sup> They

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<sup>22</sup> To be sure, some social norms structure our very perceptions of the world, and it can be extremely difficult to recognize the extent to which these perceptions *are* dependent on contingent social norms. And even less deeply embedded social norms can remain implicit, and their content can remain inarticulable by those whose interactions they govern. But we can still appeal to the standards that these norms establish in the course of our conversations.



are not apt merely to pick out *determinate* standards where moral considerations fail to do so. They are apt to make these *our* standards.

Of course, since social norms regulate our interactions indirectly, through engagement with individuals' practical reason, they do not force compliance. Mundane ignorance, partiality, weakness of will – not to mention outright animosity – can corrupt or misdirect our practical reason, rendering us to some extent vulnerable to one another's disrespect. But social norms do not merely provide us with resources with which to negotiate isolated, one-on-one interactions. They also regulate third-party responses to these interactions, and so locate them within a broader social fabric. It is in virtue of the rule of law in our communities that we can retain ownership over stolen goods, and so can rely on others' recognition of our rights of ownership in our attempts to recover stolen goods, to demand compensation from offending parties, or to demand that the state enforce such compensation.

In a very real sense, then, social norms are apt to create and distribute personhood within the community, setting relatively determinate standards by which we might recognize the boundaries of one another's rights and obligations in the course of our interactions, and affording to third parties resources with which to recognize and to respond to instances of disrespect.

A concern for negative liberty earns us none of this. Policies or social structures which minimize the performance (or non-performance) of particular acts might have no effect on – or might be positively detrimental to – others' recognition of or respect for our personhood. Let's say that we aim to maximize Lana's negative liberty by minimizing the number of actions that

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The practice of reasoning does not depend on the capacity to define its rules. At the other extreme, some norms – particularly many *legal* norms – can become sufficiently obscure or complex that we cannot comprehend them, and rely for guidance on the advice of experts (like lawyers). But even legal norms are, paradigmatically, promulgated to those over whom they claim authority, and the increasing obscurity of these norms tends to stand in tension with one of the central moral functions of the legal system. (See (Waldron 1999) for an interesting discussion.) At their best, the social norms effective in our communities are apt to render our personhood both determinate and accessible, and so to provide some of the conditions that must be satisfied if we are to enjoy one another's respect.

her neighbors, by their activities (suitably specified), prevent her from performing. We could achieve this by a variety of means: By locking her neighbors in small cells, by subjecting them to Pavlovian conditioning in order to turn them into pliable idiots, by placing shock collars around their necks that zap them when they are on the verge of interfering with Lana's activities. Out of a concern for Lana's negative liberty, we might prefer any option that minimizes her neighbors' interference (suitably characterized) in her activities.

I won't argue that a concern for negative liberty would actually give us reason to endorse illiberal methods (though I suppose that I am not convinced that it won't). The deeper problem is that negative liberty frames Lana's neighbors, not as people to be engaged with through their capacities for practical reasoning, but merely as possible sources of constraints, to be managed by whatever means will minimize those constraints they generate. Even if a concern for negative liberty would, miraculously, justify the establishment of a legal (and broader social) system that relates Lana to her neighbors in a way that renders her personhood determinate and accessible, it would do so for reasons that have nothing to do with Lana's concern for respect.

(b) *A paradigm case.* This should already make us uneasy about negative liberty's bonafides as a concept worth deploying in social and political philosophy: It implicitly relies on one concern (for respect) in order to justify one of its core commitments (to the distinctive focus on the interpersonal), but picks out nothing that is much relevant to that concern, and quite a bit that is plausibly antithetical to it. But the final defense of any moral concept is, as they say, in the eating: How much work can it do in the organization and interpretation of our experiences and concerns? And here, negative liberty fails its most important test. Attention to the social conditions of our personhood can help us to illuminate paradigmatic instances of *unfreedom* in a way in which attention to negative liberty cannot.

For instance, proponents of negative liberty seem to mischaracterize the condition of *enslavement*. Intuitively, enslaved people are unfree *because they are enslaved*. And they would remain enslaved (and so unfree) even if, for whatever reason, the slaveholder were vanishingly unlikely to interfere in their activities – that is, even if they were to enjoy considerable negative liberty.<sup>23</sup>

To be sure, the appeal to counterexamples is rarely conclusive on its own. After all, our interlocutors might well undermine the counterexample's implications by explaining our intuitions away.<sup>24</sup> What we really need are compelling theoretical resources that illuminate the case, helping us to see *why* enslavement constitutes a form of unfreedom in itself, independently of its typical effects on negative liberty.<sup>25</sup> We now have such resources: Enslaved people do not bear the normative properties constitutive of personhood in anything other than a strictly moral sense. Socially – and in particular, legally – they are not persons, but are merely the animate property of those who own them. The members of their communities – even the kindest among them – would not be able to recognize them as victims of theft (for instance), because no legal

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<sup>23</sup> Neo-republicans like Quentin Skinner and Philip Pettit have advanced this argument to particular effect. See (Skinner 1998; Skinner 2002; Skinner 2008; Pettit 1997; Pettit 2001; Pettit 2012).

<sup>24</sup> For instance, Kramer argues that in Pettit's presentation of the case of the non-interventionist slave owner, Pettit frequently argues that enslaved people will suffer significant pressure to self-police: to choose to engage in activities that will encourage the slave owner to remain non-interventionist (see Pettit 2001, 136–8). But as Kramer points out, those who self-police in this way *may* do so because they believe that even relatively benevolent slave owners have *certain* dispositions to interfere in enslaved people's activities, and that strategies of self-policing are necessary to avoid the activation of these dispositions (Kramer 2003, 136–7). Kramer concludes that we may yet think that enslaved people in such contexts remain unfree precisely because we, too, expect that the slave owners are disposed to interfere in certain contexts, and so to prevent enslaved people from engaging in some variety of activities.

<sup>25</sup> Unfortunately, neo-republicans' attempts to provide these theoretical resources have not been very compelling. Philip Pettit, for instance, distinguishes the *probability* that others will interfere in our activities from others' *capacities* to do so: While a particular slave owner might be unlikely to interfere in the activities of those he owns, the enslaved people remain unfree so long as the slaver retains the *capacity* to do so as he pleases (Pettit 1997, 88). But first, as Kramer objects, this distinction is hopeless. To aspire to eliminate people's capacities to interfere in one another's activities would be to indulge in utopian idealism. The best that we can do is aim to minimize the probability that people will acquire such capacities – and, Kramer notes, this is often the best way to eliminate the probability that people *will* interfere in one another's activities (Kramer 2003, 138–140). So it is hardly clear that the distinction between the probability that someone will interfere in another's activities, and her capacity to do so, cannot do the kind of theoretical work that Pettit seems to expect of it.

order would confer on them the rights of ownership.<sup>26</sup> The most they could hope for is kindness and mercy, not respect. Their liberation would require legal and social reform that renders their personhood socially actual – that confers on them claims against assault, the rights of ownership, prerogatives to live where they will, and they like. In the absence of such reform, they remain enslaved, however limited their constraints.

Attention to negative liberty misleads us about this case – and others – because it only pays lip service to its foundational concern for respect. But attention to our a concern for others’ respect, *independently* of any construal of freedom as unpreventedness, affords us abundant resources with which to make sense of it.

(c) *Freedom’s ambiguities.* Are there any cases in which the tables are turned – that is, in which attention to negative liberty yields more insights than does attention to the social conditions of practical reasoning? We might think so: A justly imprisoned convict is obviously unfree (Kristjánsson 1996, 72), even if the legal processes under which she was convicted took care to recognize and to respect her personhood.<sup>27</sup> Similarly, a slave might celebrate his freedom as he escapes captivity, even though he remains a fugitive in an unjust state. But the convict enjoys the social conditions of respect, while fugitive slave does not. Don’t our intuitions on these cases plainly require that we invoke resources that go beyond our concern for respect, and focus on the particular constraints that the convict bears, or that the fugitive slave has escaped? These kinds of case have been deployed with surprising finality against so-called “moralized” or

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<sup>26</sup> To be sure, actual enslaved people often make considerable efforts to develop and maintain social norms within their communities, achieving some aspects of their personhood in spite of – and sometimes as a challenge to – slave owners. But these local normative relations may mean little to the members of the community at large.

<sup>27</sup> I do not mean to assume anything about the justice of imprisonment here. Though I do expect that there is *some* role for prisons in a modern system of criminal justice, in the main text I only explore the *conditional* claim: *If* the justly convicted person is justly imprisoned, *then* she is to some extent unfree.

“rights-based” conceptions of freedom, which invoke individuals’ rights in order to mark the kinds of interactions that compromise individual freedom (Cohen 2011a; Cohen 1995, 55–6).

But their deployment elides a number of significant distinctions. We need not invoke negative liberty in order to make sense of these cases; rather, we need to remain sensitive to distinct senses of freedom as they arise in the course of moral philosophy and everyday conversation. First, recall the distinction between particular and overall freedom. The justly convicted prisoner loses some particular (normative) freedoms – prerogatives, claims, and normative powers. She also loses a significant range of abilities, which we cast in Section 1 as “particular freedoms” in another sense. These two kinds of loss lie on opposite sides of a boundary marked by the distinction between the interpersonal and the non-personal. And there may be meaningful conceptions of freedom that lie on both sides of this boundary. Interpersonal or “social” freedom stands in contrast with domination, subjugation, or oppression; freedom as generic ability stands in contrast with confinement, enclosure, or constraint. To be sure, the justly imprisoned convict may be unfree in some sense, but she is not dominated or oppressed. Although she has lost some particular normative freedoms, her freedom overall does not ebb and flow consistently with these changes. So long as social norms cast her as a person and define her rights appropriately, she remains free in this sense. In characterizing her as unfree, it seems more natural to deploy the language of generic constraint (suitably specified). Within this discourse, we gain little of significant insight when we notice that it is people who trap the justly imprisoned convict in her cell. On the other hand, while the fugitive slave sheds some enormously weighty constraints, he remains severely oppressed within an unjust state. His condition is complex, and it will be worthwhile to maintain language with which to acknowledge this complexity.

I suspect that the construal of freedom as negative liberty has emerged from a persistent failure to distinguish these senses of freedom, perhaps as the result of a systematizing urge that drives us to unify concepts best left distinct. If so, then negative liberty's two core commitments derive from distinct concerns. But there is no obvious reason to unite these separable concerns into a single concept. In fact, as I hope I have shown, there is quite a bit to lose. We should abandon the language of negative liberty.

I should emphasize that I have argued only that we should construe freedom (in one important sense) as a matter of social status, and should understand enslavement as a case in which someone is unfree because of the particular social statuses she bears. I have explicitly avoided offering any arguments about the content of personhood.<sup>28</sup> And there is room for significant disagreement here. For instance, certain kinds of classical liberals or libertarians might argue that people are free when and only when social (and in particular, legal) norms confer on them rights against assault and robust rights to private property.<sup>29</sup> Progressives may argue that free people must bear further legal rights to the public provision of basic goods. Meanwhile, feminists and critical race theorists draw our attention to the informal social statuses we bear, and the ways in which these redound to insidious extra-legal forms of oppression. Theorists within any of these camps may construe freedom and unfreedom in terms of social status. But, to a significant extent, they address our attention toward difficult questions about the content of those statuses. And it is to these questions that we must direct our attention in our further investigation into the meaning of freedom as a social and political ideal.

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<sup>28</sup> Except in footnotes. See in particular n. 18.

<sup>29</sup> These classical liberals and libertarians would *not* seek to derive robust private property rights from the construal of freedom as non-interference, as some have done. This is for the best, since such derivations are fallacious. See n. 13.

## A New Spin on Positive Liberty

### I. INTRODUCTION

Much philosophical engagement with freedom or liberty<sup>30</sup> consists in the organization of concepts like constraint, interference, vulnerability, or dependence around an architectonic concern for individual agency. Agents are not merely beings to which things are done. Agents *do*, catalyzing changes in the world around them. In moral contexts, agents choose the projects they will undertake, and organize their activities around these projects. And agency is not merely a psychological or metaphysical capacity for choice and action. It is an ideal to which we aspire. We want to be the authors of our own stories, to be able to look on our works and say: “this bears my signature, this is *me*” (Pettit 2001, 6). Theorists of freedom typically present various forms of constraint or interference, of vulnerability or dependence as a challenge or threat to agency, and as objectionable on these grounds.

But philosophers have long recognized a variety of morally distinct threats to agency. Many are in some way “internal” to the agent herself. These may include psychological disorders

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<sup>30</sup> Some find it useful to draw artificial distinctions among these terms, but I use them here more or less interchangeably. I prefer the term “freedom” largely for stylistic (and perhaps idiosyncratic) reasons. To my ear, “liberty” sounds oddly antiquated, and seems at least to connote distinctively liberal concerns. “Freedom,” on the other hand, seems to pick out these concerns and more, and so allows us to draw the sorts of conceptual connections I aim to unearth in this paper. But the term “liberty” has in some ways served as the common currency of philosophical engagement with the kinds of ideals that interest me, so I do not abandon it entirely.

(like agoraphobia or addiction), various vices (like weakness of will), or certain delusions. Some threats, on the other hand, are distinctively interpersonal. For instance, others might “impose their wills” on us by various forms of coercion, co-opting us into projects that are not our own, and so to some degree alienating us from our own activities. When the gunman demands your purse, he somehow forces your hand in a way that limits your responsibility for your own actions. You do not give him your purse; he takes it. The relationship between the slave and the slaveholder drives this dynamic to an extreme. In a significant sense, enslaved people do not set their own ends. Slaveholders do. Slavery, as a persistent condition, transforms the enslaved into an extension of the slaveholder’s agency, an instrument apt for the slaveholder’s use. The characterization of slaves as animate property makes this transformation explicit.

But while coercion, slavery, disorders, and vices all may threaten or challenge agency, intrapersonal and interpersonal threats to agency merit distinctive moral treatments. Something sets coercion and slavery apart from addiction or *akrasia*. Liberal and republican political philosophers have marked this difference in part by distinguishing “positive liberty” and “negative liberty.”<sup>31</sup> This approach to freedom as a political ideal depends on a univocal conception of agency that is vulnerable to interpersonal and non-personal threats alike. Positive liberty typically targets agency (so construed) in its fullest sense, as autonomy or self-mastery. In this felicitous condition, we suffer neither internal nor external compulsions: We fully own our own actions, see ourselves in them, and gladly claim responsibility for them. But negative liberty targets, not agency in general, but the absence of distinctively interpersonal threats to our agency. Negative liberty does not require that we set our own ends; it requires only that no one else does.

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<sup>31</sup> Of course, the distinction, or perhaps more precisely, distinctions between positive and negative liberty are not entirely natural. Theorists deploy these terms in diverse ways in order to mark various putatively significant boundaries in our moral and political concepts. My presentation of the distinction here represents a clarification of one dominant (if rarely explicit) role that the distinction has served in liberal and republican theory.



It does not require that we enjoy self-mastery *tout court*, but only that we are not subject to the mastery of others (Larmore 2004, 97).

Much contemporary liberal and republican theory occurs within a paradigm constituted by a conception of agency as a capacity for choice from among available options, and for action in the pursuit of chosen goals.<sup>32</sup> Call this the teleological paradigm. In casting agency (so construed) as a political concern, liberal and republican theorists argue that we value, not merely particular options which may (or may not) be available to us, but the capacity for choice itself. And they cast threats to this capacity as threats to freedom. Psychological disorders and vices may prevent us from resisting particular choices even when better options are available to us. And while there is significant disagreement about the kinds of interpersonal phenomena that threaten the generic capacity for choice, the preponderance of liberal and republican theory focuses (in various ways) on the intentional limitation of the options from which we might choose. These theories may cast coercion as interference in our activities, slavery as a kind of vulnerability to interference.

But I argue that the teleological paradigm distorts our social world. To represent agency univocally as a generic capacity for choice is to efface a distinctively social aspect of agency, which we might call *personhood*. Personhood is essentially interpersonal: It emerges from those status relations which constitute us as owners of property, as members of families and neighborhoods, as participants in various market relations, and as members of shared political

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<sup>32</sup> I do not mean to suggest that the capacity for choice involves a bare “liberty of indifference.” Rather, it typically involves a number of distinct psychological systems, which jointly constitute our capacities for practical reason: capacities for perception, for the formation and revision of beliefs, for practical reasoning about means and ends, and for the expression of our choices in action. A number of pathologies, like agoraphobia or addiction, might compromise these capacities in ways that threaten our agency (Benn 1975; Pettit 2001). A positive conception of freedom that construes freedom as a capacity for choice will mark these pathologies as threats to our freedom.

On these grounds, the teleological approach need not mark our actual beliefs and desires in general as threats to our freedom. Since they are at least part of the currency of our practical reason, and since our capacities for practical reason partially constitute us as agents, these beliefs and desires do not inherently threaten our agency, as do pathologies like addiction.

communities. These relations constitute our practical authority within various domains, giving rise, not to a generic capacity for choice, but to our particular standings to perform actions with social significance. I argue that we should construe freedom (as a social and political ideal) in terms of the distribution of practical authority. Legal slavery<sup>33</sup> (for instance) extends one person's authority beyond its legitimate boundaries, affording her rights of ownership in another person. To be sure, this relationship typically makes slaves vulnerable to slaveholders' interference. But that is a symptom of slavery, and not the heart of it. On this approach, interpersonal phenomena like slavery are not distinctively interpersonal threats to a generic capacity for choice; rather, they contrast with a positive, but essentially interpersonal ideal: the just distribution of practical authority. Call this the relational paradigm.

The paper has four parts. In Section 1, I flesh out the teleological paradigm, illustrating the ways in which theorists S. I. Benn and Philip Pettit rely on a conception of agency as a generic capacity for choice to construct negative conceptions of liberty. In Section 2, I characterize the relational paradigm, and argue its theoretical advantages over the teleological paradigm. In the final two sections, I argue that these paradigms yield distinct, and to some extent competing prescriptions. While the teleological paradigm allows, and often promotes, the liberation of one person by the constraint of another, I argue in Section 3 that liberation on the

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<sup>33</sup> Strictly speaking, slavery picks out several kinds of maldistribution of practical authority, clustered together by a family resemblance. It picks out conditions like legal slavery, in which law relates slaveholders and slaves as owners to property. But it also picks out conditions of extra-legal slavery, in which one person simply coerces another into obedience either illegally, or in contexts in which there is no law. The gloss that I give in the text more clearly fits legal slavery than extra-legal slavery.

I have some hunches about what might connect legal and extra-legal slavery. In particular, I expect that although in extra-legal contexts, no background distributions of status relations extend the coercer's authority beyond its legitimate boundaries; nevertheless, he usurps that authority, using available resources to make choices that ought not belong to him and so effecting a maldistribution of practical authority at what we might call the "micro-level." This construal of extra-legal slavery requires some fleshing out, which is beyond the scope of my project here.

For my purposes in this paper, it is enough that we recognize both legal and extra-legal slavery as maldistributions of practical authority. Once we locate them within this shared conceptual space, I expect that the ways in which they are different are apt to be of greater moral and political significance than are their superficial similarities. A nuanced taxonomy of maldistributions of practical authority would make these differences explicit, and so would capture both the meaningful connections and the significant distinctions among these conditions.

relational paradigm requires that we revise the status relations in which we stand. These liberatory strategies are at best orthogonal to one another. At worst, strategies of constraint are hostile to the just distribution of practical authority, as I argue in Section 4.

## II. THE TELEOLOGICAL PARADIGM

Those familiar with the phrase “negative liberty” may associate it with a concern for non-interference by other people. Isaiah Berlin could not have put it more bluntly: On his gloss, “I am normally said to be free to the degree to which no man or body of men interferes with my activity” (Berlin 1997, 194). The natural challenge for those who construe freedom in these terms is to put flesh on these bones: What counts as interference in the relevant sense?

The most sophisticated theorists of negative liberty answer this question, not (or at least, not only) by appeal to ordinary usage of the words “freedom” or “interference” (which, after all, have myriad distinctive senses, not all of which pick out morally significant concerns), but by casting interference (at least in certain forms) as a distinctively interpersonal threat to a more generic ideal – namely, agency.<sup>34</sup> The conception of agency as a generic capacity for choice plays two roles in this approach. First, it picks out the positive ideal to which, for instance, coercion or slavery stand in opposition, and so informs the ways in which we frame these phenomena. (This typically results in a complication of the construal of negative liberty as “non-interference.”) Second, it informs the ways in which we focus on distinctively interpersonal threats to agency, like coercion or slavery.<sup>35</sup> I sketch each of these steps in turn.

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<sup>34</sup> Not every construal of freedom as non-interference represents interference in this way. Berlin argues that “We must preserve a minimum area of personal freedom if we are not to ‘degrade or deny our nature’” (Berlin 1997, 198), but he judiciously refrains from expounding on the content of that nature. Ian Carter argues that a concern for non-interference is liable to reflect a host distinctive foundational concerns, perhaps including, but not necessarily limited to, our interest in our own agency (Carter 1999).

<sup>35</sup> To be sure, not everyone working within the teleological paradigm agrees that there are distinctively interpersonal threats to our agency (see, for instance, Crocker 1980, 99–109). I will not explicitly address these approaches here.

(a) *A positive ideal.* Interpersonal phenomena like coercion and slavery do not directly attack those psychological systems which constitute our capacities for choice, as might disorders like agoraphobia or vices like *akrasia*. In fact, in typical cases, coercion works through – and so depends on – those capacities for practical reason that constitute the psychological aspects of agency. Rather, coercion often involves the manipulation of our circumstances so that our best option is the very option our coercer wants us to choose (Frye 1983a, 56). Those who construe coercion and slavery as threats to a generic capacity for choice typically focus on the ways in which these phenomena limit the choices available to us. Here, I sketch Benn’s and Pettit’s approaches in order to illustrate the general framework. The details of their accounts are less important for our purposes than are the ways in which they rely on a conception of agency as a generic capacity for choice in order to characterize threats to individual freedom.

