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ARE WORKERS DOMINATED?

Tom O'Shea

Listen to what workers in London say about their jobs. In a shambolic 3-D printer manufacturing company, an employee complains about "arbitrary management decisions," including unplanned sackings and hasty changes to working time and pay.[1] A temp at a supermarket distribution center says their shifts get canceled at short notice with little compensation, while adding that management can get temps to work faster by means of an "arbitrary" hiring process for the "carrot of a permanent job."[2] According to a care worker, casualization has led to greater precarity for their colleagues, such that "current support workers are dependent on the good will of their employer."[3] These workers are each objecting to *arbitrary power*.

This language should be immediately familiar to political philosophers, since opposition to arbitrary power is a perennial theme of civic republican accounts of domination. But are these workers genuinely dominated? They choose to work for their employers, enjoy protection under the law, and possess the legal right to quit. Do they really lack the freedom republicans hold dear? I shall show how employers can and often do deprive workers of this republican freedom. Getting to grips with the nature of power over workers and job seekers does, however, require some conceptual innovation. My goals are to demonstrate that the leading republican theory of domination falls short in this respect, and to propose a capabilitarian and structural account of domination that sheds greater light on the mechanics of power in the workplace and labor market.

We shall see that the voluntariness of labor contracts and the limits on employer authority introduced by labor law do not preclude arbitrary power over workers. Yet, it is much harder to say when this amounts to arbitrary power to *interfere*, which is often treated as a necessary condition of domination. The orthodox account of domination adopted by neo-republicans like Philip Pettit sputters out when it encounters the turbulent history of labor struggle, since

1 Anonymous, "Soldering On."

2 Anonymous, "Don't Breakdown!"

3 Anonymous, "Careless."

it relies on a form of cultural contextualism about what counts as interference, which cannot accommodate fierce disagreements between workers and bosses about the baseline choices workers can expect. However, the republican critique of domination can be reframed in terms of capabilities rather than interference, and this opens the door to an alternative account of domination as the arbitrary power to determine access to the capabilities needed to stand in relationships of civic equality. While this capabilitarian theory of civic domination offers a more tractable criterion for measuring domination, it neglects the possibility that dominating power is not always concentrated in the hands of a single employer. So, I show how this account of civic domination can be supplemented in order to encompass the domination to which workers and job seekers can be exposed as a result of their socio-structural position in the economy.[4]

1. ON DOMINATION

The aim of republican conceptions of domination has been to account for the unfreedom that arises from relationships within which a person falls under the power of a master (*in potestate domini*).[5] Slaves are dominated, for instance, since they are subject to the will of their masters. This subjection has often resulted in forced labor; however, in principle, actual compulsion is not necessary for a dominating relationship: the kindly master who does not interfere with their slave remains a master all the same. Cicero captures something of this idea when he tells us that the most miserable aspect of slavery is that "even if the master happens not to be oppressive, he can be so should he wish."[6] Similarly, when the legal doctrine of coverture granted a husband the discretion to prevent his wife from holding property, obtaining an education, or entering a contract—including earning a wage for herself—then she was dominated whether or not the husband was inclined to exert his authority, since the fact that he could do so whenever he wished was sufficient to subject the wife to his will.[7]

Pettit, the leading contemporary republican philosopher, has made several

4 Our focus will be paid work in the formal economies of liberal democratic states, in which workers enter into voluntary contracts with employers to sell their labor-power. This narrow conception of work leaves aside unpaid reproductive activities, subsistence work, forced labor, volunteering, and so on. This is for analytical convenience rather than any intention to exclude these other activities from the category or esteem of genuine work. Similarly, we will pass over the converse question of whether workers dominate employers. For discussion, see Taylor, *Exit Left*, 60.

5 See Skinner, "Freedom as the Absence of Arbitrary Power," 86; *Digest of Justinian*, 1.6.1, 18.

6 Skinner, "Classical Liberty and the Coming of the English Civil War," 10.

7 Jugov, "Systemic Domination as Ground of Justice," 9.

influential attempts to characterize domination in a more exacting fashion than these examples alone allow. This is the most well-known definition:

> Someone dominates or subjugates another, to the extent that
> 1. they have the capacity to interfere
> 2. on an arbitrary basis
> 3. in certain choices that the other is in a position to make.[8]

The most slippery term here is "arbitrary," which has been subject to a number of competing interpretations.[9] Pettit now prefers to talk of domination as "exposure to another's power of uncontrolled interference" in order to avoid some of the misleading connotations of arbitrariness.[10] But the fundamental coordinates of the concept remain much the same: domination can be present without actual interference occurring, whereas domination is absent when the ability to interfere is suitably regulated or constrained.

Why should we care about this domination? The republican answer is that it makes people unfree. Someone who is dominated cannot know their choices are secure from interference at the hands of individuals or institutions with unchecked power over them. Consequently, they are able to act only at the indulgence of others. This not only undermines their freedom but can also begin to warp their character—encouraging the dominated to get into the habit of fawning over or cowering from those who could intrude in their lives. Domination, so understood, can foster a servile and pliant disposition, which is why republicans identify a "tendency of the enslaved to act with slavishness."[11]

My goal is to determine whether domination occurs in the workplace or labor market, and this might seem relatively simple, since we only have to figure out whether the decisions of workers and job seekers can be arbitrarily interfered with. Moreover, there are some plausible *prima facie* grounds for thinking that workers are subject to such arbitrary power. Most workplaces have a hierarchical structure that allows bosses and managers to exercise a wide-ranging discretionary authority to hire and fire, as well as granting them the power to shape job roles, work pace, company policy, and the working environment. These considerations lead some republicans and sympathetic fellow travelers to conclude that domination is a real threat to many workers. For example, Elizabeth Anderson tells us that employers typically enjoy authority that is "sweeping, arbitrary, and unaccountable," with workers occupying "a state of republican unfreedom,

8 Pettit, *Republicanism*, 52.

9 Lovett, "What Counts as Arbitrary Power?"

10 Pettit, *On the People's Terms*, 28.

11 Skinner, "Freedom as the Absence of Arbitrary Power," 92.

their liberties vulnerable to cancellation without justification, notice, process, or appeal."[12] But we should not rush to such conclusions too hastily, since there are a number of reasons for denying that domination is commonplace in modern workplaces or labor markets.

2. DO EMPLOYERS HAVE ARBITRARY POWER?

Skeptics may deny the power of employers is sufficiently *arbitrary* to constitute domination—doubting that it qualifies as uncontrolled or unaccountable. The first reason to entertain such doubts stems from the voluntariness of labor contracts: the fact that workers must agree to work for their employers. Someone has to choose to take a job before their boss can start ordering them around, and this distinguishes employers in capitalist economies from slave masters or seignorial lords whose laborers were bound to them. This need to secure the agreement of workers makes it less plausible to characterize power over them as entirely arbitrary, since this power does not rest solely upon the will of the employer but also the decision of workers to enter into labor contracts (as well as to not subsequently quit). There is historical precedent for this verdict in the scorn of some American abolitionists toward the very idea of wage slavery. These abolitionists were uncomfortable with the implication that the shift from chattel slavery to waged labor had simply exchanged one form of domination for another. We instead find them stressing the importance of contractual agreement in underpinning the newfound freedom of emancipated slaves, whom they laud as "Freedmen at work as independent laborers by voluntary contract!"[13]

We should, however, reject the claim that a voluntary labor contract precludes arbitrary power. Considering another example of domination that comes about by means of agreement should help us see why. Someone who gives or sells themselves into slavery can do so consensually—for protection, subsistence, or money.[14] In straitened circumstances, this might well be the best available option, chosen both rationally and willingly. But it is a loss of freedom in exchange for something valued more highly, and the voluntariness of the exchange

12 Anderson, *Private Government*, 54, 64. See also Hsieh, "Rawlsian Justice and Workplace Republicanism"; González-Ricoy, "The Republican Case for Workplace Democracy"; Breen, "Freedom, Republicanism, and Workplace Democracy." For other civic republican engagement with political economy, see Dagger, "Neo-Republicanism and the Civic Economy"; Pettit, "Freedom in the Market"; White, "The Republican Critique of Capitalism"; MacGilvray, *The Invention of Market Freedom*; Anderson, "Equality and Freedom in the Workplace"; Gourevitch, *From Slavery to the Cooperative Commonwealth*; Roberts, *Marx's Inferno*.

13 Garrison, "Is the Cause Onward." See also Cunliffe, *Chattel Slavery and Wage Slavery*.

14 Patterson, *Slavery and Social Death*, 130–31.

does not mean the resulting power is neither arbitrary nor dominating. Willingly handing over control to a new master does not itself ensure their freshly acquired power is so limited, accountable, or contestable that it no longer has an arbitrary character. Similarly, voluntarily accepting the authority of an employer need not establish sufficiently strong constraints on their power to make it nonarbitrary. Of course, the live possibility of workers refusing to take up or remain in a job can still exert a disciplinary pressure on an employer, which may restrict their room for maneuver in how they can routinely treat their staff. But it does not comprehensively close down their discretionary power—especially that held over those workers who have a compelling reason to stay in their jobs, such as a lack of better options. Therefore, workers do not possess immunity from the arbitrary power of employers simply by virtue of having agreed to work for them.

Legal constraints outside the labor contract provide a second reason to doubt the power of employers is arbitrary enough to be dominating. Think of measures making racial, gender, and/or disability discrimination illegal in recruitment; mandating a minimum wage; limiting working time; requiring rest breaks; outlawing sexual harassment; restricting unfair dismissal; guaranteeing rights to join a trade union; establishing minimum safety standards; and so on. While these protections are far from universal, when present they each restrict the untrammeled authority of employers. This significantly conditions the power to which workers and job seekers are subject—further constricting the free play of employers beyond the limits placed upon them by the need to establish and maintain a labor contract with their workers.

Employer power does not, however, have to be entirely unchecked to be arbitrary. While the law fences employers in to some degree, there are many areas where they typically have authority to act as they see fit, or in which legal regulation allows them great latitude within certain bounds: for instance, determining work pace, altering job roles, directing company policy, and shaping the physical and social environment where work takes place. Even in those areas that are supposed to be tightly legally governed, such as wrongful dismissal and minimum wages, the effective ability to enforce the law is often lacking, especially where union representation is low and the threat of employer retaliation is hard to defend against. Furthermore, the social position occupied by managers often allows them to enjoy considerable informal authority, which can enable them to goad staff into working longer, harder, and in worse conditions than the law itself allows. Thus, while legal protections shape aspects of employment relationships, these are not always effective, and inevitably leave unregulated a significant subset of the powers of employers over their workers.

Our initial impetus for supposing some workers might be dominated was

their own testimony concerning the arbitrary power of employers over recruitment, wage-setting, and control of the labor process. Examples abound of the draconian use of such powers, including refusals of toilet breaks, bans on causal chatting, mandatory unpaid after-work inspections, suspicionless drug testing, and firings of union organizers.[15] But we have met two objections to characterizing the power of employers as arbitrary: the voluntariness of labor contracts and the constraints imposed by labor law. Each places some limits on the authority of employers but still leaves considerable scope for workers to find themselves subject to the will of their bosses. So, the control over power that they grant to workers is at best incomplete. Domination is not therefore ruled out on the grounds of a lack of arbitrariness in employer power.

3. CAN EMPLOYERS INTERFERE?

Civic republicans usually understand domination as the arbitrary power to interfere.[16] This opens up a second line of attack for those skeptical that workers are dominated: they can concede that employers possess arbitrary power while maintaining that this is not a power of outright interference. Few bosses can consistently beat or imprison their workers. Nor is an employer able to compel someone who resigns or refuses to sell their labor to them in the first place. So, in what sense, if at all, are employers able to *interfere* with workers and job seekers?

Pettit identifies interference with an intentional removal, replacement, or misrepresentation of the choices available to someone, which worsens their choice-situation.[17] This encompasses not only physical coercion, restraint, or obstruction but also punishment and threats, as well as manipulation and deception. Among examples of a power of interference would be capacities for violence, blackmail, or dishonesty whose exercise negatively affected the deliberative capacities or choices available to someone. The choices vulnerable to interference that Pettit takes to be most salient for a republican ideal of non-domination are those underpinning the basic liberties, understood as "the sphere of choice required for being able to function in the local society."[18]

Some economists and philosophers offer reasons to doubt that employers wield powers of interference. Take Armen Alchian and Harold Demsetz, who claim that firms have "no power of fiat, no authority, no disciplinary action any

15 Anderson, *Private Government*, xix.

16 Pettit, *Republicanism*, 52; Honohan, *Civic Republicanism*, 184; Laborde, *Critical Republicanism*, 2; cf. Lovett, *A General Theory of Domination and Justice*, ch. 3.

17 Pettit, *On the People's Terms*, 46, and *Republicanism*, 52.

18 Pettit, *On the People's Terms*, 8.

different in the slightest degree from ordinary market contracting between any two people."[19] They recognize that employers can terminate the relationship with a worker but treat this as no different from someone who chooses to shop with a different grocer. Thus, they conclude, "No authoritarian control is involved; the arrangement is simply a contractual structure subject to continuous renegotiation."[20] Pettit's own account of market exchange does not make a radical departure from this analysis, insofar as he claims that market exchanges are voluntary agreements among people who accept "reciprocal offers of reward in the event of acting as they require of one another," and that "such offers of reward are not coercive in the manner of penalties or threats of penalty."[21] So understood, ordinary market offers do not constitute interference, because they simply add a new choice to someone's option set rather than removing, replacing, or misrepresenting their existing choices.

Consider the implications of Pettit's discussion of market exchange for the control of employers over the recruitment process, including hiring, contract renewal, and assigning shifts. We might think the ability to refuse someone a job resembles a power of interference. But Pettit's account of the market emphasizes that an offer of a job remains an *offer*. Ordinarily, the power to withhold an offer is not itself a power to interfere with someone's choices, since offers expand rather than contract the choices available to people. Seen in this light, the power of employers over recruitment would not allow them to interfere with existing choices but only determine whether an additional choice is added—namely, the choice to enter or extend a working relationship with this employer. Thus, these powers would not be dominating, irrespective of how arbitrarily they could be exercised.

Civic republicans do, however, acknowledge that some omitted market offers constitute interference. Think of the pharmacist who refuses to sell someone an urgently required medicine without good reason or only at a hugely inflated price. Pettit counts this refusal as interference due to the degree to which the array of choices available to the sick person is worsened with respect to "the received benchmark."[22] This account holds that interference presupposes a prior baseline relative to which the effects of any intentional removal, replacement, or misrepresentation of choices must be understood. Pettit thus talks of "inter-

19 Alchian and Demsetz, "Production, Information Costs, and Economic Organization," 777. For further discussion, see Anderson, *Private Government*, 54–56.

20 Alchian and Demsetz, "Production," 794.

21 Pettit, "Freedom in the Market," 143. Pettit acknowledges that this is a highly idealized understanding of markets, which will not apply in conditions approaching "wage slavery," but he fails to say whether he thinks the latter conditions prevail in our actual world.

22 Pettit, *Republicanism*, 54.

ference by the benchmark of what is normal," telling us that "context fixes the baseline by reference to which we decide if the effect is indeed a worsening," and referring us to "the facts as they are seen through the local cultural lens" in making such judgments.[23]

This is a contextualist account of interference that relies on local cultural standards to determine whether a choice situation is worsened relative to a baseline normal position. What does it imply for power in the workplace and job market? Pettit suggests that workers will be dominated when they enter employment contracts under the "spectre of destitution."[24] For example, an employer can possess a power of interference over a worker under monopsony conditions who has few social welfare guarantees, whereas they will be further from doing so when many non-colluding employers are competing for the worker's labor or if there is a strong social safety net for the unemployed. Therefore, Pettit's contextualism can make room for exceptions to his otherwise sanguine view of marketized relationships, which allows that there are circumstances when powers of interference and relationships of domination do emerge in the workplace and labor market.

