

WAHEED HUSSAIN 

## Pitting People Against Each Other

Many philosophers believe that we can understand the demands that political morality makes on our basic institutions in terms of two fundamental principles: liberty, on the one hand, and equality or fairness, on the other. If other principles are important, they are important mainly because they set out effective strategies for maintaining institutions that satisfy the demands of liberty and equality. My goal in this article is to show that there is an aspect of institutional morality that transcends these two principles. The aspect I have in mind represents one facet of a value that we sometimes call “community.”<sup>1</sup>

The main idea might be put like this. A society’s basic institutions can mistreat people in various ways: for example, institutions can fail to

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1. The most important contemporary accounts of community, in the relevant sense, are Rawls’s account of “social union” (John Rawls, *A Theory of Justice*, revised ed. (Cambridge: Harvard University Press, 1999), pp. 456–64); Cohen’s “Principle of Communal Reciprocity” (G. A. Cohen, *Why Not Socialism?* (Princeton: Princeton University Press, 2009), pp. 38–45); Marx’s communist ideal, especially as interpreted by Cohen (Karl Marx and Frederick Engels, “Manifesto of the Communist Party,” in *The Marx-Engels Reader*, 2nd ed., ed. R. Tucker (New York: W.W. Norton and Co, 1978); G. A. Cohen, “Self-ownership, Communism and Equality: Against the Marxist Technological Fix,” in *Self-Ownership, Freedom and Equality* (Cambridge University Press, 1995), pp. 122–23; see also Daniel Brudney, *Marx’s Attempt to Leave Philosophy* (Cambridge: Harvard University Press, 1998)); and several views influenced by Aristotle (e.g., Michael Sandel, *Justice* (New York: Farrar, Straus and Giroux, 2009); John Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 1980), chapter 6). The underlying idea in each case is that members of a political association must share in some way in one another’s ends. None of the contemporary views offers a satisfactory account of the political morality of rivalry.

provide people with fundamental rights and freedoms, or they can unfairly advantage some people over others. But in addition, institutions can mistreat people by defining a normative framework in which the only way for one person to secure an important good is by formulating and successfully carrying out a plan that interferes with some other person's formulating and successfully carrying out a plan to secure an important good. That is, institutions can define a framework in which people have to struggle against each other or, as I will put it, institutions can "pit people against each other."

Pitting people against each other is closely related to competition. Many social institutions tend to be competitive, including labor markets, college admissions processes, and democratic elections. A presidential election, for example, typically defines a framework in which for any one candidate to secure the office, she must formulate and carry out a plan that will prevent all of the other candidates from securing the office. Competitive institutions have many things going for them: they can encourage people to develop their talents, place qualified candidates in important positions, and allocate productive assets to their most socially beneficial uses. Competition is often a good thing, and no plausible account of political morality would rule out competition altogether.<sup>2</sup>

It is equally clear, however, that there are moral limits to competition. Suppose that a liberal democracy is considering a proposal to weaken its public health care system.<sup>3</sup> Instead of providing health care to individuals free of charge and bearing the costs collectively, it would be up to each citizen to secure a market income and buy private insurance for herself and her dependents. If we assume that something short of full employment is the normal situation, moving health care into the sphere of market distribution would put citizens on a very different footing. With more job seekers than jobs, each citizen would find that in pursuing job

2. Even Rousseau gives competitions a place in the ideal republic. See Jean-Jacques Rousseau, "Letter to M. D'Alembert on the Theatre," in *Politics and the Arts*, trans. Allan Bloom (Ithaca: Cornell University Press, 1960), pp. 126-27; Rousseau, *Émile*, trans. A. Bloom (New York: Basic Books, 1979), pp. 352, 141-42; Rousseau, "Considerations on the Government of Poland," in *The Social Contract and Later Political Writings* (1997), p. 191.

3. As I write this article, a third attempt to repeal the Affordable Care Act (ACA) has failed in the U.S. Senate. The Graham-Cassidy bill would have taken over \$800 billion out of the Medicare program and dismantled the ACA's regulations, taxes, and public subsidies at the national level. These measures would have made access to health care depend much more significantly on how an individual (or members of her family) fares in labor market competition.

opportunities, partly to secure health care for herself and her family, she must carry out a plan that would interfere with other citizens' getting jobs and securing health care for themselves and their families. Citizens would effectively pose an active threat to one another's basic health care coverage.

The mutual threat may seem relatively benign when viewed through the abstractions of economic theory. It may even be attractive insofar as it gives people incentives to surpass one another in terms of skill and productivity. But the mutual threat is much less benign when we consider it from the perspective of the human beings who have to live with each other under the new arrangement. In a high stakes labor market, each citizen looking for a job will do real damage to the citizens whom she beats out, but she can't act on a concern for others if she's going to land a job and prevent the damage from being done to herself and her loved ones. She therefore has a powerful reason to act with disregard for her fellow citizens. They have a similar reason to act with disregard for her. And mutual disregard is, in this way, built into the very nature of competitive institutions.<sup>4</sup>

In what follows, I will develop a theory that can explain both why competitive institutions are morally permissible and why there are moral limits. Many philosophers recognize that citizens in a liberal democracy stand in a social relationship with one another.<sup>5</sup> According to what I call the *Estrangement Account*, political morality requires that background institutions in a liberal democracy must respect the requirements of the civic relationship. Much as a properly ordered poker game among friends must stay within the limits of a "friendly competition," a properly ordered scheme of background institutions must keep its competitive character within the limits appropriate to a solidaristic partnership among citizens. The main point of the Account is not that citizens are required to care for

4. The high stakes labor market may have other moral defects (e.g., failing to satisfy a right to health care). But pitting people against each other is among its defects, and a complete theory of institutional morality must explain this defect.

5. See Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983); Ronald Dworkin, *Law's Empire* (Cambridge: Harvard University Press, 1986); T. M. Scanlon, "The Difficulty of Tolerance," in *The Difficulty of Tolerance* (Cambridge: Cambridge University Press, 2003); Rawls, "The Idea of Public Reason Revisited," in *Political Liberalism*, expanded ed. (New York: Columbia University Press, 2005); Cohen, *Why Not Socialism?* See also Rousseau, *Émile*; Rousseau, "On the Social Contract," in *The Social Contract and Later Political Writings*, ed. V. Gourevitch (Cambridge: Cambridge University Press, 1997).

each other but that a certain form of caring is a regulative ideal and social institutions must be properly consistent with citizens caring for each other in the relevant way.

Ultimately, the goal of the Estrangement Account is not to motivate some form of socialism, but rather (a) to articulate the moral appeal of social democratic policies that moderate the competitive character of social life and (b) to show that the moral appeal of these policies is not fundamentally tied to equality, whether distributive or relational.

#### I. RIVALRY-DEFINING ARRANGEMENTS

Philosophers have not squarely addressed the issues I want to discuss, so I begin with some basic ideas.<sup>6</sup> A *social institution* is an impersonal scheme of rules (and sometimes principles) that specifies how members of an association should think and act, where each member of the association has an obligation to adhere to the scheme in part because the other members are adhering to it as well.<sup>7</sup> The rules typically define various statuses, with rights, duties, and powers attached. The rules determine how people acquire and lose the statuses defined, and they may also specify the grounds on which people may legitimately exercise various institutional powers.<sup>8</sup>

Think of a course registration scheme at a university. The rules of the scheme define the rights, duties and powers that go along with being “signed up” for a class. The rules define how the actions of students and professors can change who is “signed up” for which classes. And the rules specify how certain institutional powers may be exercised: e.g., professors can “waiver” students into a class for educational reasons but not in

6. There is a well-developed literature on how people should act within adversarial institutions (e.g., Arthur Isak Applbaum, *Ethics for Adversaries* (Princeton: Princeton University Press, 1999)), but it does not directly address the moral soundness of these institutions themselves. Christopher McMahon, “Morality and the Invisible Hand,” *Philosophy & Public Affairs* 10, (1981): 247–77 and Paul Gombert, “Against Competitive Equality of Opportunity,” *Journal of Social Philosophy* 26, (1995): 59–74 address issues more closely connected to the latter question. For a careful analysis of competition less institutionally focused than mine, see Oliver Black, *Conceptual Foundations of Anti-Trust* (Cambridge: Cambridge University Press, 2005).

7. See H.L.A. Hart, *The Concept of Law*, second ed. (Oxford: Oxford University Press, 1994); Rawls, *A Theory of Justice*, pp. 293–308; Dworkin, *Law’s Empire*; Scanlon, *What We Owe to Each Other* (Cambridge: Harvard University Press, 1998), pp. 339–40.

8. Hart, *The Concept of Law*, pp. 27–42; Scanlon, “Due Process,” in *The Difficulty of Tolerance* (Cambridge: Cambridge University Press, 2003), pp. 43–44.

exchange for payment. Many different rule structures may have been fair and appropriate for a university community, so part of the reason each member has an obligation to adhere to the existing scheme is that everyone else is adhering to it as well.