Benn starts from our conceptions of ourselves as set apart from “the *things* in the world which are simply the subjects of happenings, carried away by the tide of events” (Benn 1975, 117 (original emphasis)). Unlike mere things, he argues, we initiate actions by deciding from among available options which we will choose, and by acting in the pursuit of those options. And by appeal to our conceptions of ourselves as choosers living among other choosers, Benn articulates moral standards for our interactions with one another. In particular, his “principle of non-interference” assigns to all agents defeasible claims against interference in any choice, regardless of the content of that choice. “Part of what I understand by showing respect for persons,” Benn writes, “is... that if what I propose to do will thwart someone or reduce his options in some way, then it is not enough that I *want* to do it; his enterprise counts as a defeasible reason for my not doing it, and requires therefore some further reason for my going ahead” (Benn 1975, 121). Since these claims are defeasible, on Benn’s view, one person might

justifiably interfere in another's activities. Since these claims are general, the burden falls to the former to justify interference in another's activities.

This approach affords Benn resources with which to complicate his conception of freedom as non-interference. In particular, he argues that certain acts, like deception or censorship (Benn 1975, 112; see also Pettit 2012, 54), hypnosis or brainwashing (Benn 1975, 112, 116–7; see also Pettit 2012, 55), directly attack our very capacities for choice, and so might threaten our freedom no less genuinely than does interference. He argues that classical liberal approaches, which he alleges focus exclusively on interference, ignore the subtle ways in which belief- and goal-shaping activities can threaten individual freedom, and so ignore the ways in which, for instance, the marketing practices familiar to capitalist economies might well make us unfree without imposing any external limitations on our options.

Pettit similarly presents a “comprehensive model” of both intrapersonal freedom of the will and of interpersonal freedom in society (Pettit 2001, 1). But unlike Benn, Pettit argues that interference does not challenge agency directly, even if it does limit our options. (When Odysseus' sailors bind him to the mast, their interference in his activities supports his own intention to hear the sirens' song without perishing (Pettit 2001, 75), and so supports his agency.<sup>36</sup>) But Pettit does not abandon the focus on interference that is characteristic of the teleological paradigm. Instead, Pettit argues that people challenge our agency when they impose

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<sup>36</sup> It might remain an open question whether interference of this species constitutes the kind of interference that Benn – or Berlin, for that matter – would contrast with freedom. I suspect that it does. After all, in order for something to compromise our freedom (on Benn's framework), it need only be the case that others choose to interfere in our activities; it need not be the case that they do so on grounds that defeat our claims against interference. On this reading, Benn should say that Odysseus' sailors make him unfree to move about the deck, or to swim toward the sirens, but they do so justifiably.

I am inclined to think that this disagreement reflects a failure to distinguish two distinct senses of freedom. On the one hand, freedom in general contrasts with inherently objectionable conditions, like domination or oppression. To be unfree in this sense is inherently unjust. On the other hand, we might distribute freedoms to perform particular actions – like the freedom to move about the deck – justly or unjustly. Benn focuses in the first instance on the analysis of particular freedoms, so it makes sense that he should embrace the notion of “justifiable unfreedom.” But as I argue in Chapter 2, a conception of freedom that begins with the analysis of particular freedoms is not apt to generate a useful conception of freedom as a political ideal. Pettit stands on firmer ground on this matter.

their wills on us, or (in a word) dominate us. And he characterizes domination in terms of interference, arguing that people dominate us when we do not control their interference in our activities. In these conditions, they choose the range of options from which we choose, and so locate our purposive activities, as it were, within theirs. Our actions manifest their choices and the concerns that underlie them, as well as – and perhaps at the extreme, instead of – our own. In general (Pettit argues), others subject us to their wills when they compete with us for control of our activities (Pettit 2012, 38–9).

Pettit's most significant innovation might lie in his argument that people can dominate one another, not only by particular acts, but in particular relationships. The slaveholder dominates the slave, he argues, not (or at least, not only) because of the ways in which he treats her, but simply because he owns her. On these grounds, Pettit has argued that interference is not necessary to subject another person to one's will. Nevertheless, Pettit still characterizes relations of domination and subordination in terms of interference: The slaveholder dominates the slave, he argues, because he enjoys a capacity to interfere arbitrarily in her activities (Pettit 1997, 21). If I retain a capacity to interfere in your activities at my discretion (he argues), that alone transforms the set of options available to you from, say, {P, Q, R} to {P if I allow it, Q if I allow it, R if I allow it} (Pettit 2012, 61). And, Pettit argues, these amendments suffice to locate your purposive activities within mine – to render you subject to my will, even if I do not actively interfere in your activities.

Pettit's arguments on this front have been controversial, to say the least. (In particular, some theorists have argued that we can capture his insights without abandoning a conception of freedom as non-interference (Kramer 2008).) But these controversies are incidental to our purposes here. More pertinent is the way in which Pettit advances these arguments, namely, by

representing vulnerability to another's arbitrary interference as a threat to the capacity for choice. Though he critiques conceptions of freedom as non-interference, and presents his own account as an alternative to such conceptions, he still speaks the language of non-interference – that is, the language of the teleological paradigm.

(b) *A negative ideal.* Although theorists working within the teleological paradigm assume an interest in the generic capacity for choice and construe (for instance) coercion or slavery as threats to this capacity, they do not only cast the preservation of this capacity as a positive ideal. They also discriminate among various species of threat to that ideal, arguing in particular that interpersonal phenomena like coercion and slavery merit distinctive attention. As a result, theorists working within this paradigm typically construct conceptions of freedom that specifically target, not the capacity for choice itself, but the absence of distinctively interpersonal threats to that capacity. These are the conceptions I call “negative liberty.” To be free in this negative sense is not yet to be an agent. But freedom in this sense does purport to pick out a distinctively political concern connected to, and so informed, our broader interest in agency.

What kinds of concerns justify the distinction of negative and positive liberty? First, a number of theorists argue that interpersonal threats to our agency are morally distinct from similar non-interpersonal limitations on our capacities for choice. The relevant difference shows up in the distinctive range of attitudes with which we respond to other people's assaults on our agency. Isaiah Berlin, citing Rousseau, observes that “The nature of things does not madden us, only ill will does” (Berlin 1997, 195). This claim might be too strong, but we can at least say that “ill will” and “the nature of things” elicit different kinds of anger. While generic limitations on our activities might frustrate or exasperate us, coercion and domination are apt to outrage us.

Some theorists regard this as evidence that interference is, on the whole, worse than comparable forms of non-personal limitation (Pettit 2012, 43–4).

Second, interpersonal threats to agency seem distinctively salient to the evaluation of the political domain. To be sure, we often care about autonomy or self-mastery in general, and so (for instance) undergo treatment to ameliorate our disorders, read widely in order to shed our delusions, and work to overcome our vices. But to a significant extent, it might seem appropriate that we locate these projects in the private sphere, as goals toward which we strive as individuals (Pettit 2012, 49). In fact, it often seems that the state that interests itself in our autonomy oversteps its bounds. To some extent, our disorders and vices, like our virtues, are our own, and the state may trespass against our freedom when it deploys its coercive apparatus in order to correct them.<sup>37</sup> On the other hand, interference and vulnerability to interference strike many as appropriate objects of political concern. Some theorists have gone so far as to argue that this concern partially constitutes the context of political theory (Steiner 1983, 74–5; Steiner 1994, 44; Kramer 2003, 367–8). For his part, Isaiah Berlin explicitly equates negative liberty with “political freedom” (Berlin 1997, 194).

In order to mark the difference between positive and negative liberty, we need to pick out those threats to our agency that count as “distinctively interpersonal.” And here, the conception of agency as a generic capacity for choice plays its second role within the teleological paradigm, centering our attention on people’s intentional interference in one another’s choices (or on their intentional deception, manipulation, or dominate one another), or on their capacities for such interference. Pettit captures the approach quite clearly:

Were non-intentional forms of obstruction also to count as interference, that would be to lose the distinction between securing people against the natural effects of chance and

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<sup>37</sup> It was on roughly these grounds that Berlin first argued that an unchecked political concern for “positive liberty” has transformed so many partisans of freedom into overreaching despots (Berlin 1997, 220–2).



incapacity and scarcity and securing them against the things that they may try to do to one another. This distinction is of the first importance in political philosophy, and almost all traditions have marked it by associating a person's freedom with constraints only on more or less intentional interventions by others (Pettit 2012, 52–3)

Of course, the details vary with the theories: There are myriad ways in which we might invoke the concept of choice (or of the capacity for choice) in order to draw the boundary between the interpersonal and the non-personal. On some accounts, we might even allow that certain unintentional acts might count as interference in the relevant sense (see especially Miller 1983).<sup>38</sup> But on all theories within the teleological paradigm, intentional choice picks out the center of our target as we construct standards by which to distinguish negative from positive liberty.

This, then, is the general structure of the teleological paradigm. Relying on a conception of agency as a generic capacity for choice, it first picks out those phenomena that contrast with freedom, including both intrapersonal pathologies and interpersonal phenomena like coercion and slavery. And second, it picks out from among these threats those that count as distinctively interpersonal, and so purports to focus our attention on a distinctively political concern. The paradigm's advantages should be clear: It establishes a general framework within which we are able to explain freedom's value, and sets the terms by which we might construct and evaluate different conceptions of negative liberty. But in spite of these advantages, I argue in the next section that this paradigm contrasts slavery and other distinctively interpersonal species of unfreedom with the wrong ideal, and so yields a distorted picture of our social world.

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<sup>38</sup> Benn, for instance, writes that paradigmatic cases of unfreedom involve one agents' explicit intention to interfere in another's choices (Benn 1975, 110). Some theorists (especially libertarians) stop there (Hayek 1960; Hayek 1982); others allow that, in the absence of an explicit intention to interfere, someone's action (or omission) may yet make another unfree if we can reasonably charge them with negligence (see Miller 1983; Kristjánsson 1996). And Pettit, of course, directs our attention toward people's very capacities to interfere intentionally in one another's activities.

### III. A RELATIONAL APPROACH

The teleological paradigm is right to a degree: We are purposive beings, who choose the goals we will pursue and the ways in which we will pursue them. But we are also social beings, who participate in various interpersonal relationships. And while we sometimes choose the relationships in which we participate, we should not represent relationships in general simply as particular projects we might choose to take up. Many of our relationships do not merely construct the furniture around which we must navigate as we exercise our capacities for choice, but constitute us as the kinds of agents we are. They construct our practical authority – our standings, rather than our capacities, for choice and action – and so constitute us as persons.

I argue in this section that attention to our personhood, and not to a generic capacity for choice, affords us resources with which to construct an alternative to negative liberty – namely, a positive conception of freedom as the just distribution of practical authority. I sketch the approach and argue its advantages over the teleological paradigm.

*(a) Status relations and standings.* The teleological paradigm emphasizes our conceptions of ourselves as possessed of capacities for choice and action. But we also represent ourselves and one another as possessed of various status relations: of complex bundles of prerogatives, claims against others, powers over others, and immunities or liabilities to others' powers. We represent one another, for instance, as owners of various kinds of property. Such ownership does not consist in the bare control of material goods, but in complex and variable bundles of prerogatives to use these goods as we please (within certain limits); of claims against others' use of these goods; and of powers to waive these claims temporarily, or to alienate them permanently through gift, sale, or bequest. These status relations construct a domain within which we enjoy practical authority – within which we are sovereign.

It might seem natural to think of our status relations as resources with which we might constrain one another's interference in our activities, and so protect our generic capacities for choice. Many liberal and republican frameworks cast rights of ownership, for instance, as constructive of spaces within which other people are unlikely to interfere in our activities, or unable to do so with impunity.

But these status relations do not simply constrain others' interference in our activities.<sup>39</sup> They are not simply sophisticated fences built on pre-existing terrain. Rather, they construct the very landscape on which we interact by giving socially recognizable meaning to our words and actions. They establish actions that would not be possible – would not even be comprehensible – outside of the normative contexts they constitute. In the context of chess, for instance, our various powers and prerogatives enable and allow us to move our own pieces, to capture one another's pieces, and to put our opponent's king in check. Outside of this normative context, we could not make these moves at all. Perhaps we could rearrange small plastic objects on a square, checkered board, but this would be a far cry from playing chess.

And this is not peculiar to chess: Our status relations color every aspect of our actions and interactions, and so constitute us as various kinds of choosers in different normative contexts. Consider, for instance, the act of telling someone that it is raining outside. When we convey a fact by testimony in the course of casual conversation, we do not simply produce evidence that our claim is true. Rather, we offer our assurance to our interlocutors, and make ourselves accountable for its truth (Moran 2005). These relations of accountability, and our powers to enter into them, constitute particular forms that our status relations might take. Without access to these status relations, we might well bring someone to believe that it is raining outside, but we could not carry on anything like a conversation with them. Or consider the bare

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<sup>39</sup> As I will argue in the next section, they do not always do even that. See n. 51.

act of walking down the street. As pedestrians navigate one another's paths on the sidewalk, they negotiate their routes not only in order to afford collisions, but in order to respect one another's claims on personal space. The ways in which they do so reflect the distribution of such claims, as plebeians make way for patricians, and patricians forge ahead unperturbed. When a plebeian and a patrician collide, the distribution of status relations affects the content of their actions: Though both neglected the other's route, only one party commits an offense.

Or, finally, consider ownership again. The rights of ownership do not merely protect us from others' interference in our use of the goods we own. Rather, they construct these goods as *ours*, and so color our interactions with them. They distinguish these interactions with the acts we perform when we steal, borrow, or rent things that belong to others, or make use of goods that we own in common with others, or that no one owns.

This much I take to be relatively uncontroversial, and I expect that theorists working within the teleological paradigm will find none of what I have said so far surprising. But attention to our personhood affords us resources with which to construct a new conception of freedom, one built around an immediately social aspect of our agency. The status relations that we bear may not constitute our capacities for choice and action, but they do construct our various standings, and so make us the kinds of persons we are: players of chess, owners of property, participants in conversations, pedestrians of various import. On these grounds, I propose a conception of freedom as the just distribution of practical authority. (I will not say very much here about the standards by which we distinguish just and unjust distributions of practical authority. For now, I hope that we can rely on our intuitive judgments on a few uncontroversial cases, like slavery and the patriarchal family.) Status relations that deny us practical authority over morally appropriate domains attenuate or distort our personhood by unjustly limiting our

practical authority. In conditions of legal slavery,<sup>40</sup> for instance, slaveholders might bear legal rights that extend their practical authority well beyond its legitimate boundaries. Their status relations with the other members of their communities transform slaves into animate property because they afford to slaveholders some bundle of those claims, powers, and prerogatives that are standard incidents of ownership: prerogatives to use slaves as they see fit; claims against others' abuse of the slaves; powers to alienate these claims and prerogatives through gift, sale, or bequest. As a result, enslaved people lack status relations that ought to belong to them, including (but certainly not limited to) prerogatives to move freely, and claims against assault and other forms of abuse.

This positive conception of freedom has two significant advantages over negative conceptions of freedom. These advantages relate to the two roles that the conception of agency as a generic capacity for choice plays in the teleological paradigm. First, in construing agency as a generic capacity for choice, the teleological paradigm elides a morally significant distinction between subjection (in general) and domination (in particular). And second, in focusing on threats related to others' choices or capacities for choice, the teleological paradigm obscures meaningful connections between domination and species of social unfreedom that do not reflect any particular agent's intentions, like oppression. The relational paradigm makes these connections explicit.

(b) *The constitutive boundaries of practical authority.* I argued in Section 1(a) that the teleological paradigm casts slavery and coercion (or at least, those species of coercion that contrast with freedom) in opposition to a generic capacity for choice, and that this opposition informs the characterization of these phenomena in terms of interference, or vulnerability to

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<sup>40</sup> Extra-legal slavery, too, constitutes a kind of maldistribution of agency, but one that merits distinctive treatment. See n. 33.

interference. But attention to agency's social aspect reveals the limitations of this approach. Not all subjection to another's authority threatens our agency, even when it makes us vulnerable to their interference in our activities. To be sure, others' prerogatives to interfere in our activities, powers over us, claims against us, and immunities to our powers do in a sense mark the boundaries of our domains, and so the limits of our practical authority. Your rights of ownership in your land limit my prerogatives to walk freely across its borders. But these same boundaries also serve to constitute our own domains: The particular structures of these limitations bear on the content of our own standings, and so partially constitute us as particular kinds of persons. The range of things that we as social agents can do depends in part on the things that we cannot do, and on the things that can be done to us.

We might see this best if we first return to the simple context of chess. My power and prerogative to capture your bishop in a game of chess depends on background rules that confer on you the same powers and prerogatives. Without these rules, I would not be vulnerable to defeat – but only because you and I would not be able to play chess at all. To play chess with others *is* to be vulnerable to their interference. And, again, chess is hardly unique in this respect. Many of the normative contexts about which we care most construct our practical authority in part by making us subject to other people. In an egalitarian household, for instance, spouses are able to participate as equals in joint deliberations about shared resources in part because of the powers, prerogatives, and claims that both share. Conditions of patriarchy limit even the feminist husband's standing to participate in such joint deliberations. As long as he retains prerogatives to decide unilaterally how to spend household finances, these prerogatives inform the meaning of his words and actions. He can deign to hear his wife's thoughts, but he at most makes her an

influential counselor. Final decisions remain his. As a feminist, he should pine for the redistribution of practical authority.<sup>41</sup>

The point here is not that we care about things other than agency (like, say, competition or gender equality), and that we are willing to surrender our agency to some extent in order to achieve these other values. It is that patriarchal and egalitarian families constitute individuals as different kinds of persons, possessed of different standings. The patriarchal husband does not have more practical authority than does the egalitarian husband. Rather, his practical authority ranges over a different domain; each extension of his authority into new territory carries with it a concomitant limitation, losing him access to the standings that we associate egalitarian marriage. We ought not confuse the reconstruction of his practical authority with its generic extension.

Not only do particular standings, like the standing to take an opponent's pawn or to engage in joint deliberations about household finances, require our subjection to others. Status in general does.<sup>42</sup> At the limits of non-subjection, practical authority disappears completely. Unlimited power is no power at all. Freed from all subjection, we might hope to possess exclusive authority to interpret our own words and actions, to interpret our own interpretations, and so on; but in bearing this authority, we would become uninterpretable to everyone else. They could never comprehend our actions, because we would speak a private language whose norms we could never violate. (It is not clear that we could even understand ourselves at this point.) In this condition, we would find ourselves unable to bear any further relations with the other members of our communities. And stripped of all substantive standings, our actions would lose

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<sup>41</sup> Marilyn Frye makes a similar point about the ways in which white supremacy limits white people's options: "As a white woman I have certain freedoms and liberties. When I use them, according to my white woman's judgment, to act on matters of racism, my enterprise reflects strangely on the matrix of options within which it is undertaken" (Frye 1983f, 113).

<sup>42</sup> Hegel makes an argument along these lines in *The Phenomenology of Spirit*, in his critique of "absolute freedom" (Hegel 1977, sec. 584–5).

their meaning to all others. We would find ourselves unable to marry, to make promises, to own property, to play chess. Our behaviors would still have physical consequences for those around us, as do a hurricane's winds and waters. But they could not constitute actions with any social significance. (Some of the most unnerving portraits of tyranny depict people on the edge of falling into this social void, and of assimilating themselves to the forces of nature.) Our subjection to others' practical authority serves as a bulwark against this total evaporation of our practical authority. It is not a threat to our agency, but a necessary condition on our personhood.

In construing agency as a generic capacity for choice, threatened by limiting factors like interference or vulnerability to interference, the teleological paradigm obscures our significant dependence *as agents* on our own subjection to other people's authority. In doing so, it represents as threats to our agency some of the very phenomena that help to constitute us as agents. This explains one common problem with theories in the teleological paradigm: They are apt to generate "false positives," seeing unfreedom in unobjectionable species of interference or vulnerability.<sup>43</sup> Those working within the paradigm often deploy these false positives as counterexamples to particular theories, and as motivations to tweak these theories in order to generate more palatable results.<sup>44</sup> But the real problem runs deeper than any mere tweaking can

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<sup>43</sup> Consider, for instance, the relationships that might manifest between people biding their time in a waiting room at the dentist. Whoever sits closest to the dentist's only copy of *Us Weekly* might have capacities to deny to anyone else the opportunity to read the magazine. A theorist working within the teleological paradigm might be tempted to judge that this person dominates the other patients when he chooses to take the magazine before anyone else can get to it. Pettit does so almost explicitly: "...what... of the case where there is only one copy of the newspaper available, you and I both wish to read it and, recognizing the competition between us, you grab it first, thereby frustrating me? ... You may not wish to impose your will on me as such, lamenting the fact that we cannot both read the newspaper, but you impose your will on me – you actively and deliberately interfere with me – for the instrumental reason that it is the only way in which you may satisfy your own will" (Pettit 2012, 40). But people in waiting rooms typically have informal powers and prerogatives to lay claim to the available reading materials, but these normative relations simply constitute the structure of our practical authority within a particular context – just as the rules of chess constitute our standing to make choices within the game of chess. These status relations simply give their authority a particular form – one that is, at the very least, not obviously unjust.