4. OUT OF CONTEXT

Contextualism is most plausible against the backdrop of high levels of agreement about the baseline choices against which we can measure whether interference takes place. But such consensus is elusive in actual discussions of work. For instance, there are rarely any uncontested "received benchmarks" or "local cultural standards" available to determine whether a failure to offer someone work worsens their choice-situation, since there is little agreement about when it is either normal or reasonable to expect an employer to hire someone, renew their contract, or maintain their hours. The inconclusive exchange between Marion Cotillard's character and her boss in the 2014 film *Two Days, One Night* exemplifies such disagreements:

> *Sandra*: I can't let someone be laid off so I can come back.
> *Dumont*: He won't be laid off. His contract just won't be renewed.
> *Sandra*: It's the same thing.
> *Dumont*: It isn't.[25]

We cannot simply read off the relevant baseline from the cultural context be-

23 Pettit, *Republicanism*, 162, 53, 54.

24 Pettit, *Republicanism*, 142.

25 Dardenne and Dardenne, *Two Days, One Night*.

cause what counts as normal working conditions here is highly contested *within* the local culture.

It is clear from the history of labor struggle that there is no single, local cultural lens through which to assess other kinds of power over workers and job seekers. Workers' movements have fought to shift the background norms and expectations concerning the treatment of workers and job seekers, including the length of the working day, basic health and safety standards, the extent of holiday and sick pay, and the level of minimum wages. Conversely, employers continue to resist many of these changes and have sought to impose their own understanding of the normal condition of workers, through supporting "right-to-work" laws, legal challenges to collective bargaining, and protection for "fire at will" clauses. Of course, some common background assumptions about what counts as a worsening of a person's choice situation do still hold in most places (e.g., threatening or committing outright violence). But contextualism sheds little light on those cases we need most theoretical help to understand: the nature of the power that many employers have over hiring, firing, wage-setting, job roles, and the myriad small details that shape the everyday experience of workers.

We are now living through the latest wave of contestation over the norms and culture of work. Consider the recent rise of "platform capitalism" in which companies like Uber, Deliveroo, and TaskRabbit use proprietary digital platforms to connect workers and customers via apps.[26] Local cultural standards offer no definitive criteria of judgment for determining the nature of the power these companies hold over platform workers because the relevant culture is still being formed. Should we regard these workers as independent contractors or employees owed full employment rights? Are they confronted with fewer or worse choices if their hourly wage is replaced with a piece-rate payment per task completed? Do platform companies remove or replace the choices of their workers by only allowing them to work at specific times or locations? Battles to establish what counts as the relevant default baselines here are still being waged among employers, workers, unions, the courts, and the state.

Let us suppose that consensus does arise about the baseline choices people can expect. This would still not clear a path for using conceptions of domination that depend on contextualism to diagnose the nature of power in the workplace and labor market. That is because contextualism is vulnerable to a further objection—one grounded in domination's role as a *critical* concept meant to give us evaluative purchase on the world around us. This critical potential is blunted by a contextualism about interference that leans heavily on local norms and culture, since these local standards are themselves subject to influence by the powerful.

26 Srnicek, *Platform Capitalism*.

When it is no longer seen as normal for people to make certain decisions for themselves, then being deprived of them will no longer count as interference on a contextualist account. The meager options now available to them become the new baseline against which effects on their choice situation are measured, so long as these changes sufficiently saturate the local culture. For instance, if we become completely accustomed to a lack of job security and fixed working hours, then the power of bosses to fire workers at will or extract unpaid overtime at their convenience will not count as an ability to remove or replace decisions, since this would no longer actively worsen the options available to workers relative to the new normal. But the normalization of power over others should not inoculate the powerful from the charge of domination. In other words, the cultural entrenchment of domination does nothing to diminish its dominating character. On the contrary, we need a conception of domination that is able to identify and criticize those local cultures that have thoroughly acclimatized us to arbitrary power. It would be perverse if workers were made immune to domination simply because employers had engaged in such widespread and systematic deprivation of choice that people no longer thought much of the average person's powerlessness. For this reason, we should be skeptical about appealing to local cultural standards that have been shaped by the longstanding power of employers as the basis for determining whether that same power constitutes domination.[27]

Could an alternative to contextualism still allow us to count control over certain market offers as an ability to interfere with another's choices? The idea of the *coercive offer* promises to do this in many cases.[28] However, the offers from employers we are dealing with do not fall within the main subcategories of the coercive offer: they are not "throffers," which combine a threat and an offer; nor are they "seductive offers," which entice someone with short-term benefits without delivering long-term rewards. Are they offers under coercive circumstances? Zimmerman has argued that workers with poor bargaining positions can face "coercive wage offers" of this kind.[29] But the power over recruitment that we are concerned with is the ability to withhold an offer of employment rather than

27 Can Pettit's "eyeball test" do any better? It identifies non-domination when someone can "look others in the eye without reason for the fear or deference that a power of interference might inspire; they can walk tall and assume the public status, objective and subjective, of being equal in this regard with the best" (Pettit, *On the People's Terms*, 84). The test makes no explicit mention of contextualist criteria for interference—but similar problems recur because it both invokes a conception of interference and relies on a standard of appropriate reasons for fear or deference for which it fails to offer a non-contextualist account.

28 See Wertheimer, *Consent to Sexual Relations*, 171–77.

29 Zimmerman, "Coercive Wage Offers."

the power to enforce uptake of a bad offer. The ability to refuse someone a job would instead need to be understood as a coercive non-offer. Yet, many such omissions cannot be made sense of under the heading of a *coercive* non-offer, since the employer is often indifferent to the fate of the worker or job seeker rather than intending to get them to do something (as Dumont's power over Sandra's colleague shows). Thus, the categories of coercive offer and coercive omission will be of limited use in making sense of the power that employers hold over workers and job seekers.

We have now seen that it is harder to determine whether workers are dominated than it initially appeared. While there is a strong case for thinking that employers often possess some degree of arbitrary power over workers and job seekers, there are significant theoretical roadblocks to figuring out whether this also constitutes a power of outright interference. The contextualist account of interference that Pettit defends is difficult to apply when there is disagreement about what counts as a normal range of choices, with the history of the labor movement showing that what does and should pass as such a baseline in the workplace is often fiercely contested. But even without such disagreement, the problem with a heavily contextualist account of interference is that it can obfuscate domination of workers and job seekers that has become normalized in the local culture. Nor did appeal to coercive offers and omissions provide a comprehensive alternative. How then do we investigate whether workers and job seekers are dominated?

5. Capability and Domination

Neo-republicans could attempt to rebut these objections to contextualism or else turn to non-contextualist accounts of interference to shore up their accounts of domination. However, I shall argue that a more promising approach to assessing the nature of power over workers and job seekers is to adopt a conception of domination that hinges not on interference but capabilities. Domination is unfreedom that arises from subjection to another's arbitrary power—but restricting this to the arbitrary power to interfere leads to an excessively cramped understanding of dominating relationships. Someone is no less dominated when they are confronted with another agent who has the arbitrary power to determine whether they can meet their fundamental needs. Such domination does not have to be premised on an arbitrary power to interfere, where that is understood in terms of an uncontrolled ability to intentionally worsen someone's options by removing, replacing, or misrepresenting those normally available to them. You can be subject to the power of a master due to greatly needing their

help, even if their refusal of aid would be unremarkable and so would not worsen your choices relative to the benchmark of normality.

Which needs count for domination? Limiting them to the most spartan requirements for bare life would be too restrictive. Power rooted in control over other human goods—such as social recognition and political representation—can also create subordinating relationships of mastery and servitude. Conversely, allowing any strong desire to count as such a need would be too lax. If not, the discretion to deny someone a life of untold opulence would count as outright domination, so long as they wanted this fiercely enough. In order to avoid these implausible extremes, I shall specify a set of capabilities for which it is a sufficient condition for domination that our only access to them depends on the arbitrary power of another.

Adopting the language of capabilities is not itself a radical break from orthodox neo-republicanism: Pettit already appeals to Sen's and Nussbaum's capability approaches to determine what count as the basic liberties, with these liberties fixing the scope of his republican ideal of non-domination.[30] However, Pettit simply refers to "basic capabilities for local functioning," with reference to Sen and Nussbaum, without establishing why either of their rather different conceptions of capabilities provides the right focus for a republican conception of domination.[31] For instance, Nussbaum's core capabilities are meant to be those without which human life would be "so impoverished that it is not worthy of the dignity of a human being."[32] While dignity is an important value, it is not clear why dignity-preserving capabilities should provide us with a criterion for domination *per se*. So, I shall propose a resolutely republican account of which capabilities underpin non-domination.

Modern republicans are relational egalitarians who seek to diagnose and combat relationships that subordinate some people to the autocratic power of others. Such subordination can be material, social, or political—rooted in another's control over wealth, status, or the means to rule. This suggests that domination can arise from the arbitrary power to determine access to three broad and overlapping sets of capabilities for material, social, or political functioning. These include capabilities for biological subsistence and personal development, which presuppose the availability of food, shelter, clothing, medical care, physical security, education, recreation, and rest; capabilities for social interaction,

30 On republicanism and the capability approach, see Pettit, "Capability and Freedom"; Qizilbash, "Some Reflections on Capability and Republican Freedom"; Laborde, "Republicanism and Global Justice."

31 Pettit, *On the People's Terms*, 112.

32 Nussbaum, *Women and Human Development*, 72.

which presuppose the conditions for respect, association with others, and living without shame; and capabilities for political participation, which presuppose the psychological and institutional foundations for political agency, meaningful suffrage, and democratic power. We could think of these as what Elizabeth Anderson has called capabilities of "special egalitarian concern," or more loosely, as capabilitarian grounds for redistributive, recognitive, and representative justice.[33] But I will name these "civic capabilities" insofar as they are necessary for citizenship among equals.[34]

6. Civic Capabilities at Work

Our revised conception takes domination to arise from the arbitrary power to determine another's access to civic capabilities:

> *X* is dominated by *Y* to the extent that *Y* is able to arbitrarily determine whether *X* has access to the material, social, or political capability to function as an equal citizen.

For example, the master dominates the slave because he can deprive them of all these capabilities at will and with impunity—ensuring the slave goes hungry, undereducated, shamed, or politically enfeebled. Likewise, the husband dominates the wife under coverture with respect to her material and social capabilities, since he has unaccountable power to prevent her from getting a formal education and working for a wage.

When domination is identified with arbitrary power over civic capabilities, does this fail to accommodate some plausible candidates for dominating relationships? Consider two such objections.[35] First, someone might be mistaken about their fundamental needs. If they think another agent has discretion to ensure their fundamental needs are not met, then what does it matter whether their true or basic needs are really at stake after all? The feudal peasant who sincerely believes the Catholic Church's favor is necessary for eternal salvation can seem to be dominated by the clergy, irrespective of whether salvation is among his

33 Anderson, "What Is the Point of Equality?" 316.

34 Another account that understands vulnerability to domination principally in terms of control over capacities required to secure one's basic interests is Ian Shapiro's "power-based resourcism." However, I provide a more determinate and avowedly egalitarian specification of those interests than Shapiro—taking them to be the material, social, and political capabilities necessary for relationships of equality between citizens. Likewise, I reject Shapiro's non-republican claim that domination only occurs when "power is somehow abused or pressed into the service of an illegitimate purpose" ("On Non-Domination," 308).

35 I owe these objections to an anonymous reviewer for this journal.

fundamental needs, or whether the church actually has the power to deny him it. He feels beholden, and that is enough to result in his subordination. Can a theory of civic domination make sense of cases like this?

My view is that domination occurs only when another agent has arbitrary power to determine whether someone has access to civic capabilities. Thus, I do not think that domination obtains merely because a person believes their ability to meet their fundamental needs rests in another's untied hands. But mistaken beliefs of this kind can increase the effective leverage others have over the person who holds them. The peasant who fears for his soul might thereby find it psychologically unsustainable to depart from the church's dictates on whether to pursue an education or when he can and cannot rest from work. Some of his civic capabilities do then fall within the arbitrary power of others due to misapprehensions about his needs or who can frustrate them. So, false beliefs about fundamental needs—whether they result from innocent errors or deliberate ideological manipulation—will sometimes entrench domination.

Our second objection claims people can be dominated even when they are able to meet their fundamental needs securely, since they can be subject to arbitrary power over other areas of their lives. We can fall under the sway of other people because of their control over what we want and not merely what we need. Perhaps, as we noted earlier, it would be implausible to say that domination can arise from the arbitrary power to deny someone *anything* they want—sex, fame, or a third slice of cake included. But why insist civic capabilities are the only levers of domination? When an ambitious and wealthy lawyer's long-sought promotion to a partnership turns on the discretion of her senior colleagues, then she may be under tremendous pressure to yield to their wishes, even if none of her civic capabilities hang in the balance. Why not take her to be dominated too?

We find similar psychological dynamics to domination in these situations, such as the pressure to fawn over influential superiors. But these are examples of what republicans have called a "corrupting dependence" arising from a discretionary ability to bestow largesse on those favored by the powerful.[36] There is often something objectionable about corrupting dependence, but when civic capabilities are not at stake it falls short of the outright domination that more fatefully corrodes relationships of equality among citizens. For a political conception of non-dominated relationships, civic considerations should take precedence.

Civic domination, so understood, can take place in the absence of the arbi-

36 Sparling, "Political Corruption and the Concept of Dependence in Republican Thought." On the idea that "golden fetters" can intensify the dependence underlying domination, see Lovett, *A General Theory of Domination and Justice*, 40.

trary power to *interfere*. For instance, a woman in a remote rural area can be dominated when her access to abortion is entirely dependent on the will of a single local healthcare provider with no legal or institutional obligation to facilitate this access for her. She will be at their mercy for her possession of civic capabilities relating to healthcare, even if the provider is unable to interfere *sensu stricto* with her choices, such that they cannot actively worsen her choice situation relative to the normal local baseline. When the manager of a small charitable shelter for the homeless has complete discretion as to whether to offer someone one of the few beds available, then she dominates them if her refusal would ensure they went without a roof over their head for the night. This amounts to arbitrary power not to extend capabilities for housing and for living without shame (at least in societies stigmatizing rough sleepers). It remains civic domination even when a refusal to admit someone to the shelter is a failure to provide them with an additional choice rather than a restriction of their normal options. Of course, judgments about whether a power to determine access to a capability is present do not have to be radically uncontextualized—what counts as shaming in one society may not in another. But such judgments do not invite problems of determinacy and criticality of the same depth as those affecting accounts that take a merely normal range of choices as their baseline for interference. The examples outlined here are relationships of domination that will not always constitute subjection to an arbitrary power of interference as understood on the contextualist model. Nevertheless, capability- and interference-centric domination can generate similar feelings of subordination and anxious precariousness. Likewise, they also incentivize deference and servility, when one person can see that another goes without the likes of shelter and bodily autonomy.

