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Towards an Analysis of Social Hierarchy

NIKO KOLODNY*

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Much in our interior mental lives and in our exterior social structures presupposes that we, human beings, are conscious of social hierarchy, of differences in rank and status.¹ We are “conscious” of hierarchy in both senses of the word: “aware” of and “anxious” about.² This consciousness appears to be rooted in our natural history.³ Many social animals are likewise preoccupied with “pecking order.” These animals include not only chickens, who literally peck, but also our closest primate relatives.⁴

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1. I am grateful for comments from participants at the Institute for Law & Philosophy Conference, “Inequalities: Do they matter, and if so, which ones and why?” at the University of San Diego and especially for prepared comments from David Brink.

2. Cameron Anderson, et al., *Is the Desire for Status a Fundamental Human Motive? A Review of the Empirical Literature*, 141 *PSYCHOLOGICAL BULLETIN* 574 (2015).

3. Mark Van Vugt & Joshua Tybur, *The Evolutionary Foundations of Hierarchy: Status, Dominance, Prestige, and Leadership*, in *The Handbook of Evolutionary Psychology* (David M. Buss, ed., 2d ed. 2016).

4. FRANS DE WALL, *CHIMPANZEE POLITICS* (2007).

And this consciousness of hierarchy, transformed by our species' special bent for symbol and self-reflection, has driven much of our non-natural history. The main chapters of the human story might be defined by the prevailing answers to the questions of who among us, if anyone, would be above, and who, if anyone, would be below. For most of the career of *homo sapiens*, we lived in hunter-gatherer bands, and then pastoralist or settled tribes, which were vigilantly egalitarian, at least for adult men.⁵ As civilization was born, in several places and times, this was upended, with the great many being subordinated to the very few. Modernity is in large part the tale, at times inspiring, at times cautionary, of our experiments with reconciling the hierarchy of society with the equality of individuals.

Suppose this is all true. What question does it raise for philosophy, as opposed to social science? First, there is the analytical question of what we mean by "hierarchy." This paper answers that it consists in asymmetries of power and authority, as well as disparities of regard. Second, there is the normative question why, if at all, we should care. Perhaps hierarchy matters only insofar it breeds other evils: an unfair division of material goods, or heightened cortisol levels for those on the bottom rung. But what might follow if hierarchy should matter in its own right: if hierarchy—not in all forms, to be sure, but when not adequately tamed or managed—should itself be something to avoid or regret?

To situate the question, let us ask: What, in the most basic and general terms, may we ask of others? At a minimum, it would seem, we may ask that others respect the boundaries of our persons. We may ask, for example, that others not subject us to gratuitous violence. Beyond that, we may ask that, where it does not burden them too much, they make things better for us. We may ask, for example, that others help us to secure clean drinking water. That others respect the boundaries of our persons, and make things better for us, at least when it does not cost them too much, already is a tall order. It is an order so tall that perhaps no society has ever filled it for each of its members, or ever will. Indeed, it is an order so tall that one might be forgiven for stopping there, and so overlooking that we also ask for something further and distinct. However, I doubt that we can fully understand our own moral sentiments unless we recognize that we ask for something further and distinct. We ask that others not make us their inferiors, or anyone else's. This is to say that I suspect that many commonplaces in our social and political thought can't be fully explained by appeal to "rights against invasion"—that others respect the boundaries of our person—or by appeal to "interests in improvement"—that

5. CHRISTOPHER BOEHM, *HIERARCHY IN THE FOREST* (2001); KENT FLANNERY & JOYCE MARCUS, *THE CREATION OF INEQUALITY* (2014).

others make things better for us. Nor can these commonplace claims be explained by a combination of rights against invasion and interests in improvement. There is a stubborn residue left unaccounted for. And I conjecture that it is accounted for by claims against standing in a relation of inferiority to another natural individual. I leave the pursuit of this conjecture, about the normative significance of inferiority, largely to other work. In this paper, I try to make some progress on the analytical question of what relations of inferiority are, with special attention to what I call “disparities of regard.”

I. RELATIONS OF INFERIORITY: THREE ABSTRACT CONDITIONS, TWO PARADIGMS

To start, we can give at least three necessary conditions of relations of inferiority. Abstract though they are, they do considerable work, even without further specification. First, relations of inferiority involve genuine relations. These relations need not be face-to-face encounters. But they must involve interactions of some kind or at least co-membership in a common society. So, on the one hand, there are no relations of inferiority between people who live in altogether different times and places. You, reader, stand in no relation of inferiority to the ancient Egyptian pharaoh, Ramesses the Second. On the other hand, it is not sufficient for a relation of inferiority simply that some have more, or are better off, in itself. The mere fact that some contemporary, in your society (let alone someone living in an altogether different time and place) discreetly enjoys, in the privacy of their own home, some labor-saving convenience that you don’t enjoy does not put you in a relation of inferiority to them. (This is not to deny that you can have improvement complaints against the long-dead Ramesses, or provoked by your more inconvenienced contemporary. Perhaps Ramesses, or whoever better inconvenienced your contemporary, could have improved your situation, without unfairness to others, but failed to do so.)