<sup>44</sup> Pettit's argument (sketched in Section 1(a)) that other people's interference in our activities need not threaten, but may actually support our own agency if it is subject to our control, illustrates this dialectic nicely.



handle. At the risk of being glib, we might say that the this paradigm does not pick out a social ideal, so much as an anti-social ideal – one that locates our freedom in spaces untouched by the very characteristics that constitute other people’s choices or capacities for choices. And this is an inapt ideal for social agents like us.

*(d) The varieties of interpersonal unfreedom.* On to the relational paradigm’s second advantage over the teleological paradigm. As we saw in Section 1(b), in order to respect the distinction between the non-personal and interpersonal, theorists working in the latter paradigm construct negative conceptions of freedom that focus specifically on interpersonal threats to a generic capacity for choice. This, of course, requires standards by which to distinguish the interpersonal from non-personal. And there are two problems here.

First, as we have seen, the relevant standards typically rely on a conception of agency as a generic capacity for choice, and so focus on more or less intentional interventions in our activities (or on capacities for such intervention). But these particular standards tend to focus our attention too narrowly on relations among particular, identifiable agents, and so ignore more broadly systematic species of unfreedom of the kind we associate with oppression.

By oppression, I mean the social arrangement of people into groups, and the definition and distribution of practical authority in ways that tend systematically to disadvantage some groups to the advantage of others (Frye 1983b). For instance, the gender concepts constitutive of patriarchy as an ideology construct men and women as different kinds of agents, possessed of practical authority over very different domains (Frye 1983c; Frye 1983d; Kukla 2014). In some contexts, as in the patriarchal home, these constructions extend men’s authority beyond its legitimate boundaries, establishing relations of domination and subordination between particular

men and particular women. But this is not the only way in which gendered concepts are liable to limit women's authority unjustly.

Consider, for instance, a woman who approaches a realtor, looking to sell her house. "Happy to help," the realtor says cheerily. "When can I talk with your husband?" By asking this question, the realtor need not be interfering in the homeowner's activities, or "imposing his will" on her. The question in itself certainly does not prevent her from selling her home, and may manifest only a fleeting misunderstanding. She might well answer dismissively and proceed with the negotiations. But the realtor's misunderstanding reflects his conception of the home as appropriately represented in the wider community by a male head of household. In sexist communities, this patriarchal conception of the family does not merely support gender domination within the home, but structures the distribution of practical authority beyond its walls. It imposes significant structure and limitation on women's interactions with the members of their broader communities – in the workplace, in political fora, and in the marketplace. In this case, it limits (even if it does not eliminate entirely) women's standings to hire realtors to sell their homes.

Or consider the factory manager, who issues instructions to the (mostly male) workers on her floor in polite but clear terms, and yet suffers constant insubordination. The problem may be that the workers are blatantly sexist and chafe under the management of a woman. Or it may be something subtler: It may be that gender relations interact with workplace relations in vicious ways, corrupting the standard hierarchy of the workplace. If, as in familiar conditions of gender oppression, women generally do not have the standing to order men around, then in spite of her official title the manager may have only the standing to issue requests or suggestions. This generates insubordination, because while orders purport to confer obligations, requests or

suggests afford our interlocutors prerogatives to dismiss our instructions (Kukla 2014, 445–6).

Gender oppression constructs managers who are men and managers who are women as different kinds of persons in ways that limit women's standings to issue orders on the factory floor.

Though oppressive social orders arise in complex ways from people's intentional actions, they often are at most the oblique upshots of these actions. They represent "the tyranny of small decisions," in Alfred E. Kahn's phrase, rather than the tyranny of any particular agent or body of agents. As a result, those working within the teleological paradigm are apt to cast, for instance, sexist limitations on women's standings to sell their own homes as non-personal limitations (as at Pettit 2012, 134). This is not to say that those working within this paradigm cannot argue that such limitations are bad, particularly to the extent that they do support relations of domination and subordination (as at Pettit 2012, 63). But on this view, since we cannot attribute these limitations to any agent, they seem to have more in common with, say, a drought or a hurricane than with subjugation.

In framing oppression in these terms, those working within the teleological paradigm obscures significant connections between oppression and domination. Both are distinctively interpersonal phenomena, more alike to each other than either is to a natural disaster. These similarities manifest in part in the very same phenomena that prompted us to focus on interpersonal threats to agency in Section 1(b). After all, the homeowner is apt to resent the realtor's question, and the factory manager may be outraged at the workers' insubordination, just as we are apt to resent certain interferences in our activities. The relational paradigm reveals these connections immediately: Both domination and oppression consist in the maldistribution of practical authority, borne of the unjust status relations among the members of a community. To be sure, we should not assimilate domination and oppression to a single category. We locate

them, as it were, at different levels: Oppression at the level of the social system, and domination within particular relationships. Attention to their similarities and to their differences should allow us to construct a nuanced taxonomy of the diverse species of unfreedom.

Theorists impressed by the teleological paradigm might object that I have only shown the shortcomings of certain versions of it – namely, those which rely on poorly constructed standards for the distinction of the interpersonal from the non-personal. But the deeper problem is not so much with any particular standards that particular theorists might use, as it is that they need such standards in the first place. Articulating these standards in a way that picks out a genuine moral category – the interpersonal threat to our generic capacities for choice – is awkward business, and however subtle these standards are, we almost inevitably suppress morally significant connections between diverse social phenomena. Since the relational paradigm construes freedom only as a positive ideal, we need not specify ahead of time the particular threats to this ideal that interest us. This affords the relational paradigm a degree of simplicity and elegance that eludes the teleological paradigm.

Not only that, but it lights the way for further research. There may be further forms that the maldistribution of practical authority might take, distinct in significant ways from domination or the aspects of gender oppression at which I gestured above. When we take up a negative conception of liberty, its standards focus our attention *ab initio* on particular kinds of phenomena in ways that blind us to morally similar phenomena lying just outside of our field of vision. We discover these phenomena, and their connections with already familiar species of domination or oppression, only looking beyond our theory of freedom and revising the standards on which that theory is built. A focus on the just distribution of practical authority leaves unspecified the

various forms that the maldistribution of practical authority might take, opening up fertile ground in which we might make new moral discoveries.

To review, then: Our status relations do not merely construct the context in which we exercise our capacities for choice and action, but constitute us as particular kinds of distinctively social agents – that is, as persons. By construing freedom as the just distribution of such status relations, we gain access to a crucial distinction between subjection to another person’s authority in general, and domination in particular. And by attending to the distribution of practical authority, we are able to draw conceptual connections between domination, oppression, and other possible species of the maldistribution of practical authority. The teleological paradigm is apt to elide these connections, and so to distort our conception of our social world.

But the relational paradigm is not only theoretically superior to the teleological. These paradigms are also apt to generate distinct liberatory strategies, which may stand in practical tension with one another. In order to unearth this tension, we need access to the kinds of liberatory strategies that the relational paradigm generates. We need to clarify the ways in which social norms distribute practical authority within a community, and so illuminate the ways in which we might redistribute it. I turn to this project in the next section, so that in Section 4, we might uncover these practical tensions more clearly.

#### IV. THE SOCIAL DISTRIBUTION OF PRACTICAL AUTHORITY

In this section, I argue that the status relations we bear depend on the sets of concepts by which we represent one another as different kinds of persons, and that these concepts derive from the ways in which we express these representations in the course of our interactions. This shared fund of concepts locates our relations within a broad social context, in ways that are apt to structure our vulnerabilities to one another. They afford us rights to others’ recognition of our

practical authority. We exercise these rights in particular by demanding others' affirmation of our authority in the face of attack, which preserves our practical authority over time.

(a) *Public concepts.* We should begin by distinguishing two modes by which we might influence the world around us, which we might call management and rational engagement. (To be sure, the distinction is rough, and its boundaries vague and contestable. I am not interested in drawing them too precisely here; an intuitive sense of the distinction should serve our purposes.) On the one hand, we can manage viruses by containing them, or by vaccinating against them; animals, by caging them, hunting them, or conditioning them; rivers, by damming or redirecting them. Assorted resources might afford us capacities to manage other people's activities, too, and so to gain some kind of control over their interactions with us. We can subject them to behavioral conditioning, cultivating in them negative associations with actions we wish they would avoid.<sup>45</sup> We can draw on cutting edge cognitive science and behavioral psychology to structure the environments in which others live and work, so as to influence the choices they are likely to make.<sup>46</sup> Or, perhaps most familiarly, we can threaten to take away their property in order to raise the costs of actions we would prefer they not perform, or lock them up if we do not want to deal with them for a time.

But the power to manage other people's activities does not suffice for practical authority. Authority necessarily involves resources with which to engage rationally with others, appealing to their capacities to recognize and to respect our claims, powers, prerogatives, and the like. Chess players must be able to point out illegal moves to one another. Owners of property must in general be able to expect others' comprehension when they say: "Hey, that's mine!" This requires that we and our interlocutors have access to a shared fund of conceptual resources, a kind of

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<sup>45</sup> As in *A Clockwork Orange*, for instance.

<sup>46</sup> As libertarian paternalists Cass Sunstein and Richard Thaler recommend (Thaler and Sunstein 2009).

common language that allows practical authorities to communicate the boundaries of their domains in ways that are apt for uptake from their interlocutors.

The practices effective in our communities supply the relevant conceptual resources. Legal practices do so relatively explicitly. Law does not merely issue instructions backed up by threats, but defines and distributes legal statuses, constituted by bundles of legal claims, legal prerogatives, legal powers, and the like. And it makes these statuses available to legal subjects through promulgation.<sup>47</sup> In doing so, it affords legal subjects resources with which to recognize and respond to one another's legal standings, and so to interact with one another through exercises of their legal authority.

While our legal status relations are enormously important to the construction and distribution of practical authority, many further public concepts arise, not from legislation, but from conduct (Postema 1994, 363; Fuller 1981, 212). Through our interactions with one another, we (often unintentionally) express implicit representations of ourselves and of the people with whom we interact. Our reactions to others' words and actions suggest particular interpretations of our status relations, and so communicate to others the ways in which we represent the boundaries of our interlocutors' domains. For instance, we express distinctive representations of their statuses when we respond to their instructions as commands, suggestions, or instances of bullying. Through these expressions, we might affirm others' representations, or educate them into new ones; in response, they might affirm or challenge ours. Over time, we educate one another into a set of shared concepts by which we make sense of our interactions with the other members of our communities. Our individual interactions coalesce into practices, comprehensible only to those with access to the relevant concepts. And through participation in

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<sup>47</sup> It also claims practical authority over legal subjects in its own right (Raz 1985). In doing so, it gains access to the normative domain in which our status relations make their home. This is a crucial part of law's story, but it is one we will have to gloss over here.

these practices, we continually re-express those representations out of which our public standards initially emerged, maintaining a relatively stable fund of public concepts, and so reproducing our normative communities over time.

These public concepts organize our interactions with one another, as it were, indirectly. They do not constrain or compel us themselves. But we, possessed of capacities for practical reason, can regulate our own interactions by appeal to them. We can deploy these concepts in order to mark and restructure the boundaries of our domains, engaging with one another through exercises of practical authority.

*(b) The right to recognition.* But while public concepts are apt for the indirect regulation of our interactions, they do so successfully only when we self-regulate successfully, deploying these concepts appropriately in order to recognize and respect the significance of others' words and actions. And any number of familiar human failings – from mundane distraction, to ignorance, bias, passion, or outright malevolence – can disrupt our own self-regulations. At first glance, then, apt public concepts alone might seem to leave us vulnerable to others' disrespect.

But our shared conceptual resources mark encroachments on our domains as instances of disrespect, locating them within a broad social framework that structures the ways in which other people should conceptualize and respond to them. The details will vary along a number of axes, but in general, first, those who transgress against us typically have obligations to acknowledge their wrongs, and to make amends (if possible). Second, those who observe these transgressions often have obligations to acknowledge them, marking them publicly as instances of disrespect. And third, those wronged typically bear the standing to demand that others fulfill these obligations. They typically have what we might call a right to others' recognition of their practical authority.



We claim our right to recognition in myriad ways in diverse contexts. In legal contexts, for instance, we appeal to the courts to affirm our legal rights against in the face of attack. In more informal contexts, we might simply raise our voices in anger at those who wrong us. By these actions, we express reactive attitudes like resentment or condemnation, through which we communicate evaluations of one another's characters, words, and actions in light of standards implicit in our relationships (Strawson 1968). Through these expressions, we do not merely inform our interlocutors that they have done us wrong. We arrest their attention, demanding conversation, reevaluation, and reparation or recrimination (McGeer 2013, 179–80).

We often address our resentment directly to those who transgress against us, demanding apology and restitution. But we often also call on others to fulfill their obligations to mark trespasses against us publicly as instances of disrespect. Observers of disrespect – whether they are courts of law or private citizens, close friends or strangers – might fulfill these obligations in various ways. They might only verbally affirm our rights, perhaps with a tone that communicates their outrage on our behalf. They might withhold privileges from those who wrong us. They might aid us in order to mitigate the harms we suffer; while such aid might constitute charity in other contexts, its meaning is liable to shift in the contexts of disrespect (see Bicchieri and Thulin 2015). Through these actions, observers affirm the scope and structure of wronged parties' practical authority, expressing representations of them as bearers of the relevant statuses. And through these expressions, observers preserve the public concepts that confer practical authority on wronged parties. Even when individual wrongdoers remain recalcitrant, and even when their recalcitrance expresses a deviant representation of the status relations of the people

they wrong, these expressions are not liable to affect the distribution of practical authority within the community.<sup>48</sup>

(c) *An instrument of cartography.* This affords us an easy strategy by which we might map the distribution of practical authority within our communities: We can identify the boundaries of our domains by identifying those contexts and matters in which others are apt to recognize our claims on practical authority, and so to respond to our demands for recognition. Marilyn Frye sketches the strategy. “Anger can be an instrument of cartography,” she writes. “By determining where, with whom, about what and in what circumstances one can get angry and get uptake, one can map others’ concepts of who and what one is” (Frye 1983d, 93–4). She deploys the strategy to map the distribution of practical authority in a sexist community like ours. In response to women’s anger, observers often misconstrue angry women as upset, hysterical, or crazy, and turn their attention “not to what we are angry about but to the project of calming us down and to the topic of our ‘mental stability’” (Frye 1983d, 84). The problem, Frye argues, is that the scope of women’s practical authority in sexist societies falls radically short of its legitimate boundaries. And where women have no authority, their demands for recognition are incomprehensible.

That is not to say that women have *no* practical authority in such societies. Frye argues that women’s anger will be comprehensible to the members of a patriarchal community, so long as their claim to authority falls within “the place and functions of Mother/Caretaker/Conserver/Helpmate” (Frye 1983d, 91), because these roles partially constitute

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<sup>48</sup> Jean Hampton goes so far as to argue that expressions of resentment manifest our fear that others, through their wrongs against us, raise doubts about status relations in ways that might ultimately *lower* our status relations. When others merely mistake the scope of our claims against them in ways that carry no such threats, Hampton argues, we are “beyond resentment” (Hampton 1988, 57). I doubt that we should agree to this, in light of the various roles that expressions of resentment play in our daily engagements. But expressions of resentment do serve in part to protect us against the eventual transformation of our status relations.

the concept of Woman that is publicly available within a sexist community.<sup>49</sup> This concept constitutes women as particular kinds of persons – and as different kinds of persons than men.

These, then, are the kinds of considerations that bear on the social distribution of practical authority. First, through our practices, we express representations of one another that generate the public concepts by which we recognize the boundaries of one another's domains. Second, these public concepts situate us within a community, affording us the standing to command others' recognition and affirmation in the contexts of disrespect. Since liberation on the relational paradigm requires the redistribution of practical authority, and since distributions of practical authority derive from the public conceptions effective in our communities, we might characterize the relational paradigm's liberatory strategies as strategies of "liberation by redefinition." When we can reform the public concepts effective in our communities, and affirm these reformed concepts in the contexts of disrespect, our status relations shift. There are a variety of methods apt to serve these aspirations. Social critique, education, and legal reform are perhaps the most obvious candidates. It will be worth our while to characterize these various methods in some detail, to identify their strengths and weaknesses, and to locate them each in their proper contexts, but that project lies beyond the scope of this paper.

For now, we should at least recognize that the teleological paradigm does not focus our attention on these strategies. Rather, its generated strategies are at best orthogonal to the redistribution of practical authority by the redefinition of public concepts, and that are at worst hostile to the just distribution of practical authority. It is to these points that we turn in the last section.

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<sup>49</sup> Frye suggests that we might even take her mapping metaphor literally. "One woman took this thought home with her and tried it out. She walked about the apartment she shared, not unhappily, with her young husband, testing in imagination for the viability of her anger – in what situations it would 'work,' would get uptake. She discovered the pattern was very simple and clear. It went with the floor plan. She could get angry quite freely in the kitchen and somewhat less freely and about a more limited range of things in the living room. She could not get angry in the bedroom" (Frye 1983d, 94).

## V. CONSTRAINT AND REDEFINITION: PRACTICAL TENSIONS

Many of those working within the teleological paradigm advocate a strategy of liberation by constraint. We emancipate the enslaved by constraining the slaveholder's interference in her activities, liberate the subjects of a ruthless despot by constraining executive power. The relevant constraints could include "an obstructive obstacle or... a deterrent penalty" (Pettit 2012, 71), which prevent others from limiting our options or imposing their wills on us. Strategies of liberation by constraint may not be the only liberatory strategies available to theorists working within the teleological paradigm, but they represent common ground for most of them.

But if we take up the teleological paradigm, we see that constraining the slaveholder does not, on its own, liberate the slave. If anything, it is the other way around: The redistribution of practical authority generates distributions of vulnerability and constraint. First, of course, public concepts afford us resources with which to regulate other people's interactions with us indirectly, by engaging their practical reason. When this fails, and when we demand that others mark and respond to an instance of disrespect, the ways in which we do so, and the ways in which third parties affirm our practical authority, may have significant effects on the ways in which other people interact with us. Our expressions of resentment, condemnation, or other negatively tinged reactive attitudes can cause real psychological distress.<sup>50</sup> This distress only becomes more acute when those who observe wrongs against us chime in on our behalf. And we sometimes express these reactive attitudes through interactions that themselves impose sometimes severe constraints on one another's actions – say, by withholding privileges from those we condemn. (But we should not lose sight of the fact that we impose these constraints in a social context that constitutes them as modes of rational engagement through which we communicate and affirm

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<sup>50</sup> For his part, Pettit seems to allow that the penalty of others' moral disapprobation might introduce the kind of "external check" on our choices that might mitigate others' vulnerabilities to our choices (Pettit 2012, 63).

our practical authority within our domains. To extract these constraints from this context by focusing on them immediately would blind us to their broader significance.) As a result, the social conditions that confer on us practical authority within various domains limit our vulnerabilities to disrespect within those domains.<sup>51</sup> Strategies that target these vulnerabilities directly – in particular, strategies of liberation by constraint – target symptoms, and not the underlying disease.

This misfire is not entirely benign: The constraint of people's interference in one another's activities is apt to bear in unwelcome ways on the distribution of practical authority

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<sup>51</sup> We need to speak carefully, though. The social distribution of practical authority is apt to structure our vulnerabilities to others' disrespect in sometimes significantly qualified ways. It need not eliminate entirely our vulnerabilities to disrespect.

First, we have already seen that we rely on others to recognize and respect our practical authority, and (as we have observed) mundane instances of bias, passion, distraction, or *akrasia* might frustrate our hopes. This is one way in which distributions of practical authority need not eliminate our vulnerability to disrespect. And these problems will recur within the contexts of disrespect, when we demand (for instance) that observers affirm our practical authority against transgressors. Observers will have to recognize their obligations in these contexts for themselves. In doing so, they will have to judge whether the interaction to which we object in question genuinely constitutes an instance of disrespect. This requires that they interpret our shared concepts in roughly the way that judges interpret a legal code. And they are liable to come to different conclusions than we do, either because the boundaries of our social statuses are vague, or because they have come to regard these boundaries as morally illegitimate. They may reach bad conclusions, and these conclusions may leave us vulnerable to disrespect. But there is no way around it: Maintaining our practical authority is a shared project, which requires cooperation and conversation. We cannot bypass one another's judgments and choices in this distinctively interpersonal project. We can proceed only through engagement with one other's capacities for practical reason.

Second, observers and transgressors alike may enjoy significant discretion within the contexts of disrespect. In certain situations, at least, there may be ways in which they can appropriately mark an interaction as an instance of disrespect, and so preserve the practical authority of disrespected parties, without raising the costs of transgressions too highly. In doing so, we may leave space for disrespect in our lives, and this can be important in a number of ways. Certain instances of disrespect may be instrumentally valuable, spurring growth in our relationships and as individuals. They can encourage the cultivation of important virtues, like those colloquially known as "chill." Others, like practical jokes, may be inherently valuable, and part of an important kind of friendship. Of course, there are significant complications here. For instance, while it may be perfectly appropriate to tell a wealthy white man to chill out when he snaps at someone who has cut in front of him in line, we only uphold oppression when we say the same thing to a member of an oppressed community objecting to a micro-aggression. And the line between the practical joke and bullying can be almost invisible to those without finely tuned sensitivities to others' situations and needs. But these are challenges that we, as observers of disrespect, must face: The responsibility falls to us to tune our responses to our particular contexts. And we can do so more or less badly.