We find clear examples of this civic domination in the workplace and labor market that also count as domination on interference-centric accounts: for example, the monopsonic employer with the power to hire and fire at will, who is someone's only way of getting enough subsistence goods. But civic domination can also take place in the workplace and labor market when there is no arbitrary power to interfere or when the baseline for interference is contested. When Dumont has the arbitrary power not to renew Sandra's colleague's contract, then it does not matter whether this would constitute interference with the colleague's choices: he will be dominated when it would leave him without the capability to function as an equal citizen. Similarly, the monopsonic employer whose private medical insurance is a young woman's only access to abortion also subjects her to civic domination, even if access to abortion is rare in the local culture and no longer offering it would not push her below what passes for a baseline normal level of choice compared to others. This constitutes domination whether or not

we think the employer has any moral or legal responsibility to provide someone with a job or access to medical services: the fact that they can arbitrarily ensure lack of access to civic capabilities is itself sufficient.

Monopsony and near-monopsonic conditions are more common in labor markets than is often assumed.[37] But most workers and job seekers are not at the mercy of any single employer with respect to their access to civic capabilities. No one agent decides whether they can eat, learn, live without shame, or act politically: whether this happens is usually a result of a relatively uncoordinated motley of decisions by local and national governments, families and friends, charities and community associations, trade unions and law courts, and an array of private and public employers—all taking place against a background of more faceless and impersonal social processes. Thus, comparisons between employers and the near-absolute power of slave holders or tyrants risk appearing overblown.

Civic domination will be rare if it presupposes a lone autocratic who determines access to civic capabilities. But this can seem at odds with the phenomenology of work, where the experience of subordination to the sweeping authority of employers is not confined to monopsony. Consider the sense of powerlessness the writer Ivor Southwood has felt in his own low-paid and precarious manual jobs: "Where I work, doing what and for whom, for how long and how much; all these co-ordinates are arbitrary to the point of absurdity."[38] He observes that "the manager increasingly comes to take the position of the customer who must be satisfied, and to whom one has to continuously sell oneself."[39] Yet, none of this depends on there being only a single employer to work for. Southwood instead tell us that the position of many workers is one in which they are "taunted with the illusion of choice, like a prisoner whose jailer tosses him a bunch of keys to identical cells."[40] Can a radical republicanism account for these experiences of work?

7. STRUCTURAL DOMINATION

Domination need not rest on the power of a single dominator. The "labor republican" movement in nineteenth century North America realized that the unfreedom they confronted as workers consisted in their systemic dependence on the owners of productive assets like land and tools more than their exposure to the caprice of any particular employer. In his groundbreaking reconstruction of

37 Azar, Marinescu, and Steinbaum, "Labor Market Concentration."

38 Southwood, *Non-Stop Inertia*, 70.

39 Southwood, *Non-Stop Inertia*, 25.

40 Southwood, *The Uncomplaining Body*, 9.

labor republicanism, Alex Gourevitch uses the term "structural domination" to describe this phenomenon. He says: "Structural is the appropriate word [for the domination of these workers] because it was a form of domination arising from the background structure of property ownership and because the compulsion they felt did not force them to work for a specific individual."[41] Structural domination happens when someone's socio-structural position leaves them without a reasonable alternative to being subjected to a master. Gourevitch goes on to claim that, in structural domination, "an unequal structure of control over productive assets" leads to workers being "dominated by a number of agents, but not any single, given agent in particular."[42]

Structural domination is contrasted with a more familiar personal domination that has a dyadic form: the latter is a relationship with a specific dominator who can exercise arbitrary power, whereas the former arises not from the power of any particular dominator but the power of many agents. Of course, social structures enable much personal domination—for instance, the personal domination of the wife by her husband under coverture depended on social background conditions, such as a specific legal tradition backed by a system of gendered social norms. But not all agents who contributed to these background structures had the direct and intentional personal power the husband could exercise. Nor did every contributing social structure constitute the kind of structural domination it is plausible to attribute to the diffuse class of men who—directly or otherwise—held the fate of most women in their hands.

While structural domination is analytically distinct from domination by a single agent, it can nevertheless generate and reinforce such personal domination. On Gourevitch's account, structurally dominated workers without a reasonable alternative to selling their labor are compelled to subject themselves to the authority of at least one employer. In contrast to the artisan, who sells the products of their labor, the waged worker sells their labor itself. Since this labor is a physical commodity inseparable from the person, this usually involves relinquishing a significant degree of control over the seller's will. It means coming under the often-considerable discretionary power of a boss, even if workers are often not completely constrained with respect to which boss that is. This boss invigilates the worker and has both the social authority and disciplinary tools to exert control over their employee's activities for much of the working day. Structural domination compels the worker into a contract of employment, and then the arbitrary power of bosses leaves them personally dominated once they are so contracted. In order to avoid these situations, the labor republicans attempted

41 Gourevitch, *From Slavery to the Cooperative Commonwealth*, 109.

42 Gourevitch, "Labor Republicanism and the Transformation of Work," 596, 602.

to implement forms of cooperative labor, which sought to make workers their own masters rather than subordinating them to the authority of the owners of productive assets.[43]

Gourevitch's reconstruction of a labor republican understanding of structural domination is a tremendously valuable contribution to thinking through power over workers and job seekers. But it suffers from an important weak spot: an underdefended appeal to the "reasonable alternatives" available to them. Gourevitch thinks someone is structurally dominated only when they lack a reasonable alternative to subjecting themselves to the arbitrary power of a boss. When the choice is to work for a boss or starve, then it is difficult to maintain that the alternative is reasonable. But where should the line of reasonableness be drawn in more difficult cases? Much like the contextualist standard for interference, this will be highly contested. Gourevitch is skeptical that those workers and job seekers whose alternative to working for a boss is reliance on welfare benefits or an unconditional basic income can be said to escape the net of structural domination—believing that a path to exit does not necessarily secure an effective voice for workers within a company.[44] This imposes a demanding threshold for what counts as a reasonable alternative to subjecting oneself to the discretionary power of an employer. Furthermore, it falls short of a criterion for determining which alternatives count as reasonable in other scenarios. Are you still structurally dominated if you have access to the capital needed to become self-employed—albeit at some risk of future bankruptcy? Will you remain structurally dominated when your wealthy spouse can decide to fund a career break whenever you grow tired of working for others? The *reasonable alternative* is too malleable a category to offer us determinate answers in such cases without drawing on mere intuition or a deeper account of reasonableness.

We can build upon Gourevitch's articulation of structural domination while avoiding the "no reasonable alternative" test by instead articulating a socio-structural form of civic domination:

> *X* is structurally dominated by the set of agents *Y* to the extent their relative social positions enable the members of *Y* to arbitrarily determine whether *X* has the material, social, or political capability to function as an equal citizen.

Structural domination thereby comprises an arbitrary power to control access to civic capabilities that is distributed across multiple agents. Someone will be structurally dominated when their position within a social structure grants a set

43 Gourevitch, *From Slavery to the Cooperative Commonwealth*, ch. 4.

44 Gourevitch, "Labor Republicanism," 598–600.

of other people an aggregative power over their civic standing. For example, if a group of employers can with impunity prevent someone from working by refusing to hire them, while maintaining control over the resources and opportunities they would need to provide themselves with civic capabilities, then this person will be structurally dominated. This might happen through collusion, such as drawing up a blacklist of trade union organizers, whom the employers all agree to freeze out. But an uncoordinated set of arbitrary wills is also sufficient for civic structural domination: each employer having the arbitrary power to hire and fire, with someone's economic fate and social status dependent on a series of uncontrolled but independent decisions in the hands of employers. The worker or job seeker who occupies this socio-structural position is at the mercy of the aggregated decisions of employers—subject to the disciplinary pressure of keeping at least one onside, and so not departing from any requirements they all choose to impose in common.

8. Conclusion

Are workers dominated? Sometimes. Our account of civic domination tells us someone is dominated when their access to civic capabilities is dependent on the arbitrary power of others. Workers can then be dominated when the uncontrolled decisions of employers are what determines whether they can function as equal citizens.

The domination of workers is clearest in monopsonies without a strong social safety net or stringent labor laws, such as a mining community or company town within a deregulated economy with a minimal welfare state. An employer with the discretion to hire or fire at will under these conditions—when unemployment brings hunger, eviction, or enduring shame in its wake—will have considerable arbitrary power to grant or impede the civic capabilities of local workers and job seekers. The more extensive the social safety net—with access to a greater range of civic capabilities guaranteed through measures like income redistribution or public services—then the less intense such domination will be. If someone has secure access to civic capabilities independently of employment, then even a monopsonic employer cannot dominate them. Likewise, the more robust labor laws are in limiting the uncontrolled power of employers or making this power accountable to workers, the smaller the degree of domination there will be over those workers. Of course, employers whose power is not arbitrary can still be unjust and exploitative toward workers, but they cannot be dominating.

Most workers are not beholden to a monopsonist employer, so what about

those with a good chance of securing another job if they are sacked, quit, or not hired in the first place? Even those who can find work elsewhere are not thereby immune to a dyadic arbitrary power to determine access to civic capabilities. Changing jobs can impose significant costs that impact those capabilities: periods of unemployment can take a pecuniary toll as well as leading to a loss of the social status gained from being recognized as making a productive economic contribution; the need to become familiar with a new workplace and build new working relationships can be onerous, making workers more vulnerable to bullying and exploitation, with a throughput of staff also making it difficult to organize and exert political agency at work. That quitting is not costless can provide employers with additional leverage to make unaccountable management decisions that further sap civic capabilities: introducing more arduous working practices, restricting rest breaks, or requiring more work in the same time, with any attendant toll on physical and psychological health. Those without the independent wealth and social status to secure their civic capabilities are thus frequently exposed to personal civic domination by ordinary non-monopsonic employers too.

We need to supplement a dyadic conception of domination focusing on single dominators with a structural account of domination if we are to come to a more full understanding of the range of powers over workers and job seekers. Whenever someone is dependent on the arbitrary power of employers as a condition of securing their civic capabilities, then they will be dominated by the set of those employers able to offer or refuse them a wage or salary. Most workers in capitalist economies are structurally dominated in this way—unable to fashion themselves with the resources and opportunities necessary for political equality as citizens without the contingent and revocable support of employers. This does not necessarily imply that those employers have an obligation to ensure full employment; it simply means they have the fateful power to shape other people's lives without regard for whether those people's standing as political equals is undermined. There would be little exaggeration in claiming that workers whose socio-structural position subordinates them to the owners of productive property in this way are the victims of economic oligarchy.[45]

The radical republicanism outlined above gives us good reason to be worried about these forms of dominating power. Structural domination leaves our

45 Does this analysis make radical republicanism indistinguishable from Marxism? Domination is conceptually distinct from the alienation that Marx stresses in his early work and the form of exploitation that figures in the mature political economy. But there is significant overlap and influence between the two traditions. See Roberts, *Marx's Inferno*, and Leipold, *Citizen Marx*.

lives in the hands of institutions we have little control over and that prioritize the interests of their stakeholders over citizens at large. This exposes workers to relationships of personal domination in which they are subordinate to specific bosses and managers. This is the lot of the London workers we encountered at the beginning of this article: vulnerable to the caprice of the labor market, which reinforces their dependence on the goodwill of their current employers, and which prompts a mixture of anxious concern and docile acquiescence to authority. If this diagnosis is sound, then it is now incumbent on republican political thought to identify the tools and politics best suited to helping these workers organize themselves and abolish the dominating power to which they—for many readers, we—are subject. Nothing less than our freedom is at stake.[46]

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THE COMPARATIVE NONARBITRARINESS NORM OF BLAME

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BLAME IS GOVERNED by a range of norms. Most centrally, blame is subject to a norm of correctness or fittingness. Understood as a retrospective response that represents its target as being blame*worthy* for (typically) an action, blame can be appropriate only if it *correctly* represents the blamee. Blame's fittingness thus requires that the blamee in fact be blameworthy (and that the blame be proportionate to his blameworthiness).[1] The blamer must also be *justified in believing* that the blamee is blameworthy, otherwise the epistemic

1 For the purposes of this paper, we do not distinguish between blame being *fitting* and blame being *deserved*, where desert is generally, but not always (Nelkin, "Accountability and Desert"; King, "Moral Responsibility and Merit"), understood to be a more robust relation than fittingness. In order for blame to be fitting, as we employ the term, the target of blame must be blameworthy in a backward-looking way, leaving aside what exactly this "worthiness" comes to. So understood, this norm of blame is rejected only by those who understand blame to be a forward-looking phenomenon, evaluated as appropriate relative to its anticipated effects, e.g., of deterrence (Nowell-Smith, "Freewill and Moral Responsibility"; Smart, "Free-Will, Praise and Blame"). Thus, the debate over the fittingness norm focuses not on its *existence*, but its *nature*. For a relatively recent range of views on what it is, or at least is necessary, for blame to be fitting in this broad sense, see Arpaly, *Merit, Meaning, and Human Bondage*; Carlsson, "Blameworthiness as Deserved Guilt"; Darwall, *The Second-Person Standpoint*; Fischer and Ravizza, *Responsibility and Control*; Graham, "A Sketch of a Theory of Moral Blameworthiness"; Haji, *Moral Appraisability*; Hieronymi, "The Force and Fairness of Blame"; Kane, *The Significance of Free Will*; Levy, "The Good, the Bad and the Blameworthy"; Mele, "Moral Responsibility for Actions"; McKenna, *Conversation and Responsibility*; Nelkin, *Making Sense of Freedom and Responsibility*, esp. ch. 1; Pereboom, *Living without Free Will*, esp. chs. 2–4; Rosen, "The Alethic Conception of Moral Responsibility"; Russell, "Responsibility and the Condition of Moral Sense"; Scanlon, *What We Owe to Each Other*; Shoemaker, *Responsibility from the Margins*; Sher, *In Praise of Blame*, chs. 3–4; Smilansky, *Free Will and Illusion*; Smith, "Responsibility for Attitudes"; Strabbing, "Accountability and the Thoughts in Reactive Attitudes"; Talbert, "Moral Competence, Moral Blame, and Protest"; Vargas, *Building Better Beings*; Wallace, *Responsibility and the Moral Sentiments*, esp. chs. 6–7; Watson, "Two Faces of Responsibility"; Wolf, *Freedom within Reason*.

norm of blame is flouted.[2] And, even if the target of blame is blameworthy and the blamer is justified in believing them to be so, blame may still be inappropriate in virtue of violating a norm governing the moral "standing" to blame.[3] For example, if an agent blames another for a wrong that they themselves have performed and have refused to acknowledge and apologize for, or if they were instrumental in the blamee's doing that for which he is blameworthy, then the agent may lack the standing to blame. A great deal has been written about these aforementioned norms, and each plays an important role in accounting for the ethics of blame.[4]

In this paper we argue that there exists another norm of blame that has yet to receive adequate philosophical discussion and without which an account of the ethics of blame will be incomplete: a norm proscribing comparatively arbitrary blame.[5] Even when blame is fitting, is epistemically justified, and the blamer has

2 See Coates, "The Epistemic Norm of Blame," for an outline and defense of this norm, and Rosen, "Skepticism about Moral Responsibility," for a skeptical argument concerning the practical satisfiability of this kind of norm.

3 See Cohen, "Casting the First Stone"; Duff, "Blame, Moral Standing and the Legitimacy of the Criminal Trial"; Edwards, "Standing to Hold Responsible"; Fritz and Miller, "Hypocrisy and the Standing to Blame"; Herstein, "Understanding Standing"; Radzik, "On Minding Your Own Business"; Russell, "Selective Hard Compatibilism"; Smith, "On Being Responsible and Holding Responsible"; Todd, "A Unified Account of the Moral Standing to Blame"; Wallace, "Hypocrisy, Moral Address, and the Equal Standing of Persons." For critical discussion, see Bell, "The Standing to Blame."