Second, relations of inferiority involve an unequal ranking. There is one party who can be identified as higher in the hierarchy, the other as lower. One is above, the other, below. Third, relations of inferiority are relations between individual, natural persons. They are not relations between an individual, natural person and an artificial person, or collective, or force of nature. The second point, that relations of inferiority involve unequal rankings, partly explains the third point, that they are not relations between individual natural persons and entities of an entirely different moral category, such as a force of nature, or a collective or artificial person. What would

it even mean for you to have equal, inferior, or superior status with a hurricane? Of course, we can make sense of a difference in power between you and a hurricane. A hurricane can have effects that you can't. The question is whether the difference in power constitutes something further that is of concern, something that we want to describe as, say, subordination, or whether it is just a difference in power. Similarly, what would mean to say that you have equal, inferior, or superior status with a collective or artificial agent, such as Indonesia, or the Roman Catholic Church, or Procter and Gamble? Again, we can say that a collective, such as the state, can have greater power over you. But is there a question of the state itself having inferior, superior, or equal status in relation to you? It seems to me a kind of category mistake.⁶ If I am the equal of the City of Albany, the State of California, and the United States, and if equality is transitive, would the city, state, and nation then be equals? And if it doesn't make sense to have equal status with a collective, what sense does it make to be unequally ranked—as opposed to neither equally nor unequally ranked—with respect to a collective?

So we have some abstract necessary conditions of relations of inferiority. Here is another point of entry. We can identify relations of inferiority by their two most extreme forms. On the one hand, there is *bondage*, epitomized by the relation between slave and master. Here the republican epithets of “domination” and “dependence” apply most readily and with the least qualification. On the other hand, there are cases of *caste*, epitomized by the relation of Dalits to Brahmins, or Blacks to Whites under Jim Crow. Caste consists in the stratification of classes across a society. While bondage and caste often travel together, they can come apart. There might be an isolated relation of bondage between two individuals, without the inferior in that relation belonging to some caste that is recognized as lower in the broader society. If a Gothic slave slips the fetters, and speaks Latin without an accent, perhaps he can blend in.

Now—and I can't emphasize this enough—I am not claiming that all instances of relations of inferiority are, or are morally equivalent to, instances of bondage or caste. Rather, I am saying that bondage and caste are extreme forms: aggravated cases of the pathology, which might instruct us about milder cases. They are cases in which the constituents of relations of inferiority are particularly intense or pronounced, and where the factors that elsewhere “temper” such relations, as I will put it, are sparse or absent.

6. This is not to deny that one may stand in a relation of inferiority to each of several individuals in virtue of the asymmetric power and authority that they each enjoy in virtue of their membership in a collective, as when a family collectively “owns” a slave.

II. POWER, AUTHORITY, AND REGARD

What do relations of inferiority consist in? Put another way, what are these admittedly extreme examples, bondage and caste, extreme examples of? I suggest that Loman's standing in a relation of inferiority to Hyman consists in one or several of the following five things.

First, Loman's standing in a relation of inferiority to Hyman can consist in Hyman's enjoying an untempered *asymmetry of power over* Loman: that Hyman has greater power over Loman than Loman has over Hyman. Hyman has greater power over Loman insofar as, first, Hyman has the capacity to make decisions to affect Loman more significantly and, second, Hyman faces lower cost or difficulty in making these decisions. This power need not be to interfere in Loman's choice, or to invade Loman's person or property. The power might be of another kind, such as to withhold goods from Loman or shape Loman's environment.

Second, Loman's standing in a relation of inferiority to Hyman can consist in an untempered *asymmetry of de facto authority over* Loman: that Hyman has greater de facto authority over Loman than Loman has over Hyman. Hyman has greater de facto authority over Loman, first, insofar as Hyman can command a more significant range of actions from Loman; second, insofar as Hyman faces lower cost or difficulty in making these commands; and third, insofar as Loman is more likely to obey. By "commands," I mean, at a minimum, that Hyman's directives are not presented as advice, which merely informs Loman of reasons that would have obtained even in the absence of the command. By "obey," I mean at least that Loman performs the commanded action at least partly because it was commanded. However, the authority is "de facto" in the sense that the commands need not create, or claim to create, or be believed to create, reasons, let alone moral reasons, for compliance. People may be acting out of habit, or to avoid punishment, or to preempt a contretemps, or because the command has solved a coordination problem. For brevity, I will drop the qualifier, "de facto," taking it to be implied.

Third, Loman's standing in a relation of inferiority to Hyman can consist in Hyman's enjoying an untempered *asymmetry of power in comparison with* Loman: in Hyman's having greater power *over others*, in some group to which Hyman and Loman both belong, than Loman has over those same others. Note that what matters is Hyman's greater power *over others* than Loman, not simply Hyman's greater power *over things* than Loman. My neighbor with his larger capacity washing machine has greater power than I have, at very least to wash larger loads in one go.

But my neighbor does not have greater power over me or greater power than me over others, unless he somehow uses his surplus capacity as leverage.

Fourth, Loman's standing in a relation of inferiority to Hyman can consist in Hyman's enjoying an untempered *asymmetry of authority in comparison with Loman*: in Hyman's having greater authority over others, in some group to which Hyman and Loman both belong, than Loman has over those same others.

Finally, Loman's standing in a relation of inferiority to Hyman can consist in an untempered, *unmerited disparity of regard*: that Hyman enjoys, whereas Loman does not, certain kinds of favorable responses from others in some group to which they both belong, such as, among other things, respect, courtesy, a willingness to serve interests.

The specification of these five constituents of relations of inferiority explains and gives content to the first abstract feature listed in the previous section: namely, that relations of inferiority presuppose genuine relations between people. To the extent that Hyman and Loman do not interact, Hyman cannot have greater power or authority over Loman. And where Hyman and Loman do not come under the same appraising eye, Hyman cannot enjoy greater authority over others or higher regard than Loman. For that requires that there is a common judge, Miro, of Hyman and Loman who responds more readily to Hyman's commands or regards Hyman more highly.