Of course, we should not make too much of observers' discretion. After all, we should locate observers' reactions to disrespect within the broader system of recognition and response. When people command our recognition, we judge and respond both to their claims about the scope and structure of their own practical authority, and to other observers' responses to their demands. The ways in which we do so can help to mitigate the harms that we do when we judge badly, and can help to further shore up our practical authority against assault. My point is only that the ways in which we do so, first, must work through other people's capacities for practical reason; and second, need not eliminate entirely our vulnerability to disrespect.

within a community. To see the relevant threats, recall that the public concepts available to the members of our communities depend on the practices effective in our communities, and on the representations that we express through participation in these practices. And notice that the constraint of another person's activities is itself an action, which is apt to express representations of our relationships with the people we manage. And these representations are apt to contribute to construction of public concepts, and so to contribute to the distribution of practical authority within our communities.

Of course, we cannot specify the relevant the representations that we express by any particular actions without locating these actions within a normative system of concepts and standards, since in general these give our actions publicly recognizable content. That means that the representations we are apt to express by constraining others' activities will depend to a significant extent on the pre-existing structures of our relationships. We will need to invoke facts about empirical, historically located communities in order to specify the content of our expressions. On these grounds, I focus in this section first on contemporary strategies of preventive policing in American cities, and argue that these reflect and sustain race relations that generate an antagonistic relationship between law and black Americans. I do not mean to suggest that those working within the teleological paradigm must embrace these strategies. I expect that most of them would not. But after sketching the dangers posed by preventive policing, I argue that strategies of liberation by constraint risk generating these very same dangers.

At this point in American history, our activities have coalesced into a set of practices whereby we as a community act on, and continually re-express, representations of black Americans as criminals (Peffley and Hurwitz 2002). These representations manifest in a variety of contexts. They manifest, for instance, in depictions of crime in American media. They

manifest in the mundane act of crossing a quiet street at night in order to avoid an oncoming black man. And they manifest in the contemporary strategies of urban policing. Since the 1980s, the architects of police policy in American cities have developed and relied on preventive measures designed, not to respond to past offenses, but to discourage the commission of crimes. In many contexts (typically marked by their racial features (Stuntz 2011)), police departments seem to emphasize preventive policing as a substitute for the arrest and prosecution of violent offenders.<sup>52</sup>

Some preventive strategies seem to assume that police officers' mere presence should discourage criminal activity. In Los Angeles, police officers have sometimes left unattended patrol cars in targeted areas, or have driven around aimlessly with their lights flashing (Leovy 2015, 59). Other strategies are more proactive. For instance, urban police departments have deployed aggressive foot and traffic patrols, encouraging officers to invoke minor violations – say, driving two miles per hour over the speed limit, or driving with a malfunctioning license plate light – as a pretext to detain purportedly suspicious persons, and to seek evidence of criminal activity (Epp, Maynard-Moody, and Haider-Markel 2014, 59). Proponents argue that investigatory stops help police officers to identify and detain dangerous persons, and to confiscate weapons and other contraband, thereby minimizing threats to law-abiding citizens.

Strategies of preventive policing contrast with the kinds of strategies we might associate with the authoritative governance of a legal state. The legal state rules, first, by promulgating legal codes and principles, and by affording legal subjects opportunities to regulate their own activities on their bases; and second, by prosecuting criminal violations of the legal code.

Through these prosecutions, the state does not simply impose costs on these violations, and so

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<sup>52</sup> Jill Leovy's chronicle of criminal justice in Los Angeles, *Ghettoside*, illustrates the ongoing costs that this substitution has on American cities (Leovy 2015).

aspire to prevent future crimes. It claims the standing to determine (at least within certain domains) the structures of its subjects' legal status relations; and through prosecution, it condemns subjects' criminal activities (Feinberg 1965; Hampton 1984), and so demands legal subjects' recognition of its authority over them. The legal state does not merely aspire to mitigate the crime rate. It demands recognition of its normative power to regulate the distribution of practical authority within the community over which it presides.

The emphasis on preventive policing, rather than the legal response to criminal conduct, reflects and re-expresses a representation of black Americans as criminals – not, that is, as people who have committed crimes, but as people who reject altogether law's claim on authority. By relying on preventive strategies, police departments express a view on which the state cannot expect black Americans to respect the law's claim on authority, and so cannot rely on responsive strategies; rather, it must manage their activities through displays of sheer force or physical detention. And by failing to prosecute crimes against black Americans at the rate at which it prosecutes crimes against (in particular) white Americans, the state represents these crimes as, at best, lesser crimes against second-class citizens. This representation may take many forms, but in part, the state is apt to represent black victims as criminals who “had it coming.” Former *Los Angeles Times* reporter Jill Leovy observes that among the patrol officers of Southeast and South Central Los Angeles, the prevailing attitude has been that “There are no victims here” (Leovy 2015, 65).

These representations are comprehensible to anyone educated into American racial concepts: to the police who practice policies of preventive policing, to members of the public to whom these practices are sold, to those who suffer them, and to those who see these policies enacted within their neighborhoods. For instance, sociologists have found that drivers tend to



experience investigatory traffic stops in ways that reflect their racial framing, and that these stops tend to undermine drivers' trust in the police, to undermine their sense that the police will protect them from others, to reinforce their sense of vulnerability to police, and to disincline them to call on the police when they need help (Epp, Maynard-Moody, and Haider-Markel 2014, 138–43). In brief, experiencing an investigatory stop does not merely cause a minor inconvenience. It expresses to the driver a representation of her relationship with the state, in which the state does not claim the authority to regulate her status relations with the other members of her community, but simply constitutes a hostile antagonist.

Over time, these representations are apt to generate and sustain a kind of anomic relationship between the state and black Americans, one defined by the exercise of force, and not of practical authority. As a result, legal concepts will be inapt to mark the structures of legal subjects' practical authorities in those neighborhoods subjected to strategies of preventive policing.<sup>53</sup> This may help to establish an apparent “lawlessness” within predominantly black neighborhoods – a lawlessness, not borne of pathologies in the black community, but imposed from the outside. This might help to explain preventive policing's at best mixed empirical record.<sup>54</sup> But my point is not that these strategies are self-defeating. It is that they target the wrong goals. Even if preventive policing were to discourage the commission of crime, we should still worry that crime is only a visible expressions of a deeper problem: the symptom, and not the underlying disease. Even where preventive policing discourages theft, assault, and murder, its representations of black Americans as criminals are liable to threaten both citizens' relationships

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<sup>53</sup> To be sure, informal norms are apt to fill in many of the gaps within predominantly black neighborhoods (Elijah Anderson 1999).

<sup>54</sup> There is some empirical evidence that preventive policing does not significantly lower the crime rate. Conventional wisdom has it that these kinds of preventive strategies underlie the unprecedented decline in New York's crime rate since the early 1990s. But the empirical evidence does not clearly support this conventional wisdom (Epp, Maynard-Moody, and Haider-Markel 2014, 32; Zimring 2012, 145–6).

with the state, by constructing the state as a colonial presence in occupied territory; and to threaten the normative context in which citizens enjoy, not simply low crime rates, but generally recognized legal claims against theft, assault, and murder.

None of this is to say that we ought never act so as to constrain one another's activities. That would be far too strong a claim. After all, we reasonably lock our doors when we leave our houses. These actions may not direct others' attention to our rights of ownership in our houses and possessions, but they at least serve to protect us from the particular harms associated with break-ins. And even if these actions are sometimes apt to distract others from our practical authority, or even to express inapt representations of our relations with others, we might be content to accept these risks in some circumstances. The burden of maintaining a just distribution of practical authority is a burden that we all must share as members of a political community, and sometimes it ought to fall predominantly on others.<sup>55</sup> The just distribution of practical authority turns, in part, on the just distribution of this burden.

This, I expect, is part of the moral role of the state. Law earns its claim on practical authority over legal subjects in part by doing the hard work of representing us as persons, so that we may go about our daily lives in peace. We can legitimately lock our doors in part because law constitutes us as owners of our homes, and so frames this as a legitimate exercise of practical

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<sup>55</sup> For instance, as Baratunde Thurston observes in his memoir *How to Be Black*, there are diverse ways in which blacks might respond when whites ignore their claims against physical contact: "White schoolmates would look at my afro, then shout excitedly, 'Is that your real hair?' and 'That is so cool!' and 'Can I touch it?'" all the while *reaching* to touch it regardless of what answer was percolating from my mind to my mouth in response to their perfunctory inquiry. If I did not know you, the answer was simply, "No!" accompanied by a gracefully evasive maneuver to avoid unsanctioned hand-to-hair contact. But if we were friends, I would offer a detailed response. I would patiently explain that it was rude to just touch someone's hair without permission; that black people, especially, have a history of white people exerting their privilege over black bodies, extending from uninvited head-rubbing to far worse transgressions..." (Thurston 2012, 80–1).

Those whom Thurston merely evaded might well have felt irked by the implicit rebuke. Without his detailed explanations, they might come away with a sense that he was in the wrong, and that his "graceful evasions" manifested a kind of unfriendliness or arrogance. But that is their problem, not Thurston's. He owes them no explanation; it is on them (and on the community at large) to recognize the morally legitimate extent of blacks' practical authority over their own bodies.

authority, rather than as hostile engagement of our antagonistic neighbors.<sup>56</sup> But while the state might secure us space within which we might comfortably constrain one another's activities without worrying (too much, at least) about the ways in which we might corrupt the distribution of practical authority within our communities, the state itself certainly cannot afford this luxury. This would mean the abdication of one of its central moral roles.

Again, I do not mean to claim that those working within the teleological paradigm would find nothing objectionable about preventive policing. But I do claim that the liberatory strategies that their frameworks generate – including strategies of liberation by constraint – threaten in particular contexts to undermine the very concepts on which we rely in exercising practical authority in our interactions with the other members of our communities. Preventive policing in a racial context illustrates the risks particularly clearly, but the problem goes far beyond this particular context.

In other contexts we might represent those that we manage, not as criminals, but as aliens to our normative communities: as people for whom no shared standards apply, and so with whom we stand in no determinate status relations. We might represent them as less than human, as beasts unable to regulate their own actions by rational considerations. Or we might represent them as children, capable of obedience, but not of comprehension. When our interactions express these kinds of representations, and when these representations inform the standards out of which our local practices emerge, our management becomes a kind of self-fulfilling prophecy: It threatens to generate standards that cast the people we manage as aliens, animals, or children, and so fail to organize our relations with them normatively.

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<sup>56</sup> Of course, law is not the only institution apt to shoulder the responsibility for the affirmation of legal subjects' practical authority. We might usefully frame a host of institutions in this light, including newspapers, unions, and the other pillars of civil society.

Someone impressed by the teleological paradigm might well argue that we have simply identified morally significant considerations to which we must attend as we decide how we will constrain people's interference in one another's activities. But we discover these considerations by taking up the relational paradigm, and so construing freedom as the just distribution of practical authority. Once we take that paradigm up, it is hard to know what further use we might have for the teleological paradigm – especially once we recognize, as I argued at the outset of this section, that the redefinition of public concepts on its own suffices to ameliorate our vulnerabilities to disrespect. Ultimately, the relational paradigm eclipses the teleological.

## VI. CONCLUSION

I have argued the theoretical advantages of the relational paradigm over the teleological, and the practical tensions in which these paradigm stand. Attention to the justice and injustice inherent in the distribution of status relations affords us access to a nuanced conception of our social world: one that allows us to distinguish subjection (in general) from domination (in particular); to distinguish domination from further species of unfreedom, like oppression; and to construct liberatory strategies that directly target underlying social diseases, rather than their symptoms. In this way, the relational paradigm captures all that is attractive about the teleological paradigm, and illuminates much of what is not.

Of course, I have not said anything about what constitutes a just distribution of practical authority. And we will need to if we are to speak concretely about freedom as a social and political ideal. We might wonder if the teleological paradigm, or at least its animating spirit, might reemerge once we turn our attention to these further questions. Could we map the just distribution of status relations with an eye toward a conception of ourselves as purposive beings, possessed of capacities to choose the kinds of lives we will pursue, and the ways in which we

will pursue them? Perhaps. For my own part, I am skeptical that this approach will prove fruitful. But for now, it is enough that we have turned our attention to these sorts of questions.

## Choices of One's Own: The Moral Constitution of Agency

### I. INTRODUCTION

In ordinary discourse, we sometimes cast freedom as something of an anti-social ideal, realized fully only in lonely isolation from other people. But one important sense of freedom picks out an inherently social ideal, attainable only in community with others. To be free in this inherently social sense is not to enjoy unlimited prerogatives to do whatever one likes.<sup>57</sup> It does not contrast essentially with limitation or constraint, or even with others' intentional interference in one's activities. These are constitutive elements of life among people. Rather, freedom in this sense manifests in our relationships with one another, and in particular, in our rights as members of a free society. It contrasts with the malformation of these relationships, of the sort that we find (for instance) in relations of domination or in conditions of oppression.

This complicates our discourse about freedom. If we cannot infer that someone is at all unfree simply on the grounds that, say, the law does not permit her to perform some activity, then what more would we need to show? The challenge that we face is to find standards by which to fill in the gap, and so to distinguish mere limitations on our activities from domination or

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<sup>57</sup> As John Locke famously put the point: “a *State of Liberty*... is not a *State of Licence*” (Locke 1988, chap. II.4–6). Following Locke's lead, libertarians have long taken aligned themselves with this view (at least implicitly), associating freedom with the equal distribution of private property, even though these rights significantly limit people's options. But as G. A. Cohen has argued, if I pitch my tent on your land without your permission, I'll be liable to interference by the police. If I *own* the land, I may be free to pitch the tent at my pleasure. See (Cohen 2011a; Cohen 1995, 55–6). Cohen's point would have come as no surprise to the best libertarians, who deny that liberty involves generic non-liability to interference.

oppression. These standards are the subject of considerable contention in contemporary politics. Consider, for instance, labor laws prohibiting discrimination in hiring and firing practices. Employers sometimes find these laws burdensome, abrogating unjustly their prerogatives to choose how they will run their own businesses. But progressives regularly deny that employers need such prerogatives. Non-discrimination law does not oppress employers (we argue), however burdensome it might seem. In order to make our case, however, we as members of a political community need common terms by which to mark the kinds of relationships that count (for instance) as oppressive, and to set these apart from those in which we find social freedom.

In much liberal and republican philosophy, philosophers have constructed these standards around an architectonic concern for the equal of independence of each from all. Call this the independence strategy. It takes as its starting point a conception of the free person as an agent, capable of choosing her own ends. While myriad psychological conditions (like addiction) or vices (like weakness of will) might compromise our capacities for choice, our relationships with other people can compromise our standing or authority to choose our own ends. Relations of domination and subordination afford to others opportunities to usurp our authority over our own lives, to set our own ends for us. Enslaved people, for instance, are unfree because slaveholders – and not the slaves themselves – choose the ends they will serve. We find freedom, on this view, when each enjoys domains in which no one else can choose the projects she will undertake.

These standards allow us to distinguish mere limitation from unfreedom. First, in conditions of equal independence, we might get in one another's ways by pursuing mutually incompatible goals. But we do not dominate anyone unless we set their goals for them. And second, we might bear various obligations to one another, which limit our prerogatives. But these obligations will not oppress us if they serve the preservation of each citizen's independence of

all. So if workers would be subject unduly to the wills of their employers without the protections of non-discrimination law, then these laws would not suffice to render employers at all unfree. Progressive defenses of non-discrimination law often consist in the defense of the antecedent in this conditional. Such defenses reflect the appeal of the independence strategy.

No single tradition properly owns the independence strategy, but it is particularly prominent within Western liberalism and republicanism. We can find evidence of it in the political theories of John Locke<sup>58</sup> and Immanuel Kant,<sup>59</sup> of contemporary libertarians like Robert Nozick (Nozick 1974) and Loren Lomasky (Lomasky 1987), and of contemporary neo-republicans like Quentin Skinner (Skinner 1998; Skinner 2008) and Philip Pettit (Pettit 1997; Pettit 2001; Pettit 2012).<sup>60</sup>

But in spite of its appeal, I argue that the strategy relies on an attenuated conception of agency, and so corrupts our moral vocabulary quite radically. The general standing to make our own choices means nothing without a conception of the choices that are ours to make. When our

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<sup>58</sup> John Simmons, in particular, argues that Lockean *labor* is action oriented toward a goal, and the power to acquire material property by laboring on it derives from the normative requirements of agency. See especially (Simmons 1992, 271–8).

<sup>59</sup> In the *Groundwork of the Metaphysics of Morals*, Kant provocatively asks: “What, then, can freedom of the will be other than autonomy, that is, the will’s property of being a law to itself?” (Kant 2010, 52). In the *Metaphysics of Morals*, Kant develops this concept of autonomy as subjection to a law that one gives oneself into a political theory that emphasizes our independence, not of the causal chain, but of our peers, whose actions might flout the law that we give to ourselves. As Ripstein puts it, “...a system of equal freedom is one in which each person is free to use his or her own powers, individually or cooperatively, to set his or her own purposes, and no one is allowed to compel others to use their powers in a way designed to advance or accommodate any other person’s purposes” (Ripstein 2009, 33).

<sup>60</sup> It might seem odd to put Lomasky into the same category as Skinner and Pettit. After all, he and Geoffrey Brennan explicitly reject Skinners’ and Pettit’s non-domination conceptions of freedom (Brennan and Lomasky 2006). But Brennan and Lomasky’s arguments target, not an underlying concern for agents’ independence of others, but Pettit’s republican elucidation of that underlying concern. For instance, on Lomasky’s view, people ought to have the moral space to decide for themselves the projects they will pursue: “[B]ecause people are separate beings individuated in part by virtue of the particular projects to which they commit themselves, they are rationally entitled to insist that they be let alone to pursue their own designs and not be enlisted as adjuncts to the projects of others” (Lomasky 1987, 99). Talk of others “enlisting us in their projects” strongly evokes republican talk of others “imposing their wills” on us, and it is hard not to read Lomasky’s “separateness of persons” as synonymous with republican concerns for independence. Failure to recognize the common ground on which classical liberals like Lomasky and neo-republicans like Pettit work generates odd and artificial taxonomies. See (Larmore 2004) for further discussion.



legal system unjustly withholds from us, say, guardianship over our children, it denies to us choices that morally belong to us. This distorts our agency, because relationships like guardianship constitute us as agents, giving our choices and actions social significance. By abstracting agency from these relationships, proponents of the independence strategy detach agency from the social world in which it finds its home, and so distort our underlying concerns.

The paper has three parts. I present the independence strategy in Section 1, clarifying the conception of agency on which it depends. In Section 2, I develop an alternative conception of agency. Taking guardianship as my central case, I distinguish our moral statuses (that is, those social statuses on which we have moral claims) from our empirical statuses (that is, those statuses that current social norms confer on us). I argue that our moral statuses constitute us as particular kinds of agents, picking out the choices that belong to us. Empirical statuses that deny us these choices distort our agency. Finally, in Section 3 I argue that we should distinguish (on the one hand) questions about the statuses on which we have moral claims, from (on the other hand) questions about the social conditions in which we bear those statuses. A concern for independence will prove useful in this second stage, but a concern for independence *simpliciter* conflates these distinct questions, and so distorts our conceptions of freedom and oppression.

## II. THE EQUAL INDEPENDENCE STRATEGY

A concern for agency pervades Western moral, social, and political philosophy. In its barest essentials, *agency* involves *activity*: Agents are beings that *do*, and not (or at least, not only) beings to which things are done. In moral contexts, agents make *choices*, and in choosing the ends they will pursue, they move themselves: They act. Moral philosophers and metaphysicians have long explored the *psychological* conditions of agency – conditions that might contrast with an array of disorders, vices, or particular forms of ignorance. Such

conditions might render us subject to alien forces; at the extreme, they might subvert our agency altogether.<sup>61</sup>

But while our psychological capacities for choice are obviously morally significant, there is a further, *social* sense of agency that focuses our attention specifically on our relations with the other members of our communities.<sup>62</sup> Agency in this sense concerns, not our capacities, but our *authority* to choose and to pursue our own ends. Proponents of the independence strategy construe the free person as a *social agent*. In this section, I characterize their strategy, and illustrate the ways in which these proponents deploy the strategy to derive the requirements of freedom.

(a) *Social agency*. Authority is a normative concept.<sup>63</sup> We identify the scope and structure of someone's authority by focusing on the structure her *statuses*, constituted (at least in part) by her normative (Hohfeldian) relations with the other members of her communities: her claims against others, her obligations to others, her prerogatives, her normative powers to revise

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<sup>61</sup> Inspired by these concerns, philosophers have spilled incredible amounts of ink debating the *metaphysical* requirements of a capacity for choice, and its compatibility with determinism. Their concerns apparently depend on a construal of choice as an uncaused cause, but it is hardly obvious that we need to adopt this construal in order to maintain that the relevant disorders, vices, or forms of ignorance might compromise our agency. See (Strawson 1968; Wolf 1990).

<sup>62</sup> For instance, Ripstein writes that Kant begins with “the simple but compelling *normative* idea that, as a matter of right, each person is entitled to be his or her own master, not in the sense of enjoying some form of special self-relation, but in the contrastive sense of not being subordinated to the choice of any other *particular* person” (Ripstein 2009, 4).

Pettit, too, distinguishes different senses of *unfreedom*, but maintains that they stand in contrast with *freedom* in a single, unified sense. Psychological disorders like *addiction*, non-personal conditions like *bad weather*, and social conditions of *domination* compromise freedom in a single sense, though in different ways (Pettit 2012, 36–7; Pettit 2001, 1–5). His point seems to be that the different requirements of the psychological and social senses of agency manifest the same underlying concerns, albeit in different contexts. I am tempted by this construal, but as far as I can tell, it is not essential to the independence strategy.