4 There may be further norms governing the *expression* of blame. Fricker, for example, argues that expressions of blame "must be properly geared to people's entitlement to take some risks in learning how to do things for themselves and make their own mistakes" ("What's the Point of Blame?" 168). For further discussion of the norms of expressed blame, see Friedman, "How to Blame People Responsibly"; McGeer, "Civilizing Blame"; McKenna, *Conversation and Responsibility*; Scanlon, "Interpreting Blame"; Wertheimer, "Constraining Condemning."

5 However, similar norms have been discussed in other contexts. For example, in a recent paper, Kyle Fritz and Daniel Miller argue that the morally objectionable nature of hypocritical blame is grounded in the unfairness of regarding morally equal persons unequally ("Hypocrisy and the Standing to Blame"). They argue: "If *R* ought to regard *S* in some way, then, if there are no morally relevant differences between *S* and some other person *T*, *R* also ought to regard *T* in this way" ("Hypocrisy and the Standing to Blame," 122–23). This bears similarity to the norm we defend in this essay with two important differences. First, we argue only that there is a nonarbitrariness norm that governs *blame*. In fact, in section 1 we argue that comparative arbitrariness does not render many forms of regard morally objectionable, though it does so for blame. Second, Fritz and Miller argue that comparative arbitrariness undermines an agent's *standing* to blame ("Hypocrisy and the Standing to Blame," 132–33). In contrast, we argue that the comparative nonarbitrariness norm is distinct from standing conditions. Here we align with Patrick Todd's criticism of Fritz and Miller and agree that an agent can blame arbitrarily, and thus objectionably, without losing their standing to blame

the standing to blame, blame may be inappropriate in virtue of being comparatively arbitrary. That is, even when the above norms of blame are satisfied, there remains something morally objectionable about a state of affairs in which an agent blames two individuals to significantly different degrees for actions that do not ultimately differ in normative significance.

The relative absence of a comparative nonarbitrariness norm in the moral-responsibility literature is somewhat surprising given that criminal law theorists have paid a good deal of attention to parallel questions about (*inter alia*) the criteria for, and limits to, comparatively nonarbitrary criminal sanctioning.[6] Whatever the reason for this inconspicuousness, by making explicit and defining our commitment to a norm against comparatively arbitrary blame, we stand to acquire a richer understanding of the ethics of blame and of the norms of moral responsibility more broadly. We proceed as follows. In section 1, we present a comparative nonarbitrariness condition on blame, or the "comparative condition" (CC) for short. In section 2, we address two objections that threaten CC's explanatory power: the objection from fittingness and the objection from forward-looking considerations. In section 3, we consider whether CC can be applied *inter*personally, and argue that CC is best conceived of as a purely *intra*personal norm. Finally, in section 4, we bring things to a nonarbitrary conclusion by reflecting on the work CC can do by being added to an ethics of blame.

1. THE COMPARATIVE CONDITION

Imagine that a parent's two adult children conspire to steal $10,000 from her bank account. The parent blames both children, but to significantly differing degrees: she gives one child a stern talking-to and demands that they repay her $5,000 but gives the other child only a stern talking-to.[7] We stipulate that both the adult children stole their parent's money freely and are blameworthy for doing so. Additionally, the parent justifiably believes that both children engaged in this blameworthy behavior. We can also assume that the parent successfully meets all standing conditions on blame. Thus, in this case, all extant fittingness,

(Todd, "A Unified Account of the Moral Standing to Blame," 24–25). In this paper, our aim is to identify the conditions under which an agent's blame is comparatively arbitrary and incorporate a norm against this behavior into our ethics of blame.

6 E.g., Murphy, "Mercy and Legal Justice"; Husak, "Already Punished Enough"; Kolber, "The Comparative Nature of Punishment."

7 We focus on overt acts of blame in order to exemplify the practical significance of blaming to significantly differing degrees and do not presuppose that blame *consists in* overt actions (rather than, say, negative reactive attitudes).

epistemic, and standing conditions for blame are met. But there is something deeply inappropriate about the parent's response to her children.

When blame is at issue, like cases must be treated alike—if the parent blames one child by demanding partial repayment, then, *ceteris paribus*, she should blame the other child to the same extent. Of course, it is possible that these are not like cases. There could be relevant differences between the children that justify the parent's pattern of blaming behavior. Perhaps one of the children was pressured into stealing the money by the other child (and for this reason is less blameworthy), or perhaps the parent abandoned one of the children at birth such that she does not have the appropriate relationship to blame them in the same way she blames her other child. But if the two children are guilty of the same offense to the same degree and the parent relates to both children and their wrongdoings in the same way, then it would be morally objectionable to blame them to substantially different degrees. To do so, as the parent in our example does, is to blame in a way that is comparatively arbitrary and thus *pro tanto* inappropriate.[8]

To capture the intuition that comparatively arbitrary blame is inappropriate,

8 Factors extraneous to the norms of blame may affect whether one has all-things-considered reason to blame in a particular manner, and so whether one's blame is *on balance* appropriate. If, for instance, a malicious observer was to kill an innocent person *unless* the parent blames one child to a significantly greater degree than the other, the parent may have all-things-considered reason to blame the children to significantly different degrees. Or, perhaps due to the children's psychologies, blaming them in this way generates the best outcome. Although forward-looking factors of this sort are practically relevant to determining whether one has all-things-considered reason to blame in a certain way, factors of this type may affect one's all-things-considered reasons for *any kind of response.* Since our goal is to understand the factors specific to blame that render it appropriate, we put aside extraneous forward-looking considerations. But one might argue that these considerations are far from extraneous. Perhaps these forward-looking considerations can render blame *nonarbitrary*. In one sense, if the parent has all-things-considered reason to blame in this way, then the blame cannot be arbitrary since she has reason to do it. But in another, more pertinent sense, the parent's blame remains arbitrary in virtue of violating CC (see below). Imagine that one child is deterred from future immoral behavior more effectively if he witnesses others being blamed harshly than if *he* is blamed harshly, and this is why the parent has all-things-considered reason to blame her children to significantly different degrees. In this case, it might be permissible for the parent to blame them to different degrees, but this is intuitively because the bad-making feature of this kind of blame is *outweighed*, rather than *extinguished*, by the forward-looking considerations. This distinction is relevant in making sense of the moral residue that blame of this kind is apt to leave behind, e.g., the parent's regret that she had to blame in such a way as to secure the best outcome; the resentment of the harshly blamed child toward the parent; the guilt (or gratitude, or both) of the leniently blamed child upon learning of the burden borne by his sibling.

we propose that our responsibility practices display sensitivity to the comparative nonarbitrariness condition of blame, or the "comparative condition":[9]

> CC: If *A* blames *B* for some action *X* to a sufficiently greater (or lesser) degree than *A* blames *C* for *X*, and there is no morally relevant difference between either (i) *B* or *C*'s relationship to *X* or (ii) *A*'s (moral or epistemic) standing relative to *B* or *C*, then *A*'s blame of *B* and *C* is inappropriate in virtue of being comparatively arbitrary.[10]

Each of the two kinds of "morally relevant" differences—(i) and (ii)—is capable of justifying a significant differential in blame. *B*'s relationship to the action *X* may differ from *C*'s relationship to *X in a morally relevant way* if *B*'s performance of *X* requires a substantially greater degree of effort, say, or is expressive of a poorer quality of will. In this case, *B* may be the fitting target of a greater degree of blame than *C*, and so *A*'s blame differential will not be normatively arbitrary. Similarly, if *A* is complicit in *B*'s, but not *C*'s, wrongdoing, then *A* might lack (or have diminished) moral standing to blame *B*. In this case, because there is a normatively relevant difference in *A*'s moral standing relative to *B* and *C*, the blame differential might be justified. Finally, if *A*'s epistemic situation relevantly differs with respect to *B*'s and *C*'s wrongdoings (perhaps *A* has decisive evidence that *B* acted culpably while possessing only weak evidence regarding *C*'s culpability), then a differential in *A*'s blame will not be comparatively arbitrary. In short, CC is violated when the differential in blame is explained neither by *B*'s and *C*'s relation to the action nor by *A*'s (moral or epistemic) standing to blame *B* and *C*.

In virtue of what, however, is CC-violating blame objectionable? One might suppose that it is objectionable in virtue of violating a general norm against the arbitrary treatment of persons, one requiring that we treat morally like individuals alike. If that is the case, one could explain why arbitrary blame is morally objectionable without reference to a blame-specific norm, like CC.[11] This proposal, however, is without promise. In many areas of life, it is permissible to treat rele-

9 It is possible that there exists a comparative nonarbitrariness condition on praise as well. But in order to present our argument as clearly and concisely as possible, we focus exclusively on comparatively arbitrary blame.

10 Importantly, CC is distinct from a claim about the supervenience of the normative on the nonnormative. This is because CC is a claim only about the relationship between *normative* categories. CC claims that there ought to be no difference in our blame responses without a corresponding difference in the blameworthiness of agents or the (moral and epistemic) standing of the blamer. Thus, CC could still be true even if supervenience does not hold between the normative and nonnormative.

11 We would like to thank an anonymous reviewer for raising this concern.

vantly similar individuals dissimilarly. We can confide in, become friends with, fall in love with, and marry one individual without treating relevantly similar individuals in the same way. Now, one might rightly be disappointed when one learns that an individual who shares all their relevant features has been confided in, befriended, fallen in love with, or married to someone who has not treated them in a similar way. But, though perhaps disappointing, there need not be anything *morally* objectionable about such treatment; agents, even morally good agents (even those no worse than those dear to us), do not, as such, have a claim or right to our confidences, friendship, love, or hand in marriage.[12] For this reason, these and other related practices and patterns of concern permissibly admit of significant degrees of arbitrariness.[13] But this is not so for blame. Blame is governed by a set of norms different from those applicable to the above-mentioned forms of treatment.

Why should blame be special in this way? This is plausibly because we have a right or claim on others not to be harmed without reason, and blame characteristically imposes some (not insignificant) amount of harm on its targets. An idea common to many views of blame is that blame characteristically adversely affects the interests of—or harms—the blamee.[14] Even if blame does not *necessarily* harm the blamed (e.g., if the blame remains unexpressed, or if the blamee is indifferent to others' evaluations and actions), there is a more than accidental connection between blame and harm. Blame is characteristically manifested in negative modes of expression and treatment, like "avoidance, reproach, scolding, denunciation, remonstration, and (at the limit) punishment."[15] It is in virtue of this connection between blame and harm that responsibility theorists sometimes claim that blame responses involve liability to sanctions, or at least *sanction-like* responses.[16] In our central case, the burdensome or sanction-like nature

12 On this point, see Scanlon, "Interpreting Blame," 91, and Darwall, *The Second-Person Standpoint*, 120.

13 Of course, we do not wish to claim that blame is the *only* practice that is governed by a comparative nonarbitrariness norm. Rather, our claim is that there is no *general* norm against arbitrariness that could supplant CC. But, importantly, even if this general norm did exist, CC could still do normative work. After all, what makes a practice objectionably arbitrary will differ from practice to practice. CC specifies the conditions under which blame, in particular, is arbitrary and thus morally objectionable—i.e., by violating conditions (i) and (ii).

14 Feinberg, *Harm to Others*; McKenna, *Conversation and Responsibility*, 134–41; Rosen, "Skepticism about Moral Responsibility"; Watson, "Two Faces of Responsibility"; Wallace, *Responsibility and the Moral Sentiments*; Carlsson, "Blameworthiness as Deserved Guilt"; Bennett, "The Varieties of Retributive Experience," 151–52.

15 Wallace, *Responsibility and the Moral Sentiments*, 54.

16 As Gary Watson writes, "Holding accountable … involves the liability to sanctions," as

of blame is evident, as the demand to repay $5,000 and being the target of a condemnatory lecture both typically adversely affect one's interests.

In light of blame's sanction-like nature, together with our right or claim not to be harmed without sufficient reason, blame can be unfair. Indeed, blame can be unfair in a variety of ways. Theorists of responsibility have focused on the ways that blame might be *non-comparatively* unfair, as blame would arguably be if it turned out we were the sorts of agents who lacked the kind of free will, or control over our actions, necessary to be morally responsible. If we were the sorts of agents who lacked the requisite capacities (whatever they are) to be the fitting objects of blame, then, even if *everyone* was blamed to the same degree for the same kinds of actions, the blame might nonetheless be unfair, in a non-comparative sense.[17] The same can be said for blame that violates the epistemic and standing conditions that govern our blaming practices. But CC-violating blame is unfair in a different way; it is *comparatively* unfair, as it relies on a significant differential in blame directed toward multiple agents who are relevantly similar.[18] In our central case, the parent meets both the standing and epistemic conditions on blame, and each child is blamed to a fitting degree, so there is nothing non-comparatively unfair about the parent's blame. But the parent's blame of her children is nonetheless *comparatively* unfair. For, in blaming one child with

"blaming responses (at least potentially) affect the interests of their objects adversely" ("Two Faces of Responsibility," 275–80).

17 This is the type of unfairness Hieronymi discusses in considering the idea that "blaming a wrongdoer can be unfair because blame has a characteristic force, a force which is not fairly imposed upon the wrongdoer unless certain conditions are met—unless, e.g., the wrongdoer could do otherwise, or is able to control her behavior by the light of moral reasons, or played a certain role in becoming the kind of person she is" ("The Force and Fairness of Blame," 115).

18 Note that CC is not a general norm against comparatively unfair blame. There are possible ways for blame to be comparatively unfair that do not constitute violations of CC. Some argue, for example, that it is comparatively unfair to blame a person who *actually* does wrong but to abstain from blaming the person who *would have* performed the same wrong in different circumstances but did not, when the difference between the two agents is explained by a difference in their respective circumstances, which are beyond their control. This is a case of "luck in circumstances," or circumstantial luck (Nagel, "Moral Luck," 33). Opposition to this form of luck, and moral luck generally, often proceeds from the claim that it would be *comparatively unfair* to blame two agents differently on the basis of factors beyond their control. Comparing two such agents, Zimmerman claims that "since what distinguishes them is something over which they had no control . . . it is unfair to blame [one] more than the [other]" (*An Essay on Moral Responsibility*, 136). We take no stand here on whether such blame is objectionable. Regardless, it does not violate CC, as CC deals only with cases where agents in fact perform the same action. CC specifies one way of blaming that involves comparative unfairness.

a stern talking-to plus the demand of repayment and the other with only a stern talking-to, the blamer burdens the former to a significantly greater degree, in effect giving less weight to one of the children's claims not to be harmed without sufficient reason. As such, the more severely blamed child is treated comparatively unfairly. We contend that it is in virtue of being comparatively unfair in this way that CC-violating blame is *pro tanto* morally wrong.[19]

To conclude this section, we highlight two aspects of CC that might not be immediately transparent. First, CC targets cases in which *A*'s blame of *B* and *C* differs to a *sufficiently great degree*. It may be that some differentials in blame are too miniscule to make a normative difference. Or, perhaps even the smallest differential of blame is sufficiently great. We take no stance on this issue. Second, in saying that *A*'s blame of *B and C* is inappropriate, we secure CC's status as an essentially comparative norm. That is, if *A* arbitrarily blames *B* to a sufficiently different degree than she blames *C*, the inappropriateness of A's blame does not reside simply in the degree to which *A* blames *B* or the degree to which *A* blames *C*. This is because it is possible that, when considered non-comparatively, *A*'s blame of *B* is appropriate and *A*'s blame of *C* is appropriate. If so, the inappropriateness of *A*'s blame of *B* and *C* can only be understood comparatively. We explore this thought below in replying to the objection from fittingness.