Some institutions are what I will call *Rivalry-Defining Arrangements* (RDAs). The key feature of an RDA is that its rules are structured in such a way that (under the right conditions) full adherence to the scheme would create a context for strategic interaction among the members of an association.<sup>9</sup> More formally:

**Rivalry-Defining Arrangement (RDA):** A social institution is an RDA when its rules have a structure such that (given normal background conditions and full publicity) an association of rational individuals,<sup>10</sup> respecting the rules in their thought and conduct would find that there are at least two members of the community, *A* and *B*, such that *A*'s formulating and carrying out a plan to realize *A*'s aspirations within the framework of the rules would interfere with *B*'s formulating and successfully carrying out a plan to realize *B*'s aspirations within the framework of the rules.

The most important type of RDA for my purposes is a competitive institution. Consider the typical tennis match. The rules of the enterprise attach claims to recognitional goods (e.g., trophies, applause) to the institutional status of "winner." The rules then define a procedure for securing

9. My discussion will assume a nonconsequentialist approach to institutions characteristic of Kantian contractualism. On this view, an institution is a rule structure or collective maxim. We assess institutions as proposals for a public scheme of rules to guide the thought and conduct of rational, fully informed members of an association, under normal background conditions. Whether a collective maxim is properly respectful of a certain value or ideal typically depends on the context for social interaction that full adherence to the rules would create in an association, assuming (a) members are rational, (b) background conditions are normal, and (c) full publicity is satisfied. If adherence to the collective maxim would create an appropriate context under these conditions, then the maxim is properly structured to play the role that it is supposed to play. In all of the examples and illustrations in this article, I assume that (a), (b), and (c) are reasonably satisfied, allowing us to assess the basic soundness of the collective maxims represented. I postpone detailed questions about "nonideal" circumstances for another time—but see footnote 29 below.

10. Here a "rational individual" forms and revises her intermediate goals appropriately in light of her final ends, and forms and revises her final ends appropriately in light of the availability of various objective human goods. See Rawls, *A Theory of Justice*, pp. 358–80.

this status: i.e., taking the right number of points, games, and sets. But according to the rules, one person's completing the procedure to secure the valuable status for herself would interfere with another person's completing a corresponding procedure to secure the valuable status for *herself*. That is, player *A*'s winning a point would bring *A* one step closer to taking the right number of points, games, and sets, but it would also push player *B* one step further from completing the corresponding procedure. When everyone respects the rules, including audience members and officials, rational individuals will find themselves in a context for strategic interaction. Each player aspires to win, but she finds that if she formulates and successfully carries out a plan to realize her aspiration within the framework of the rules, this would prevent the other player from formulating and successfully carrying out a plan to realize *her* aspiration within the framework of the rules.<sup>11</sup>

Philosophers often assume that rivalry is a condition imposed on people by natural scarcity. This is a serious mistake. Imagine a community in which two people, *A* and *B*, need a kidney transplant, but there is only one kidney. Scarcity creates an opposition of interests: *A* is better off if *A* gets the kidney; *B* is better off if *B* gets the kidney. Now contrast two institutional arrangements for distributing the kidney: a lottery and a tennis match, where the winner gets the kidney. The lottery defines claims, statuses, and procedures in such a way that there is nothing *A* or *B* could do to secure a claim on the kidney or deny the other person a claim—it takes the assignment of resources out of the hands of the individuals involved. By contrast, the tennis match defines claims, statuses, and procedures in such a way that there *is* something *A* or *B* could do to secure a claim—i.e., win the tennis match. The underlying opposition of interests is the same, but only the tennis match is an RDA because only the tennis match creates a context for strategic interaction among the relevant

11. Suppose the members of an association are playing *Monopoly*. The game is an RDA because full adherence to the rules would create a context for strategic interaction among members, assuming (a), (b), and (c) in footnote 9 are satisfied. The game would still be an RDA on my view, even if the members of the association are actually too drunk to form a coherent aspiration to win. The idea is that *Monopoly* itself—i.e., the rule structure or collective maxim—embodies a lack of respect for certain relational ideals. The measure of this lack of respect is not the actual context for interaction in the association, but the context that *would* result in the circumstances where members are rational, background conditions are normal, and full publicity is satisfied. It is a further question when (if ever) this lack of respect constitutes a moral defect.

parties. It is, in effect, *social institutions* that turn natural scarcity into rivalry when they have a structure more like the tennis match than the lottery.<sup>12</sup>

For the purposes of my analysis, I want to stress that competitive institutions differ from other types of RDAs. Specifically, competitive institutions do not typically require participants to form an intention to harm or defeat one another. In a tennis match, each player only has to form an intention to hit every ball into the opposing court: if she gets every ball back, she wins. The other player's defeat need only be a foreseeable side-effect of each player's pursuit of the valuable status.<sup>13</sup>

Two further points will be important for my discussion. First, when we assess a social institution from the moral point of view, we do so in light of a substantive normative understanding of the role that its rules are supposed to play in social life. For example, we assess the rules of a course registration scheme as a normative framework for a particular university community, where each member will have an obligation to adhere to the framework in part because the others are adhering to it as well.

Second, the institutions that are my main concern are *substantially engulfing*.<sup>14</sup> We assess the rules of these institutions as an obligation-defining normative framework for an association, where in addition: (a) the rules are supposed to determine access to important goods that all members of the association have reason to want and (b) the association is of a kind such that there is a normative expectation that members are seriously constrained in terms of their liberty to exit or dissolve the association.<sup>15</sup> The rules of a casual game of tennis are not substantially engulfing:

12. What holds for scarce goods also holds for positional goods (see Fred Hirsch, *Social Limits to Growth* (Cambridge: Harvard University Press, 1976)). Suppose that the status value of a house depends on its being bigger than other houses. But suppose that our institutional order assigns houses to people by lottery after they are built. Here the status value of houses may be positional, but the institutional order does not turn the positionality of the goods into a context for strategic interaction among individuals.

13. Other types of RDAs may be nastier. A "specifically adversarial" institution makes securing the valuable status conditional on a participant intentionally doing something undesirable to another participant—e.g., a duel may identify the winner as the participant who intentionally kills the other participant. I focus on merely competitive institutions because these are the most important RDAs in modern political life.

14. Political morality may also constrain the rivalry-defining character of other types of institutions, but I will not discuss those constraints here.

15. When we assess institutional rules for an association, we do so in light of a substantive normative understanding of the association's nature and purposes. In some cases, given the

they determine access only to minor goods, and they define obligations for an association where it is expected that players can leave whenever they want.

By contrast, the background institutions that make up the basic structure of society are substantially engulfing. Consider the rules of ownership, exchange, inheritance, and public provision in a liberal democracy.<sup>16</sup> We assess these rules together as an obligation-defining framework for a political community, where the rules apply to everyone as a matter of law. The rules determine access to essential goods that everyone needs to avoid starvation and death—e.g., food, shelter, and medicine. And there is a normative expectation that members of a political community will be seriously limited in terms of their freedom to exit or dissolve the association. A substantially engulfing institution is not “just a game,” and this matters because certain properties that might be acceptable in an ordinary game are much more problematic in a substantially engulfing arrangement.

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nature and purposes of an association, we assess institutional rules against the background of an assumption that members are not at liberty to exit or dissolve the association at will. The assumption may be that members lack the resources to leave, would face high costs for leaving, or are subject to a relational ideal that significantly limits when they can leave.

Marriage, for example, is a committed partnership. Part of the point of the association is to facilitate certain types of joint investment (e.g., buying a house). Moreover, the relational ideal for marriage restricts when partners can exit or dissolve the association—e.g., partners can leave over “irreconcilable differences,” but not over minor disputes, like who will take out the trash. Given the nature and purposes of the association, an obligation defining normative framework for a marriage must be suited to a committed partnership whose purpose is to bind partners together in these ways. The rules must be justified on the assumption that partners are “locked in” to the association to a significant degree. As a result, we assess potential rules for a marriage under the assumption that partners have joint investments that make it very costly for them to leave and normative obligations that constrain when they can leave. I assume that academic departments and political communities are also committed partnerships, though they differ in various ways from a marriage.

16. By “public provision” I mean publicly funded schemes that provide more or less universal access to a good in a community. Some examples in liberal democracies today include arrangements that provide access to running water, roads and sidewalks, sewers and sanitation services, primary and secondary education, police protection, courts and the judicial system, sports and recreation facilities, libraries, parks and public spaces, retirement income, information about current events (e.g., BBC), statistical data (e.g., a census), scientific knowledge, etc.

## II. MORALLY DEFECTIVE RDAS

Does the fact that a substantially engulfing arrangement is an RDA count as a moral defect in the regime? In this section, I want to show that it sometimes does. To examine the issue, I will consider an example where a scheme of rules determines access to important goods in an association and members are expected not to be at liberty to exit or dissolve the association at will. Over the course of this article, I will show that the example is a good model for thinking about a liberal democracy.

Here is the example.