<sup>63</sup> Not all theorists construe social agency as a normative concept. Pettit, for instance, characterizes it, not in terms of the *normative relations* in which the members of a community stand, but in terms of the *controls* that they exercise over one another's interference (see especially Pettit 2012, 57). I do not wish to remain neutral in the main text between a normative and a non-normative construal of agency, because the non-normative construal is inapt. But it should not be too difficult to recast the general framework that I present in this section in non-normative terms, and to target the arguments that I advance in Sections 2 and 3 on this reformulated framework. I leave this recasting as an exercise for the concerned reader.

these relations, and her liabilities or immunities to others' powers. These relations construct normative spaces, vulnerable to encroachment only by other people. Only other people can trespass on our land, can steal from us, can assault us. A hurricane, for all its force, cannot.

We should distinguish the very general condition of *bearing a status* – that is, of enjoying authority over *some* domain – from the particular condition of bearing a *particular* status. They include those *legal* statuses which make us owners of property, which confer on us particular legal family relations, and which construct legal economies and locate us within them as investors, employers, managers, or employees. They include extra-legal, *informal* statuses, which extend family relations beyond their legal forms, which construct gender and race relations within our communities, and which structure underground economies. People can share the common property of *bearing a status* even though they bear few (if any) of the same particular statuses.

In light of this distinction, we stand at a conceptual crossroads. When we say that free people are *social agents*, do we mean the *weak* claim that free people bear status relations with one another, which afford them diverse (potentially objectionable) authorities? Or do we mean something stronger, namely, that free people (*qua* agents) ought to bear a *particular* status, conferring a particular structure on their authority?

The former claim, that free people bear statuses, is extraordinarily weak. To be sure, some social conditions might render people unfree by depriving them of any status. For instance, the law in a slaveholding society confers on the enslaved no claims, no powers, no prerogatives. In this way, the law strives to transform them into slaveholders' animate property. But first, law's capacities to deprive individuals of *any* status are not without limit. Even under legal slavery, informal social norms may preserve significant normative relations among the

enslaved.<sup>64</sup> Second, people frequently suffer domination or oppression, not because they lack status altogether, but in virtue of the particular statuses they bear. For instance, patriarchal norms need not, in general, deny to women *any* authority. Rather, they structure women's authorities in ways that reflect their roles within the patriarchal community. Marilyn Frye writes that

in general, if a woman's purposive behavior and the web of interests and authority it weaves can be seen as falling within the place and functions of Mother/Caretaker/Conserver/Helpmate, her claim to authority, interest, presence and place will make sense relevant to others. It is likely to accord well enough with their concept of Woman. (Frye 1983d, 91)

The problem with patriarchy and slavery is not necessarily that these social systems withhold from women or enslaved people *any* authority, but that they (perhaps radically) attenuate or distort their authority. So if, in equating free personhood with *social agency*, proponents of the independence strategy meant only that free people bear social statuses, then their claim would be too weak to generate the resources we need to identify and critique standard cases of domination and oppression.

Proponents of the independence strategy must opt for the stronger claim, on which social agents bear a *particular* status. And indeed, they typically argue that the concept of agency itself gives us the resources that we need to draw the boundaries of the free person's domain. Their crucial claim is that an agent does not simply make choices, but *owns* her choices. She must be able to say of her work: "This bears my signature, this is *me*" (Pettit 2001, 6). As a result, we can attribute her actions to her, hold her responsible for what she does, and glimpse through her actions the content of her character. According to proponents of the independence strategy, this requires that the free person enjoy a domain within she acts independently of others. Within this

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<sup>64</sup> The cultivation and maintenance of these relations may constitute a significant mode of resistance in some contexts (Genovese 1976; Gutman 1976). This is worth emphasizing, in light of the extent to which white histories and sociological studies of blacks in America – even those penned by sympathetic scholars – have tended, especially until the 1960s, to paint black culture as utterly devastated by slavery, and so to underemphasize black slaves' persistent agency in the face of oppression.

domain, she need not wait for anyone else's permission in order to marshal her resources in the pursuit of any given project; nor may others trespass across the boundaries of this domain in order to enlist her, against her will, in projects that she does not endorse. (This does not require that an agent enjoy complete control over the ways that other people's activities affect her options. Her domain has boundaries, and beyond those boundaries lie other people's domains.<sup>65</sup>) We derive those relatively concrete bundles of claims, prerogatives, powers, and the like, that constitute the status of *agency* by showing that these bundles preserve the agent's independence within her domain. Those who do not enjoy this independence are, on this view, perpetually subject to others' authority – subordinated, or (at the extreme) enslaved.

(*b*) *The strategy in action.* How does the strategy work? By way of illustration, it may be worthwhile to sketch the derivation of several of rights that might preserve our independence.<sup>66</sup>

First, social agents will almost certainly enjoy claims against assault. Our bodies are as essential to our (*non-social*) agency as are our psychological capacities for choice. Without claims against assault, others would bear prerogatives to use *us* in the pursuit of ends that we do not necessarily endorse, whether by physically constraining or manipulating us, or by threatening to damage or destroy us (Ripstein 2009, 44). In such conditions, we would be able to pursue any project only if others were to contingently refrain from exercising their prerogatives to prevent us

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<sup>65</sup> As Ripstein puts the point in characterizing Kant's political theory, "You do not dominate me by failing to provide me with a suitable context in which to pursue my favored purposes" (Ripstein 2009, 48).

<sup>66</sup> In these sketches, I will be working at a relatively high level of abstraction, and the rights that I characterize here may be enormously underdetermined. I argue that free people must have claims against assault, but this leaves open myriad questions about what *counts* as assault, about the conditions in which we might waive these rights, and how we should respond to violations of these claims. Those who object to the idea of natural rights sometimes object that these rights remain too vague to guide us.

But that is no strike against natural rights. It shows only that respect for these rights might require particular social and institutional settings. Kant, for instance, argues that people do not have "fully formed moral rights in a state of nature" (Ripstein 2009, 8). Part of the point of law, on Kant's view, is the establishment of a system of public rules that render these rights determinate. So when we talk *in general* about the rights of the free person, abstracted from a particular legal or social context, our talk will have to remain quite vague. But the determination of these abstract rights would, of course, have to answer to the foundational concern for agents' independence.

from doing so. *All* of choices would depend on theirs. So our independence must require that we enjoy claims against assault.

Moreover, social agents likely will have some kinds of rights to private property – including, at least, prerogatives to use, and claims against other people’s use or abuse of, some material goods other than our bodies. Without these prerogatives, almost all action<sup>67</sup> would be forbidden. Without the relevant claims, our decisions about what we do with *any* material goods would depend entirely on what other people decided to do with those goods. If I have no claim against others’ use or abuse of a particular apple tree, I will not be able to eat its fruits unless others choose *not* to harvest the apples first, to cut the tree down before I arrive, or to erect barbed wire fencing around the tree. But if I *do* have these claims, then others will necessarily have obligations to refrain from the relevant uses or abuses (unless I choose to waive my claims). That means that, within my broader domain, others do not get to structure or eliminate my authority to decide how I will use the apple tree or its fruits.<sup>68</sup> Apparently, then, we need some kinds of property rights in order to remain independent.

These are among the independence strategy’s least controversial results, and libertarians might well stop with them. But we should not confuse a concern for social agency with a commitment to libertarianism. Different proponents of the independence strategy may disagree about what *kinds* of independence we require. For instance, some argue that inequalities of various kinds might compromise people’s independence by establishing hierarchical relations

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<sup>67</sup> Merely mental actions might remain licit, but of course, they would not outlast our own starvation.

<sup>68</sup> As Ripstein puts the point: “Your basic right to private property is the right that you be the one who determines<sup>68</sup> how it will be used” (Ripstein 2009, 95). (Ripstein may be writing a little carelessly here: He offers us an identity claim, but is not obviously entitled to it. The right to private property is *one* kind of right to determine how something will be used, but not all such rights are rights to private property.)

within a community.<sup>69</sup> And some have argued that an unfettered free market will tend to generate the relevant inequalities. In a sophisticated legal system, we might tailor the complex, variable normative relations that constitute private ownership so that it takes on specific forms that mitigate these inequalities. For instance, Pettit has deployed the independence strategy in defense of a basic income (Pettit 2006; Pettit 2007), which would require systems of taxation that structure, but need not eliminate, citizens' rights to private property.

But disagreements among libertarian and non-libertarian proponents of the independence strategy need not signal that the strategy is excessively malleable, and yields no real conclusions. Rather, the independence strategy offers common ground on which relatively diverse theorists might pitch their tents. As such, it provides useful resources with which we might remain in conversation with one another: Even though we defend different conclusions, we share common standards by which to evaluate these defenses, and so over time to discover their weaknesses and their strengths.

*(c) Claims against discrimination.* We might attempt to deploy the strategy in order to justify workers' claims against discriminatory hiring and firing practices in a market for labor. The defense might go something like this. Our access to property and to the basic goods with which we preserve our bodies (like food, shelter, and health care) depends, in a largely capitalist society, on our access to financial resources. And workers' access to financial resources depends – again, in a largely capitalist society – to a significant extent on their access to work. But, as Alex Gourevitch has argued, “an unequal structure of control over productive assets” renders “[t]hose who do not own... economically dependent on employers for jobs, wages, and thus their

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<sup>69</sup> Of course, Rousseau, who was particularly sensitive to our dependence on one another's esteem, pioneered this strategy (Rousseau 1997a; Rousseau 1997b; see also Neuhouser 2008).

livelihoods” (Gourevitch 2013, 602).<sup>70</sup> At the very least, this dependence will violate the egalitarian standards that preserve workers’ independence of their employers. Workers like Carl may be constrained in their choices about whom they will marry – or at the very least, may be reduced to deception and flattery in their attempts to preserve their jobs. And so, without anti-discrimination laws, employers may dominate workers (see Pettit 2012, 114–5).

Or so the argument might go. Of course, this is a *very* rough sketch, and I do not know for certain that it will work. I am particularly uncertain that its crucial premises do not tell in favor of the radical reconstruction of the economy – the establishment of a basic income, for instance, or of workers’ control over the means of production. It is not obvious that the relevant reconstruction would not mitigate Carl’s dependence on his employers *without* according him any claim against discrimination. So-called “left-libertarians” agree that there is a place for a robust welfare system funded by taxation and administered by the state, but argue that once this system is in place, the state should allow individuals expansive powers to contract freely with one another, and should involve itself in these contracts as little as possible. How we best mitigate workers’ dependence on owners may remain to some extent an open question.

But we might hope that we will find the answers to these questions by deployment of the independence strategy. It involves notions that bear strong intuitive connections to the idea of *freedom* – notions of choosing our own ends for ourselves. And it seems to promise us common standards with which to explore the requirements of freedom, and so to rationally mark the domain of the free person. But in spite of these apparent advantages, we should be wary of the independence strategy.

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<sup>70</sup> Gourevitch argues on this basis in favor of the democratic regulation of the economy, and worker control over enterprise (Gourevitch 2013, 597).



### III. GUARDIANSHIP OVER CHILDREN

In this section, I argue that the equation of social agency with a *particular* status, constituted in terms of social agents' standing to make independent choices, threatens to blind us to morally significant attenuations and distortions of our agency. In order to evaluate someone's freedom, we need to know, not only *that* people enjoy authority within some domain, but that these domains range over the right territory. And the territories over which these domains should range will depend on substantive moral considerations that likely go well beyond a concern for independence.

I take guardianship over children as my primary case. I first argue that *being* guardian to a particular child shapes the structure of one's authority in (at least apparently) morally significant ways. Second, I argue that this generates an (at least apparent) moral challenge for the independence strategy, which cannot capture the intuitive instances of domination and oppression that manifest when guardians' authority is unjustly limited, or when guardianship is unjustly distributed. Third, I argue that this apparent challenge derives from a distortion built into the independence strategy: Its resources are apt to identify some ways in which we might fail to *possess* authority, but not to map the contours and boundaries of the authorities on which we have moral claims. (This challenge persists even if we deny intuitive judgments about the just definition and distribution of freedom.)

(a) *The definition and distribution of guardianship.* Notice that bearing a status like *guardianship* structures a guardian's authority, and so affects the kinds of actions that she is free to perform. Background social norms (including, but not necessarily limited to, legal norms) confer on guardians particular prerogatives to interact with their children in various ways. Guardians enjoy prerogatives to decide which books they will read with their wards, which

chores they will assign them, which faiths they will practice with them, which houses they will live in. (These prerogatives serve to distinguish many guardians' actions from, say, the actions of a kidnapper.) Guardians enjoy legal claims against others' physical engagement with their wards. And they bear various powers, whose exercise might impose new obligations or confer new prerogatives on other adults. They might enroll their children in recreational sports, send them to summer camp, or hire a babysitter. Other adults lack the authority to perform these acts: They lack the guardian's particular freedoms.

Given a distinction between *freedom* and *license*, we cannot infer from the fact that someone lacks guardianship over a particular child, or that she is not free, say, to withhold her child from school, to the conclusion that she is in any way unfree. But certain definitions or distributions of guardianship at least seem morally objectionable.

First, the *definition* of guardianship seems morally significant. Consider laws that either prohibit or require the circumcision of baby boys.<sup>71</sup> There are many serious considerations to which people should attend when they decide whether to have any particular boy circumcised, including the pain it will cause the baby, the potential health benefits of circumcision, and (of course) the symbolic religious meaning that attaches to circumcision in many faiths. But it is not enough that *someone* weigh these considerations and decide. *Guardians* ought to do so, and would be wronged if background norms withheld the relevant prerogatives and powers. Similar concerns extend to guardians' prerogatives to choose the books that they read to their children, the ways in which they discipline them, and the faiths into which they raise them.

To be sure, not all restrictions on guardianship may be onerous. Our concerns for children's welfare and for the community at large should inform the kinds of powers,

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<sup>71</sup> Obviously, female circumcision is different in sufficiently significant respects that we ought *not* leave it up to guardians to decide whether they will circumcise baby girls.

prerogatives, and claims that accrue to guardians. These concerns will require that social norms limit and structure guardians' authority in various ways. A concern for equality might give us compelling reason to restrict, or even eliminate, parents' powers to determine the schools that their children will attend – say, in order to mitigate the dangers posed by racial and economic segregation in public schools. But a concern for guardians' interests should play *some* substantial role in marking the contours of their authority over their wards.

Second, the *distribution* of guardianship seems morally significant. Consider the violence that slavery in the antebellum United States did to enslaved families. Since American law cast enslaved people as animate property, slave owners enjoyed many of the prerogatives and powers that typically accrue to owners of property, including the prerogative and power to sell, gift, or bequeath slaves at will. As historian Heather Andrea Williams observes:

Practices of sale and purchase varied, but for enslaved people, the single most important fact was that owners had the power to decide what they would do with the people they owned. They decided whom and when to sell. They decided which children would be sold with their mothers and which would be separated. They decided whether to keep families together or to ignore familial bonds, and their actions held great consequences for enslaved people. Every death of an owner, every auction, and every sale portended separation for the enslaved children and parents; every transaction could bring about loss and grief. (Williams 2012, 26–7)

Even when owners did *not* separate children from their parents, parents had no authority to decide how they would raise their children. Polly Turner Cancer, recalling her childhood on a Mississippi plantation, said that the master “wudn’t let de mammies whip dey own chillun [or ‘do dey own cookin’]... ef he cum ‘cross a ‘oman whuppin’ her chile he’d say, ‘Git ‘way ‘oman; dats by bizness’” (Cancer 1937; cited in Jones 2010, 317). Enslaved children suffered profoundly on discovering that “the parents they loved and looked up to could not shield them from white people’s power” (Williams 2012, 28). Enslaved adults suffered, too. Williams quotes one former slave’s account of the division of slaves among the heirs of a deceased slaveholder:

“I really thought my mother would have died of grief at being obliged to leave her two children, her mother, and her relations behind. But it was of no use lamenting...” Brown, *Slave Life in Georgia*, 3-8 (Brown 1991, 3–8; quoted in Williams 2012, 31). Obviously, this was only one of the domains within which black slaves in America found themselves powerless. But it was one of extraordinary significance.

The American criminal justice system wreaks similar havoc on many families today. For instance, in response to new legislation in the 1990s, the Housing and Urban Development Department (HUD) developed guidelines that encouraged housing agencies to evict tenants (and to screen prospective tenants) on the basis of their criminal records. These guidelines have encouraged housing officials to invoke “virtually any crime” (Alexander 2012, 144–5) to justify denying housing to many applicants. This is bad enough, but it also bears on the distribution of guardianship over children:

Take for example, the forty-two-year-old African American man who applied for public housing for himself and his three children who were living with him at the time. He was denied because of an earlier drug possession charge for which he had pleaded guilty and served thirty days in jail... [H]e was not only targeted by the drug war but then denied access to housing because of his conviction. Since being denied housing, he has lost custody of his children and is homeless. (Alexander 2012, 145)

Under American slavery, particular slave owners chose arbitrarily when to break up enslaved families. Under HUD’s “One Strike” guidelines, legal officials effectively exercise the same power – although the law diffuses that power across offices and institutions. Again, while this is hardly the only of the injustices of the War on Drugs, it is an important one.

Finally, American law has long allowed (or even required) adoption agencies to deny guardianship over particular children to same-sex couples. Before the Supreme Court ruled in *Obergefell v. Hodges* that all American states must recognize same-sex marriages, Ohio did not fully recognize Jessica and Melissa Tincher’s marriage, which severely constrained their powers

to adopt children *together*. As a result, only Jessica claimed legal guardianship over their four children. *The New York Times* reported that “...Melissa, who stays at home to care for the children, must carry around a permission slip of sorts when she takes them to the doctor or other appointments. ‘I am with them all day every day,’ Melissa said. ‘I take care of their day-to-day needs, and I have no rights to them legally. It’s hurtful’” (Bernard 2015). Again, this is hardly the only way in which American law has long sustained heterosexism. But it is important.

(b) *An apparent moral challenge.* The unjust definitions and distributions of guardianship in the cases that I characterize above at least seem to generate conditions of domination or oppression. If they *do*, then that spells trouble for the independence strategy. That is because claiming guardianship over particular children does not require *only* that we be independent of others, but that background social norms build the rich normative structures that constitute family relations. The ways in which we construct these relations should reflect what is valuable about them, and this pushes us beyond our concerns for independence. Even if we could justify the best definition and distributions of guardianship by deployment of the independence strategy, our justifications would save the phenomena by distorting our underlying concerns.

For instance, *intuitively*, parents should in general have some kind of claim on guardianship over their biological children.<sup>72</sup> One apparent (though hardly unique) problem with the arrangements that I surveyed above is that they do not afford these claims to some parents.

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<sup>72</sup> Of course, where parents *do* enjoy these claims, they must be limited in several ways. They must be defeasible in ways that reflect our concern for children’s welfare. And they must be alienable: Parents must be able to put their children up for adoption, or to serve as surrogate mothers for other would-be parents. (I do not mean to suggest, for instance, that rights of surrogacy are not controversial. It may be worth reflecting on the extent to which the commodification of pregnancy threatens certain relationships which we might value (Elizabeth Anderson 1993, 168–89).) But if these rights are legitimate, then they must complicate – not eliminate – parents’ defeasible and alienable claims on guardianship over their biological children.

Granted, these intuitions may not survive critique. But that will not do serious damage to my argument, because I do not assume that currently prominent judgments about just family structures are not contestable. I argue only that we must deploy substantive moral considerations in order to discover the statuses to which we have moral claims, *not* that we know for certain which statuses these will be. The case of guardianship serves only to illustrate my point.

If we were eager to use the independence strategy to explain this unique standing, we might try to do so by noting that parents (or at least mothers) typically have physical control over their children before anyone else does, and so have some *opportunity* to claim guardianship before others do;<sup>73</sup> or we might argue that a person's biological children are generated by components to which she already has a claim, namely, her biological materials.<sup>74</sup> It would be easy enough to generate counterexamples telling against particular versions of either of these accounts.<sup>75</sup> But the most important objection to these strategies is that, even if they were to yield correct answers in all cases, they would ground those answers in considerations that seem completely irrelevant to parents' actual concerns, or to parents' objections against those systems that unjustly deny them guardianship over their biological children. If we wish to justify people's claims on particular definitions or distributions of guardianship, then we ought to appeal to concerns that actually relate to the relationship between a guardian and her ward.

Which concerns might these be? To be sure, in contemporary philosophical literature there remains enormous uncertainty about the ways in which we ought to understand relations

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<sup>73</sup> Ripstein suggests a version of the first kind of story in his writings on Kant. Apparently, on Kant's view (as Ripstein interprets it), those people with a claim on the parental rights with respect to some particular child just are those who first *laid claim* to those rights, apparently by taking physical control of the child's body. Mothers take "rightful possession of a child" (and so establish a moral claim to the rights of parenthood with respect to that child) "simply by giving birth to it," apparently because giving birth to the child counts as a way of taking control of her. In other words, mothers get first dibs on children simply because of the fact that children come into being spatiotemporally located inside of the woman's body, which gives mothers the first opportunity to lay claim to the rights of parenthood. But mothers may refrain from laying claim to the child, may yield that claim after the fact, may lose the claim if they perish, or (presumably) may lose the claim if they fail to live up to their obligations to care for the child. According to Ripstein, "If the parents die or abandon a child, then the person who takes the child in has taken control and is obligated to manage and develop the child" (Ripstein 2009, 72 n. 20).

<sup>74</sup> See, for instance, *Moore v. Regents of the University of California*, 51 Cal. 3d 120; 271 Cal.