2. THE EMPTINESS OBJECTIONS

In this section we address two objections that, if sound, would render CC explanatorily epiphenomenal: the objection from fittingness and the objection from forward-looking considerations. According to the former, fittingness can do all the normative work to explain why comparatively arbitrary blame is morally objectionable, while the latter contends that forward-looking considerations alone can account for its objectionableness.

2.1. The Objection from Fittingness

One might argue that CC does not do any independent normative or explanatory

19 Alternatively, one might propose that the objectionableness of comparatively arbitrary blame consists in a vice manifested in the blamer. But, while it is possible that individuals who blame arbitrarily are manifesting a vice, this need not be the case; an agent's blame can violate CC without reflecting a vicious character. In such cases, the comparatively arbitrary blame would intuitively still be (*pro tanto*) inappropriate, indicating that the relevantly objectionable feature of comparatively arbitrarily blame resides in the arbitrariness of the blame, not the blamer's character. This point sets us further apart from Fritz and Miller, who locate the morally objectionable feature of hypocritical and arbitrary blame in the *dispositions* of the blamer ("Hypocrisy and the Standing to Blame").

work. After all, morally like cases share morally relevant intrinsic features, and so perhaps the fittingness conditions that supervene on these features will, all by themselves, guarantee that like cases should be treated alike. If so, fittingness norms alone can explain what is wrong with comparatively arbitrary blame. But if norms of fittingness do all the normative work, then even if CC issues the right verdicts, it will be normatively and explanatorily epiphenomenal.

To develop this objection, let us return to the case of the adult children embezzling $10,000 from their parent. Recall that the parent blames one child by giving them a stern talking-to and demanding that they repay her $5,000, and blames the other child by only giving them a stern talking-to. Given that the blamer has qualitatively identical (or identical in *every morally relevant respect*) relations to each of the children and is equally justified in believing that each child is equally culpable, there is something deeply inappropriate about one child getting a stern talking-to and the other child getting a stern talking-to *and* the demand to make a $5,000 repayment for performing the same blameworthy act. One might, however, doubt that we need CC to tell us why this is so.

The proponent of the objection from fittingness can propose an alternative explanation: the same degree of blame is fitting for both embezzlers, and the norm of fittingness provides a sufficient normative basis for the claim that one of the embezzlers is blamed objectionably. We can stipulate that both agents—Agent 1 and Agent 2—are motivated to the same degree by the same morally dubious reasons to steal their parent's money, and that the contents and strengths of all the attitudes relevant to their (equally bad) actions are qualitatively identical. Suppose "$\phi 5$" designates the type of action they each perform, and that an agent who performs $\phi 5$ is the fitting object of blame to degree D_n. Since Agent 1 and Agent 2 each performs action $\phi 5$, they are each fitting objects of blame to degree D_n. Now, it will indeed be inappropriate if Agent 1 receives blame to degree D_n, while Agent 2 receives blame to degree D_{n-1}. But, the objector continues, this is explained *not* by some independent norm regarding comparative nonarbitrariness, but simply by the fact that Agent 2 receives less blame than is fitting. So, even if CC issues the right verdict regarding Agents 1 and 2, if all the normative work is done by the internal features of the case and the respective fittingness conditions, reference to CC will be normatively otiose.[20]

The problem with the above explanation, we contend, is its presupposition that for any given blameworthy action there is a unique degree of blame that is

20 This objection is adapted from Westen's influential criticism of the principle of equality ("The Empty Idea of Equality"). Our reply, in turn, draws on Chemerinsky's ("In Defense of Equality") and Simons's ("Equality as a Comparative Right") responses to Westen. Thanks to Brian Leiter for suggesting the relevance of the Westen paper and the ensuing literature.

fitting. This presupposition is neither widely shared in the responsibility literature nor is it independently plausible. CC earns its keep partly because the fittingness conditions of blame generally license a *spectrum* of appropriate responses. This "spectrum thesis" has been implicit in the above discussion, and it will be worthwhile to provide some motivation for it.[21]

The falsity of the spectrum thesis (i.e., the truth of the "uniqueness thesis") would require that for each blameworthy action type there is a single, unique degree of blame that is fitting as a response. If there were a unique degree of blame that was alone fitting for any given blameworthy type of action, then the margin for fitting blame would be extremely narrow. But intuitively there are a variety of ways to appropriately blame someone who is blameworthy. In response to the same slight, one person might angrily confront the slighter, another may temporarily distance himself from the slighter, and yet another might privately resent the slighter. Should we think that, just because they differ in degree, two or perhaps all of these responses are unfitting? The uniqueness theorist is committed to this exceedingly strong claim. While there will surely be an upper threshold past which one's blame will be excessive (and often a lower threshold beneath which one's blame may be objectionably lenient), there is intuitively a bounded range of fitting responses for any given blameworthy action.[22]

The spectrum thesis is intuitively true of many responses beyond blame. Our responses of gratitude, regret, disappointment, trust, pride, admiration, fear, amusement, hope, and frustration (among many others) are evaluable for fittingness. And when any such response would be fitting, there will normally be several qualitatively distinct ways of fittingly reacting with a response of that type. To illustrate, consider the implausibility of a uniqueness thesis as applied to fitting responses of comic amusement.[23] If there were a uniquely fitting degree of

21 A spectrum thesis for deserved blame finds explicit support in Sommers, who claims "We maintain that there is a range of appropriate blame or punishment responses and that responses outside of this range would be undeserved. Whether the betrayed spouse asks for a trial separation, files for divorce, gives the partner another chance is largely up to her. All of these are proportionate responses. But imprisoning the spouse or killing him or even cutting off all access to the children would be disproportionate" (Sommers, "Partial Desert," 255–56).

22 Notice that the spectrum thesis of fitting blame is presupposed by a common view of forgiveness as discretionary or elective (Allais, "Wiping the Slate Clean" and "Elective Forgiveness"; Calhoun, "Changing One's Heart"; Cowley, "Why Genuine Forgiveness Must Be Elective and Unconditional"). On this view, there is nothing morally suspect in one agent's forgiving a wrongdoer (and as such, forswearing blame) whom another blamer continues to blame, and as such, blames to a greater extent than does the forgiver.

23 The analogy between humor and responsibility has been explored recently by David Shoemaker ("Response-Dependent Responsibility") and Patrick Todd ("Strawson, Moral Re-

comic amusement for any particular joke, then, given the wildly varying degrees of laughter in comedy clubs and movie theaters, most (and perhaps all) responses to jokes would be unfitting. But surely the norms surrounding humor permit a wide range of fitting responses to things that are funny. It would be jarring to witness a large group of individuals responding with exactly the same degree of amusement to a joke or humorous story. We take it that the same would be said of a group of individuals who blamed a blameworthy agent to exactly the same degree. The point here does not depend on the assumption that blame functions just like amusement or other fitting reactions. We are likely to be more permissive about the range of fitting responses to jokes than we are about the range of fitting responses to moral wrongs. Nevertheless, it would be surprising if instead of simply displaying a *more restricted* range of fitting responses, it turned out that blameworthiness did not actually warrant ranges of fitting responses *at all*.

Let us return to the embezzling adult children case. What is wrong with this case is not that one agent received too little blame or that the other agent received too much—(i) stern talking-tos and (ii) stern talking-tos in addition to demands for partial repayment are both appropriate ways of blaming such acts of embezzlement. It would be appropriate if the parent gave both children stern talking-tos and demanded that each child pay her $5,000 or only gave both children stern talking-tos, for example. It is only by invoking a relational or comparative norm like CC that we can identify what is inappropriate about the parent's blaming one of their children in manner (i) and the other in manner (ii). Although both instances of blame are fitting, there is more to appropriate blame than fittingness (and epistemic justification, and standing). Given that there is no relevant difference in the parent's beliefs about each child's culpability, her relationships to the two children, or between the children's relationships to the blameworthy actions they perform, if one child receives (i) and the other (ii), we have reason to conclude that the disparity in strength of blame is inappropriate in virtue of being comparatively arbitrary. Thus, norms of fittingness do not render CC normatively otiose.

2.2. The Objection from Forward-Looking Considerations

Even if fittingness cannot, all by itself, provide an explanation for the objectionableness of comparatively arbitrary blame, perhaps other explanations are available. In particular, one might think that a forward-looking explanation can provide a suitable alternative to CC. Our opponent might maintain that our

sponsibility, and the 'Order of Explanation'") in the development of response-dependence accounts of responsibility.

blaming responses are subject to a (backward-looking) norm of fittingness, but that there are also forward-looking reasons for blame to *appear* fitting, both to the blamees and to observers. For if our blame responses appear arbitrary (as they sometimes will when two agents are blamed to different, but fitting, degrees), blame may lose some of its deterrent or rehabilitative efficacy.[24] Perhaps if blamees and the moral community generally had *all* the relevant information, and so understood that seemingly comparatively arbitrary instances of blame were really different-*but-fitting* instances of blame, then there would be no problem with blaming in different-but-fitting ways. But observers and recipients of our blaming responses typically do *not* have all the relevant information, and often will not understand that seemingly arbitrary instances of blame are *only seemingly* arbitrary. To avoid appearances of arbitrariness, then, we should blame wrongdoers to the same fitting degree.

In response, we grant that there may be forward-looking reasons for our blaming responses not to appear arbitrary. But it is not plausible that forward-looking considerations are the only (or even the primary) reasons not to blame wrongdoers to different degrees. For, even in cases where the blamees will acknowledge that each of the blame responses is fitting, we contend that they will still find it morally objectionable that one is blamed more severely (and so has his interests more adversely affected) than the other. The following strikes us as a reasonable response that the more severely blamed person may issue: "Yes, but why should *I* be blamed more severely?" This sort of reaction will be available to them even if they realize that both instances of blame were fitting. A parent might believe that each of the following is a fitting response to a child's breaking curfew: (i) grounding the child for a night; (ii) verbally communicating disapproval and giving the child a second chance. But, thinking back on some occasion when, as a teenager, he (i.e., the parent) was grounded while his sibling was merely scolded for breaking curfew, he may continue to believe that there was something objectionable—indeed, unfair—in his being blamed more severely than his sibling.

The forward-looking reasons for blame to appear nonarbitrary are likely derivative of the backward-looking reasons against comparatively arbitrary blame. To illustrate, consider a similar forward-looking explanation of the wrongness of hypocritical blame. One might hold that if the blamee is indeed a fitting target of blame, hypocritical blame (i.e., blame issued by a blamer who is unapologetically guilty of the same offense for which he blames another) is not objectionable *in itself*. But as the blamee is likely to be defensive when he is blamed by another who unapologetically commits the same wrong, such blame is unlikely to be ef-

24 We are thankful to an anonymous reviewer for raising this objection.

fective (and may even be counterproductive). Although it is true that this sort of blame is unlikely to be effective, this is intuitively because it is morally objectionable in itself. In replying, "Who are *you* to blame me?" the blamee is not merely deflecting blame, but voicing a reasonable objection about the prerequisites for having the standing to blame. So while there is plausibly a forward-looking reason not to blame hypocritically, this reason is parasitic on the backward-looking reason that hypocritical blame is objectionable in itself. Likewise, comparatively arbitrary blame is less likely to be effective at promoting rehabilitation and deterrence, but we contend that this is chiefly because comparatively arbitrary blame is unfair in itself. In our view, the forward-looking reasons to not blame in comparatively arbitrary ways are thus parasitic on the backward-looking reason against arbitrary blame.[25]

3. Why is CC an intrapersonal but not interpersonal norm?

We have presented CC as an intrapersonal norm that governs an agent's blame of other, equally blameworthy agents. But one might wonder whether CC can be applied *inter*personally as well. That is, can CC constrain how *distinct* blamers blame individuals who have committed similar wrongs?

Imagine that two different, unrelated parents (P1 and P2) discover that each of their adult children (C1 and C2) has embezzled $10,000 from each of them. We can imagine that all the relevant facts about these two cases are the same: the adult children are equally blameworthy for stealing the money, the parents justifiably believe to the same degree that their respective children embezzled from them, and the parents relate to their children in qualitatively identical ways. If P1 blames C1 by giving them a stern talking-to and demanding a $5,000 repayment, and P2 blames C2 by only giving them a stern talking-to, has something inappropriate occurred?

Since we think there exists a spectrum of fitting responses to a given blame-

25 There may be further forward-looking considerations relevant to blaming in a CC-consistent manner. For example, CC-consistent blame differs from CC-violating blame in precluding worries on the part of the more severely blamed blamee that they are being discriminated against. Stipulating that the differential blame *is not* in fact explained by a discriminatory bias (or an otherwise pernicious property) of the blamer, it will nonetheless sometimes be understandable for blamees and observers to wonder whether they are being blamed differentially *on the basis of* a morally irrelevant feature (e.g., membership in a historically marginalized group). (Their so wondering is apt to give rise to negative hedonic feelings, like distress and anxiety, and so CC-violating blame can be criticized on utilitarian grounds.) Indeed, the blamee might wonder this *despite* knowing that the blame is non-comparatively appropriate, i.e., fitting.

worthy action, and C1 and C2 have performed qualitatively identical blameworthy actions, we think it is perfectly appropriate for P1 to blame C1 by giving them a stern talking-to and demanding partial repayment and for P2 to blame C2 by only giving them a stern talking-to. After all, there is nothing morally suspect about one parent choosing to ground their child for breaking curfew and another parent choosing to simply verbally communicate their disapproval for doing the same. However, there is something inappropriate (and deeply so if you ask the children involved) about a parent choosing to ground one of their children for breaking curfew but not their other child for doing the same. In such a case, the parent gives one child's moral claim not to be harmed (without reason) greater weight than she gives the other's. Her blame is therefore comparatively unfair. We have an obligation to be consistent in our blame of others, but we do not have an obligation to render our blame in line with how others blame. Moreover, on the assumption that the spectrum thesis is true, we *cannot* have an obligation to blame in a way that is consistent with others, since the relevant others might themselves blame to different, but fitting, degrees. While it is possible for me to blame to the same degree that *A* does, I cannot blame to the same degree that *both A* and *B* do if *A* and *B* blame to different (but fitting) degrees.

One could argue that though we are not required to render our blame in line with others' blame, we should hold ourselves to the same standards we think others ought to be held to. For example, imagine that P1, prior to blaming C1, learns that P2 blamed C2 by only giving them a stern talking-to. Imagine further that P1 judges P2's blame to be appropriate and thinks there are no relevant differences between their two situations. One might argue that P1 should then blame C1 to the same degree that P2 blamed C2. Perhaps nonarbitrariness norms like CC should not require agents to be consistent with how others blame, but they should require that blamers be consistent with their *judgments* about how others blame. If this is correct, then one could modify CC to capture these kinds of cases and it could still remain an entirely intrapersonal norm.

However, we would resist such revisions to CC. We contend that it is perfectly consistent for P1 to judge that P2 blames C2 appropriately and to judge that her own blame of C1 is also appropriate despite differing in degree. Just as we think there exists a spectrum of appropriate responses to blameworthy agents, we also think agents can coherently judge that distinct instances of blame are appropriate, even if they differ in degree. Of course, reflecting on what you take to be appropriate instances of blame could lead you to revise your judgments about other instances of blame and even your own blaming practices. If, upon reflection, P1 judges that it is appropriate for P2 to blame C2 by only giving them

a stern talking-to, P1 might question whether their decision to demand partial repayment from C1 was really appropriate. But revisiting one's judgments about the appropriateness of an act of blame in light of how others blame is not an expression of a commitment to nonarbitrariness. Rather, it is most likely an expression of epistemic humility. These are important, but distinct, norms that we should be careful not to conflate.