**Physics Department.** A physics department has two tenure-track assistant professors, *A* and *B*. Each one works in a separate subfield and has a position with a separate “line.” According to the rules, *A* will get tenure if she makes a significant contribution to the field, regardless of what happens to *B*. And *B* will get tenure if she makes a significant contribution to the field, regardless of what happens to *A*. The department gives no one any guarantee that the rules won’t change, just as many other department policies might change. Given their talents and the state of the field, *A* and *B* each has a 50% chance of getting tenure.

One day, the department institutes a new arrangement. The new arrangement collapses the two lines into one, so either *A* or *B* will get tenure, depending on who makes the more important contribution. If *A* gets tenure, *B* will not. If *B* gets tenure, *A* will not. Given their talents and the state of the field, *A* and *B* each has a 50% chance of getting tenure.

Call the first tenure scheme “S1” and the second “S2.” For the purposes of my discussion, I stipulate that the department has the resources to tenure both candidates under S1 if they both satisfy the tenure standard.

I believe that there is a distinctive moral defect in S2 as compared to S1. Let’s assume that both arrangements are structured in such a way that rational people in the position of junior faculty members will aspire to become tenured professors. S1 gives *A* and *B* “clear pathways” to tenure. *A* can formulate and successfully carry out a plan for realizing *A*’s aspiration without interfering with *B*’s pursuit of tenure. And *B* can formulate and successfully carry out a plan for realizing *B*’s aspiration without

interfering with *A*'s pursuit of tenure. This feature of the arrangement is important: as *A* pursues her research program, she can share wholeheartedly in *B*'s professional aspirations, sharing in *B*'s successes and failures, and helping *B* to achieve her aims, because *A*'s success does no damage to *B*'s prospects. The same holds true for *B* with respect to *A*. The agent relative reasons that each junior faculty member has for pursuing her own projects do not give her any special reason not to share in the aspirations of her colleague.

By contrast, S2 does not give *A* and *B* "clear pathways" to tenure. For *A* or *B* to realize her aspiration under S2, she has to formulate and successfully carry out a plan that will prevent the other from doing the same thing. This creates a very different environment. Put yourself in *A*'s position. Suppose you start producing more than *B*. With every paper that you publish, you push *B* one step closer to failure. But if you want to realize your aspiration, you have to go on writing and publishing, one paper after another, year after year, steadily running *B*'s dream into the ground. In the process of writing and publishing, you have a powerful reason to think and act with disregard for *B*'s pursuits: you have a powerful reason not to be moved by the setbacks you are imposing on *B* and a powerful reason not to restrain your efforts for *B*'s sake. The same holds true for *B* with respect to *A*.<sup>17</sup>

As I noted earlier, it may be morally acceptable for certain kinds of institutions to be rivalry-defining—e.g., the typical tennis game. But the department's tenure scheme is substantially engulfing: it determines access to important goods and members are expected not to be at liberty to exit or dissolve the association whenever they want. The tenure scheme is not "just a game," and it is partly in virtue of this fact that the rivalry-defining character of S2 constitutes a moral defect.

17. Note that S2 creates other reasons that bear on the relations between *A* and *B* and that may be morally relevant. For example, S2 gives each candidate a reason to hope that the other fails in her pursuits (insofar as her pursuits bear on the candidate's getting tenure). I focus, however, on the reasons that S2 creates for each candidate to disregard the other's aspirations in the process of pursuing tenure. I do so because these reasons are distinctively powerful. Focus on *A*. Generally speaking, it makes no difference to the outcome whether *A* hopes that *B* fails. But if *A* does not act with disregard for *B*'s aspirations in the process of conducting research, writing papers, etc., she will perform less well (so as to avoid harming her colleague) and is less likely to get tenure. S2 makes *A*'s prospects for tenure depend on *A*'s acting with disregard for *B*'s professional pursuits, but it does nothing similar with respect to *A*'s merely hoping that *B* fails.

An analogy might help to crystallize the idea. Suppose a Roman emperor throws two citizens into a gladiatorial arena. There is only one exit. The emperor does not tell anyone what to do, but announces a rule: “two men enter; one man leaves.” As the first citizen starts toward the door, he knows that he is effectively damaging his fellow citizen’s prospects for escape, but what can he do? When the second citizen sees the first heading for the door, instead of welcoming the possibility of his compatriot escaping, he starts running for the exit himself. As they both race to the door, they are each responding to the very powerful reasons that the institution creates for them to act with a kind of disregard for the other person and his projects. As some would say, the arrangement sets the stage for “man’s alienation from his fellow man.”<sup>18</sup> I take it that the emperor has serious moral reasons not to treat people this way, and some of these reasons stem from the fact that he is putting human beings in an environment where they have powerful reasons to act with intense mutual disregard. Under S2, the physics department would be throwing its junior faculty members into an academic survival contest, and it has a serious moral reason not to do this.

### III. GOOD FEELINGS CANNOT BE THE WHOLE STORY

There is a distinctive moral defect in S2. In order to motivate my explanation of the defect, I want to show first how several ideas in contemporary political philosophy cannot provide a satisfactory explanation on their own. Start with good feelings. Suppose it is intrinsically good for human beings to have friendly feelings and supportive dispositions toward one another. Maybe the distinctive problem with S2 is that the feelings and dispositions likely to develop under S2 are worse than those likely to develop under S1?

18. Though Marx uses the phrase, he has something different in mind (see Marx, *The Economic and Philosophical Manuscripts of 1844*, trans. Martin Milligan (New York: International Publishers, 1964)). Marx wants to draw attention to the authoritarian character of market society, where members create market arrangements but then become subservient to the impersonal drive for capital accumulation built into the market process. Subservience to the impersonal drive leads to a more specific and personal subservience to the particular individuals (i.e., capitalists and their managers) in whose activities the accumulation process is partly realized.

The explanation offered doesn't work because the moral defect in S2 is not simply a matter of the actual feelings and dispositions that will develop under the scheme. Consider the following.

**Physics Department (b).** The department in the original example is considering a move from S1 to S2. This time, *A* and *B* happen to be good friends when they are hired. Their friendship is so strong that, as a matter of fact, *A* and *B* will not slide into indifference or hostility under S2, but will remain on friendly terms.

Given the circumstances in Physics Department (b), there is no difference between S1 and S2 in terms of the actual feelings and dispositions that will develop under each arrangement. Nonetheless, there is a distinctive moral defect in S2. The point might be clearer if we imagine that the faculty hold a meeting to discuss the move from S1 to S2. Some faculty members might argue that since there will be no net change in people's feelings and dispositions under S2, there is nothing morally objectionable about the arrangement. But other members would be correct to reject this line of reasoning. Even if the friendship between *A* and *B* would prevent certain feelings and dispositions from emerging under S2, the arrangement still mistreats junior faculty members. It does so mainly because it creates powerful *reasons* for *A* and *B* to act with disregard for one another. The fact that S2 is structured in this way is itself a failing in the institution, even if the corresponding attitudes and behaviors don't materialize. If I were in the position of *A* or *B* in the faculty meeting, I would be right in thinking that the new arrangement mistreats us and the fact that she and I happen to be good friends does not give the department a license to pit us against each other.

#### IV. FAIRNESS AND EQUALITY CANNOT BE THE WHOLE STORY

Another possible explanation of the moral defect in S2 appeals to fairness: some might argue that S2 is unfair in a way that S1 is not. This view is not plausible, however, because neither arrangement tilts in favor of one of the candidates over the other, and in both cases, the candidates are assessed in terms of relevant criteria, such as the quality of their work and their service to the department.

What about equality? The two arrangements provide junior faculty with similar tenure prospects and similar resources, so there is no difference in terms of equality of opportunity or equality of resources. In terms of equality of outcomes, however, there is a difference. S1 allows for the possibility of an equal outcome—i.e., *A* and *B* could both get tenure or both get denied tenure—but S2 will necessarily lead to an unequal outcome. Some might argue that this orientation toward inequality can explain the distinctive moral defect in S2.

We can reformulate the example, however, to show that equality of outcomes cannot be the whole story.

**Physics Department (c).** The department in the original example has no tenure scheme and is choosing between two possibilities. Under S3, the department secures approval for two “lines” and each candidate will get tenure if she satisfies the tenure standard, regardless of what happens to the other candidate. The standard is based on research and teaching, and given the facts, *A* and *B* each has a 50% chance of getting tenure.

Under S4, there is a competition: if one candidate surpasses the other in terms of both research and teaching, that candidate alone will get tenure. If no candidate does better along both dimensions, the department will seek approval from the dean for two “lines” in order to tenure both candidates, but there is a 50% chance that the dean will say yes and a 50% chance that she will reject both candidates. The candidates are evenly matched, so they each have a 50% chance of doing better in terms of research and a 50% chance of doing better in terms of teaching.