<sup>75</sup> For instance, it is unclear how we could derive *fathers'* claims to parental rights from Kant's strategy as described in n. 73. After all, fathers (unlike mothers) are *not* in a position to lay claim to children's physical bodies while those bodies are gestating in the mother's womb. But particularly nuanced versions of the Kantian strategy might resist this problem. And, of course, others might well argue on these grounds that fathers *have* no moral claims on guardianship over their biological children.

between parents, guardians, and children.<sup>76</sup> And I am not in a position to make significant contributions to this debate. But it is easy enough to identify considerations that seem vastly more relevant than those generated exclusively by a concern for independence.

For instance, Harry Brighthouse and Adam Swift have argued that people in general have a non-fiduciary interest in playing the kind of fiduciary role that guardians play for their children. That is, guardians do not merely bear the burden of raising children, but enjoy the privilege of bearing this burden:

The role enables them [parents] to exercise and develop capacities the development and exercise of which are, for many (though not, certainly for all), crucial to their living fully flourishing lives. Through exercising these capacities in the specific context of the intimately loving parent-child relationship, a parent comes to learn more about herself, she comes to develop as a person, and she derives satisfactions that otherwise would be unavailable. (Brighthouse and Swift 2006, 95)

If Brighthouse and Swift are right, then whatever it is that makes this privilege valuable should play some role in structuring guardianship. Affording parents obligations to satisfy their children's needs, *without* affording parents opportunities to engage in the kinds of activities that foster intimacy and affection, would not only damage the children: It would threaten the parents' interests.

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<sup>76</sup> In part, the rights constitutive of parenthood derive (or ought to derive) from our concern for children's needs and rights, just as the rights of the lawyer ought to derive from our concern for the needs of her client. Parents play a fiduciary role with respect to their children. Children often lack the intellectual and physical capacities necessary to demand recognition of their rights. They are vulnerable, and stand in need of a protector (or two); parents provide this service for them. And children depend on their parents to provide them with aspects of the considerable education, moral guidance, and socialization without which they will not be able to flourish as autonomous adults. Parents retain rights to decide how their children will be raised because they speak *for* their children until these children are able to speak for themselves. But this only shows that children need *someone* to play a fiduciary role on their behalf. It does not show that parents ought to be able to play this role with respect to their biological children, or that parents in particular are wronged when the role is denied to them illegitimately. If parents' rights with respect to their children derived exclusively from our concern for children's rights, then it would be hard to see what would be wrong with a state policy of child redistribution, so long as the redistributive institutions reliably place children into the care of competent and willing adults. In order to complete the story, we must recognize that parents have some nonfiduciary claim to play this fiduciary role (Brighthouse and Swift 2006, 95), and this interest suffices to ground a moral claim on the role. Where parents lack the standing to play this role, they ought to be able to demand it, and the members of their community ought to recognize and to respect that demand.

Moreover, Anca Gheaus has argued that people may have a non-fiduciary interest in playing this fiduciary role specifically for their *birth* children. Absent these claims, she observes, we might opt for a redistributive program that randomly confers guardianship on newborns to any competent and willing caregivers. But, she argues:

...birth parents, or at least gestating mothers, are typically highly emotionally invested in the pregnancy. An intimate relationship with the future baby starts even before the baby is born... Thus, to shuffle babies between all the people that are willing and able to parent would be unfair to birth parents and would destroy already formed parent–baby relationships. (Gheaus 2012, 436)

This at least generates *some* reason to reject the redistribution of children at birth.

I also expect that the ways in which the members of our communities conceive of the family can affect the ways in which we conceive of ourselves, and so can bear on the kinds of lives that will satisfy us. As a result, our access to those normative structures that constitute family relations within our communities may be enormously important to our well-being.<sup>77</sup> I do not mean to be overly conservative here. The fact that the normative structures of families within our communities can affect our conceptions of ourselves and of the good life does not show that we ought not revise these conceptions in response to moral critique. For instance, particular family structures can radically undermine people's independence (Okin 1989), and while independence does not seem *uniquely* morally significant, a concern for independence does generate certain moral claims against these family structures. Patriarchal norms, for instance, valorize the domination and oppression of women (and of children, lesbian, gay, bisexual, and transgender persons – and probably others, besides). So we should not endorse patriarchal family structures, even though patriarchal norms have long informed (or corrupted) people's

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<sup>77</sup> Of course, the fact that other communities might value different family structures suggests that the members of different communities might have moral claims on different kinds of family structures. Naturally, this will raise important moral challenges for pluralistic societies. But it does not show that *no one* bears *any* claim on particular kinds of family structures. If we leapt to that conclusion, we would be left with an alien, hopelessly attenuated moral language that could not address the concerns of the people living within these pluralistic communities.



conceptions of themselves and of the good life. But these norms might interact with the interests of the members of a community in complicated ways that sometimes generate moral claims, not on the *abolition* of those structures, but on their *revision*. The valorization of heterosexist marriage is apt to generate for lesbian, gay, or bisexual people an interest in the revision of the normative structure of marriage. These interests might not arise in communities that do not valorize marriage in the same way. So local conceptions of family structure, even when they are objectionable, remain to some extent relevant to the kinds of relationships to which we crave access.<sup>78</sup>

(c) *Moral and empirical authority*. As I said, this generates intuitive trouble for the independence strategy. But why should we take these intuitions seriously? We might judge that unjust definitions or distributions of guardianship generate *bad* conditions in one way or another; but why should we insist that this badness consists in a form of *unfreedom*?

First, the kinds of considerations that Brighthouse and Swift, Gheaus, and I invoke – or at least, suitably developed version of them – might plausibly suffice to generate for parents *moral* claims on guardianship over their biological children; for same-sex couples, on rights of adoption; and for legitimate guardians, on those particular bundles of powers, prerogatives, and other normative properties that answer to the value of guardianship *for guardians*.

By way of illustration, contrast these cases with a fourth. Say that Mark has been living in foster care for several years, and that a couple has expressed interest in adopting him. If the adoption agency were to make them Mark's new guardians, the rest of Mark's childhood would be excellent. He would grow up to be charming, well-adjusted, intelligent, and compassionate. He would maintain excellent relations with his adoptive parents well into their twilight years,

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<sup>78</sup> These kinds of complications may ultimately incline us in favor of radical revisions of marriage and parenting, or at least, of the relationship between the state and family structures (Card 1996). But see n. 72.

and as a result of his experiences, would go on to adopt children of his own. There may be a sense in which the adoption agency *should* confer guardianship on them, or in which it might even be bad for the agency not to do so. But if the agency's policies are above reproach, then the agency does not wrong the couple by conferring guardianship on someone else. That is because, while the couple aspires to guardianship, they have no moral claim on it. In this respect, this couple's case differs from those that manifest under American slavery, the War on Drugs, or heterosexist marriage law. In these latter cases – intuitively at least – particular people seem to have moral claims on guardianship over particular children, and guardians in general seem to have moral claims on particular authorities with respect to their children.

Second, if people have moral claims on particular statuses, then there is an important sense in which they *already bear* those statuses, even while background social norms withhold these statuses from them. For instance, when legal norms deny to us statuses on which we have moral claim, it is true *both* that we bear the status (morally), and that we lack the status (legally). This distinction is in some respects analogous to the distinction between *ownership* and *possession*. Ownership persists even when owners do not possess the goods they own – even when they rent or lend them out, or (more to the point) even when the goods are stolen. Your stolen car is still *yours* (even though you do not have it) because you retain your rights of ownership, including claims on the car. Similarly, without the relevant background social norms, we may not “possess” guardianship over particular children. But those who bear a *moral* claim on guardianship “own” the relevant forms of authority, nonetheless.

When, in virtue of unjust background social norms, people in our communities lack the social standing to *lay* claim to those statuses to which they have moral claims, others might invade their domains or usurp their authority with impunity. Others might make *their* decisions.

These kinds of usurpations were just the things on which proponents of the independence strategy focused our attention, but the independence strategy fails to make sense of them. The apparent challenge that I sketched above reveals a deep shortcoming of the independence strategy: It investigates the conditions in which we can make our own choices, without asking which choices are ours to make.

#### IV. A BIFURCATED STRATEGY

Once we distinguish *moral ownership* from *social possession* of a social status, we can distinguish two questions we will need to address in our investigations into the requirements of freedom. First, we need to investigate the statuses to which we have moral claims. And second, we need to investigate the conditions in which background social norms secure our standing to lay claim to those statuses. In this section, I sketch the kinds of conversations that we will need to have as we address these questions, and locate the proper role of the independence strategy.

(a) *The moral market.* In Section 2, I focused on our claims on particular family relations, focusing in particular on guardianship. But we might find that we have moral claims on further statuses, relevant to other aspects of our social orders – including those market statuses with which we began. Workers have moral claims on labor markets whose structures reflect the market’s morally legitimate roles within the broader community, and which define and distribute employers’ and employees’ statuses in light of those roles. Disagreement about these roles might yield disagreement about workers’ rights.

For my part, I expect that job applicants and employees ought to have some kinds of rights against certain forms of discrimination – for instance, on the basis of religion, gender identification, political commitments, or sexual orientation. Similarly, employees ought to have rights against certain kinds of treatment by employers, including rights against sexual

harassment; and in the marketplace more generally, customers have similar moral claims against discrimination by businesses. These rights derive, not only from our interest in independence, but also from our interest in particular kinds of *markets* and *workplaces*. The moral distinction between the public and the private renders certain activities (like sexual advances) inappropriate in the public sphere, and renders certain considerations (like people's sexual orientations) irrelevant to the choices we make in our public roles. The market for labor should orient employers' policies and activities toward considerations that are relevant, and relevant in the appropriate ways, to the business at hand. Where it does not, employees ought to have the social (and in particular, legal) standing to object. I do not mean to argue that labor does not depend inappropriately on capital in a largely capitalist economy like ours, and that we should not work to mitigate this dependence. I only mean to argue that exclusive attention to this dependence would not serve to mark the complete contours of workers' oppression.

Of course, these points remain contested within our political discourse. If they are correct, then we cannot derive the requirements of freedoms simply from a concern for independence. But even if they are not, we best rebut them, not simply by appealing to a concern for *agency* (in the abstract), but by appeal to competing moral conceptions of the market.<sup>79</sup> Proponents of the independence strategy might have something to say here: They could defend a substantive (and I expect implausible) moral thesis, namely, that we only have claims on the abstract standing to make independent choices. (Some, I suspect, implicitly do just this, though in the guise of a conceptual analysis of *freedom*.) But we ought not build their moral commitments into our shared conception of freedom, because this would tether a concern for

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<sup>79</sup> In important ways, this characterization reverses a strategy that is widely employed in the literature on just markets, in which we characterize the morally acceptable market as the market in which people's freedom is best secured, invoking a substantive conception of freedom in order to do so. On the view I describe, we cannot know what market institutions will best support people's freedom *until* we know the kinds of market relations to which participants in the market, including workers, employers, and consumers, have moral claims.

freedom to a very particular moral framework. In doing so, we would render the concept of freedom irrelevant to much of our moral discourse – especially if these moral commitments turn out to be false. Proponents of these moral commitments are free to name their fundamental concern “freedom,” but we should be under no obligation to respect their nomenclature. We would be better served to excise particular moral commitments from our conception of freedom, and to cast much disagreement about the requirements of freedom as *moral* disagreement about the statuses to which we have moral claims.

(b) *The social conditions of agency.* As we investigate the requirements of individual freedom, it will not be enough to identify the social statuses to which we have moral claims. We will also need to identify the social conditions in which we “possess” authority within those domains.

And it is here that the independence strategy shows its real promise: It may not pick out the *domains* over which we should enjoy authority, but it *may* help us to think about the conditions in which we possess authority over those domains. When we depend in various ways on others, this may suffice to afford them the opportunity to make our choices for us, or to deny to us choices we on which we have moral claims. Say, for instance, that all employers in a given market were to form a united front, conspiring to fire and blacklist workers who stood on their legal claims. If, as Gourevitch argued, workers depend on employers for their livelihoods, then the blacklist would effectively undermine employers’ legal claims. This is one of many ways in which the members of our communities might subvert our authority. The vast literature that explores the conditions of our independence may yet provide useful insights on this front, and we may yet use these resources with which to defend some of the rights of the free person.

But even here, the independence strategy is of limited value. While various forms of dependence might subvert our authority within particular domains, independence is at best a necessary, and not a sufficient condition on our freedom. As I emphasized in Section 2, we also need social norms that define and distribute authority within our communities, which render our statuses determinate and accessible to the other members of our communities. While we ought not abandon the independence strategy, then, we ought to take care not to inflate its significance within our conversations about the requirements of freedom.

## V. CONCLUSION

Instead of conceiving of freedom as the *abstract* standing to set and pursue our own ends, I have argued that we should locate our social agency within our concrete relationships. We *should* construe the free person as possessed of the standing to set and pursue her own ends. But background social norms should confer on her the standing to pursue those ends that are hers to pursue. On this conception, freedom must involve the social standing to lay claim to our moral statuses. As we move forward, then, we must investigate two distinct sets of questions: On which statuses do we have moral claims? And in what conditions do we enjoy the standing to *lay* claim to these statuses? The independence strategy might well serve to identify some of the requirements of freedom, to the extent that the forms of dependence on which it focuses our attention might compromise our standing to lay claim to various statuses. But we cannot satisfy people's aspirations to freedom if we do not engage with their substantive, context-dependent moral concerns, which alone can illuminate the domains on which free people lay claim.

## A Right to Recognition: Democracy Beyond Law

### I. INTRODUCTION

Democracy involves institutions that afford people resources and opportunities to participate in the evaluation and revision of the norms to which they are subject. Democratic theory consists in large part in the justification and critique of these institutions. And much democratic theory focuses on the defense of what we might call political democracy, which targets those familiar institutions that incorporate citizens into the evaluation and revision of the law and of state policy. It targets the ways in which, for instance, parliamentary elections, rights of free speech and assembly, and rights to stand for public office protect citizens' involvement in the regulation of their government's activities. And yet neither state policy nor legal norms generally uniquely construct our relationships with the other members of our communities. Beyond the law, we find ourselves caught in a complex tangle of interpersonal relationships that define our powers over others, and other people's powers over us; that structure and limit the things that we can do, the things that we cannot do, and the things that can be done to us. And the norms that define these relationships can sometimes seem like alien forces, and the processes out of which they emerge can sometimes seem genuinely undemocratic.

By way of illustration, consider two men, Glenn and Hank, in the checkout line at the grocery store. Glenn watches with growing disdain as Hank unloads box after box of Hungry-Man frozen dinners and plastic bags of frozen, pre-fried fish onto the checkout counter – enough

to last him a whole week. He simply can't believe that someone would be irresponsible enough to rely on such processed, fatty, salty foods. Doesn't he know how innutritious they are? But Glenn keeps his thoughts to himself. He's no boor. He knows how rude it is to comment on a stranger's choices about how they spend their own money – even when those choices are so ill-advised. “It isn't my place,” Glenn thinks, biting his tongue.

But Glenn's disgust turns to outrage when Hank, preparing to pay, reaches into his wallet and pulls out a SNAP card. “Food stamps?” he groans aloud. “As long as you're spending my money, you might want to know that you'll get a lot more value if you spend less time in the frozen foods aisle, and more time in produce.”

As he walks out of the grocery store, Hank feels humiliated at having been called on to justify his decisions to a complete stranger. Maybe he shouldn't rely on frozen foods as much as he does. But it is his money, after all – legally, anyways. People tend to respect other people's rights to spend their money as they please, so long as they are not doing anything illegal. But Hank seems to have no such prerogative. Whenever anyone realizes that he relies on assistance from the state, they take themselves to have some informal standing to exercise oversight over the ways he spends his money. Glenn had called it *his* money, and he certainly seemed to see things that way. That isn't fair, Hank thinks to himself. This is a complaint about the structure of Hank's relationship with Glenn.

But something else bothers Hank, beyond this unfairness: He knows that there is nothing he can do about it. If he tried to respond to the critical stranger behind him in line, pointing out that the money is *his*, and not the stranger's, he would get at most a patronizing lecture on discipline and hard work. After that, things would carry on as they always had. There is nothing that Hank can do about it: Society has rules, and people like him don't get to make them. This is



a complaint, not about the current structure of his relationships, but about the social processes that generate that structure.

Political theorists typically distinguish the current structures of our relationships from the processes out of which those relations emerged. And in general, theorists cast concerns about current structure as matters of justice, and concerns about the processes by which these relationships come about as matters of legitimacy. Hank's second complaint, then, is that the social processes effective in his community which render him subject to Glenn's supervision are illegitimate. And it is easy enough to find versions of Hank's second complaint throughout discussions of oppression. Marilyn Frye, for instance, writes that in conditions of patriarchy, "Women generally are not the people who do the defining, and we cannot from our isolation and powerlessness simply commence saying different things than others say and make it stick" (Frye 1983e, 105–106). Similarly, bell hooks argues that oppression consists in part in a kind of objectification: "As subjects, people have the right to define their own reality, establish their own identities, name their history... As objects, one's [*sic.*] reality is defined by others, one's identity created by others, one's history named only in ways that define one's relationship to those who are subject..." (hooks 1989, 42).

But after a little engagement with democratic theory, this kind of complaint might start to seem misguided. Although much popular discourse casts democracy as a political system in which the people are sovereign, enjoying the power to decide the laws to which they will be subject, many theorists cast democracy negatively, as a political system by which we prevent any one person or group of people from accumulating disproportionate political power. Democratic institutions are legitimate, these theorists argue, not because they give voice to any "will of the people" (if there ever was such a thing), but because equal rights of political participation are apt

to protect citizens from subjection to one another's wills. On this roughly Madisonian conception of legitimacy, we need no such protections where there is no power to accumulate. And in general, informal, extra-legal norms – the kind that structure Glenn's relationship with Hank as taxpayer and welfare recipient – arise from impersonal, often invisible social processes over which few (if any) can exercise any intentional control. There is no sovereignty in this domain, and so no danger that others will subject us to their wills by imposing on us informal norms to which we object. We might reasonably complain about the content of the rules to which these processes give rise, objecting (for instance) that the stigmatization of welfare supports the systematic exploitation of the working poor. But to call the processes themselves "undemocratic" or "illegitimate" starts to seem confused.

On the contrary, I argue that we should take Hank's complaint seriously. It targets a common social phenomenon that insulates oppression against critique and revision, unjustly limiting our standings to demand that the other members of our communities subject their representations of us to moral critique. Equitable distribution of this standing would afford the members of oppressed communities entry into the largely discursive social processes that generate our extra-legal relations. It would, in a sense, afford us resources with which to extend democracy beyond law. Attention to the values that underlie this extension earn us a new conception of legitimacy, and so reveal the moral limits of Madisonian conceptions of democracy.

The paper has four parts. In Section 1, I do the preliminary work of arguing that Glenn's interaction with Hank is an apt subject for political theory, since it reveals aspects of the interpersonal relationships available to them – what Rawls called "the basic structure of society." I sketch several ways in which informal norms might distribute these relationships unjustly.

These points should not be too controversial. Our question is: Can the processes out of which these norms emerge be illegitimate? In Section 2, I outline a contemporary version of the Madisonian approach to democratic legitimacy, which rests on a concern for “non-domination” – that is, for a condition in which no person imposes her will on another. And I argue that this approach affords us no resources with which to cast informal norm-generating processes as illegitimate.

But I cultivate an alternative conception of legitimacy in the final two sections. In Section 3, I identify a type of speech act by which we demand entry into the discursive production of informal norms, and argue that as moral persons, we have moral claims on the standing to make these demands. In Section 4, I argue that legitimate norm-generating processes – political and informal alike – distribute this standing equitably. This affords us resources with which both to make sense of Hank’s complaint that his informal social system is, in a sense, undemocratic, and to elaborate nuanced conceptions of legitimate political culture.

## II. THE POLITICAL SIGNIFICANCE OF INFORMAL STATUSES

As you read about the interaction between Glenn and Hank, you might have thought: “Glenn is rude to Hank, but that – while objectionable – is not a matter for political theory. It is a matter of interpersonal morality, which requires that we not be jerks. But political theory focuses our attention on questions of social structure, and not on our choices as individuals within that social structure. It focuses our attention on phenomena like inequality, domination, and oppression.” If you thought this, then the questions I have raised so far may seem fundamentally misguided. But in this section, I argue that Glenn’s and Hank’s interaction does not manifest only Glenn’s obnoxious vices, but the structure of his relationship with Hank – a relationship made possible by the social norms that structure their community.

(a) *Status in general.* It may be best to think first about what it means to be a rook in a game of chess. To be sure, rooks have a characteristic shape, but this shape is inessential to them. If you were to lose the rook in your chess set, you might take a quarter and declare it a rook. It would become the sort of piece that can move along the rows and columns of a chess board, that can castle with your king, that can capture your opponent's pieces, that can put your opponent's king in check. To be a rook just is to be the sort of thing capable of these sorts of moves within a game of chess. Of course, it is physically possible for a person to move a rook in other ways, or even to upend the board in a fit of frustration. But these movements are not moves within the game of chess. It is in virtue of the rules of the game, that, in moving one's rook along a row on the chessboard, one is not merely "altering the position of matter at or near the earth's surface relative to other such matter" (to repurpose a phrase from Russell 1972, 12). One is castling with her king, capturing her opponent's knight, or escaping check.

Just as the rules of chess constitute pieces as rooks, knight, pawns, and bishops, so social norms in general constitute us as particular kinds of persons in diverse normative contexts. They do so by relating us to the other members of our communities. The relevant relations are essentially normative in character: They include our claims against one another, our obligations to one another, our powers to alter one another's relations, and our liabilities and immunities to one another's powers. Property ownership, for instance, does not consist in bare control over a material good – what Kant called "empirical possession" (Kant 2010, 37) – but in complex and variable constellations of prerogatives to use the goods we own, of claims against others' use of these goods, and of powers to waive or alienate these claims and prerogatives. Just as the kinds of things that rooks can do within a game of chess depend on the ways in which the rules of chess construct them, so many of the kinds of actions that owners of property can perform – like

lending, renting, giving, selling, or bequeathing – make sense only against this normatively rich backdrop. Similarly, saying “I do” in the course of a marriage ceremony makes sense only within a social context that gives content to marital relations, including, perhaps, hospital visitation rights, claims on certain tax benefits, or claims against infidelity.