This indicates some structural differences among constituents of relations of inferiority. On the one hand, we might divide the constituents in terms of their association with the paradigms of bondage and caste. What bondage carries to extremity is Hyman's having greater power and authority over Loman, whereas what caste carries to extremity, by contrast, is Hyman's enjoying greater power, authority, or regard than Loman. On the other hand, we might divide the constituents in terms of their dependence on the responses of a third party, Miro, to Hyman and Loman. In order for Hyman to have greater authority over others than Loman, there must be some Miro who complies more readily with Hyman's directives than with Loman's. And in order for Hyman to enjoy higher regard than Loman, there must be some Miro who regards Hyman more favorably than Loman. By contrast, Hyman can have greater power or authority over Loman, or greater power over others than Loman, without the responses of any Miro.

With five different constituents of relations of inferiority, which, as we have seen, can be grouped in different ways, with what right do we still view relations of inferiority as a unified category? Or, pragmatically setting aside questions of right, with what expectation of illumination do we view relations of inferiority as a unified category? For all of these differences among constituents of relations of inferiority, they still share

the abstract features identified in the previous section: they presuppose genuine relations, they are unequal rankings, and they are between natural individuals. And, most importantly, they are all targets of complaints, on behalf of those set in the inferior position.

III. THE PRIMARY TEMPERING FACTORS

We have so far defined relations of inferiority as consisting in asymmetries of power and authority, and in disparities of regard. And we have suggested that those who find themselves in the inferior position, at least, have claims against standing in it. But surely this is too broad as it stands. Not every asymmetry of power and authority, and not every disparity of regard, gives rise to an objection. Such asymmetries and disparities are everywhere, in clubs, schools, mass transport, and houses of worship. Flight attendants and college professors, for example, tell passengers and students what to do. We greet these asymmetries and disparities more or less with equanimity. What's more, we don't always view those asymmetries or disparities as bitter compromises, concessions to necessity, or the tragic price paid for efficiency. Indeed, such asymmetries or disparities, between mentor and mentee, priest and parishioner, and so on, may be constitutive of social forms that we find valuable in themselves. So how can it be said that asymmetries of power and unmerited disparities of regard are objectionable or regrettable? As Berlin observes, "Even the most convinced social egalitarian does not normally object to the authority wielded by, let us say, the conductor of an orchestra. Yet there is no obvious reason why he should not."⁷

We greet these asymmetries and disparities with equanimity, I suggest, because of certain *tempering factors* which we tend to take for granted, noticing them only by their absence. These tempering factors bound, contextualize, or transform these asymmetries or disparities so that they count less, or not at all, as objectionable relations of inferiority. What constitute objectionable relations of inferiority, therefore, are not asymmetries of power and authority and disparities of unmerited regard, but rather untempered such asymmetries and disparities. The idea is not that these tempering factors somehow outweigh or compensate for the bad of inferiority. The idea is instead that when these tempering factors are present, the asymmetries and disparities are not a bad, or less of a bad, to begin with.

7. Isaiah Berlin, *Equality*, 56 PROCEEDINGS OF THE ARISTOTELIAN SOCIETY 301, 313 (1956).

In this section, I lay out what I call the “primary tempering factors.” Before listing these, some general comments. First, we can identify certain tempering factors by noting that when they are present, the asymmetries and disparities are further from the paradigms of caste and bondage. Second, we can identify other tempering factors by noting that when they are present, the superior power or authority is less that of another natural individual, with whom one has a claim to equality. Finally, even when the factors temper disparities and asymmetries in a scalar way, by making disparities *further* from the paradigms of caste and bondage or by making the superior power or authority *less* that of another natural individual, the tempering factors, as they accumulate, can have a dichotomous effect. A threshold may be crossed beyond which the tempering factors make the asymmetry or disparity no longer such as to ground a claim against inferiority at all.

A first tempering factor, *episodic character*, is that the asymmetries or disparities arise only in chance, one-off encounters, instead of being entrenched in an established, ongoing social structure. For example, in an upbeat mood, a benefactor, Benny, might offer supererogatory help to a stranger, Indy, such as giving Indy a lift without any plan to do the same for another stranger, Altra. Benny performs a “random act of kindness.”⁸ This may be an unmerited disparity of regard, but it is tempered by the fact that there are no established, ongoing relationships among Benny, Indy, and Altra constituted by these fleeting interactions. (It is compatible with this, however, that there are other established, ongoing relationships among the trio. It is just that if there are other relationships, they are constituted by something other than these fleeting interactions. For instance, Benny, Indy, and Altra might stand in the established, ongoing relationship of co-citizen, which is constituted by the interactions of each of them with the same state.)

A second tempering factor, *context limitation*, is that the asymmetries or disparities are limited to certain contexts, including certain times and places. Teachers might only be able to tell students what to do in class, and only for a given semester or course of schooling. Flight attendants might be able to tell passengers what to do only for that interval between when they board and deboard the plane.

A third tempering factor, *content limitation*, is that the asymmetric power or authority is limited in content: that is, in what can be done or commanded.

A fourth tempering factor, *escapability*, is that the asymmetries or disparities may be escapable, at will, with little cost or difficulty. To take an extreme case, if one can exit a slave contract at will, then it is not clear in

8. Thus becoming what the Random Acts of Kindness Foundation calls a “Raktivist.”

what sense one really is enslaved. Another way of putting this is to say that what matters for relations of inferiority is not so much inequality in exercised power or authority, and actual regard, but instead inequality of opportunity for power, authority, and regard, where equality of opportunity is understood not as equal *ex ante* chances to end up on the winning end of the asymmetry or disparity, but instead as retained freedom to exit the relations in which the asymmetry or disparity arises. The point is not that while being on the losing end of asymmetries or disparities is always a burden, one forfeits one's complaint when the burden is self-imposed—that one has no one to blame but oneself.⁹ It is rather that the freer one is to exit what would otherwise be an objectionable relation of inferiority, the less it seems an objectionable relation of inferiority to begin with.