Much as in the original example, there is a distinctive moral defect in S4 as compared to S3. The rules of S3 give *A* and *B* “clear pathways” to tenure: they can each formulate and carry out a plan for getting tenure without interfering with the other candidate’s pursuit. The rules of S4 do not give them “clear pathways” to tenure. According to the rules, each candidate has two routes to tenure: (a) surpass the other in terms of both research and teaching or (b) surpass the other along one dimension and hope for a favorable decision from the dean. If *A* publishes a paper or gets a good teaching evaluation, this constitutes a setback for *B* in terms of

both routes: *B* has to publish one more paper or get one more good teaching evaluation just to stay even. As such, *S4* pits *A* and *B* against each other in a way that *S3* does not. There is, however, no difference between the two schemes in terms of the probability of an equal outcome: there is a 50 percent chance in each case—a 25 percent chance that both candidates get tenure and a 25 percent chance that both do not.<sup>19</sup>

The basic problem here is that fairness and equality are values that apply to an institution most naturally insofar as it distributes benefits (or burdens) to some people rather than others. But the distinctive moral defect in *S2* is not about where the benefits and burdens end up. The defect is about something more like fighting: *S2* is structured in such a way that candidates must foreseeably crush each other's dreams to get ahead. The arrangement creates a certain context for social interaction, and we need an account of the moral defect that is more closely tied to this concern.

#### V. FACE TO FACE INTERACTION IS NOT ESSENTIAL

Before moving on, I want to address a different kind of objection. Some readers might accept that substantially engulfing RDAs are morally problematic in the context of a small department where people meet each other face to face. But they might think that this does not have implications for the background institutions of a liberal democracy because citizens typically do not meet the vast majority of their fellow citizens face to face.

Although certain moral defects might presuppose face to face interaction, the moral defect at issue in this article does not. Here is an illustration.

**Physics Department (d).** The original physics department is once again considering the choice between *S1* and *S2*. This time, however,

19. Under *S3*, there is a 50 percent chance of an equal outcome (i.e., a 25 percent chance that both candidates will get tenure and a 25 percent chance that both will get denied tenure). Under *S4*, there is a 50 percent chance that no one will win outright at stage 1, at which point there is a 50 percent chance that the dean will tenure both candidates and a 50 percent chance she will deny them both. So at the outset, there is a 50 percent chance of an equal outcome—a 25 percent chance that both candidates will get tenure and a 25 percent chance that both will get denied tenure. Thanks to Jonathan Weisberg for his help in formulating the example.

the department occupies two floors in a large academic building. People on different floors never meet each other face to face. Junior professor *A* is on the higher floor and junior professor *B* is on the lower one. *A*'s office happens to be directly above *B*'s, and because of the ventilation system, *A* can hear joyous whoops when things go well for *B* and quiet sobbing when things go badly for her. The same holds true for *B* with respect to *A*.

There is a distinctive moral defect in S2, even in the circumstances set out in Physics Department (d), and it makes no difference whether the junior faculty members meet face to face. Think of it this way. Though *A* and *B* never meet, they know perfectly well the structure of the second tenure scheme and how their pathways to tenure would affect the other person, abstractly conceived. Moreover, when *A* hears joyous whoops from downstairs or quiet sobbing, she understands in a clear and present way the impact that her pursuits have on the other person. So although *A* and *B* never meet face to face and have no personal acquaintance, the arrangement still creates reasons for them to act with a certain disregard for the other person and her projects. Under these circumstances, when the choice between S1 and S2 comes up in a faculty meeting (held concurrently on the two floors), *A* and *B* would each be correct in arguing that S2 is morally objectionable because it pits them against each other. What is essential to the objection is the way that the institution defines people's pathways to important goods; whether there is face to face interaction is beside the point.

To make the issues more concrete, let me describe one way that we encounter the institutional structure I have been discussing. In modern liberal democracies, we find a vast array of competitions for attractive positions, including competitions for jobs, university admissions, and places in good secondary and primary schools. Competitions for particular positions are part of an ongoing competition among citizens to occupy positions and secure the goods—e.g., education, health care, income—attached. The ongoing competition exists because of the rivalry-defining character of background institutions. For example, labor market competition exists because the law gives ownership rights in important resources to employers and it gives employers the power to hire and fire employees for most any nondiscriminatory reason. The rules of taxation and public provision further define the competitive environment by determining the

extent to which each citizen's claims on basic resources depend on employment.

Given the rivalry-defining character of background institutions, citizens in a liberal democracy have significant reasons to act with disregard for one another. When I take my daughter to the local park, I am often aware that the other parents are diligently hiring tutors and saving money to help their kids go to better high schools and colleges and eventually beat my daughter (or anyone else) out for a decent job. And I will have to do some of the same things to help my daughter eventually to beat these kids (or anyone) else out for a decent job. We may not know all of the other individuals involved, people in distant cities and towns, but given the character of our background institutions, we must act with disregard for all of these individuals, abstractly conceived—if we do not, we will get pushed into the dirt ourselves.

#### VI. THE ESTRANGEMENT ACCOUNT

Substantially engulfing RDAs are sometimes morally defective in virtue of their rivalry-defining character. None of the ideas canvassed offers a full explanation, whether alone or in combination, so I will set out a theory now that supplies what's missing.

A few background ideas will help. A *relational ideal* is an objective set of norms or standards that specify a way for two or more people to relate to each other.<sup>20</sup> The ideal may cover how people should act toward each other, but it may also cover the considerations they should treat as reasons for action and for forming attitudes. For example, there is a relational ideal for families. Among other things, it says that family members should celebrate important milestones in one another's lives—e.g., birthdays, graduations—and that they should do so not mechanically, but out of a genuine appreciation of the importance of these events for their fellow family members.

Relational ideals have conditions of application.<sup>21</sup> When two or more people collectively satisfy these conditions, they are subject to the requirements of the ideal and they belong to an association of the corresponding

20. See Scanlon, *Moral Dimensions* (Cambridge: Harvard University Press, 2008), pp. 131–38; see also Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), pp. 309–13 and 348–57.

21. See Scanlon, *Moral Dimensions*, pp. 139–41; Dworkin, *Law's Empire*, pp. 195–98.

type. The conditions of application may refer to the choices people make, in which case the corresponding type of association is voluntary. But the conditions may refer simply to facts, such as having a shared history, a shared genetic background, and shared practices, in which case the corresponding type of association is nonvoluntary.<sup>22</sup> For example, interactions among myself, my wife, and our children are governed by the relational ideal for a family because we have a shared history, participate in a shared household, and have certain genetic ties.<sup>23</sup> Our interactions are governed by the ideal, even though my children never chose specifically to associate with me and my wife and we never chose specifically to associate with them—i.e., they were born into our care.

A *solidaristic association* is an association governed by a relational ideal that requires members to care for each other in a certain way. With respect to carrying out some abstract project P: each member must give the successes and failures of any other member a functional role in her practical reasoning that is similar to the functional role that her own successes and failures should play in her practical reasoning. For example, a neighborhood is a solidaristic association. The relational ideal for neighbors requires solidarity with respect to the project of maintaining a good home for your family. If A, B, and C are neighbors, and a brushfire threatens to destroy C's house, then neighborly solidarity requires that A and B should treat the potential setback to C's efforts to maintain a good home for her family as if this were also a potential setback to their own efforts to maintain good homes for their families. Among other things, they should worry about the fire damaging C's house; they should pitch in to help C to save her house; and they should feel relief when the fire is put out.<sup>24</sup>

22. See Dworkin, *Law's Empire*, pp. 195–202; Scanlon, *Moral Dimensions*, pp. 139–40; see also Niko Kolodny, "Which Relationships Justify Partiality? The Case of Parents and Children," *Philosophy & Public Affairs* 38, no. 1 (2010): 37–75.

23. The conditions listed are jointly sufficient for the relational ideal to apply. Some may not be necessary—e.g., genetic ties.

24. In most solidaristic associations, one partner is not required to give another partner's successes and failures in carrying out P the same *weight* in her practical reasoning as her own successes and failures. The important point is that she should give her partner's successes and failures a similar action-guiding and attitude-guiding role in her practical reasoning. If A and B are neighbors, A should treat the fact that a certain task contributes to B's providing a good home for her family as a reason to help B to *perform* the task, to be *concerned* if the task is not completed, to feel *satisfied* if B completes the task, and so on.

We can think of failures of solidarity in terms of *estrangement*. Two people, *A* and *B* are “estranged” when *A* and *B* are members of a solidaristic association, but they do not give each other’s successes and failures with respect to *P* the appropriate role in their practical reasoning. Estrangement can take the form of indifference, where *A* and *B* treat each other’s successes and failures as not warranting any particular actions or attitudes. But estrangement can go beyond indifference into enmity, where *A* and *B* treat each other’s successes and failures as grounds for actions and attitudes that are the opposite of what the ideal requires—e.g., they are neighbors, but they hope that the other’s house burns down and they light careless fires whenever they can.