Many aspects of marriage and of property ownership inhere in the legal norms which partially define them – norms which confer on us our legal claims, legal powers, legal prerogatives, and the like. But informal norms, too, structure enormous aspects of our relations with the other members of our communities. Though they do not manifest in the legal code, they have profound effects on the kinds of actions available to us.

For instance, we might construe the act of giving testimony – not legal testimony, but the everyday, mundane act of conveying a fact in ordinary conversation – as a speech act performable only in virtue of the speaker’s particular status relations with her audience. Richard Moran has argued that this is what makes a person’s testimony that *P* distinct from other forms of evidence that *P*. When a person testifies that *P*, the audience “sees the speaker as presenting himself as accountable for the truth of *P*, and asking, through the recognition of his intention, that this offer of his assurance be accepted” (Moran 2005, 18). And accountability is a status concept: To be accountable to someone is, at the very least, for her to have certain claims against you. Without the power to make these claims available to others, one’s utterance “It’s sunny outside” would not be testimony, but would just be an event to be explained. Others might appropriately take one’s utterance to be good evidence that it is sunny outside, but they would not engage with one’s utterance as testimony.

Similarly, consider the standing to invite someone to join you for a drink. These invitations do not merely inform our interlocutors that we intend to engage in some activity at

some time, or make it more likely that they will engage in the same activity at the same time. They confer on them an informal prerogative to participate with us in a cooperative activity. But the utterances with which we extend these invitations achieve the desired results only if the people offering the invitations have the power to confer these prerogatives on others. If the person who says “Would you like to join me for a drink?” is of a higher status than her interlocutor, the utterance could be a command, imposing an obligation to join her for a drink. If the positions are reversed, the utterance could be an insulting breach of propriety. It isn’t too hard to imagine class or caste relations in which the utterance would be almost nonsensical, too bewildering even to be insulting.

A catalogue of our informal standings could go on almost indefinitely. Consider the rights, obligations, and other relations involved in making promises, in standing in line, in storing one’s groceries in a shopping cart before paying for them, in deciding for oneself whether or not to yell at one’s children when they are misbehaving in public. None of these normative relationships show up in the legal code. Or consider again Glenn’s relationship with Hank. In their community – our community, really – people typically have informal obligations not to criticize the ways that other people spend their money. But apparently we do not owe such obligations when the money comes out of a SNAP account. In fact, informal norms seem to afford the members of our communities claims on others’ deference when they rely on food stamps. Glenn did not merely offer a helpful (if inappropriate) suggestion: He expressed outrage at Hank’s choices. This distribution of claims and prerogatives informs the social content of Glenn’s actions: It affords him a kind of ownership in the money in Hank’s account. His choices are not merely personally obnoxious, but reveal the informal structure of his relationship with Glenn.

(b) *A matter of justice.* These relationships are a part of the basic structure of society, in that they bear on the general distribution of burdens and opportunities among the members of a community.

For instance, in many cases, distributions of informal relations inform the content of our (effective) legal rights, or even undermine these rights altogether. They do so in a number of ways. For one thing, private citizens will be unstoppable in their criminal conduct if enough of them are educated into informal social orders in which others' legal rights (or the state's claim on authority in general) are unrecognizable to them. If the coercive apparatus of the state is the only thing standing between them and gross violations of their neighbors' legal rights, then the state will need incredible coercive power and unusual technical competence in the use of that power to keep them at bay – if it can do so at all. (This is part of why colonial occupations often are so expensive.)

Second, distributions of certain informal statuses can sustain widespread ignorance of the conditions in which other people live (see Mills 2007). These include status relations that maintain certain forms of geographic segregation, or that limit the kinds of conversations on which we are free to embark. And the forms of ignorance that these relations sustain can in turn corrupt legal officials' judgments. For instance, in order to determine whether verbal assent counts as legally valid consent, legal officials need to determine whether the assent was coerced. And in to determine this, they must pay explicit attention to the kinds of threats and risks that the assenting party faces, which will bear on questions of coercion. But the kinds of conditions that count as relevantly threatening will vary from person to person, reflecting our unique vulnerabilities (Scheppelle 1991). So if the informal statuses that we bear sustain legal officials' ignorance of these conditions, then these informal statuses will corrupt legal officials' judgments.

Finally, legal officials' uncritical education into the informal statuses that the members of our communities bear may also threaten the integrity of officials' legal reasoning. For instance, to a significant extent, informal norms inform the kinds of acts that legal officials represent as legally valid consent. In principle, these norms could define consent so broadly that almost nothing we do counts as withholding consent. This in turn would mean that almost nothing that is done to us could count as a violation of our claims (unless, of course, we had no power to waive these claims by consent). This kind of problem may be at least one aspect of the law's failure to confront women's vulnerabilities to sexual assault in our communities (Langton 1993).

But our informal relations do not merely inform the content of our legal relations. They are distinctive aspects of the basic structure in their own rights, bearing immediately on the distribution of burdens and opportunities within our communities. Consider, for instance, the unwanted touching of a black woman's hair. This might violate her legal claims against assault, but well-enforced legal rights are not apt to protect us against violations on such a small scale. For one thing, standing on our legal rights can be quite burdensome financially, and no single violation on this scale may warrant the cost of taking someone to court – even while the harms done by many such violations can eventually become exorbitant. For another thing, for someone to stand on her legal claim against assault in a case of this kind of case would strike many as crazy. This is one way in which oppressive systems perpetuates themselves: They give to some people only extreme resources, and then encourage others to regard them as crazy when they make use of these resources in less than extreme circumstances. Different, non-legal resources are needed here, involving informal claims against unwanted touching. And the unwanted touching of a black-person's hair constitutes a micro-aggression in part because race unjustly informs the distribution of such claims in American society.



*(c) A matter for political theory.* We now have resources with which to answer our preliminary challenge: Glenn's and Hank's interaction is a matter for political theory, and not merely for personal morality. Hank's legal property rights may protect him against, for instance, theft. But in the American context, informal rights of ownership generally include claims against others' supervision in the use of one's property (at least, so long as one does not by this use harm another). But local norms cast taxpayers generally as owners of the taxes they pay, and in particular of the money that funds welfare programs like SNAP. This supports a representation of the recipients of welfare as akin to thieves – as “moochers” who spend other people's money instead of earning their own. When Glenn exercises his prerogative to critique Hank's purchases, he reminds Hank that in a crucial sense, he does not own the money he spends, and that he is subject to others' authority in his use of this money. Over time, these reminders are apt to take a severe psychological toll on Hank, and to threaten his sense of self-respect.

Moreover, this particular distribution of standing forms an important part of a broader social system that allows for (or even encourages) the exploitation of the working poor. The stigmatization of welfare recipients as moochers discourages those legally entitled to welfare from seeking it, and encourages voters to support restrictions on the availability of welfare. These restrictions are liable to entrench the working poor in their financial vulnerability, exacerbating their financial dependence on prospective employers and so exposing them to ongoing exploitation.

Now that we have these preliminaries out of the way, we should be comfortable calling Hank's relationship with Glenn unjust. But we set out to address a different question: Are the social processes which gave rise to this relationship illegitimate? That depends on how we

conceive of legitimacy, which depends in turn on how we conceive of democratic ideals in general.

### III. NON-DOMINATION AS A DEMOCRATIC IDEAL

A number of theorists argue that democratic institutions protect citizens from domination by the state (or by state officials, or by private interests able to capture state power). In this section, I sketch non-domination as a general ideal, present democratic institutions as bulwarks against domination, and argue that this conception of democratic institutions affords us no resources with which to represent informal norm-generating processes as illegitimate.

(a) *Domination and agency.* A concern for non-domination typically centers around a concern for individual agency, that is, for our powers<sup>80</sup> to choose the goals that we will pursue. A host of familiar conditions “internal” to the agent – including psychological disorders (like phobias or addictions) and vices (like *akrasia*) – might compromise these powers immediately. But domination constitutes a distinctively interpersonal challenge to our agency. Other agents dominate us when they “impose their wills” on us, co-opting us into projects that we do not endorse, and so to an extent transforming us into extensions of their agency. We can locate domination both in particular actions, like certain species of coercion; and in particular relationships, like the relationship between the slaveholder and the slave, between husband and wife in a patriarchal marriage, or between protection rackets and their clients.

We need not say too much here about what exactly counts as an act or relation of domination. There are enough conceptions of domination in the literature that if we were to wade

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<sup>80</sup> I use the term “power” in the text in order to remain ambiguous between a number of different ideas. In some contexts, “agency” picks out the psychological capacity for choice. In other contexts, “agency” picks out a social standing for choice and action, constituted by the interpersonal relations in which we stand. I argued in Chapter 3 that theorists of non-domination often focus on our capacities for choice, but that this is an inapt conception of agency around which to build a political theory. But I mean to set those arguments aside here, and so speak only of “power” in order to remain neutral between capacity and standing.

too deeply into the weeds, we would be apt to get lost. But I assume that an intuitive sense of the phenomena should be more or less readily available. And in any case, the only point that we need to make explicit for our purposes is that acts of domination require the intentional direction of another's activities. Without these intentions, we might accidentally interrupt or redirect another's activities – perhaps quite radically – when we happen to choose goals mutually incompatible with theirs. But we harness them as instruments in the pursuit of our own ends only if we choose to do so; otherwise, we impose no will on anyone. It is through this intentional direction that dominating agents choose the conditions in which others choose and act (Pettit 2012, 38),<sup>81</sup> and so assimilate dominated parties' agency to theirs. Call this “the intentionality requirement.” This necessary condition on acts of domination informs standard conceptions of relations of domination, since on most frameworks, relations of domination are those that afford one person resources and opportunities to perform acts of domination with impunity (see especially Pettit 1997, 21–2; Pettit 2012, 66–7; Lovett 2010). The slaveholder dominates the slave because she is at liberty to direct his activities more or less as she pleases.

The intentionality requirement represents common ground among standard conceptions of domination. While it does not on its own afford us all of the resources we would need to construct a complete theory of domination, it is all that we need to make our point in this section.

*(b) Non-domination as a negative ideal.* A number of philosophers argue that we should construe freedom in one sense – a distinctively political sense – as non-domination. Freedom in this sense names a particular “negative” ideal: It does not directly target our fundamental concern for agency, but focuses instead on distinctively interpersonal threat to agency. Freedom as non-

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<sup>81</sup> This is not to say that others dominate us whenever they choose to interfere in our activities. Odysseus' sailors limit his actions radically when they tie him to the mast, but they do not dominate him (Pettit 2001, 75). Perhaps somewhat more controversially, we do not obviously dominate one another even when we thwart one another's projects: say, when we check out the library's only copy of the latest best seller before anyone else can get to it, or when we deny to others permission to log on our property. But something sets these kinds of interference apart from those forms of coercion, deception, or manipulation that we should construe as acts of domination.

domination does not require that we enjoy a robust power to set our own ends. It requires only that no one else sets our ends for us. As Charles Larmore puts the point, “This notion of freedom... refers to a condition in which we can find ourselves, namely, the condition where we are not living under the thumb of another. It does not mean the exercise of a capacity, and so in particular it does not signify the control which an individual or community exercises over the shape of its own existence” (Larmore 2004, 97).<sup>82</sup> This means that non-domination aims, not at individual or collective empowerment, but at the disempowerment of those who would dominate others.

To be sure, a concern for non-domination urges individual empowerment when this is an apt strategy by which to achieve the disempowerment of others. We can see the strategy of disempowerment-by-empowerment at work in a number of contexts. For instance, law defines and distributes rights against assault and various rights of ownership in material goods. In doing so, law empowers individuals to assert these rights in court. But if our goal is non-domination, these modes of empowerment are only part of the strategy, and not the goal: Legal rights serve to limit people’s powers to enlist one another coercively in projects that do not support their own goals.

But a concern for non-domination does not require individual empowerment. By various strategies, we might disempower people directly. Say, for instance, that we need to assign disproportionate burdens within a group. If any member of the group were to enjoy the discretion to distribute these burdens unilaterally, then she would be liable to dominate the person on whom she imposes these burdens. In order to protect the members of the group from this domination, the group might not allow anyone the power to make this decision. Instead, they might assign

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<sup>82</sup> In this way, freedom as non-domination marks a moral distinction between interpersonal and non-personal threats to our agency, as I argue in Chapter 3 (Pettit 2012, 52–3).

these burdens at random, say, by drawing straws. In doing so, each would abdicate the power to decide who should lose out. And since the processes which assign the distribution of burdens do not satisfy the intentionality requirement, those who suffer under the resulting distribution would be subject to no one's will, but to bad luck only. This strategy does not provide to any member of the group the power to decide whether they will accept disproportionate burdens. But it does secure them against the intentional, alien direction of their activities – that is, from domination.

Of course, this might just push the problem back a level: While the lottery might protect each member of the group from domination by any individual, the group as a whole might dominate any reluctant party in its decision to subject her life to chance. This points the way toward questions, not only about the structures of our relationships, but about the processes by which we generate these structures. And theorists of non-domination typically offer non-domination as an architectonic ideal by which to clarify justice and legitimacy alike – by which to critique both structure and process. In general, they argue that justice requires non-domination in our private relations (Pettit 2012, 77), while legitimacy requires non-domination of the citizens by the state (Pettit 2012, 130).

*(c) Non-domination as a democratic ideal.* In casting legitimacy in terms of non-domination, theorists often argue that a widespread distribution of political power and a carefully-crafted system of checks and balances should protect citizens from domination by the state or its representatives. This often involves the empowerment of individual citizens, say, through the equal distribution of voting rights. But on a Madisonian model, these modes of empowerment serve less to secure to individual people robust power to influence the direction of state policy – and still less to give voice to the will of the people – than to prevent any one

person (or institution) from gaining the power to impose her will on others.<sup>83</sup> The Madisonian is not a full-blown anarchist, but by the construction of multiple institutions possessed of interlocking powers over one another, she hopes to mitigate – if not eliminate entirely – the agency of any dominating state.

Philip Pettit is perhaps the most influential contemporary theorist of domination, and this Madisonian spirit infuses his model for politics. Against the anarchist, he argues that we cannot hope to eliminate the state's power to direct citizens' actions intentionally; to do so, he argues, would be to make citizens generally vulnerable to domination by one another, or by a foreign power. But he argues that to protect citizens against domination by the state, it is enough that citizens enjoy "an equal share in a system of joint control" (Pettit 2012, 168). This generally requires the empowerment of the citizenry, through the establishment of spaces and institutions allowing for the discussion and contestation of government policy (Pettit 2012, 168, 260). But as on any theory of legitimacy as non-domination, this empowerment serves to achieve the disempowerment of others. This emerges most clearly in Pettit's discussion of equality of access. He argues that, as long as we cannot attribute public decisions to an alien will – say, to a colonial administration, or to a powerful lobby – we will have no reason to resent the state for its policies, even when we find them objectionable. So when we find ourselves on the losing side of a policy dispute, it is enough that we can reasonably judge that our loss was only a matter of "tough luck," to which we can attribute no alien intentions (Pettit 2012, 177). That does not mean that we cannot resent particular *people* – say, our fellow voters or government officials – for the ways in which they perform in their roles in the regulation of government. But this will not threaten

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<sup>83</sup> Richardson constructs a compelling alternative to this approach in (Richardson 2002), opting for a "Rousseauvian," rather than a Madisonian, conception of democratic institutions. The framework that I articulate in this chapter is, I think, largely compatible with the framework he develops, though it sheds Richardson's emphasis on non-domination.

the state's legitimacy if their roles are suitably circumscribed: "That the state enacts an unjust policy, by your lights, will be a result of the bad luck of your having many culpably ignorant or indifferent compatriots, not a result of its harbouring an alien will" (Pettit 2012, 178). And if the state harbors no alien will, then state direction of our activity does not satisfy the intentionality requirement, and so cannot dominate us.

I will not here explore the viability of Pettit's approach to the legitimacy of the democratic state. Instead, I turn to the questions we set out to address: What might theorists of non-domination have to say about social processes that give rise, not to the legal order or to state policy, but to the informal order?

(c) *The informal order*. Theorists of non-domination might well concede that informal relationships can be unjust, exposing us to domination by our peers. Glenn's relationship with Hank certainly affords him the standing to direct Hank's activities in some important sense – though of course, whether this direction will count as domination will depend on our which conception of domination is most apt. At the very least, this relationship forms a part of a broader social system that supports the exploitation of the working poor, and we might well see domination in this exploitation (or at least, in certain instances of it).

But theorists of non-domination should deny that the social processes that gave rise to this relationship were at all illegitimate. After all, people have at most very limited powers to decide the structure of the informal order. Certainly no one enjoys the legislative standing to impose these status relations onto us. (This is what distinguishes these informal norms from what Lon Fuller called "made law" (Fuller 1981, 232).)<sup>84</sup> The status relations that constitute this order

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<sup>84</sup> To be sure, in some contexts, particular individuals have harnessed these social forces to their own ends. (Consider the ways in which white elites in the 18<sup>th</sup> century pitted blacks and poor whites against one another, and so in effect *created* the kinds of race relations which would allow for the continued exploitation of both.) But we need to distinguish the fact that some people can sometimes harness social forces to their own ends, from (say) the

arise organically, from the conduct of individuals within the community. Through our responses to one another's actions, we express representations of one another's status relations. When you issue an instruction, I may respond in a variety of ways: as though you are making a polite suggestion or request, are being a bully, are being insubordinate, are telling a joke, are insane, or are issuing a command with which I am obligated to comply. Through my response, I express a representation of our status relations, both to you and to any observers. Both you and those who observe our interaction may expressively affirm my representation of our relationship, reject it wholesale, or modify it slightly. Through these individual expressions, we over time educate one another into a shared fund of public concepts that mark the structure of our status relations, making these relations relatively determinate and stable over time. Glenn's interaction with Hank has the force that it does because the other members of their community share access to public concepts of welfare that assign ownership over welfare to taxpayers, and not to recipients. And though these concepts arose in complex ways from our individual interactions, no person or group may have the power to sustain or revise these concepts intentionally. This means that, while we might well object to the structure of the informal order, and to the ways in which this order makes us vulnerable to domination, we can point to no single individual or institution that imposes these statuses on us. The informal order may be unjust, but it cannot be illegitimate.

In general, theorists of non-domination seem to agree. It may be worth quoting Pettit at length his gloss on these informal processes. He writes that

The norms envisaged.. would emerge and stabilize as by an invisible hand, since neither the introduction of the norms nor the imposition of costs would require a state. An effective regime of such non-intentionally policed norms should be very appealing for anyone concerned with freedom as non-domination. (Pettit 2012, 134)

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fact in patriarchal conditions, "Women generally are not the people who do the defining, and we cannot from our isolation and powerlessness simply commence saying different things than others say and make it stick" (Frye 1983, 105–106).



Pettit doubts that informal norms alone will protect subjects from domination (Pettit 2012, 135), and the case of Glenn and Harry shows that he is right to do so. But he apparently concedes that, except perhaps in unusual circumstances, informal norm-generating processes are legitimate almost by definition. A conception of legitimacy as non-domination by the state affords us no resources with which to make sense of Hank's complaint.

This is not yet objection to a conception of freedom as non-domination. Perhaps Hank is confused, and should only object to the injustice of his relationships with the other members of his community. After all (we might think), what alternatives could Hank possibly demand to the spontaneous, organic development of informal relations among private individuals? He certainly could not reasonably hope for the regulation of these relations by democratic political institutions. Such regulation would involve enormous government overreach into people's private lives, and in any case would be doomed to fail: No state could exercise such total power over the concepts on which people rely in their representation of one another. The democratization of the informal order, on this view, would seem both technically infeasible and morally abhorrent.

But though theorists of non-domination might be tempted by this conclusion, it is this very conclusion that I challenge in the next two sections.

#### IV. MORAL PERSONHOOD: A POSITIVE IDEAL

As we have just seen, a concern for non-domination represents an underlying interest in agency. Domination involves the assimilation of one person's agency to another's, and so represents a distinctively interpersonal threat to our powers to choose our own ends. But we are not merely beings who choose our own goals. We are also persons – that is, distinctively *social* agents, possessed not only of capacities for choice and action, but of social standings to perform

actions with publicly recognizable significance. The status relations that we sketched in Section 1 do not simply structure the context in which we choose our goals. They define the boundaries and content of our standings, and so constitute us as particular kinds of persons in diverse normative contexts: as participants in conversations, as players of chess, as owners of property, and so on.

In this section, I argue that a concern for personhood, rather than our generic agency – for our social standings – affords us resources with which we might make sense of Hank’s complaint against an apparently implacable informal order. I first I distinguish two aspects of our personhood, located, on the one hand, in our the status relations that current public concepts make available to us; and on the other hand, in our moral claims on practical authority over particular domains.<sup>85</sup> And I argue, first, that to represent someone as a moral person is to represent current public concepts as, in part, resources by which we represent her moral personhood. Second, I identify a set of speech acts by which we demand that others subject current public concepts to moral critique, revising them in light of evidence that they misrepresent our moral personhood. Third, I argue that we have moral claims on the standing to perform these speech acts. The inequitable distribution of these standings leaves us vulnerable to the distortion of our empirical personhood by inapt public concepts. And finally, I argue that the standing to perform these speech acts would afford us resources with which we as individuals can participate in the ongoing construction of the informal order – not by choosing its structure, but by involving ourselves in those discursive processes out of which it emerges.