While the way others blame is not *irrelevant* to how we ourselves ought to blame, we do not have an obligation to render our blame in line with others' blame, even if we deem it appropriate. We do, however, have an obligation to be consistent in our own blaming responses. Thus, we think CC is properly conceived of as a purely intrapersonal norm.

4. CONCLUSION

In this paper, we first developed a norm proscribing comparatively arbitrary blame: CC. Next, we defended CC against two charges of explanatory vacuity and then argued that it properly applies only to instances of intrapersonally arbitrary blame. We will now conclude by briefly reflecting on the importance of including CC in an ethics of blame.

Given the inherently social character of moral responsibility—its arena regularly referred to as that of the *community* of morally responsible agents—it is unsurprising that we care not only about the way in which others blame us, but also about the way others blame us relative to their blame of similar agents. Given the literature's focus on non-comparative norms of blame, it is difficult to give voice to what is wrong with blaming relevantly similar agents to different degrees. After all, it would not be right to say that such blame is unfitting or that the blamer lacks moral or epistemic standing. CC, however, can identify what is morally objectionable about the blame in such cases: it is comparatively arbitrary, and so treats one of the blamees comparatively unfairly. As theorists of blame and responsibility are already committed to understanding the conditions under which blame is fair, they should not exclude the conditions under which blame may be comparatively unfair, especially given the inherently social character of moral responsibility. In acknowledging the moral relevance of an individual's blame of multiple agents, CC sheds new light both on the nature of blame and on the ways in which blame can be morally objectionable. Once we are able to properly diagnose what is wrong with these blaming interactions, we are in a position to improve them. By focusing on the comparative aspects of blame, CC

is poised to contribute to both our understanding and the improvement of the practices of blame.[26]

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RISK AND THE UNFAIRNESS OF SOME BEING BETTER OFF AT THE EXPENSE OF OTHERS

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THIS PAPER offers a novel account of how complaints of unfairness arise in risky distributive cases. According to a recently proposed view in distributive ethics, the Competing Claims View, an individual has a claim to a benefit when her well-being is at stake, and the strength of this claim is determined by the expected gain to the individual's well-being, along with how worse off the individual is compared to others.[1] If an individual is at a lower level of well-being than another, their claim to a given benefit is stronger. On this view, the strength of individuals' claims is a function of their comparative well-being levels. In this paper, I instead argue that competing claims obtain only when a particular relationship holds between the fates of individuals: that one individual's gain is at the expense of another. This is a particular complaint that obtains when the fates of individuals are tied together in such a way that inequality that is to the detriment of the person who is worse off is guaranteed (or likely) to obtain. As such, I argue that complaints of unfairness arise in fewer cases than the Competing Claims View currently states. A purely comparative view is unable to account for this unique complaint of unfairness. I argue that this complaint is not only independently plausible, but can serve as a foundation for a more general account of competing claims complaints.

The paper has three aims. The first is to demonstrate how the type of risk that one is exposed to can make a moral difference to how one should act. There has been little systematic discussion of this question. The second is to outline and defend the plausibility of a unique complaint of unfairness: that sometimes some are better off at the expense of others. The third is to contrast my account of competing claims with that of the recent view of Otsuka, Voorhoeve, and Fleurbaey, and provide a possible extension. They argue that complaints of unfairness arise as a function of the comparative well-being levels of individuals when some are (or are expected to be) worse off than others. The view I offer is different in the respect that it provides an account of competing claims that

1 Voorhoeve and Fleurbaey, "Egalitarianism and the Separateness of Persons," 397.

is grounded solely in a view about *how* individuals' interests are related to one another.

Before proceeding, I shall briefly outline what it means for claims to compete. An individual has a claim on a good when her interests are at stake. An individual does not have a claim if her interests are not at stake. Claims of individuals are in competition with one another when they cannot be jointly satisfied. For example, suppose both Cara and David are equally in need of one dose of medicine that will increase their well-being. Francis has one dose of the medicine. Cara and David both have a claim on Francis to be helped. Whereas Emily, who does not need the medicine, does not have a claim on Francis to be helped. Competing claims views remark on how one should act when faced with the competing claims of individuals to some good, or to the avoidance of a burden.

The structure of the paper is as follows. In sections 1 and 2, I argue that when risks are independent, i.e., when the prospects for one person in a gamble do not depend on the prospects of another, it is permissible for a morally motivated decision maker to provide an expected well-being-maximizing alternative, regardless of the number of people involved, and that the potential for outcome inequality does not itself give rise to complaints of unfairness. In section 3, I argue that in cases where risks are inversely correlated, i.e., when the prospects for one individual have an inverse relation to the prospects of another, a source of individual complaints against a situation in which they are disadvantaged is that some are better off at their expense. This complaint, I argue, should lead us to be averse to inequality in inversely correlated cases. In section 4, I contrast my view with that of the recent competing claims view of Michael Otsuka, Alex Voorhoeve, and Marc Fleurbaey. In section 5, I demonstrate how my account guides action in cases involving certainty, as well as how it respects the distinction between what is called the unity of the individual and the separateness of persons.

1. SINGLE-PERSON CASE AND TWO-PERSON INTRAPERSONAL CASE

Consider the following case:

> *Single-Person Case*: Ann, a young child who is currently in full health, will soon go completely blind through natural causes (utility = 0.65) unless Tessa, a morally motivated stranger, provides one of two available treatments. Treatment *A* will either, with fifty percent probability, leave Ann blind (0.65) or instead, with fifty percent probability, fully cure her (utility = 1); treatment *B* will restore Ann to partial sight for sure (0.8). (See Table 1.)

Table 1. Final Utilities for Single-Person Case

	S1 (0.5)	S2 (0.5)
	Ann	Ann
Treatment *A*	0.65	1
Treatment *B*	0.8	0.8

Before judging this case, I need to clarify the measure of well-being employed. I assume a measure of utility derived from idealized preferences satisfying the Von Neumann-Morgenstern axioms. According to this measure, a prospect has higher expected utility for a person

> just in case it would be preferred for that person's sake after rational and calm deliberation with all pertinent information while attending to her self-interest only. (A person's expected utility is just the probability-weighted sum of her utility in each state of the world.) One prospect has the same expected utility as another for a person just in case such deliberation would yield indifference between the two prospects.[2]

Now, supposing only Ann's interests are at stake, which treatment should Tessa select? Treatment *B* gives Ann a set outcome for sure, but offers a lower expected well-being than treatment *A*. In this case, it is possible to offer the following prudential justification for providing *A*: "I did the best I could for you given the information I had at the time."[3] This provides, I believe, a strong reason for selecting *A*. Insofar as the individual's interests are considered in isolation from others, there is no countervailing reason to favor *B*. As Michael Otsuka puts it, there are "no interpersonally comparative or otherwise distributive considerations … that tell in favour of paying heed to anything other than what is in this [person's] rational self-interest."[4] Why, when one is considering this individual's interests alone, ought one to depart from what, given the information available, anyone concerned exclusively with the individual's interests (including the individual herself) would rationally regard as the best one can do for her?

For these reasons, in this paper, I assume the following answer is correct:

2 Otsuka and Voorhoeve, "Equality versus Priority," 8–9. The measure does not presuppose anything about what the nature of well-being is in itself. For instance, one may think that well-being consists in the satisfaction of preferences or the presence of happiness and absence of suffering. The measure is consistent with a decision maker maximizing whatever it is they take well-being to be. I will use the terms "utility" and "well-being" as synonymous in this article.

3 Voorhoeve and Fleurbaey, "Equality or Priority for Possible People?" 935.

4 Otsuka, "Prioritarianism and the Measure of Utility," 5.

in Single-Person Case, Tessa should maximize Ann's expected well-being and hence choose *A*. The correctness of this answer has recently been much debated.[5] I do not revisit the debate here. Instead, I pursue the following, less thoroughly discussed question: How should a view that accepts the premise that one should maximize an individual's expected well-being when one considers her fate in isolation deal with multi-person risky cases, in which the risky alternative that is in the expected interests of each person, taken separately, will generate outcomes in which some end up better off and others worse off than they would under a less risky alternative?[6] This question is important because some who accept my premise hold that in such multi-person-risk cases, each individual has a claim only to what would maximize their expected well-being, and those who end up worse off as a result of the distributor's choice of such an alternative have no complaint.[7] Against such a view, I argue that within a claims-based framework there can sometimes be reason to select an alternative that does not maximize each person's expected well-being, namely, when choosing what would maximize each person's expected well-being would ensure that some end up better off at the expense of others.

Now consider the following case, inspired by Voorhoeve and Fleurbaey:[8]

> *Two-Person Intrapersonal Case*: This case is identical to the preceding case with the addition of an extra person, Bill, who has partial sight for sure (0.8), no matter what treatment Tessa selects for Ann. Bill's well-being is completely unaffected by Tessa's action. If Tessa selects treatment *A*, then Ann will with fifty percent probability either remain blind (0.65) or

5 Otsuka and Voorhoeve ("Why It Matters that Some Are Worse Off than Others") and Otsuka ("Prioritarianism and the Measure of Utility") defend the permissibility of maximizing well-being in the Single-Person Case. McCarthy ("Utilitarianism and Prioritarianism II" and "The Priority View"), Greaves ("Antiprioritarianism"), and Voorhoeve and Fleurbaey ("Priority or Equality for Possible People?") defend the view that one ought to maximize this person's expected well-being. For the contrary view that one is permitted to be risk averse in a person's well-being, see, e.g., Parfit, "Another Defence of the Priority View," 432; and Bovens, "Concerns for the Poorly Off in Ordering Risky Prospects," 404.

6 Many views accept this premise. Most noteworthy are the views defended by Otsuka and Voorhoeve, "Why It Matters that Some Are Worse Off than Others," "Reply to Crisp," and "Equality versus Priority"; Voorhoeve and Fleurbaey, "Egalitarianism and the Separateness of Persons," "Decide as You Would with Full Information!" and "Priority or Equality for Possible People?"; and Frick "Uncertainty and Justifiability to Each Person," 186–91, and "Contractualism and Social Risk," 130–33.

7 For example, Frick, "Uncertainty and Justifiability to Each Person," 144–45, and "Contractualism and Social Risk," 181–88.

8 Voorhoeve and Fleurbaey, "Egalitarianism and the Separateness of Persons," 386.

instead, with fifty percent probability, be fully cured (1); treatment *B* will restore Ann to partial sight for sure (0.8). (See Table 2.)

Table 2. Final Utilities for Two-Person Intrapersonal Case

	S1 (0.5)		S2 (0.5)	
	Ann	Bill	Ann	Bill
Treatment *A*	0.65	0.8	1	0.8
Treatment *B*	0.8	0.8	0.8	0.8

In this case, Tessa ought to, in my view, select *A*. Only Ann's interests are at stake in this case, just like in Single-Person Case. Just as it was reasonable to select a treatment in Single-Person Case to maximize Ann's expected well-being, it should also be the case here. The only difference to the structure of the example is that now there is an extra individual, Bill, who is completely unaffected by Tessa's decision. If we believe that only people who have their well-being at stake in a gamble have a complaint, or potential complaint, against the actions that a decision maker will take, then Tessa ought to select *A*. To lend support to this idea, an interpretation of contractualism, the Complaint Model, states that "a person's complaint against a principle must have to do with its effects on him or her, and someone can reasonably reject a principle if there is some alternative to which no other person has a complaint that is as strong."[9] The absence of any effects on Bill from Tessa's action means that Bill does not have a complaint against the provision of *A*. This captures an important feature of the separateness of persons. The separateness of persons establishes that, because individuals lead separate lives, it is inappropriate to balance benefits and burdens *across* individuals as if they were a super-individual. A present or possible burden for an individual can be compensated by a future or possible benefit, whereas a burden to one individual cannot straightforwardly be compensated by giving a benefit to another person. The provision of treatment *A* only affects Ann's interests, and does not interfere with the interests of Bill.

One way to argue against the selection of *A* in this case is to claim that the morally motivated decision maker ought to care about the fact that there will be inequality if *A* is selected. For instance, there may be a brute luck egalitarian reason to favor the selection of *B*, for this ensures that both Ann and Bill will have a well-being level of 0.8. Brute luck egalitarians believe that "it is bad, or objectionable, to some extent—because unfair—for some to be worse off than others

9 Scanlon, *What We Owe to Each Other*, 229. However, Scanlon also argues that there may be considerations other than well-being that may lead to grounds for complaints, such as complaints of unfairness.

through no fault or choice of their own."[10] Even if Ann and Bill were on separate continents and had absolutely no relationship with one another, inequality between them would be bad to the extent that it did not follow from a choice of theirs.

This view can be defended with an appeal to *impersonal value*. Perhaps brute luck equality is impersonally valuable. My response is that, although it may be granted that brute luck inequality can sometimes provide reasons for action, it is unreasonable for such impersonal considerations to outweigh the individual reasons that Ann possesses in favor of the selection of *A* in this particular case. Given that only Ann's interests are at stake in this case, nothing other than a concern for Ann's rational self-interest should determine what treatment ought to be selected.[11] If *A* is selected then there will be outcome inequality for sure, but there will be no reasonable complaints against this.

Ittay Nissan-Rozen has argued that a distributor has a *pro tanto* reason to discard impersonal reasons when deciding what reasons to take into account when acting in a risky distributive case.[12] Nissan-Rozen appeals to the Kantian demand to treat individuals as ends in themselves and not as mere means. The impersonal reason of equality has nothing to do with Ann's well-being. By selecting an alternative in line with this impersonal reason when only Ann's interests are at stake, "the distributor treats the [impersonal reason] itself … as the end of the act of weighing it; and so, by weighing [the impersonal reason], the distributor treats [Ann] as a means to an end: she treats her as a means for the end of satisfying [the impersonal reason]."[13] As such, there is further reason to be skeptical of the claim that in cases where individuals have claims grounded in their (expected) well-being, one ought to sometimes act in accordance with impersonal reasons. Although impersonal reasons may feature in the deliberations of an agent, they should not veto the individual reasons of those who stand to have their interests affected.

The inequality present in Two-Person Intrapersonal Case does not provide a sufficient reason to favor treatment *B*. My view is that inequality is necessary but not sufficient for a complaint of unfairness in risky cases. The presence of inequality does not guarantee a complaint of unfairness.

10 Temkin, *Inequality*, 13.

11 As such, it may be the case that brute-luck inequality can provide *reason* for action, but such a consideration fails to outweigh the considerations in favor of selecting what is best for Ann, since only Ann's well-being is at stake in Tessa's choice.

12 Nissan-Rozen, "How to Be an Ex-Post Egalitarian and an Ex-Ante Paretian."

13 Nissan-Rozen, "How to Be an Ex-Post Egalitarian and an Ex-Ante Paretian," 554.

2. INDEPENDENT RISKS AND INEQUALITY

I now consider a case involving two individuals, where the well-being of both is at stake.

> *Fully Independent Risk Case*: Two children, Ann and Bill, will soon go completely blind through natural causes (utility = 0.65) unless Tessa, a morally motivated stranger, provides one of four possible treatment alternatives. She can give treatment *A* to Ann and treatment *B* to Bill or vice versa, or she can give both individuals treatment *A* or both treatment *B*. Ann's and Bill's outcomes under the treatments are statistically independent of each other. (See Table 3.)