A political community is a nonvoluntary association, where citizens are members in virtue of their collectively satisfying certain conditions, such as their being born in a certain territory and their maintaining a common legal system.<sup>25</sup> In a liberal democracy, citizens are also members of many subordinate associations, both voluntary and nonvoluntary, including families, friendships, professional communities, neighborhoods, and so on. Many of these are “thick” associations, governed by distinctive relational ideals. Some nonvoluntary associations are more encompassing than a domestic political community (e.g., the community of nations). And the most wide-ranging relational ideal is *basic humanity*, which defines a minimal form of solidarity that is required among all human beings, as human beings.<sup>26</sup>

25. See Rawls, “The Idea of Public Reason Revisited.”

26. On my view, basic humanity requires solidarity among human beings with respect to the pursuit of basic survival and bodily integrity: if we see a fellow human being running from an avalanche, we should be anxious about her survival and we should feel relief if she escapes. Given this baseline form of mutual concern, we enter or find ourselves in more specific associations governed by more demanding ideals.

Basic humanity, in some form, is an important idea in the contractualist tradition. Rousseau takes the “love of mankind” to be among the attitudes that must be fostered in an ideal republic (Rousseau, *Émile*, chap. IV, especially pp. 220–53). Kant holds that human beings have duties of “mutual love” which require them to show active sympathy toward one another and to treat one another’s ends as reason giving (see Immanuel Kant, “The metaphysics of morals,” in *Practical Philosophy*, ed. Allen Wood (Cambridge: Cambridge University Press, 1996), pp. 568–88; Onara O’Neill, “Between Consenting Adults,” *Philosophy & Public Affairs* 14, no. 3 (1985): 252–77). Rawls emphasizes that social justice is continuous with the “love of mankind” (Rawls, *A Theory of Justice*, §§72–74, especially p. 417; see also p. 167). And Scanlon sees all human beings as standing in a “moral relationship” that involves reasons to think and feel in certain ways toward one another (Scanlon, *Moral Dimensions*, pp. 139–52).

With the preceding as background, the Estrangement Account explains the distinctive moral defect in certain RDAs by appeal to two moral requirements that specify how substantially engulfing RDAs must respect relational ideals. The first requirement involves basic humanity and sets an absolute constraint on the rivalry defining character of any substantially engulfing RDA. I will not discuss this requirement further here since it does not bear on the most pressing questions.<sup>27</sup> More important is the second requirement, which says:

If a substantially engulfing RDA defines obligations for an association *X* and *X* is solidaristic, then the RDA must not be structured in such a way that full adherence to the rules (under the relevant conditions<sup>28</sup>) would create reasons for estrangement among members that are both serious and bear on the form of solidarity required among them as members of *X*.

If a substantially engulfing RDA defines obligations for a solidaristic association, the second requirement allows for the RDA to have a structure that creates reasons for estrangement. But these reasons must not reach the point where they would *seriously obstruct* the form of solidarity required among members of the association as members.<sup>29</sup>

Note that the Estrangement Account is not a mechanical procedure for identifying morally defective RDAs. Like other theories in political

27. A substantially engulfing RDA must not be structured in such a way that full adherence to the rules (under the relevant conditions) would create serious reasons for estrangement among members with respect to the pursuit of basic survival or bodily integrity. For example, a gladiatorial arrangement that pits people against each other for survival violates this constraint. For the most part, background institutions in liberal democracies today do not pit citizens against each other with respect to basic survival, so I focus on the second requirement.

28. That is, assuming that members are rational, background conditions are normal, and full publicity is satisfied. See footnote 9 above.

29. A note about publicity. Imagine the circumstances of Physics Department (d), except that *A* and *B* are not aware of how one person's actions affect the other (i.e., full publicity is not satisfied). According to the Estrangement Account, *S2* would still be morally defective in these circumstances. We assess *S2* as a collective maxim, a proposal for a public scheme of rules to guide the thought and conduct of rational, fully informed members of the Physics Department under normal background conditions. When serving in this role, *S2* *would* create serious reasons for estrangement that bear on the solidarity required among department colleagues, so the arrangement itself embodies an objectionable lack of respect for academic collegiality. *S2* is morally defective in this way, even if in the actual circumstances, ignorance prevents the corresponding attitudes from materializing.

philosophy, it is a theoretical framework that guides our judgment by describing how a certain moral defect is related to various social and moral facts, particularly facts about the solidarity required in different types of associations. Whether the Estrangement Account is compelling depends on whether we can supplement the two requirements with an attractive account of the forms of solidarity required in different types of associations so that the theory as a whole fits and explains our considered judgments. A complete defense of the Estrangement Account is beyond the scope of this paper, but I will provide a sketch now consisting of three examples that show how the Account can explain our central judgments about RDAs, while avoiding some key objections.

## VII. THREE EXAMPLES

### VII.A. *Scrabble*

Imagine that a married couple lives together. A shared understanding of their roles defines obligations in the marriage. One day, the couple decides to play *Scrabble*. At first, the game is a harmless diversion and they only play when they are both in the mood. But soon they start playing more regularly and betting on the outcome. They start with small stuff: who will wash the dishes after the game. But slowly the stakes get higher—more money, more bragging rights—until eventually the game comes to dominate the marriage. On the one hand, the *Scrabble* game determines fundamental aspects of each partner's role—e.g., the partner with the worse *Scrabble* record will have to give up her career if they have children. On the other hand, not playing is considered a forfeit. When the game reaches this point, it is both substantially engulfing and pits the partners against each other in a deep way. Each partner has to spend her life formulating and carrying out a plan to win at *Scrabble*, disregarding the potential damage to her partner's career, in order to keep winning and prevent the damage from being done to her own career.

The Estrangement Account can explain the moral defect in the *Scrabble* case. Marital solidarity requires partners to care for each other in various ways, including by sharing in one another's career aspirations. A normative framework that defines obligations for a marriage must not create serious reasons for estrangement with respect to these aspirations.

Because the *Scrabble* game defines obligations for a marriage, but creates serious reasons for estrangement of this kind, it is morally defective.

### *VII.B. Tenure Scheme*

Next consider the original physics department example. Academic collegiality requires members of a department to care for each other in certain ways, including by sharing in one another's professional aspirations. The S2 tenure scheme has a structure such that each junior faculty member can get tenure only by formulating and carrying out a plan that undermines her colleague's professional aspirations.<sup>30</sup> As such, S2 creates powerful reasons for estrangement among faculty members with respect to these aspirations. Because S2 defines obligations for an academic department, but creates serious reasons for estrangement that bear on academic collegiality, the arrangement is morally defective.

### *VII.C. Labor Market*

Consider now the high stakes labor market. In order to explain the moral defect in this arrangement, we must first introduce a view about civic solidarity. On the liberal view that I advocate, a political community is a solidaristic association, one that requires solidarity among citizens with respect to the pursuit of what Rawls calls *Primary Social Goods* (PSGs).<sup>31</sup> PSGs are a set of abstract goods—i.e., liberty, opportunity, authority, income and wealth, and the social bases of self-respect—that could serve most any citizen's interest in being able to rationally form, revise, and pursue a conception of the good. Possession of these abstract goods usually consists in the possession of various concrete goods in which the abstract

30. The tenure scheme is substantially engulfing because it is part of an institutional order that structures access to important goods (e.g., tenure) and academic departments are associations such that there is a normative expectation that members are not at liberty to exit or dissolve the association at will. See footnote 15 above.

31. The "common good" is a term widely used in the history of political philosophy to refer to the class of goods such that the pursuit of these goods is the object of civic solidarity (see Waheed Hussain, "The Common Good," in *The Stanford Encyclopedia of Philosophy*, ed. E. Zalta (Spring, 2018), <<https://plato.stanford.edu/archives/spr2018/entries/common-good/>>). The *concept* of the common good refers to the abstract idea of a class of goods that is the object of civic solidarity. A *conception* of the common good presents an account of the goods that belong to this class. According to the liberal conception that I advocate, PSGs make up the common good. A central argument in favor of this conception is that it is consistent with liberal ideals, such as neutrality and respect for the basic liberties.

goods are realized.<sup>32</sup> For example, having the PSG of opportunity consists, in part, in having access to health care, which is necessary to treat periodic illnesses that could otherwise prevent you from filling various work roles or caregiving roles.<sup>33</sup>

On the liberal view, the relational ideal for citizens resembles the relational ideal for neighbors or professional colleagues in that it requires a form of solidarity. Citizens must share in one another's successes and failures, not with respect to specific personal projects but with respect to the more abstract project of securing PSGs. For example, if the members of a minority group are struggling to secure their basic liberties against a threat, civic solidarity requires that I, as a fellow citizen, should give the potential setback to their pursuit of liberty an action-guiding and attitude-guiding role in my practical reasoning that is similar to the role that I should give to potential setbacks to my own pursuit of liberty. Among other things, I should worry about the threat, I should help the minority group to secure their liberties against the threat, and I should feel relieved when the threat has subsided.