A fifth tempering factor, *higher-level equality*, has two parts. First, the asymmetries or disparities are, first, not *final*; they are themselves regulated by higher-order decisions, such as a court of appeal, or a decision further up the chain of command. Second, these higher-order decisions are not themselves marked by asymmetry or disparity. What managers can ask of workers, for example, might itself be regulated by bargains struck at the start of each year. In brief, inequality at a lower level in a decision-making hierarchy is tempered by equality at a higher level. It tempers whatever hierarchy there is, that it is regulated from a standpoint of equality.

The last tempering factor, *egalitarian relationship*, is that the people in the relationship marked by the asymmetry or disparity might also stand as equals (such as enjoying equal consideration) in some other recognized relationship. Once the plane lands, passenger and flight attendant are simply private citizens looking for ground transportation. Once the whistle blows, boss and workers are simply private citizens wondering what's for dinner.

This helps to explain why the extreme cases of caste and bondage are extreme: namely, that these primary tempering factors are absent. Bondage, for its part, involves virtually unlimited power and authority over another. Castes, for their part, are woven into the fabric of social relations; they are not cabined to any one time, place, or context; they cannot be exited; and they often preclude any other recognized relationship within which one is the equal of all the others in one's society.

9. So this is not a form of what Lippert-Rasmussen calls "luck relational egalitarianism." See KASPER LIPPERT-RASMUSSEN, *RELATIONAL EGALITARIANISM* 7 (2018).

IV. DISPARITIES OF REGARD

We begin with some general remarks about the genus of disparities in regard, before turning to its three species: disparities of esteem for particular qualities and achievements, disparities of consideration for persons, and purely expressive disparities.

First, recall that a disparity of regard between Hyman and Loman is always relative to some judge, Miro, who regards Hyman more favorably than Loman. Moreover, how far Miro's regarding Hyman more highly than Loman contributes more to Loman's inferiority to Hyman depends on who or what Miro is. In general, higher regard from a person or body that wields greater power or authority, or from a person who themselves enjoys higher regard, counts for more than higher regard from a person or body that wields lesser power or authority, or from a person who themselves enjoys lesser regard. To be the favorite of a superior is itself a kind of superiority.

Second, disparities in regard are to be distinguished from agent-relative partiality. Simply believing that a special relationship to one's friend or child gives one agent-relative reason to serve their interests, which one does not similarly have to serve the interests of strangers, does not make for a disparity of regard. To see one person and not another as a friend, for example, is not to regard the latter as though they belonged to a lower stratum. In social hierarchies marked by disparities of regard, by contrast, people regard members of the higher stratum more highly than members of the lower stratum, regardless of any further relationship to them.

Third, some disparities in regard are merited, whereas others are unmerited. In the case of a merited disparity of regard, Miro regards Hyman more highly than Loman in some respect because, first, Miro accurately judges that they differ in some respect and, second, it is constitutive of Miro's properly understanding and appreciating certain independent values that, on the basis of Miro's judgment that they differ in that respect, Miro should regard Hyman more highly than Loman in that respect. It is constitutive of understanding and properly appreciating musicality, for example, that one appraises a more musical person more highly, as musical, than a less musical person. It is only unmerited disparities of regard, not merited disparities, that make for objectionable relations of inferiority. No doubt, a merited disparity can be said to constitute a social hierarchy of a kind, and people may care intensely about their relative position within this hierarchy of merit. But it does not make for relations of inferiority against which anyone has a complaint.

Finally, often when there is an unmerited disparity of regard between Hyman and Loman, Hyman attracts higher regard because Miro believes Hyman to have (or to have to a greater degree) and Loman to lack (or to

have to a lesser degree), a certain *basing trait*, such as having no close ancestor with dark skin, tracing a noble lineage, being blessed with divine favor, or simply belonging to the conquering side. In such cases, Miro gives Hyman higher regard than Loman because Miro judges that Hyman has the basing trait whereas Loman lacks it. However, Miro need not believe that the basing trait justifies the higher regard in any further sense. More generally, an unmerited disparity of regard need not be based on a belief that there is noninstrumental reason for the disparity. For example, Lackey might be conspicuously solicitous of Patrón's interests, out of pure self-interest, simply to curry favor. Accordingly—and this is a point that bears emphasis—it is not necessary for an unmerited disparity of regard that it be believed that the social inferiors are unworthy of the greater regard that the social superiors receive. So, in particular, it is not necessary that it be believed that because the social inferiors lack some relevant basing trait, they are not fully human, have lesser basic or fundamental moral status, or have interests and claims of lesser weight.¹⁰ Miro can regard Hyman more highly than Loman from motivations that do not depend on any such belief. Miro may be responding from unthinking habit. Miro may be temporizing or responding strategically (such as by catering to the interests of Hyman because of his greater purchasing power) whether out of self-interest or for more altruistic reasons. In order to ease the work of organizing who does what or who tells what to whom, Miro may be relying on salient coordination points (such as that others are likely to defer to the White man in the group, whether or not he is otherwise the best person to lead it¹¹), or importing distinctions or emulating models with which Miro is familiar elsewhere.¹² Or, last but not least, people can simply take pleasure in belonging to the in-group, or in triumphing over those whom they have defeated, as they themselves acknowledge, only by the whims of fortune, without any illusion that their superiority has some deeper justification. To overlook this is to underestimate the human genius for social distinctions.

It might be objected what appears to be an objection to a comparative, unmerited disparity of regard between Hyman and Loman is simply an objection to a noncomparative withholding of merited regard for Loman.