Table 3. Final Utilities for Fully Independent Risk Case

	s1 (0.25)		s2 (0.25)		s3 (0.25)		s4 (0.25)	
	Ann	Bill	Ann	Bill	Ann	Bill	Ann	Bill
Ann: *A* Bill: *A*	0.65	1	1	0.65	0.65	0.65	1	1
Ann: *B* Bill: *B*	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8
Ann: *A* Bill: *B*	0.65	0.8	1	0.8	0.65	0.8	1	0.8
Ann: *B* Bill: *A*	0.8	1	0.8	0.65	0.8	0.65	0.8	1

Tessa ought to select *A* for both individuals in this case. The same reasoning that supported the selection of *A* in the preceding cases supports the same selection in Fully Independent Case. Ann's and Bill's futures are in every sense independent from one another, since (i) it is possible to offer either treatment to each individual independently of which treatment is offered to the other, and (ii) under each alternative any risks they face are independent. This implies that the well-being of Ann and Bill is *separate* in the same way that it is in Two-Person Intrapersonal Case. By this I mean their potential futures are not linked together: the well-being value of each individual is not causally dependent on the well-being values of other individuals. For example, if Tessa chooses *A* and Ann ends up with a particular level of well-being, then this has no bearing on what level of well-being Bill ends up with.

It is important to distinguish my use of "separateness" here from what is known in welfare economics as "additive separability." If one tries to order dis-

tinct distributions of individuals' well-being, one may believe that such orderings are "additively separable," which contains the thought that the moral value of "each person's well-being should be evaluated independently of other people's wellbeing."[14] I do not endorse this idea of additive separability. As I argue below, in determining the moral value of individuals' well-being, comparisons between their well-being matter just in case their fates are "tied together" in a particular manner. Rather than additive separability, I am instead endorsing an account of separability that is consistent with the separateness of persons, in that it tracks cases in which these futures are thoroughly independent, or unlinked.

In Fully Independent Case (Table 3) there is the possibility of inequality between Ann and Bill if Tessa chooses *A* for one or both of them. In Two-Person Intrapersonal Case (Table 2), inequality was certain to occur if *A* was selected, but this did not form the basis of individual complaints. How should Tessa accommodate the possibility of outcome inequality given that the interests of both individuals are now at stake? I think that, again, the potential inequality if *A* is selected for one or both of them is no basis for individual claims against selecting *A*. What is of importance in this case, as in the preceding two cases, is the separateness of Ann's and Bill's prospects. The potential futures of Ann are distinct from Bill's potential futures; moreover, nothing decided by Tessa about Ann's future affects Bill's fate, nor does anything that happens by chance to Ann affect how Bill ends up, and vice versa. In this regard, the expectably best treatment for Ann leaves Bill's well-being unaffected, and the expectably best treatment for Bill leaves Ann's well-being unaffected. Furthermore, there is a decisive reason to select treatment *A* for both Ann and Bill given the strength of the prudential justification that can be offered to both, based on the fact that the prudential justification appeals to these unified potential futures of each person.

One could object to the selection of *A* for both individuals by arguing that, while there is no complaint against inequality *per se*, this is a case in which, if we choose *A* for both, some may end up better off and others worse off than they might as a consequence of our choices, so that there may be competing claims *ex post* between the better and the worse off. And when there are such competing claims, whoever will end up worse off has a claim to an alternative in which they would have ended up better off (so to be given *B* in this case).[15]

Recall that an individual has a claim only if their interests are stake. For example, in Two-Person Intrapersonal Case (Table 2) there is only a claim on Ann's behalf since Bill's interests are not at stake. In Fully Independent Case (Table 3)

14 Broome, "Equality versus Priority," 220–21.

15 Such reasoning is suggested by Voorhoeve and Fleurbaey, "Priority or Equality for Possible People?" 10–11.

the interests of both Ann and Bill are at stake, but they are not in competition because they do not conflict *ex ante*, nor, despite the possibility of inequality, can they conflict *ex post*, as I now explain.

If S1 obtains, then it is best for Ann that *B* is selected. Selecting the best for Ann (*B*) does not preclude selecting the best for Bill (*A*), since it is possible to give *B* to Ann and *A* to Bill. This is because of the separateness of Ann's and Bill's prospects. Nothing that is decided about Ann's fate affects the fate of Bill. Similarly, the treatments affect each individual independently. There is therefore no *ex post* conflict of interest if S1 obtains. Analogous reasoning establishes the same for every other state of the world. There is therefore no conflict of interest *ex post* in any state of the world. Since there is no conflict of interest, I conclude that Tessa should simply select what is expectably best for each, which is *A*.

Now consider the following modification to the preceding case:

> *Modified Independent Risk Case*: The setup of this case is the same as before. However, due to technical limitations, Tessa can either provide both with treatment *A* or both with *B*, but cannot offer one of them *A* and the other *B*. (The case is described in Table 4.)

Table 4. Final Utilities for Modified Independent Risk Case

	S1 (0.25)		S2 (0.25)		S3 (0.25)		S4 (0.25)	
	Ann	Bill	Ann	Bill	Ann	Bill	Ann	Bill
Both get *A*	0.65	1	1	0.65	0.65	0.65	1	1
Both get *B*	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8

Does this modification change anything regarding what Tessa ought to do? One may observe that, as visible in the table above, there is a fifty percent chance that there will be a conflict of interest in final utilities, and that there are therefore competing interests *ex post*. Treatment *A* is rationally preferred by both individuals, but this choice is, in states of the world S1 and S2, better than *B* for one person but worse than *B* for another. Suppose, for instance, that S2 obtains. Giving *B* to both is best for Ann, but giving *A* to both is best for Bill. Their *ex post* interests therefore conflict, because both must receive the same treatment.

However, this potential *ex post* conflict of interest in Modified Independent Risk Case does not make a difference to what Tessa ought to do. Although it is not possible to provide a different treatment to each individual, the treatments affect each individual separately, in the sense that, if one chooses the risky treatment for both, the fact that one is well-off does not imply (or increase the chance that) the other is badly off.

Moreover, *A* would have been selected individually if it was possible to do so, as in Fully Independent Case (Table 3). The mere fact that options are removed that one would not select anyway should not make a difference to what one ought to do. Suppose that an individual is faced with a number of options, and that one alternative is permissibly chosen from these options. Suppose that we now shrink this set of options by removing one of the unchosen alternatives. The permissible alternative ought to remain permissible in this subset. This is the property of "basic contraction consistency."[16] If giving *A* to both is permissible in Fully Independent Risk Case (Table 3), then it should also be permissible in Modified Independent Risk Case (Table 4), which contains a subset of the alternatives in the former case.

I have argued that there are no complaints that give us reason to go against the recommendation to provide treatment *A* in these cases. The pattern of inequality arising in Two-Person Intrapersonal Case (Table 2) was not sufficient grounds for a complaint on behalf of Bill as he did not have a claim against Tessa because his interests were not affected by her action. Against the idea that the potential inequality in Fully Independent Risk Case (Table 3) if *A* were given to both should be of concern, I argued that this inequality need not be of concern because this is not a case of competing interests (neither *ex ante* nor *ex post*) between a better-off and worse-off person. I then appealed to both the independence of Ann's and Bill's fates to argue that in Modified Independent Risk Case (Table 4) Tessa ought to still give *A* to both.

3. Inversely Correlated Risks and the Complaint That Some Are Better Off at the Expense of Others

In this section, I consider how the view I am defending handles conflict of interest cases and arrive at a characterization of when competing claims obtain. I argue that there is an important moral difference between independent and inversely correlated risks. In the case of inversely correlated risks, the complaint of unfairness does not derive from the outcome inequality itself, but rather the fact that one is better off *at the expense of another*. I argue that this complaint ought to be included in a plausible account of competing claims. I argue that in cases of independent risks this particular complaint does not arise, and that this is so even if the *same* pattern of inequality arises as it does in an inversely correlated case.

Consider the following:

16 Sen, "Internal Consistency of Choice," 500.

Inversely Correlated Case: Ann and Bill will both soon, through natural causes, go completely blind unless Tessa administers one of two treatments. Treatment *A* will either, with fifty percent probability, cause Ann to go blind (0.65) and Bill to retain full vision (1), or instead, with fifty percent probability, cause Bill to go blind and Ann to retain full vision. Treatment *B* will restore both Ann and Bill to partial sight for sure (0.8). (See Table 5.)

Table 5. Final Utilities for Inversely Correlated Case

	S1 (0.5)		S2 (0.5)	
	Ann	Bill	Ann	Bill
Treatment *A*	0.65	1	1	0.65
Treatment *B*	0.8	0.8	0.8	0.8

Which treatment should Tessa choose? There are reasons that pull in different directions. First, there are considerations in favor of *A* due to the presence of a prudential justification to Ann and Bill, since *A* maximizes both Ann's and Bill's expected well-being. Second, there are considerations against the selection of *A*, due to the fact that (I shall argue) one will be better off at the expense of another. On balance, I argue that Tessa ought to select *B* in this case.

In this case, there will always be a conflict of interest *ex post*, whereas in Two-Person Intrapersonal Case (Table 2), although there was inequality for certain there was no conflict of interest. There will be a competing claims complaint in Inversely Correlated Case (Table 5) on behalf of whoever turns out to be worse off. This speaks in favor of selecting *B*.[17] One important consideration is that the identity of the individual who would be better off if *A* were selected and that of who is worse off is not known in this case—all that is known is that one individual will be in each position. This is important because there is a moral distinction between placeholders and persons. As Johann Frick argues, it makes a difference to the type of justification that can be given to each person in this case: "contractualist justification is owed to persons, with determinate identities and interests, not placeholders in a pattern of outcomes."[18] We might think that, because we do not know who will be better off and who will be worse off, Tessa could justify the selection of *A* to both because she does not know the

17 In structurally analogous cases, others agree with the selection of *B*. For example, Otsuka, "Prioritarianism and the Separateness of Persons," 373–74; Otsuka and Voorhoeve, "Why It Matters that Some Are Worse Off than Others," 173–74; and Voorhoeve and Fleurbaey, "Decide as You Would with Full Information!" 118–19.

18 Frick, "Uncertainty and Justifiability to Each Person," 141.

identity of who will be better off. To see how this might work, consider Frick's argument in this case:

> [Ann] and Bill, if they are self-interested [and competent choosers], would not *want* [Tessa] to choose [*B*]. It is in both persons' *ex ante* interest that we take a gamble on their behalf by choosing [*A*]. The question is: to what extent could either [Ann] or Bill complain of "outcome unfairness" when any outcome inequality under [*A*] results from having forgone an option, in line with their own self-interest, that would have satisfied both of their claims to a significant extent and produced no inequality? We might think that, by receiving [*A*], [Ann] and Bill "exchanged" their claim to the significant benefit that they could have gotten from [*B*] in return for the chance of getting an even greater good—a gamble that was in both persons' self-interest. It is not clear that, having made this exchange, either [Ann] or Bill is left with any valid complaint of unfairness if [*A*] does not turn out in [their] favour.[19]

Contrary to Frick, I think that the individuals *do* possess a valid complaint of unfairness. For the complaint of unfairness in this case does not arise merely from the pattern of inequality that results, but rather from the fact that, inevitably, someone is benefitted by the other's misfortune. In this case, the fact that it is not possible for both individuals to be simultaneously better off (or worse off) means that it is possible for a compliant to arise on behalf of the worse off: "someone else is better off *at my expense*." The strength of this complaint is determined by the degree to which risks are inversely correlated. The complaint is at maximal strength when the risks are perfectly inversely correlated, as in Inversely Correlated Case, and would be nonexistent in independent risk cases. But for cases that involve a mixture of the two risks, where the risk is partly inversely correlated, the strength of the complaint weakens.

This is a distinct complaint of unfairness that an individual can raise irrespective of any judgments about the pattern of inequality. This complaint of unfairness arises when one is worse off as a *causal flip side* of someone else benefitting. This view also captures the following two ways in which one can be worse off than another: when one is made worse off *in order* to benefit another, and when one is made worse off as a *side effect* of benefiting another. In both of these cases one is made worse off as a causal flip side of another being benefitted. One would not be benefitted were it not for another being burdened.[20]

19 Frick, "Uncertainty and Justifiability to Each Person," 144–45.

20 An interesting feature of inversely correlated risks is the role that consent might play in legitimatizing exposure to such risks. We might think that having one's fate tied to another's

Part of the grounding for this distinct claim of unfairness comes from the separateness of persons. When an individual's potential futures involve another's interests, a claim of unfairness may arise if the individuals' interests are linked in such a way that inequality may arise. The potential complaint of unfairness can be further illustrated by the following example. Following the structure of Single-Person Case (Table 1), suppose Ann ends up badly off after Tessa selects treatment *A* on her behalf. If Ann then learned that the gamble was one in which the potential to gain was *hers* but that the gain in fact failed to materialize, then Ann may see her position as justified as she had a large enough chance of being better off to make the gamble in her interest. But if Ann were to then learn that the flip side of her loss was in fact a gain to another person, she may well think that the other person is better off at her expense, since if she were not worse off, he would not be better off. Suppose that in Single-Person Case, Ann ends up badly off. In this case the potential alternative future of Ann's, where she could have been better off, evanesces when it fails to materialize for her. Suppose, now, that Ann ends up badly off in Inversely Correlated Case. Instead of Ann's potential future evanescing where she could have been better off (as in Single-Person Case), it instead falls to another individual, Bill. There is an important moral difference between these two states of affairs. This is because it is not possible in Inversely Correlated Case for *both* Ann and Bill to be simultaneously better off. Only one person can be better off, whereas in the independent risk cases it *is* possible for both to be better off.[21]

arbitrarily is unjust, whereas if one chooses to tie one's fate to another's then this is permissible. For example, Ann and Bill may choose to go to a casino where all of their payoffs are dependent (if Ann wins, then Bill loses and vice versa) or to a casino where all their payoffs are independent of one another. This would be due to the preferences that Ann and Bill have for risk. Whereas if one entered a casino with the intention of gambling alone (with payoffs independent of others') then one may object if one's gamble turned out to be tied up with another. If Ann loses a gamble then it might appear that Ann lost *at the expense of* Bill. But whether we think it is permissible that one's fate is inversely correlated with the fate of another may come down to whether the inverse correlation is voluntary. Here, I consider only risks that are nonvoluntary, because neither Ann nor Bill can make a choice for which they are responsible—only Tessa can.

21 The possibility that all could be better off speaks in favor of exposure to independent risks over inversely correlated risks. Bovens ("The Ethics of Making Risky Decisions for Others") considers cases where one may be willing to take on a risk for the chance that all will be well, rather than have a scenario where some will lose out for sure. Independent risks may be favored by decision makers who want a chance for all to fare well, rather than inversely correlated risks, where some will definitely fare worse off than others. Rowe and Voorhoeve ("Egalitarianism under Severe Uncertainty," 260–61) consider a case where there is a chance that both individuals will either sink or swim together, like in the *Perfectly Correlated Case*, below. A correlated risk that includes the potential for a catastrophe, where all individuals

An independent grounding for the distinct claim of unfairness is how inversely correlated risks have a negative effect on relational values such as solidarity. Having one's fate tied with another such that when one loses another wins modifies social relations in a way that we may have reason to regret. We prefer that we are not thrusted into essentially competitive situations where the gains to some come at the expense of others. Gaining at the expense of others is at odds with the value of solidarity. Frances Kamm defines solidarity as the "desire for all to get something."[22] This is expressed when everybody is put in the same boat, so to speak. Solidarity is not infringed when everyone is in the same predicament, but it is infringed when some gain at the expense of others. To illustrate, consider the following case:

> *Perfectly Correlated Case*: This has the same setup as Single-Person Case, with the exception that there are now one hundred individuals who will either, with fifty percent probability, all go blind (0.65) if *A* is selected, or instead, with fifty percent probability, all will retain full vision (1).