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<sup>85</sup> In distinguishing our moral from our empirical personalities, I do not mean to appeal to any alien, “unencumbered selves” detached entirely from all contingent relations and commitments. It is true, as communitarian critics of liberalism warned us decades ago, that contingent facts of culture penetrate our identities to the core. We could not conceive of ourselves as participants in concrete family or workplace relations without access to local conceptions of the family and of the workplace. So if these normative contexts bear at all on the content of our moral personhood – as I am sure they do (see Chapter 4) – then the immanent must somehow inform the transcendent. But that does not eliminate any possible gap between the immanent and the transcendent. And it is this possible gap that demands our attention.

(a) *Moral and empirical personhood.* The distinction between what I will call moral and empirical personhood should not be particularly foreign. It is roughly akin to the distinction between moral and legal rights. We locate our empirical personhood in social practices, that is, in general patterns of recognition and response that coalesce around public concepts of the kinds of persons that constitute our communities. Just as we distinguish a rook from a knight by identifying their distinct normative locations within the practice of chess, so Glenn represents Hank as a distinctive kind of person by locating him within the normative practices of taxation and welfare effective in their community. We locate our moral personhood in our moral claims on practical authority over various domains – for instance, in our claims on bodily autonomy, on particular forms of ownership of material goods, or on guardianship over our children (see Chapter 4).

Many of the public concepts that generate our empirical personalities are apt to render these domains recognizable to the other members of our communities, and to afford us resources with which to demand one another's respect for our practical authority within those domains (see Chapter 3). Legal rights of ownership, for instance, serve to make our moral claims on private property concrete, and to locate private property within a social context in which we can count on others to affirm our rights in the face of theft or trespass. But some aspects of our empirical personhood are, as it were, wholly empirical. The public concepts that make us players of chess, for instance, do not make concrete any moral right to play chess. They create these statuses *ex nihilo*, and are the sole source of our standings to move our pawns, or to capture our opponent's.

In principle, we might conceive of a wholly empirical person, possessed of various social standings, but of no moral claims on practical authority over any domain. So-called "artificial persons" like corporations fit the bill: Though a corporation may have empirical claims on and

obligations to its employees, and empirical obligations to its investors and clients, the corporation itself has no moral claims on authority within any domain. All moral claims relevant to the construction of the corporation inhere in the individuals related to it: its employees (current and potential), investors, clients, and participants in the broader economy. This interpretation of the corporation depends on a commitment to moral individualism that I will not defend here, but it should illuminate the concept of the artificial person well enough for our purposes.

To represent someone as a moral person, rather than an artificial person, is to represent her empirical status relations as evaluable against her moral claims. It is to represent her empirical personhood as, in a sense, a representation of her moral personhood, which might well misrepresent. It is to represent the public concepts effective within one's communities as at best constitutive of a lens through which we perceive the one another: However finely we craft this lens, our empirical and moral personalities lie on opposite sides of it. Artificial persons, on the other hand, have no analogues on the other side of the lens. Their empirical personalities are not representations at all, but the thing in itself. This "meta-representation" of our empirical personalities as representations of our moral personalities makes available to us important interpretations of people's words and actions. When we do not attend to this meta-representation, we either force people's actions into comprehensible (but possibly inapt) conceptual schemes; or, if we cannot do so, we represent their words or actions as unintelligible or confused. We represent women who violate gender norms as "hysterical" or as "crazy bitches," and black Americans who resist racial norms as "uppity." But a meta-representation of our empirical personalities as themselves representations makes us live to the possibility that public concepts

present a distorted image of the person represented. They allow us to see in apparently unintelligible actions calls for reinterpretation and conceptual innovation.

For an instance of such innovation, consider the concept of sexual harassment.<sup>86</sup> It has only recently come into widespread usage, and its articulation was the result of a concerted effort to name an insidious phenomenon that had gone unnamed for decades (Brownmiller 1990, 281; cited in Fricker 2007, 149–50). Without access to the concept, many people within our communities – perpetrators, victims, and observers alike – lacked the resources with which to recognize sexual harassment in countless day to day interactions. Many saw in these encounters nothing worth worrying about: just men being men, acting as men do around women. Even those who could sense that something was wrong in these encounters often were unable to say quite what it was, and knew that any attempt to communicate their concerns would be liable to generate frustration and isolation. We are now in a position to look back on them and say definitively: “That was harassment.” But in order to achieve this position, we had to engage in the critical evaluation of the norms that structured gender and workplace relations in the mid- to late twentieth century. This is the kind of conceptual innovation to which we gain access when we attend to the fact of people’s moral personhood, and so conceive of public concepts as in part constitutive of a possibly distorting lens through which we represent their moral personalities.

This conception of the relationship between empirical and moral personhood already affords us some insight into Hank’s complaint. His social order seems alien, not because its structure represents the impositions of an alien will, but because it effectively detaches his empirical personhood from his moral personhood. The former does not represent the latter. It

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<sup>86</sup> In focusing on a case from recent memory, I hope to avoid difficult questions about the moral statuses borne by people of the distant past, or in communities quite unlike ours. Could they have had moral rights against sexual harassment in the workplace? It is hard to know what such a right would mean in contexts without workplaces or gender norms like ours. But it should not be controversial that workers in the 1950s and 1960s did have such moral rights, even while these rights were not generally recognizable. And that is all that I need for my argument in this section.

purports to do so, but the public concepts available to him and to those with whom he lives constitute a false lens on which an image is painted – an image that constructs Hank’s empirical personhood in ways that serve, not to reveal his moral personhood, but (perhaps) to sustain the exploitation of the working poor. How does this detachment come about? I argue in the rest of this section that it results from the inequitable distribution of the standing to challenge informal norms.

*(b) Social challenges.* As individuals, we bear some moral responsibility to critique our current public concepts in order to detect and correct these kinds of defects. There are many questions we should ask about the appropriate distribution of this responsibility. Here, I argue that there are particular speech acts by which particular individuals impose special responsibilities on their interlocutors, demanding that they reconsider and potentially revise their representations of their moral relations. Call these acts in general “social challenges.”

Acts of what we might call “performative irrationality” – that is, acts that insistently and deliberately transgress current social norms, and appear crazy or unintelligible to those who observe them – sometimes serve as direct challenges to informal norms. Sociologist Victor M. Rios (Rios 2012, 51–2) has written of one person, Mike, who pointedly stole a twenty-five-cent bag of potato chips in response to disrespectful treatment from a shopkeeper. Mike was not simply trying to get a free snack. He made no attempt at subterfuge. In fact, he explicitly demanded the shopkeeper’s attention, showed him the bag of potato chips, and made a public display of exiting the store without paying. Mike didn’t even care about this particular snack. It just happened to be the closest thing to hand at the time. What is more, the act put Mike at risk of arrest, the costs of which far outweigh the twenty-five cents it would have cost him simply to buy the chips outright. On its face, the act seems unintelligible.

But this was no simple theft. Through the act, Mike expressed his resentment at the shopkeeper's disrespectful treatment, and called on the shopkeeper to rethink his representation of his relationship with Mike and his friends – a representation that seemed to warrant such treatment. The act even seemed to get the right kind of uptake from the shopkeeper, whose relations with Mike and with Mike's friends improved significantly after the incident.

We can see similar kinds of deliberate transgression at work in expressive forms of civil disobedience. These stand in contrast with more purely disruptive forms of civil disobedience, which simply aim to make life as difficult as possible for authorities in a way that might force the desired outcome. One way to end colonial occupation is to raise the costs of its administration. Strategies that aim to do so can be effective even if those against whom they are levied lack any concept of civil disobedience. They require only that colonial administrators be sensitive to the costs of their activities. But through other kinds of civil disobedience, protesters communicate with a wider audience. Those who participated in the American Civil Rights movements of the 1950s and 1960s did not aim simply to raise the costs of maintaining the status quo, but expressed through their acts a demand that others notice and critically engage with its pervasive racial injustices. Of course, to a significant extent, these acts targeted the legal apparatus that supported Jim Crow, but they also targeted the broader culture of racism that supported these institutions.

Of course, the kinds of challenges I have characterized so far can carry serious costs to the actors. Mike was arrested. Those who engage in civil disobedience often suffer violent responses. But these costs need not attach to the kinds of speech acts in which I am interested. As with any speech act, social conventions specify the ways in which we can perform them. In our communities, social conventions specify deliberate transgression as one way in which we can

raise challenges to current social norms. But it is in principle possible that social norms could provide us with other, far less costly means of raising these challenges – even something as mundane as the expression of a distinctive utterance with just the right tone.<sup>87</sup>

For instance, in current American discourse, many deploy charges of racism or sexism in order to express demands that interlocutors reconsider the ways in which they represent race or gender relations. To be sure, many experience these charges as attacks on someone's character, as expressions of the speaker's view that the subject hates women or the members of particular races. But people often level charges of racism or sexism, not in order to impugn someone's character, but in order to call to that person's (or others') attention the shortcomings in her representation of race or gender relations. These expressions are not modes of pushing someone beyond the pale of respectable discourse, but of engaging discursively, of communicating the need to critically assess our representations of one another's personalities. But charges of racism or sexism still carry an edge to them. They do not merely inform our audiences of potential distortions in their conceptions of race or gender. They express reactive attitudes: They scold, and they convey resentment. They are speech acts through which people express demands that others recognize and respond to potential defects in their representations of the relations effective in our communities.

In general, we do not (or at least, need not) make claims on others' deference to our own judgments when we issue social challenges. When one person charges another with racism, she typically does not hope only to change his behavior, but to bring us to understand why this behavior is wrong. Sheer deference rarely suffices for understanding. Rather, social challenges

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<sup>87</sup> Not only would this make it easier for individuals to raise these challenges; it could also help to preserve the overall stability of the system. Performative irrationality is a particularly destabilizing act because it both expresses a challenge to current norms, and does so through the explicit violation of *other* norms. Revised conventions that provide us with the standing to raise challenges to current social norms without engaging in the deliberate and insistent violation of other norms could preserve their efficacy while rendering them considerably less dangerous.



typically involve claims on others' rational and discursive engagement. In this respect, the standing to issue social challenges is akin to the standing that legal subjects have to the judge's and jury's attention when they appear in court. This standing involves prerogatives to express one's views and to argue one's case, claims against certain forms of interference in the exercise of these prerogatives, and claims on the court's attention to what one has to say. The court has a correlative obligation to listen, to seek to understand, and to respond in its decision to the arguments made. Of course, the court might conclude that these are bad arguments, and the conclusions unwarranted. Similarly, after earnest engagement with certain challenges to current social norms, we might conclude that these challenges are not particularly compelling – that current social norms afford us adequate resources with which to recognize one another's moral claims, after all. But the situation is very different when we reach these conclusions after engaging earnestly with their demands – even when our conclusions turn out to be wrong – than when we ignore altogether the possibility that we misrepresent one another's moral personhood.

(c) *A right to recognition.* The standing to issue social challenges is a standing that we are owed as moral persons. It is the standing to demand others' recognition, not of our practical authority within any particular domain, but of the bare fact of our moral personhood.

To have a claim on something in general is, in part, to have the standing to command others' respect for that claim (Feinberg 1970). Public concepts construct our empirical personhood in part by affording us diverse social standings to command others' respect for claims that current social norms make available to us (see Chapter 2). But if these are the only social standings that public concepts make available to us, then these concepts construct us as at least akin to artificial persons, possessed only of empirical claims. (In critical terminology, it is to reify her current status relations, and so make her an "object," as hooks puts it.) In

acknowledgment of our moral claims, public concepts must afford us the standing to direct others' attention beyond these same public concepts, and toward the moral relations they purport to represent. They must afford us the standing to issue social challenges.

Moreover, the standing to challenge others' representations of our status relations in these ways would constitute a standing to participate in the discursive processes out of which the informal order arises. To be sure, it would not be a standing to choose the structure of the this order. It is not the status of a legislator. But when others adjust their responses to our words and actions in light of our challenges, their responses express new representations of our status relations. And, as I argued in Section 2(c), these expressions generate and sustain the informal norms effective in our communities. Over time, social challenges and the conversations to which they give rise suffice to redistribute informal status relations in ways that reflect the content of our challenges. So although the standing to challenge current social norms is not a right to decide the structure of our society, it is the status of an active participant in the discursive interactions out of which our social norms arise, whose interlocutors owe her attention and consideration.

Hank's social conditions detach his moral from his empirical personhood because they do not afford him adequate standing to challenge others to rethink their conceptions of welfare. This allows for the orientation of public concepts toward the exploitation of the working poor by owners of capital. And this orientation distorts the relationship between public concepts and Hank's moral personhood in a way that hides his moral personhood from public view. The processes out of which the informal order emerges may not result from the intentional direction of Hank's activities, but they are alien forces that we are now in a position to characterize as patently undemocratic.

## V. A NEW CONCEPTION OF LEGITIMACY

In Section 2, we characterized a Madisonian conception of legitimacy as non-domination of citizens by the state, and we saw that this conception of legitimacy does not afford us resources with which to make sense of Hank's complaint. But we have now made sense of Hank's complaint, and in the process, we have gained access to a new conception of legitimacy. On this new conception, legitimate norm-generating processes yield public concepts which represent subjects as moral persons, to whose claims these same public concepts are answerable; and they do so by affording subjects equitable standing to issue moral challenges to current norms, and by preserving spaces within which subjects might engage in the conceptual innovations that such challenges demand. Call this conception "legitimacy as recognition."

I have focused attention on the ways in which a conception of legitimacy as recognition avails us of resources with which to represent informal norm-generating processes as, in an important sense, undemocratic. In this section, I argue that this conception also affords us insights into the structures of legitimate political institutions and cultures. My contention is that legitimacy as recognition affords us all of the insights that legitimacy as non-domination affords us, and some more besides. While I will not be able to prove the contention here, I hope to adduce compelling evidence in its favor.

We can bring this conception of legitimacy to bear on political processes relatively straightforwardly. That is because the legal state does not merely direct subjects' activities by force, but claims authority over legal subjects (Raz 1985). In our terminology from Section 3, the legal state is an empirical person, possessed of the social standing to determine the distribution of (legal) status relations among its subjects. But it is not a moral person. Its claim on authority reflects, not its own moral claims, but those of its subjects. On a conception of legitimacy as

recognition, the legitimate state's claim on authority reflects all subjects' claims on the general recognition of their moral personhood. Legal codes and principles are apt to provide crucial public concepts by reference to which subjects exercise practical authority in their relations with one another. The legitimate state makes these codes and principles responsive to evidence that the public concepts they yield misrepresent subjects' moral personalities. It does so by supporting subjects' access to spaces within which they can engage in moral and political thought, communicate their insights to one another, and demand legal innovation in response to these insights. Legitimate law, then, requires a deliberative sphere capable of effecting legal change – not (only) in order to disempower those who would dominate us, but immediately, as essential to the preservation of our standings as moral persons within concrete communities.

It may be useful to sketch one familiar social phenomenon in contemporary American politics that threatens this legitimacy, and so to illustrate the kinds of insights that legitimacy as recognition makes available to us. Of course, some threats to legitimacy as recognition should be relatively obvious. Widespread illiteracy, a politicized media, political dependence on private finance, and maldistributions of voting rights all threaten the influence of reasoned deliberation on political change. But certain apparent allies to deliberative democracy – in particular, certain conceptions of free speech and of academic freedom – constitute subtler, and so more insidious threats to democratic legitimacy. The conceptions of free speech and of academic freedom that I have in mind give rise to contemporary critiques of “political correctness,” which allegedly attenuate the sphere of public discourse inappropriately. On the contrary, a conception of legitimacy as recognition allows us to see the ways in which these critiques threaten democratic legitimacy, by undermining oppressed people's public standings to issue certain kinds of social challenges.

In one of its central senses, “political correctness” purports to pick out rules of political discourse which prohibit participants from (for instance) making certain observations or using certain terms, on the grounds that the violation of these rules threatens a particular political concern (like a concern for racial equality) or interest group. Conceptions of political correctness current in the United States yield particular interpretations of a variety of speech acts. In particular, by reference to these conceptions, participants in political discourse interpret charges of racism or sexism as acts by which people enforce the rules of political correctness, in the way that a referee calls “Foul!” in a basketball game.

On this interpretation, charges of racism or sexism punish political incorrectness in order to protect concerns that are independent of, and potentially at odds with, our interest in the truth. These charges might sometimes punish people for their racial animus or misogyny. But they are liable also to punish people even when they are only “telling it like it is,” and so constrain our discursive spaces in ways that allegedly compromise public debate. This purportedly presents us with a trade-off between distinctive concerns for deliberative democracy and for racial or gender equality. Critics of a perceived culture of political correctness argue that these rules constrain public discourse illegitimately, limiting our abilities to speak freely about matters of public interest. After all (they allege), even if the prohibited observations were true, we could not make them without running afoul of the so-called “PC police.” But if we cannot talk about a real phenomenon (these critics urge), then we cannot develop the conceptual resources with which to make sense of it, let alone develop or advocate policies that respond to it. Deliberative democracy (these critics conclude) requires the abolition of these rules.

This critique, at least in broad strokes, is hardly new in American politics, and particularly visible versions of it have arisen in the defense of a kind of academic freedom. By

way of illustration, it may be useful to focus our attention on one historical case which is now long enough past that we have a fairly clear and uncontroversial sense of it. In an earlier era, Daniel Patrick Moynihan argued in a now infamous government report that the matriarchal structures allegedly predominant in African American communities psychologically damaged those who grew up within them, contributing to the emasculation of black men and (in turn) to the economic hardship in which black families generally were reported to live (Moynihan 1965). The report generated a complex response, which eventually coalesced into a series of backlashes among black sociologists (Ladner 1973), civil rights activists, and black feminists (Wallace 1999; hooks 2015). But sociologists Lee Rainwater and William L. Yancey defended the report, arguing that that scholars must resist the “constant pressure... to tailor their findings to preferred civil rights strategies,” lest they produce “apologetics and not social science” (Rainwater and Yancey 1967, xi). As historian Daniel Geary characterizes their position: “The moral obligation of scholars was to tell the truth, regardless of how uncomfortable or embarrassing that might prove for African American leaders or lower-class African Americans” (Geary 2015, 115). On this kind of view, the political critique of social science brings outside pressure to bear on ideally independent researchers, and so threatens the conditions of academic freedom that preserve scholarly integrity against inappropriate influence (see Droge 2005, 30), in ways that are roughly akin to the ways in which charges of racism or sexism purport to threaten our public discourse more generally.

But the interpretation of charges of racism and sexism on which these critiques rely diverge from, and are at odds with, the interpretation we sketched in Section 3(b). There, I argued that we sometimes issue social challenges through these charges, demanding that others subject their conceptions of race and gender relations to moral critique. This does not direct their

attention away from the truth, but toward it. It affords us resources with which to argue that the public concepts on which others rely yield a distorted perspective on reality, creating what Tommie Shelby calls “ideological illusions” (Shelby 2003, 166). We can see Moynihan’s vulnerabilities to these illusions quite clearly from our epistemically advantaged position: Sexist (patriarchal) conceptions of the family, and racist conceptions of the black family as an unnatural matriarchy, profoundly distorted Moynihan’s analysis, effectively blinding him to his own subjects. As Ralph Ellison once wrote: If a writer “accepts the clichés to the effect that the Negro family is usually a broken family, that it is matriarchal in form and that the mother dominates and castrates the male... well, he’ll never see the people of whom he wishes to write” (quoted in Geary 2015, 124). Through charges of racism and sexism, critics demanded that Moynihan (and others) recognize their subjection to these illusions, so that they might tear away the veil and acquire new public concepts apt for clearer vision.

Of course, Moynihan wrote in a different time, and many of us have shed his obviously objectionable concepts. But we cannot abandon the concern that we, too, are subject to similar illusions. Charges of racism and sexism afford others the standing to demand our attention to this possibility, and so preserve their standing as moral beings in a political community. Critiques of political correctness, far from defending deliberative democracy against a corrupting influence, threaten democratic legitimacy by framing these challenges inaptly, in ways that hide their underlying concern for the truth and deprive members of oppressed communities – in particular, the victims of race and gender oppression – of equitable standing to demand recognition of their moral personhood. Legitimacy as recognition requires free speech and academic freedom, but charges of racism and sexism do not threaten relevant forms of either.

I do not mean to argue here that a conception of legitimacy as non-domination cannot yield similar insights about the insidious effects of contemporary critiques of political correctness. (Whether they can will depend on the precise conception of domination on which we rely, and there are many on offer.) I mean only to show that a conception of legitimacy as recognition is as apt for the evaluation of our political culture as it is for the evaluation of informal norm-generating processes. It has all of the advantages of legitimacy as non-domination, and more besides.

## VI. CONCLUSION

I set out to make sense of a concern familiar from reflection on conditions of oppression: that oppressive conditions are, in a real sense, undemocratic. And I have done so by arguing that legitimate social orders do not only protect us from domination, but do so in ways that reflect the fact that, as moral persons, we have moral claims on practical authority over particular domains. The problem with conditions of oppression generally is that they detach our empirical personhood from these claims. They may confer on us a variety of social standings, and so make us persons of a kind. But in a crucial sense, these standings do not represent us as we are, but only as our particular system of oppression has made us. This is as true of oppressive legal systems administered by colonial administrations as it is of the informal social orders that construct us as members of particular races, that define the significance of our gender identities, or that cast us as moochers off of the state.



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