10. Compare Kate Manne, *Humanizing Hatred*, in *DOWN GIRL* 133, 133–76; contrast Deborah Hellman, *WHEN IS DISCRIMINATION WRONG?* 38 (2008) and Daniel Viehoff, *Power and Equality*, in 5 *OXFORD STUDIES IN POLITICAL PHILOSOPHY* 1, 19 (2019).

11. CECILIA RIDGEWAY, *STATUS* (2019).

12. CHARLES TILLY, *DURABLE INEQUALITY* (1998).

Loman's objection is not to being regarded less highly than Hyman in comparative terms, but instead to not being regarded less highly than Loman merits in absolute terms. A number of replies are in order here. First, what sort of regard Loman merits, in absolute terms, may be underdetermined. There may be a range of responses that count as regarding Loman adequately given Loman's merits, in absolute terms. Suppose that Loman is so regarded. Still, it seems that Loman may have an objection if Hyman is more highly regarded despite having no greater merit. Second, suppose, as a baseline, that Loman and Hyman are not adequately regarded given their equal merits. Then suppose that Hyman, but not Loman, is then adequately regarded. If the objections were only to non-comparative withholding of merited regard, then this would only remove an objection. But instead it seems to add an objection that wasn't there before: namely, Loman's objection that while Hyman is adequately regarded, Loman is not. Finally, suppose that Loman is not adequately regarded, in absolute terms, given his merits. Does Loman have an objection, of any moral weight, about this? Where the inadequate regard takes the form of consideration for persons, Loman may well have an objection of a moral character. But where the inadequate regard takes the form of esteem for particular qualities and achievements, one might wonder. Suppose, for the sake of argument, that we grant that there is some identifiable threshold of esteem that every composer of a given caliber merits at a minimum. Suppose that every composer of that caliber is equally esteemed, but at some degree below that threshold (whatever that might mean). Do those composers have a moral complaint about this deficit in esteem? That's what I wonder. By contrast, the complaint takes on more of a moral character, or so it seems to me, when some, but not others, of those composers are esteemed more highly. All the more so when the disparity in esteem tracks a basing trait such as race or gender.

V. ESTEEM FOR PARTICULAR QUALITIES AND ACHIEVEMENTS

We distinguish three broad kinds of disparity of regard: disparities in esteem for particular qualities and achievements, disparities in consideration of persons, and purely expressive disparities. Esteem for a person's particular qualities and achievements consists in positive appraisal of, and expression of positive appraisal of, certain (actually or merely supposed) independently valuable qualities that they possess, such as grace or beauty, or (actually or merely supposed) independently valuable achievements that they have attained, such as acquired skills or contributions to industry or medicine, letters or science, art or sport.

Note, first, that such esteem need not have any further practical upshot. It need not incline the appraiser to do anything beyond simply favorably appraising the qualities and achievements and expressing that

appraisal.¹³ In particular, it need not incline the appraiser to the responses that we describe in the following section as “consideration.” And note, second, that such esteem can be focused on the quality or achievement itself. It need not spread to the person as a whole. We can appraise a sprinter highly along the dimension of speed, for example, without this bleeding into our responses toward him as a whole.

Esteem for particular qualities and achievements is, in general, the sort of thing that a person can merit. Where a disparity in esteem is merited, it need not make for a relation of inferiority, about which the person who enjoys less esteem has a complaint. This is, of course, not to deny that such merited disparities in esteem might be regrettable in other ways. To be sure, to lack a quality or achievement, especially one that one has sought, can give one reason to be disappointed or to count oneself a failure. At very least, one lacks reason to feel satisfied or to count oneself a success. And to be without that quality or achievement just is not to merit, non-comparatively, esteem for it. It is another question whether one has distinct reason to feel bad, in a further way, about either the comparative fact that others have, whereas one lacks, the quality or achievement or the further comparative fact that they enjoy, whereas one does not, merited esteem from others for having it. In a suitably philosophical frame of mind, one might be puzzled about what such distinct, comparative reasons could be. One might look on Oscar ceremonies and Olympic podia, as it were, with bemusement. It is clear why one should care that one lacks the quality or achievement. But why, one might wonder in this philosophical mood, should one care whether others have it? There is no denying, of course, the psychological fact that such comparisons do make people feel bad. They are a source of anguish for strivers everywhere. (For the author bigtime.) Perhaps while these comparisons don’t give people reason to feel bad in a further way, they nevertheless draw their attention to what we have granted they already have reason to feel bad about: namely, the lack of the quality or achievement itself. In any event, there is reason to reduce this psychic harm, by broadening the range of qualities and achievements for which people can gain merited esteem¹⁴ and by reducing the salience, fat least to those who merit less esteem, of the disparities,

13. W.G. Runciman, “*Social*” *Equality*, 17 *PHIL. Q.* 221, 225 (1967).

14. JOSEPH FISHKIN, *BOTTLENECKS*, ch. 3 (2014).

perhaps by what Rawls¹⁵ called “non-comparing groups.”¹⁶ However, to say that there is reason to take such steps to mitigate the suffering that might be caused by beliefs that one merits less esteem, or even that those who suffer might have a complaint when those steps are not taken, is not to say that those who merit less esteem have a complaint about meriting less esteem itself, or enjoying only so much esteem as they merit itself.