In the high stakes labor market, citizens get access to health care by securing a market income and buying private insurance for themselves. Under normal conditions (i.e., short of full employment), each citizen secures health care for herself by formulating and carrying out a plan that will interfere with her fellow citizens' efforts to secure health care for themselves. As such, the arrangement creates powerful reasons for estrangement among citizens with respect to the pursuit of health care—and, by extension, the pursuit of the PSG of opportunity. Because the high stakes labor market defines obligations for a political community, but creates serious reasons for estrangement with respect to the pursuit of PSGs, the arrangement is morally defective.

At this point, we can see how the Estrangement Account can make up for the shortcomings of the standard liberal egalitarian view of institutional morality. The standard view focuses on two principles: liberty and

32. I will call concrete goods in which PSGs are realized "relevant" concrete goods. For a discussion of how to identify relevant concrete goods, particularly with respect to health care, see Rawls, *Justice as Fairness: A Restatement* (Cambridge: Harvard University Press, 2001), pp. 171–76; Norman Daniels, *Just Health Care* (Cambridge: Cambridge University Press, 1985), especially chap. 2.

33. See Rawls, *Justice as Fairness: A Restatement*, pp. 171–76.

equality (or fairness). But these principles alone cannot explain why substantially engulfing RDAs are sometimes morally defective in virtue of their rivalry-defining character. What is missing is the concern for creating reasons for estrangement: the major background institutions of a liberal democracy are morally defective not only when they violate liberty or equality (or fairness) but also when they create serious reasons for estrangement among citizens with respect to the common good—i.e., the pursuit of PSGs.

#### VIII. SOME INSTITUTIONAL IMPLICATIONS

Having set out the main lines of the Estrangement Account, I want to make the view more concrete by considering some implications. Suppose that we revise our view of institutional morality to make it sensitive to creating reasons for estrangement. What implications does this have for the background institutions of a liberal democracy?

In addressing the issue, I will assume that background institutions must provide citizens with liberal freedom.<sup>34</sup> This means that institutions must put citizens in a position where they can each form, revise, and pursue a conception of the good. Institutions must also provide citizens with what Rawls calls a “fully adequate” scheme of civil and political liberties, including the freedom of thought and expression, freedom of religion, freedom of association, and freedom of movement.<sup>35</sup>

What is important for my purposes is that a social order that provides citizens with liberal freedom will also define an institutional context in which citizens exercise this freedom. Most importantly, various mechanisms will determine the distribution of PSGs in society and some of these may be competitive: i.e., one citizen’s completing a procedure to secure a relevant good would interfere with another citizen’s completing a corresponding procedure to secure a relevant good. For example, citizens

34. We can articulate the idea in terms of a principle that attaches special importance to the basic liberties—e.g., Rawls’s first principle of justice or Mill’s principle of liberty. Note that when people have liberal freedom, they will each find their way to their own conception of the good. If there are many different conceptions that are all reasonable but not mutually compatible, then most any social order that incorporates liberal freedom will be an RDA. I take it for granted that the fundamental importance of liberal freedom justifies the rivalry-defining character of protections for liberal freedom.

35. Rawls, “The Basic Liberties and their Priority,” in *Political Liberalism*, expanded ed. (New York: Columbia University Press, 2005).

in a liberal democracy may exercise their liberal freedom against the background of a health care system that pits them against each other for access to medical care. Or they may exercise their liberal freedom against the background of a system of civic honors that pits them against each other for the social bases of self-respect.

Let's say that the "sphere of competitive distribution" consists of all of the mechanisms defined by a society's background institutions that determine the distribution of PSGs and do so through a competitive process. What the Estrangement Account requires is that background institutions must be structured in such a way that the sphere of competitive distribution would not create serious reasons for estrangement among citizens with respect to the pursuit of PSGs. Much like a properly ordered poker game among friends must stay within the limits of a "friendly" competition, the sphere of competitive distribution in a liberal democracy must keep its rivalry-defining character within the limits of an appropriately "friendly" or "civic" competition.

We can think of the measures that answer to the Estrangement Account in terms of two basic design strategies for background institutions.<sup>36</sup>

#### *VIII.A. Keep Relevant Types of Concrete Goods out of the Sphere of Competitive Distribution*

One approach to satisfying the Estrangement Account is to avoid creating reasons for estrangement that are relevant to civic solidarity. A social order could do this by keeping various types of relevant concrete goods out of the sphere of competitive distribution, distributing these goods instead through noncompetitive mechanisms.

Here is an illustration. In most liberal democracies today, background institutions define mechanisms that create and distribute opportunities for citizens to pursue a college education. I assume that a college education is a relevant concrete good because having a college education is important to your having the PSG of liberty (i.e., the capacity to make use of your political freedoms) and the PSG of opportunity (i.e., the capacity to attain the more attractive positions in society). One type of arrangement for creating and distributing opportunities to pursue a college education is a noncompetitive testing regime.

36. An institutional order typically satisfies the Estrangement Account through some combination of the two strategies.

The rules of a noncompetitive testing regime begin by setting a basic standard for college admission, such as a minimum score on a standardized test (e.g., the SAT) or a minimum high-school grade point average. The standard is set high enough that many students (perhaps most) will not meet it, but the rules say that any student who meets the standard will get a spot somewhere in the higher education system, regardless of how well other students do. The scheme incorporates funding rules that require governments to set aside the equivalent of a certain dollar amount of funding per student, using projections based on the size of the college age cohort in the population and historical rates for students meeting the admission standard. Any student who meets the standard carries the set dollar amount of funding with her to whatever school she attends. The rules also require governments to set aside more funding from tax revenue if this becomes necessary in any given year and to save surpluses for a rainy day.

What makes the arrangement noncompetitive is that students have “clear pathways” to a college education. Each student gets into college by completing the relevant procedure (i.e., meeting the admissions standard), and her completing the procedure does not interfere with any other student’s completing a corresponding procedure. No student gets in by pushing another student out. Because of this feature, the noncompetitive testing regime does not create reasons for estrangement. Each student’s pursuit of a college education has no direct impact on the pursuits of her fellow students, so as each student pursues a college education, she (and her family) can share wholeheartedly in the successes and failures of her fellow students (and their families) in terms of pursuing a college education—and securing the PSGs of liberty and opportunity.

Note that a noncompetitive testing regime may be attractive from the standpoint of creating reasons for estrangement, even if there is no reason to favor it from the standpoint of fairness or equality. Consider that a society could create and distribute opportunities for a college education through a *competitive* testing regime. A regime of this kind would start by allocating funding for  $n$  positions in the higher education system and then admit the students with the top  $n$  results on a standardized test. Here one student gets in by pushing another student out. But if everyone has a fair opportunity to compete for a position, a competitive regime could be consistent with fairness, equality of opportunity, and equality of resources. A competitive and a noncompetitive testing regime could both satisfy the

other principles, but the noncompetitive regime would still have a distinctive moral appeal in terms of respect for civic solidarity, and this is what the Estrangement Account articulates.

Many readers might be familiar with the noncompetitive testing regime because it is partially embodied in the institutions of many societies. During most of the postwar era, for example, the State of California created and distributed opportunities to pursue higher education through a scheme articulated substantially in the landmark 1960 Master Plan for Higher Education.<sup>37</sup> The Master Plan helped to integrate the University of California (UC), The California State University (CSU), and the California Community Colleges (CCC) into one system designed, in part, to make higher education available to all of the state's citizens. Under the Master Plan, the top 12.5 percent of public high school students were eligible for admission to UC, the top 33.3 percent for admission to CSU, and any California resident 18 years or older who could "benefit from instruction" was eligible to attend CCC. The Master Plan set out growth requirements for the system to meet rising demand and geographical requirements to ensure accessibility in all parts of the state. At the level of admission to UC and CSU, the scheme defined by the Plan was competitive: California students competed to be in the top 12.5 and 33.3 percent of graduates, respectively. But at the level of access to the higher education system as a whole, the scheme was *noncompetitive*: each high school student in California had a clear pathway to CCC, regardless of how well her fellow students did.

Starting with the tax revolts of the 1970s, and accelerating with the financial crisis in 2008, California has abandoned core elements of the Master Plan.<sup>38</sup> Today the State effectively treats college education as a private good rather than a part of the common good. But other societies have not made the same political choices. Most provinces in Canada, for example, have higher education systems that more clearly embody the

37. My account draws in particular on John Aubrey Douglass, *The California Idea and American Higher Education* (Stanford: Stanford University Press, 2000); Legislative Analyst's Office, "The Master Plan at 50: Assessing California's Vision for Higher Education," <[https://lao.ca.gov/2009/edu/master\\_plan\\_intro/master\\_plan\\_intro\\_111209.aspx](https://lao.ca.gov/2009/edu/master_plan_intro/master_plan_intro_111209.aspx)> (2009); Simon Marginson, *The Dream is Over: The Crisis of Clark Kerr's California Idea of Higher Education* (Oakland: UCLA Press, 2016); Aaron Bady and Mike Konczal, "From Master Plan to No Plan: The Slow Death of Public Higher Education," *Dissent*, Fall (2012).