If *A* is selected then there will always be equality between the one hundred. Either all will be blind or all will retain full vision. Furthermore, since everyone is in the same predicament, there is no infringement of solidarity between the one hundred. The fates of each are "tied together," but not in a way that leads one to gain at the expense of others. The infringement of solidarity highlights the relational nature of the complaint of unfairness that some are better off at the expense of others.

The relational aspect of the complaint can be further brought out by considering Hugh Lazenby's account of the "uniqueness of experience."[23] This is "the fact that a person experiences only the one life she actually leads, and not the other possible lives that there was a probabilistic chance that she might have had."[24] Suppose that a faraway potential benefactor flips a coin, and if the coin lands heads Cara receives £1,000. If it lands tails she receives nothing. The coin lands tails. It seems that Cara has gained nothing of concrete value since she only experiences what she actually has. What I think *does* matter however, is whether other individuals experience the other possible futures that were open to her at her expense. If it was the case that when the coin landed tails the £1,000

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fare as badly off as possible, may provide an extra reason against selecting that particular alternative. This is especially the case if each individual could have fared better off under an alternative course of action.

22 Kamm, *Morality, Mortality Volume I*, 125.

23 Lazenby, "Broome on Fairness and Lotteries," 339–41.

24 Lazenby, "Broome on Fairness and Lotteries," 340.

went to another person, David, he is better off than her at her expense, since this potential future of hers (having £1,000) goes to David, while Cara gets nothing. Although I do not experience the possible life that I could have led, the fact that another individual does experience that life while I do not makes a moral difference to the complaints of unfairness that I can potentially raise.

The force of the complaint is a function of how worse off one would have been had another alternative been selected instead. For example, in the coin-flip example, Cara is left worse off than David after the coin is flipped. But Cara is not left worse off than she would otherwise have been, since had the coin not been flipped she would likewise have received nothing. Whereas, in Inversely Correlated Risk Case the loser of the gamble if *A* is selected is left worse off than they would have been if the alternative *B* were selected instead. Although the fates of individuals are tied together in both cases, the objectionableness of this entangling increases in line with the degree that one would be worse off than one otherwise would have been. It does so because although an individual may have lost a gamble at the expense of another winning the gamble, there is not a diminution in their level of well-being. When there is such a diminution of well-being compared to an alternative that does not diminish that individual's well-being, the case for selecting the alternative is strengthened. As a result, the complaint of the individual for not selecting that alternative strengthens.

A challenge to this view is as follows. Suppose Tessa believes she is facing the decision in Single-Person Case, believing that Ann is exposed to an independent risk if treatment *A* is selected. Tessa is about to select *A*. A person then comes along and says, "Wait! Are you sure that the risk is fully independent? Might it not in fact be inversely correlated?" One might argue that it does not make any difference to what Tessa ought to do in this case, and that she would have no reason to find out whether the risk is in fact inversely correlated.[25] Surely, it may be argued, it is enough that this treatment is in Ann's expected best interests. In response, I claim that it does matter whether the risk that Ann is exposed to is either an independent or an inversely correlated risk. It matters because it determines the sort of complaint that might be available to Ann (if at all) if she ends up badly off. Now suppose that treatment *A* is selected in this case and Ann ends up badly off. On her way home she discovers someone who was in fact a beneficiary of Tessa's decision to select treatment *A*. Now Ann has grounds for complaint since someone is better off at her expense.[26] In this scenario it may be

25 I thank Tom Parr for proposing this point.

26 This ground for complaint can be distinguished from envy. To illustrate, suppose a scarce good is distributed either by pulling straws (correlated risk) or by each person flipping a coin (independent risk). It might be said that the person who does not receive the good

objected that the fact that there is now a beneficiary ought to count in *favor* of the justifiability of an action and not against it. But the fact that there turned out to be a beneficiary is not *in itself* something that counts against selecting treatment *A*. Instead, it is the causal relationship between the benefit and the burden that matters: that one could only have the benefit if another had the burden.

The discussion so far leads to the following characterization of when individuals have competing claims:

> *Competing Claims*: Competing claims obtain if and only if individuals' interests conflict *ex ante* or, *ex post*, some might be better off at the expense of another. That is to say, either *ex ante*, all alternatives that are best for one individual are worse for another individual, or there is a chance that, *ex post*, all alternatives that are best for one individual involve that individual being better off at the expense of another.

This view can explain why Tessa ought to select *B* in Inversely Correlated Case. In Inversely Correlated Case there will always be competing claims as the interests of the better off will always conflict with the interests of the worse off. This is a decisive reason to select *B* in this case. This view also explains why there are no competing claims in Two-Person Intrapersonal Case and the independent risk cases. All of the alternatives that are best for one individual do not involve that individual being better off at the expense of another. There is no conflict of interest *ex post* in these cases.

4. Otsuka, Voorhoeve, and Fleurbaey's Competing Claims View

This view can be contrasted with Otsuka, Voorhoeve, and Fleurbaey's account of competing claims.[27] According to these authors, an individual has a claim to

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after pulling straws is merely envious that they lost out on the gamble and another person won. I do not think that this would be plain envy, since this type of envy would obtain had they lost the coin flip, too. The sentiment after losing out in pulling straws is that the mechanism is such that their losing is tantamount to another winning. This complaint is directed at the structure of the mechanism, and reveals a source of a unique complaint that is distinguishable from mere envy at discovering that another person has fared better when you fared worse. I thank an anonymous reviewer for raising this point.

27 It is also possible to distinguish my view from the Restricted Prioritarianism view outlined by Williams, "The Priority View Bites the Dust?" In intrapersonal cases, individuals have a claim on the alternative that maximizes their expected utility. However, in interpersonal cases individuals have claims to be benefited that become stronger as their absolute position worsens. Because I do not explicitly engage with prioritarianism in this paper, I leave out a detailed examination of this view. Lange ("Restricted Prioritarianism or Competing

some benefit if and only if their interests are at stake, where the strength of this claim is determined by

(i) her potential gain in well-being; and
(ii) her level of well-being relative to others with whom her interests conflict.[28]

As it stands, this view would state that competing claims exist in the independent risk cases discussed in section 2, because there is an *ex post* conflict of interest between the winners and the losers of the gambles.[29] Although the claims of the winners and the losers of the gambles in these cases are in competition with one another, in the respect that some are better off than others, it is not the case that the interests of each person are in *conflict* with one another in a way specified by my view.

Under my proposal, competing claims do not merely obtain when the interests of individuals are in competition with one another, but rather only when some might be better off at the expense of another. To this extent, my view differs from Otsuka, Voorhoeve, and Fleurbaey's view, by specifying when precisely competing claims obtain. The Competing Claims View, as it stands, allows for more unfairness complaints than I think are warranted. This is because complaints arise as a result of (expected) differences in levels of well-being between individuals, rather than *how* the fates of individuals are related to one another. My view limits the scope of cases where competing claims obtain to those cases where some are made better off at the expense of others. Given my arguments in sections 1 to 3, there is reason to believe that inequality itself does not determine the existence of complaints, but rather that complaints of unfairness are a function of how one's interests relate to others. The view I have defended partially detaches complaints from mere considerations of comparative levels of well-being, as it is *how* one's interests relate to others that potentially generates complaints.

Although inequality is necessary for a complaint of unfairness, it is not sufficient. The view I have defended provides a sufficient condition for a complaint

Claims?"), however, examines the differences between Restricted Prioritarianism and the competing claims view of Otsuka, Voorhoeve, and Fleurbaey.

28 This specification of the view is from Lange, "Restricted Prioritarianism or Competing Claims?" 140. Voorhoeve and Fleurbaey also provide a similar outline ("Egalitarianism and the Separateness of Persons," 397).

29 One might argue that complaints can be discounted by the probability that inequality would occur. For example, in Fully Independent Risk Case (Table 3), inequality occurs in half of the states of the world if treatment A is given to both, and as such one's competing claims complaint at ending up worse off than another could be discounted by its improbability. Nevertheless, a competing claims complaint still exists.

of unfairness in risky distributive cases. Although the view can stand alone as an independent theory of competing claims, it would in principle be possible for defenders of Otsuka, Voorhoeve, and Fleurbaey's competing claims approach to modify the view by adding "the fact that some are better off at the expense of others" as a third condition. However, doing so will come at a cost, since the range of cases where competing claims obtain will shrink to only those cases where one person's gain is the causal flip side of another person's loss.

The difference between the views can be further highlighted by considering the following case inspired by Roger Crisp:[30]

> *Many-Person Independent Risk Case*: This is the same as Fully Independent Case, except that there are now five hundred people.

What one can infer from this case is that it is extremely likely that there will be outcome inequality if Tessa chooses *A*—indeed, that the pattern of outcome inequality will be similar to the inequality in Inversely Correlated Case, in that roughly half will be well off and half badly off. It might be said that the law of large numbers does the work that inverse correlation does in Inversely Correlated Case.[31] Crisp argues that, in this case, one ought to select *B* for each child for prioritarian reasons.[32] In other words, applied to this case, it is more important to improve a person's well-being from 0.65 to 0.8 than from 0.8 to 1. Otsuka and Voorhoeve agree with this conclusion, but for egalitarian reasons.[33] Contrary to these authors, however, I have argued that independent risk cases possess an important moral feature. If inequality obtains, individuals are not worse off to another's benefit. Therefore, there are no competing claims. Even if the pattern of inequality turns out to be identical in Many-Person Independent Risk Case and Inversely Correlated Risk Case (Table 5), individuals will not be better off at the expense of others in the former but will be in the latter. In response, it could be argued that there will be a competing claims complaint in Independent Risk Case, albeit discounted by the probability that inequality will arise. I have demonstrated, however, that competing claims complaints do not arise in independent risk cases.

5. Competing Claims and the Separateness of Persons

In this section I consider how the competing claims account handles conflict

30 Crisp, "In Defence of the Priority View," 107.

31 Frick, "Uncertainty and Justifiability to Each Person," 146.

32 Crisp, "In Defence of the Priority View," 107.

33 Otsuka and Voorhoeve, "Reply to Crisp," 113.

of interest cases under certainty. I will thereby expand the part of the account that sees the badness of inequality in conflict of interest cases being the fact that some are worse off at the expense of others. I then demonstrate how the view reflects a concern for the separateness of persons.

Consider the following case:

> *Certainty Case*: Ann will develop partial sight (0.8) and Bill will go wholly blind (0.65). Tessa can either give treatment *A*, which moves Ann from her partial sight to full health (1), or provide treatment *B*, which moves Bill from complete blindness to partial sight (0.8). (See Table 6.)

Table 6. Final Utilities for Certainty Case

	s1	
	Ann	Bill
Treatment *A*	1	0.65
Treatment *B*	0.8	0.8

I submit that Tessa ought to select *B*, since there are competing claims in this case. The interests of Ann and Bill are in conflict, and providing *A* will only be in the best interests of Ann and contrary to the interests of Bill, who can never be better off than Ann. Ann starts off better off than Bill, and selecting *A* will further benefit Ann at Bill's expense. On the view I am proposing, this makes *A* especially problematic. In such cases of certainty the competing claims account has maximal force. Both individuals' claims are in conflict both *ex ante* and *ex post*; it is never possible to have a joint satisfaction of claims. There is no greater value of chances that could outweigh the claim of unfairness in this case, unlike in Inversely Correlated Case (Table 5). How could Tessa justify the selection of *A* to Bill when he is much worse off than Ann, this treatment would never be in *his* best interests, and he could gain nearly as much as Ann could if he were treated instead?[34]

Throughout, I have appealed to respect for the difference between the unity of the individual and the separateness of persons in order to justify my view. According to the "unity of the individual" an individual's life possesses a unity that makes it appropriate to balance benefits and burdens that accrue to her for her sake, but inappropriate to balance benefits to some with only costs to others.[35] This helps justify the selection of the utility-maximizing treatment in Single-Person Case since the potential benefits and burdens accrue only to Ann.

34 Cf. Otsuka and Voorhoeve, "Why It Matters that Some Are Worse Off Than Others," 183–84.

35 Voorhoeve and Fleurbaey, "Egalitarianism and the Separateness of Persons," 381.

According to the "separateness of persons," individuals' lives have a separateness that renders it inappropriate to balance benefits and burdens that accrue to each person as if they accrued to a single life.[36] It is therefore worthwhile to see how the proposed view handles a case that clearly contrasts intrapersonal and interpersonal tradeoffs, adapted from Voorhoeve and Fleurbaey:[37]

> *Intrapersonal versus Interpersonal Trade-Off Case*: In this case, Ann and Bill will both soon go completely blind (0.65) unless Tessa intervenes and selects one of the available treatments. There are two scenarios: one interpersonal and one intrapersonal.
>
> *Interpersonal Scenario*: Treatment *A* (interpersonal) will with fifty percent probability either give Ann an increase in well-being leading to full health (1) while ensuring Bill gains partial sight (0.8), or instead, with fifty percent probability, Ann will gain partial sight while Bill remains blind. Treatment *B* will ensure that both Ann and Bill have partial sight.
>
> *Intrapersonal Scenario*: Treatment *A* (intrapersonal) will ensure that Bill has partial sight, while giving Ann a fifty percent chance of full health and a fifty percent chance of partial sight. Treatment *B* will ensure that both Ann and Bill have partial sight. (See Table 7.)

Table 7. Final Utilities for Intrapersonal versus Interpersonal Trade-Off Case

	S1 (0.5)		S2 (0.5)	
	Ann	Bill	Ann	Bill
Treatment *A* (Interpersonal)	1	0.8	0.8	0.65
Treatment *B*	0.8	0.8	0.8	0.8
Treatment *A* (Intrapersonal)	1	0.8	0.65	0.8
Treatment *B*	0.8	0.8	0.8	0.8

In Interpersonal Scenario there is no prospect for Bill to ever be better off than Ann. If Tessa selects *A* then only Ann has a chance at being more advantaged, whereas Bill does not. Bill only has a chance of being disadvantaged. Tessa ought to select *B* in this scenario. The proposed view respects the separateness of persons by being sensitive to some only bearing a potential burden in order for oth-

36 Voorhoeve and Fleurbaey, "Egalitarianism and the Separateness of Persons," 382.

37 Voorhoeve and Fleurbaey, "Egalitarianism and the Separateness of Persons," 387.

ers to only receive a potential benefit. The proposed view respects the unity of the individual by requiring the selection of *A* in Intrapersonal Scenario for Ann's sake, since the potential benefits and burdens only fall to her. Treatment *B* is not permissible in Intrapersonal Scenario because there are no competing claims. By contrast, in Interpersonal Scenario there are competing claims because there is a conflict of interest *ex ante*. The competition between these claims favors *B*, because *A* would involve making one person better off at another's expense. In making these contrasting judgments, the view respects the difference between the unity of the individual and the separateness of persons.

6. CONCLUSION

I have argued that when the interests of only one person are at stake, one ought to act out of a concern for their best expected interests. A pattern of outcomes that contains inequality does not itself constitute grounds for individual complaints of unfairness. I also argued that the *type* of risk that one is exposed to can affect the permissibility of selecting certain treatments. If individuals are exposed to independent risks, there is both a compelling prudential justification that can be offered that appeals to the separate futures of distinct individuals and there is an absence of competing interests, so that one does not have to balance competing claims on behalf of a better-off and a worse-off person. By contrast, I have also argued that when there are competing interests (either *ex ante* or *ex post*) then one has reason to avoid inequality that would arise because some are worse off to others' benefit. In sum, I have provided a competing claims account that guides how a decision maker ought to act in conflict of interest cases involving risk and also in cases of certainty. I have shown that this approach respects both the unity of the individual and the separateness of persons.[38]

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