Be this as it may, there can also be *unmerited* disparities in esteem of qualities and achievements, and these can be partly constitutive of relations of inferiority. Often these unmerited disparities in esteem track a basing trait, such as gender. Part of what makes a culture sexist, for example, is that it systematically overlooks or discounts the intellectual or leadership contributions of women, in comparison with men (which does further harm, for example, by suggesting that women can gain esteem only for other qualities or achievements, such as physical attractiveness or nurturing others).¹⁷

“But,” one might protest, “is this not absurdly over-general? Surely, there need not be a relation of inferiority whenever there is a mistake, even an honest one, in comparative appraisal of qualities or achievements!” Agreed, but here, as elsewhere, it is crucial to remember the tempering factors, such as episodic character. Granted, accidental, isolated unmerited disparities of esteem, which are not woven into the fabric of ongoing social relations, will not make for objectionable relations of inferiority. However, the systematic discounting of the intellectual or leadership contributions of women, for example, is not tempered in this way. It is systematic and so grounds a complaint.

VI. CONSIDERATION FOR PERSONS

The second genus of regard is what we might call “consideration for persons.” I begin by listing some species of consideration for persons. Then I will identify some characteristics of the genus of consideration for persons and distinguish it from esteem.

First, consideration for a person consists, in part, in treating them with courtesy and politeness. Thus, a disparity in consideration for persons will consist in treating some with greater courtesy than others. In some cases, Miro may not only treat Loman comparatively with less courtesy

15. JOHN RAWLS, *A THEORY OF JUSTICE* 470 (rev. ed. 1999).

16. Carina Fourie, *To Praise and to Scorn: The Problems of Inequalities of Esteem for Social Egalitarianism* 87–106, in *SOCIAL EQUALITY: ON WHAT IT MEANS TO BE EQUALS* (Carina Fourie et al, eds. 2015); T.M. SCANLON, *WHY DOES INEQUALITY MATTER?* 32–36 (2017).

17. For this reason, I find the first half Runciman’s “maxim” of social equality, “free inequality of praise, no inequality of respect” too hasty. See Runciman, *supra* note 13, at 221.

than Hyman, but also non-comparatively with insufficient courtesy. In the latter case, Loman might have an independent, non-comparative objection to Miro's treatment, quite apart from an objection to the relation of inferiority constituted by the comparative disparity in courtesy. However, not every disparity in courtesy need involve Loman's receiving insufficient courtesy. Miro might show Hyman, as it were, supererogatory courtesy.¹⁸ Indeed, there may be no fact of the matter whether such and such amounts to sufficient courtesy in absolute terms. The only question to ask may be whether it is the same courtesy that others receive in these parts.

Second, consideration for a person consists, in part, in serving a person's interests, which include not only interests in improvement, but also the interests that underlie rights against invasion. Again, where there is a disparity of concern for interests, Miro may display not only comparatively less concern for Loman's interests than for Hyman's, but also insufficient non-comparative concern for Loman's interests. In such cases, where the insufficient concern may take the form of unjustified violence or an unfair distribution of resources, the non-comparative wrong of this insufficient concern will, entirely appropriately, loom much larger. But not every disparity in concern for interests need involve Loman's receiving insufficient concern. Miro might show Hyman, as it were, supererogatory concern. To illustrate this possibility, consider a set of admittedly stylized contrasts. Imagine, first, the Cold Society, in which every private person treats every other private person well enough that no one has any improvement complaint, but does nothing more for anyone. Now contrast it with the Warm Society, in which everyone takes every opportunity to do more for everyone. Supererogation is the norm. Your neighbors help you move in, hold doors when you are struggling with groceries, drive your kids to school when you've slept through your alarm, etc. Some in the Cold Society might well prefer that their society were more like the Warm Society. But none of them, even someone prepared to innovate, has a complaint (or much of one, at any rate) against anyone else. But now imagine the Half-Warm Society. Everyone now treats right-handed people in the ways that everyone treats everyone in the Warm Society, while treating left-handed people in the ways that everyone treats everyone in the Cold Society.¹⁹

18. An Oxfordian, for whom I had held the door rather too long, in his opinion, once chastised me for being "exceedingly civil."

19. If this occurred in competitive contexts, then the pattern of differential treatment would worsen the opportunities of the left-handed in absolute terms. But let us suppose that it does not occur in competitive contexts, only in noncompetitive contexts.

The left-handed in the Half-Warm Society have no non-comparative, improvement complaint—or at least no more than anyone has in the Cold Society. But still they would seem to have a comparative complaint. Indeed, the situation described seems to be one of systematic private discrimination.

Third, consideration for persons consists, in part, in recognizing them as moral agents, who owe things to others; as moral patients, who can be owed things by others; and as members of the moral community, who have standing to blame others for wrongs done others. Here a disparity in consideration would consist in Miro holding, in the absence of any independently justifying difference between their situations, (i) that Hyman would be wronged by a wider range of actions than Loman would be; (ii) that, although Hyman can wrong others, Loman would wrong others by a wider range of actions than Hyman would; and (iii) that Hyman has standing to blame others for a wider range of wrongdoing than Loman has.²⁰ In the case of such disparities, it is likely that Miro will be simply mistaken about what someone owes, or is owed, or has standing to blame others for. In that case, someone may have a non-comparative objection. For example, suppose that in holding that Loman would wrong Vic by an action that Hyman would not, Miro is mistaken in holding that Hyman would not wrong Vic by that action, while nevertheless is correct in holding that Loman would wrong Vic by that action. Then Vic has a non-comparative objection: namely, that Miro fails to recognize what Vic is owed by Hyman. However, it seems that Loman also has a comparative objection, about the fact that Miro regards Hyman as not bound by the same moral requirements as Loman.