38. See Marginson, *The Dream is Over*; Bady and Konczal, "From Master Plan to No Plan."

noncompetitive testing regime. Even in Ontario—among the least civic of provinces—public universities still admit any Ontario high school student who passes a certain threshold in terms of her grades, and about 40 percent of a university’s operating budget comes from provincial grants based on a standard funding rate per full-time student and average historical enrollment at the university.<sup>39</sup>

Noncompetitive testing is just one example. There are many other noncompetitive mechanisms that a liberal democracy could use to distribute relevant types of concrete goods. Some familiar examples include unconditional assignment (e.g., civil liberties, basic income), need-based assignment (e.g., Medicaid), conscription (e.g., military service), lotteries (e.g., organs, jury duty), and seniority rules (e.g., leadership positions on House and Senate committees). Using a variety of such mechanisms, a liberal democratic social order could keep relevant goods out of the sphere of competitive distribution and thereby avoid creating reasons for estrangement.

#### *VIII.B. Allow Relevant Types of Concrete Goods in the Sphere of Competitive Distribution but Lower the Stakes*

Another approach to satisfying the Estrangement Account is to create reasons for estrangement that are relevant to civic solidarity, but to ensure that these reasons are not too serious. A social order could do this by putting relevant types of concrete goods in the sphere of competitive distribution, but reducing the magnitude of the difference that winning and losing makes to a citizen’s holdings of these goods.

To illustrate, imagine that a liberal democratic social order distributes access to health care through labor market competition. To satisfy the Estrangement Account, the social order could incorporate certain limits.

39. Each public university sets its own threshold for admission. For an overview of higher education funding in Ontario, see Ministry of Training, Colleges and Universities, *Focus on Outcomes, Centre on Students: Perspectives on Evolving Ontario’s University Funding Model* (Ottawa: Queen’s Printer for Ontario, 2015); Ministry of Training, Colleges and Universities, “Overview of Current Funding Model,” <[http://www.tcu.gov.on.ca/pepg/audiences/universities/uff/uff\\_overview.pdf](http://www.tcu.gov.on.ca/pepg/audiences/universities/uff/uff_overview.pdf)> (2015); Financial Accountability Office of Ontario, “The Funding of Postsecondary Education in Ontario,” <<https://www.fao-on.org/web/default/files/commentaries/1605%20education/PSE%20Funding%20Commentary%20FINAL.pdf>> (2016). As I write this article, the provincial government is in the process of dismantling this scheme. Many European social democracies have higher education systems that embody the noncompetitive testing model even more clearly than Canadian provincial systems do.

On the one hand, it could incorporate an upper limit on the quality of insurance and health services that people can buy with their employment income. On the other hand, it could incorporate a Medicare system that guarantees a minimum level of access to health care unconditionally, thereby setting a lower threshold below which labor market outcomes would not affect access. With a “ceiling” and “floor” in place, the competitive arrangement would create reasons for estrangement, but these reasons would not be too serious. Citizens would have reasons for estrangement with respect, say, to the pursuit of better medical tests and shorter wait times but not with respect to the pursuit of the most basic forms of health care. With an appropriate ceiling and floor in place, a competitive regime for creating and distributing access to health care need not seriously obstruct solidarity among citizens with respect to the pursuit of the PSG of opportunity.

An implication of the second strategy is that, under the right conditions, the Estrangement Account is compatible with competitive markets. A social order could incorporate a market system to coordinate production and consumption in society, as long as an appropriate “ceiling” and “floor” are in place to limit the stakes for citizens. In an arrangement of this kind, competitive markets would create reasons for estrangement with respect, say, to the pursuit of bigger houses and more lavish vacations, but not with respect to the pursuit of basic health care or a college education.

Similarly, a social order could incorporate competitive elections for the sake of public accountability, as long as it moderates the stakes in the right way. On the one hand, a social order could limit the significance of the forms of authority attached to offices distributed through electoral competition. It could do this by dispersing authority more evenly across positions in regional, municipal, or industrial decision-making units, or by adopting some version of the separation of powers.<sup>40</sup> On the other hand, the order could adopt a bill of rights with judicial review to guarantee certain forms of authority to all citizens unconditionally—e.g., authority over your body, authority over your religious beliefs, etc. With an appropriate “ceiling” and “floor” in place, citizens would have reasons for estrangement with respect, say, to the pursuit of authority over tax policies or

40. Separation of powers involves assigning authority to different branches of government and orienting these branches to act as checks on each other.

zoning restrictions, but not with respect to the most basic authority over your body or your religious beliefs.

With respect to both of the institutional design strategies discussed, it is important to pay attention to the way that background institutions create reasons for estrangement by shaping the internal structure and normal operation of organizations in the civil sphere. For example, the law in most liberal democracies today gives ownership rights in important resources to business corporations and gives them the right to hire and fire employees. Corporate law also influences the internal structure of offices and authority in these organizations. Together, these and other features of the law may lead to a labor market in which citizens have very serious reasons for estrangement with respect to the pursuit of authority: citizens who lose out in labor market competition may end up in positions where they spend most of their waking hours subject to the authority of those who win. To moderate the stakes, a liberal democratic social order could incorporate a variety of measures to prevent excessive concentrations of decision-making authority in the social division of labor. Some examples of such policies include a legal framework for collective bargaining, German-style codetermination, policies that favor high human capital formation, limits on work hours, etc. The basic concern would extend to universities and nonprofits, insofar as these organizations form part of the labor market, though the law could treat different organizations differently, depending on their nature and purposes. What matters is that background institutions must not create a high stakes labor market with respect to authority, and there are many approaches the law could take to do this.

#### IX. UNDERSTANDING THE MORAL SIGNIFICANCE OF RIVALRY

Turn now to an objection. Suppose that a liberal democracy uses the measures discussed in the last section to restrict and moderate the sphere of competitive distribution. The institutional order now satisfies the requirements of the Estrangement Account. Suppose that we could reform the order so as to increase aggregate output and give everyone a more extensive array of resources to use in pursuing their conceptions of the good. Some readers might object that it would be irrational for a society to forego the benefits simply because the reform would create more serious reasons for estrangement.

The first thing to stress in response to the objection is that institutional morality is not fundamentally about welfare or well-being. A preferential hiring scheme that excludes women or minorities from positions of authority might actually increase economic output and generate more resources for all citizens to enjoy, even those in the excluded groups. Nonetheless, an arrangement along these lines would be morally defective. The reason is that institutional morality is not fundamentally about the welfare individuals enjoy or their level of well-being; it is about how they relate to one another. By excluding people from positions of authority, the preferential hiring scheme publicly marks certain people as inferior and gives them a reasonable basis for rejecting the arrangement. This makes the institutional order inconsistent with a way of citizens relating to one another in which it is possible for them to justify their conduct to each other on reasonable terms.<sup>41</sup>

The requirements of institutional morality are often best understood in terms of a way of citizens relating to each other based on the possibility of mutual justification on reasonable terms. But some requirements of institutional morality are best understood in terms of a way of citizens relating to each other that is rooted in a more concrete and specific relationship. Many philosophers (see footnote 5 above) recognize that citizens are subject to certain relational requirements because they stand in a specific social relationship with their fellow citizens. For example, Ronald Dworkin argues that the obligation to obey the law in a liberal democracy is best understood as an “associative obligation” that citizens owe to one another as partners in an ongoing political association.<sup>42</sup> Similarly, Rawls argues that the requirements of public reason apply to citizens as partners in an ongoing political association, where these requirements “specify the nature of the political relation in a constitutional democratic regime as one of civic friendship”.<sup>43</sup>

The Estrangement Account agrees that citizens are often subject to certain relational requirements as partners in a political association. But it departs from Rawls, Dworkin, and others in the way that it interprets these requirements. According to the Estrangement Account, the relational ideal for citizens requires a form of *solidarity*, not unlike the solidarity required

41. See Scanlon, *What We Owe to Each Other*; Rawls, *A Theory of Justice*.

42. Dworkin, *Law's Empire*.

43. Rawls, “The Idea of Public Reason Revisited,” p. 447.

among neighbors or professional colleagues. With respect to the pursuit of PSGs, citizens should treat the successes and failures of their fellow citizens similarly to the way that they should treat their own successes and failures. It follows that the background institutions in a liberal democracy are morally defective when they are seriously inconsistent with citizens relating to each other in this way. A high stakes labor market, for instance, creates serious reasons for citizens to think and act with disregard for the impact that their actions have on their fellow citizens' pursuit of PSGs. Because the arrangement tears at the fabric of solidaristic relations that exist or could exist among us, it is morally defective.

A fundamental advantage of the Estrangement Account is that it avoids the dualistic view of social relations implicit in the theories of Rawls and Dworkin. In Rawls's case, citizens stand in a civic relationship that is so intimate that they must each tailor their public arguments and voting behavior to be properly sensitive to the innermost religious and political convictions of their fellow citizens (i.e., public reason). Yet, *these very same people* stand in no comparable relationship in economic life, so there is nothing especially problematic about a market arrangement insofar as it may require citizens to foreseeably smash their fellow citizens' livelihoods in order to avoid having their own livelihoods smashed. I find this dualistic view hard to believe: if we are civic friends, then we are civic friends, whether in economic life or in political life. A fundamental attraction of the Estrangement Account is that it unifies our view of the institutional morality of economic life and political life in one coherent conception of social relations among citizens.<sup>44</sup>

44. To see how Rawls treats our activities in economic life as if these were not situated within a civic relationship consider the following. In chapter VIII, *Theory* presents an account of stability based substantially on social bonds forming among citizens through cooperative interaction and natural reciprocity. The cooperative interaction occurs in family life, politics, and in various civil associations—e.g., schools, neighborhoods, and games (see especially §71; see also Hussain, "Nurturing the Sense of Justice: The Rawlsian Argument for Democratic Corporatism," in *Property-Owning Democracy: Rawls and Beyond*, eds. Martin O'Neill and Thad Williamson (Oxford: Blackwell, 2012)). But the account never seriously addresses the fact that most people in a market society—even a just market society—will spend most of their waking hours working in firms and competing for jobs. They will be working in ways that effectively *threaten* one another's position in the marketplace and *threaten* to reduce one another's share of PSGs. This competitive interaction is distinctly at odds with social bonding through reciprocity.

Many readers will note that other theorists have also criticized the dualistic view of social relations implicit in Rawls's work, most notably G.A. Cohen. But I want to highlight a difference. Cohen objects to a justification for inequality that involves talented individuals in a Rawlsian society justifying the gains that they get through withholding their talents for higher wages and doing so on the grounds that these gains are "necessary" to maximize the prospects of the least advantaged.<sup>45</sup> We stand in a relationship of mutual justification, Cohen argues, both in maintaining background institutions and in making personal choices within these institutions, so if the talented affirm egalitarian ideals for background institutions, they can't just ignore these ideals in their personal choices.

The Estrangement Account differs from Cohen's critique because it says nothing about how ideals for background institutions must shape our choices within them—it does not claim that "the personal is political." The Estrangement Account focuses exclusively on background institutions. Where it differs from Rawls is in taking the civic relationship to require a form of solidarity among citizens and in taking the relationship to pervade economic life as well as political life. These differences lead to a different view about the normative standards for assessing background institutions in a liberal democracy, but they do not affect the basic social democratic concern for institutional structures.<sup>46</sup>

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In the assessment of economic arrangements in §§42–43, *Theory* relies on the idea that "Perfect competition is a perfect procedure with respect to efficiency" (Rawls, *A Theory of Justice*, p. 240). Appropriate measures must be in place to distribute the benefits fairly, but once a rational social minimum is guaranteed, "it may be perfectly fair that the *rest of total income* be settled by the [competitive] price system. . ." (Rawls, *A Theory of Justice*, p. 245; my emphasis). But what would social life be like if the "rest of total income" were always up for grabs in market competition? Would this be consistent with social bonding through reciprocity? In relying on economics and social choice theory to assess economic arrangements, *Theory* assesses these mainly in terms of Pareto efficiency and distributive outcomes. It does not consider the social character of interaction in economic life, and it does not assess economic arrangements in terms of how consistent they are with the formation and maintenance of social bonds among civic friends. (The basic point holds, even when we consider what Rawls says about social union, envy, and fraternity.)

45. G. A. Cohen, *If You're an Egalitarian How Come You're So Rich?* (Cambridge: Harvard University Press, 2000), pp. 122–28.

46. The Estrangement Account also differs in several ways from Cohen's "Principle of Communal Reciprocity" (*Why Not Socialism?*, pp. 38–45). Cohen is mainly worried about market instrumentalism: markets draw people into mutually beneficial patterns of production activity, but the "marketeer" values these patterns for the benefits she gets from them, not the inherent value of "serving and being served." As he says, "the market motivates

## X. IS THE VIEW TOO DEMANDING?

Finally, consider an objection related to social costs. Most principles of political morality will constrain the pursuit of other objectives, but some readers might argue that the costs of conforming to the Estrangement Account are so high that the principle could not be part of a plausible conception of political morality.

A full response to the objection would require an empirical study that is beyond the scope of this article. But a few points are worth noting. First, the Estrangement Account is not an egalitarian ideal, so it is compatible with significant performance incentives. Under a noncompetitive testing regime, for example, students have an incentive to work hard to satisfy the admissions standard: only those who satisfy the standard will get a college education. By incorporating institutions that offer citizens benefits through noncompetitive processes, a social order could create significant performance incentives without creating reasons for estrangement. Second, the Estrangement Account allows for competitive markets, as long as appropriate measures are in place to moderate the stakes. How extensively markets may be used will depend on what constitutes a serious obstruction of civic solidarity.

Third, people often assume that competition is essential for selecting qualified candidates for important positions, but this is a mistake. Selection mechanisms can be both qualification-sensitive and noncompetitive. Think of a military conscription scheme. Citizens are selected to fight based on qualifications such as age and physical fitness. But the scheme is

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productive contribution not on the basis of a commitment to one's fellow human beings. . . but on the basis of cash reward" (p. 39). (1) Cohen's principle attaches no special significance to competition: citizens would not be moved by the inherent value of "serving and being served" in any arrangement that relies on incentives to draw people into the right patterns, whether or not the incentives are competitive. Cohen's principle would seem to rule out all incentive-based arrangements, while the Estrangement Account would allow for most of those that are noncompetitive. (2) Cohen's principle objects to market arrangements because they involve citizens looking at each other in certain ways, but it pays no attention either to the seriousness of the reasons that a particular market arrangement creates for citizens to look at each other in these ways or to how bad the particular ways of looking at each other involved are—e.g., do I see others as a threat to my health care or just to my HBO subscription? By contrast, the Estrangement Account would allow for competitive markets, as long as they do not create reasons for estrangement that are both relevant to civic solidarity and serious.

noncompetitive because it does not define any institutional avenue for a citizen to affect her own or anyone else's chances of being selected. The rules may even expressly forbid certain actions (e.g., shooting yourself in the foot) that are intended to game the system to produce a certain result. Like a lottery, the conscription scheme takes decisions about who will fight out of the hands of the people involved. There are many other selection mechanisms that are qualification-sensitive and noncompetitive: e.g., the process that selected scientists for the Manhattan Project, the process that selected Robert Mueller as the head of the special investigation into Russian election interference, the process that selects recipients of the MacArthur "Genius Grant," etc.

Finally, the procompetitive hysteria in our culture tends to obscure this, but competitive institutions have their plusses and minuses in terms of efficiency, just as noncompetitive institutions do. For example, competition in large-scale institutions often leads to huge, socially wasteful investments in purely strategic activities such as noninformative advertising, credential accumulation, and personal self-promotion.<sup>47</sup> More importantly, long-term economic growth hinges on breakthroughs in science and technology. But these breakthroughs depend on an array of institutions that prevent competitive pressures from undermining the conditions for collaborative inquiry and information sharing—e.g., universities, government laboratories, public funding for basic science, regulated monopolies, firm constellations, etc.<sup>48</sup> It is a complicated empirical question how shifting the mix of institutions in society toward less competitive structures would affect efficiency and growth: there is no reason to assume the results would be disastrous.

But maybe the simplest response to the objection is just to point to the experience of many European social democracies, which maintain high

47. See Robert H. Frank, *The Darwin Economy* (Princeton: Princeton University Press, 2011); Robert H. Frank and Philip J. Cook, *The Winner-Take-All Society* (New York: Penguin, 1995).

48. The tension between competition and collaboration is widely recognized in the innovation literature. For a general discussion, see Richard K. Lester and Michael J. Piore, *Innovation—The Missing Dimension* (Cambridge: Harvard University Press, 2004); Charles F. Sabel, "Learning by Monitoring," in *The Handbook of Economic Sociology*, eds., Neil J. Smelser and Richard Swedberg (Princeton: Princeton University Press, 1994). For recent historical treatments, particularly with respect to the digital revolution, see J. Gertner, *The Idea Factory: Bell Labs and the Great Age of American Innovation* (New York: Penguin, 2012); George Dyson, *Turing's Cathedral: The Origins of the Digital Universe* (New York: Pantheon, 2012); Mariana Mazzucato, *The Entrepreneurial State: Debunking Public vs. Private Sector Myths* (New York: Anthem Press, 2014).

levels of achievement in scientific, cultural, and economic activities, while also restricting and moderating the sphere of competitive distribution.

#### XI. CONCLUSION

The background institutions of the basic structure are very different from ordinary games: they determine access to essential goods in a political community and we expect citizens not to be in a position to exit or dissolve the community at will. The competitive character of these arrangements is much more problematic than the competitive character of the typical game of *Scrabble* or tennis. Political morality puts limits on the rivalry-defining character of these institutions, limits that cannot be understood simply in terms of good feelings, fairness, or equality. The Estrangement Account provides a compelling explanation of the relevant constraints, and the two institutional strategies discussed illustrate how a liberal democracy can answer to the moral concern for rivalry.