Fourth, there can be a disparity of consideration in social norms or expectations of behavior, which may not be, or be thought of as, moral requirements. By a “social expectation that X do Y,” I mean, roughly, either that others are disposed to sanction X for failing to do Y, perhaps if only by ridicule, shunning, or disapproval, or that others (and perhaps X too) view X’s failing to do Y as in some sense inappropriate or out of order around here—at very least, the sort of thing that, whether or not in some deeper sense inappropriate, risks, around here, a social encounter out of joint. Here a disparity of consideration would consist in having a more restrictive set of social expectations on Loman’s behavior than on Hyman’s, as in Runciman’s example where “civilians never speak to soldiers until spoken to.”²¹ There is a difficulty here, however. In many cases, the social expectations on the intuitively more highly regarded can be more, or at least no less, restrictive than the social expectations on the

20. R. Jay Wallace, *Hypocrisy, Moral Address, and the Equal Standing of Persons*, 38 PHIL. & PUB. AFFAIRS 307 (2010); LIPPERT-RASMUSSEN, *supra* note 9, at ch. 4.

21. Runciman, *supra* note 13, at 228.

intuitively less highly regarded. The social expectations of the two castes are just different. In such cases, I suggest, insofar as the difference in social expectations constitutes a disparity of regard, it is as a purely expressive disparity, which we will consider in the next section.

Fifth, consideration for a person consists, in part, in trusting them by default. Trusting people by default might be thought of as the reverse of what Moreau calls “censure.”²² Her example of censure is assuming that any Muslim must sympathize with terrorism or extremism. That is, I would say, a disparity of consideration: namely, the withholding of default trust extended to others.

Sixth, consideration for a person consists in simply noticing and attending to them. It is not for nothing that, in social scientific studies, one of the main indices of social rank is simply “visual attention received.”²³ Consider Moreau’s insightful discussion of “structural accommodation,” architecture, literal and social, that presupposes that the needs, interests, and abilities of a privileged group are normal: such as the ability to climb stairs to access spaces otherwise open to the public.²⁴ To be sure, those unable to climb stairs presumably have an improvement complaint about this. Their situation could be improved, without unfairness to others. However, they have a further complaint about the fact that this simply fails to see them or to take their needs into account, while seeing and taking into account the needs of the privileged group. I would say (although Moreau herself argues against this interpretation) that this counts as a disparity of consideration, where the consideration in question consists in seeing someone and taking their needs into account.

Finally, consideration for a person consists in attending to their particular attributes, and so treating them as individuals. Notice that treating people as instances of stereotypes, rather than as individuals, is possible even when the stereotypes are otherwise favorable. Eidelson gives the example of assuming that a female Asian-American musician who has a technically imperfect audition must just be having a bad day.²⁵ I suggest that failing to treat

22. Sophia Moreau, *FACES OF INEQUALITY* (2020).

23. Joey Cheng & Jessica Tracy, *Toward a Unified Science of Hierarchy: Dominance and Prestige Are Two Fundamental Pathways to Human Social Rank*, in *THE PSYCHOLOGY OF SOCIAL STATUS* 7, 13 (Joey Cheng, Jessica Tracy & Cameron Anderson eds., 2019); RIDGEWAY, *supra* note 9, at 9, 10.

24. Moreau, *supra* note 22.

25. Benjamin Eidelson, *Treating People as Individuals*, in *PHILOSOPHICAL FOUNDATIONS OF DISCRIMINATION LAW* (Hellman & Moreau, eds. 2013).

someone as an individual matters, when it does, because it contributes to a disparity of consideration, where the relevant form of consideration is precisely attending to people's particular traits, whether chosen or unchosen. The disparity of consideration, in other words, consists in one's attending to the individual traits of some people, but not of others. This is, I suspect, part of what is meant by saying that Whiteness is "invisible" or "weightless" in a way in which Blackness is not. If you are White, then others "see through" the pane of Whiteness to your particular qualities. If you are Black, then that is all others see. Their sight never reaches your particular qualities, since the reflection on dim pane of stereotype is too fictitiously vivid. Why should this matter, especially if the individual traits that are overlooked in your case, but attended to in the case of others, are defects? Among other things, it matters because people whose particular traits are not attended to are thereby disbarred from forms of association, such as love and friendship, that require attention to particular traits. In other words, to view people as merely instances of a stereotype, even a favorable stereotype, is to keep them always at a distance. It also matters because it keeps others from recognizing one's particular qualities and achievements. If they assume that one has these desirable traits by default, then one's traits are never seen, only, as it were, veridically hallucinated. It is a disparity of consideration, we submit, when members of the majority or favored protected class treat one another as individuals, attending to their particular qualities, while treating members of the minority or disfavored protected class as merely instances of a stereotype, even if it is the stereotype of a "model minority."

Having now given a list, which may not be exhaustive, of the species of consideration for persons, we can now say something more general about the genus of consideration for persons and about how it differs from esteem for particular qualities and achievements. First, consideration of persons typically aims at some practical response to the person, whereas esteem can be mere detached appraisal, of the sort that an uninvolved spectator might make, such as that Genghis Khan was an able archer. Second, consideration for persons, unlike esteem for particular qualities or achievements, is not focused on specific, distinguishing traits, but instead extends to the person as a whole. Even when higher consideration for Hyman tracks a basing trait, the consideration focuses not on the trait itself, but spreads to Hyman as a person. Because Herr Geldsack has the trait of high net worth, for example, one is particularly courteous to him and solicitous of his interests.

Third, at least in egalitarian cultures, equal consideration for persons is extended by default, without prior appraisal of any distinguishing traits. Finally, and relatedly, consideration, unlike esteem, is rarely something that a person merits because of anything distinctive about them. Insofar

as a person “merits” consideration, it is, for the most part, simply in virtue of being a person. Accordingly, most *disparities* in consideration of persons will be *unmerited*. However, there may be some exceptions. Perhaps there are withdrawals of at least certain forms of consideration from a person that are merited by what one subsequently learns about their character or conduct. For example, it may no longer be fitting to hear Flake out, because he has shown himself to be untrustworthy, or it may be fitting to withdraw goodwill from Mustache, because he has seriously wronged others.

With esteem and consideration distinguished,²⁶ we can note that lesser consideration of Loman is compatible with higher esteem for Loman’s qualities and achievements. Buyers in a slave market can discern skills or beauty in their prospective “purchases.” We can also note the possibility that the basing trait that underlies an objectionable, *unmerited* disparity of *consideration* for persons may be a quality or achievement that grounds an unobjectionable, *merited* disparity in *esteem* for that quality or achievement. Grace and beauty might, in some society, take the place of race or lineage. What is unmerited, and so objectionable, in such a case is a disparity of *consideration* for the person based on those qualities and achievements, where that consideration consists in responses of the kind that we have been describing, which differ from the mere expression of esteem for those qualities and achievements.

To allow that merited disparities in regard are not objectionable, therefore, is not to endorse, say, grafting the pattern of consideration characteristic of an aristocratic order onto “meritocratic” competitions: that is, simply replacing lineage with qualifications or career as the basing trait. This is because there is no reason to think that qualifications or career merit such responses. Qualifications, to the extent that they are admirable, merit admiration. But admiration is not, for example, acting to advance someone’s interests. And your being better qualified means simply that others will benefit

26. This distinction between consideration of persons and esteem for particular qualities and achievement is indebted to Darwall’s distinction between recognition respect and appraisal respect for a person. Stephen Darwall, *Two Kinds of Respect*, 88 *ETHICS* 36 (1977). Consideration, like recognition respect, bears on practical deliberation in a way in appraisal respect need not, and the appropriateness of consideration, like recognition respect, does not depend on variable traits, whereas the appropriateness of esteem, like appraisal respect, does. However, the distinctions differ in other ways. For one thing, recognition respect involves sincerity in a way in which consideration does not. *Id.* at 40–41. For another, appraisal respect is only for dispositions to act on reasons, or for what depends on such dispositions, whereas there can be positive responses to a person’s qualities other than their dispositions to act on reasons.

more from your getting the job, which in turn answers the objections that other job-seekers may have for their not getting the job. But this is not a response to merit; it's purely instrumental.

Of course, some might say, not without justice, that we do currently view qualifications and careers in the way in which aristocratic orders viewed lineage.²⁷ But it isn't clear to me as a conceptual matter that qualifications and careers, however scarce and desirable, must be freighted with such further significance. The fact that someone spends his days doing something that I would prefer to spend my days doing need not mean that he has a higher rank, any more than that he enjoys, in the privacy of his own home, some labor-saving convenience that I don't. This is not to deny that the distinction may be psychologically difficult to sustain.²⁸ Nor is it to deny that the distribution of such goods—desirable work or conveniences—is of concern. It is of concern, and there are claims to improvement that such goods be distributed fairly. The point is just that the concern is not rooted in a claim against inferiority.

VII. PURELY EXPRESSIVE DISPARITIES

The third and final kind of disparity in regard, in addition to disparities of esteem and disparities of consideration, are purely expressive disparities. Consider the social expectation that Blacks sit only in the back of the bus, whereas Whites sit only in the front. This seems to be an objectionable disparity of regard, in which, one wants to say, Whites are more highly regarded than Blacks. Yet there is no disparity of esteem for particular qualities or achievements. Nor is there a disparity in consideration, at least not in any of the forms that we have distinguished. For example, it is not clear that seating someone in the back, as opposed to the front, in itself, involves giving less weight to their interests. Sitting in the back of the bus might not be, in general, less desirable than sitting in the front. Some might prefer to sit in the back. Nor, if Whites are expected to sit only in the front, are the social expectations of Blacks more restrictive than the social expectations of Whites. What is objectionable, one wants to say, is what the difference in expectations expresses.

I take it that an act, *A*, expresses a content, *C*, only insofar as some people in the relevant culture either intend to communicate *C* by *A* or interpret others as doing so.²⁹ If *A* does not bespeak or invite such intentions or interpretations, then it simply does not express *C*. Whether *A* expresses

27. Richard Arneson, *Against Rawlsian Equality of Opportunity*, 93 PHIL. STUD. 77, 93–94 (1999).

28. Bernard Williams, *IN THE BEGINNING WAS THE DEED* 113–15 (2005).

29. Richard Ekins, *Equal Protection and Social Meaning*, 57 AM. J. JURIS. 21 (2012).

C will of course depend on convention, context, history, and more general cognitive limits of intention and interpretation.

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

These expressions depend "recursively," in two ways, on independently existing relations of inferiority. First, to repeat, the content expressed is an endorsement of some independent relation of inferiority of Blacks to Whites. Again, it is endorsement of that social fact, whether or not that endorsement is grounded in some further judgment that, e.g., Blacks lack full moral status. Second, the vehicle of expression may be some difference in response to Whites and Blacks that, apart from independently existing relations of inferiority, would not express an endorsement of relations of inferiority. Whether it counts as lesser consideration to be required to sit in the back, as opposed to the front, of the bus is impossible to say without knowing whether it is the superiors or inferiors (as determined by other contexts) who are required to sit in the back.³⁰ Holding other things fixed, if Blacks had been told to stop at the front of the bus and only Whites been allowed to sit at the back of the bus, "going to the back of the bus" would have had the opposite valence.

30. DEBORAH HELLMAN, *WHEN IS DISCRIMINATION WRONG?* 37 (2008).

