1. Introduction

The modern experiment with democratic government is nearly 250 years old, yet we struggle even now to understand the ideals that are its basis, the institutional structures that are most likely to achieve the best approximation of those ideals, and the ethical obligations that fall upon democratic citizens in their role as citizens. To some extent, our struggle reflects the fact that the ground beneath our feet is constantly shifting as demographic realities undergo transformation.

The ancient Greek philosopher, Aristotle, recognized that the question of which institutions and norms can operationalize, or achieve the best approximation, of a definition of justice depends on underlying demographic facts: the balance of rich and poor in a city; the relative proportion of agricultural, trading, and leisure classes, the degree of education of the citizenry and so on. His view and approach, in other words, are the antithesis of much contemporary political philosophy, which has sought to construct theories of justice that abstract away from any definite demographic pattern or realities. While Aristotle argues for two core principles of justice—a principle of proportional equality (as in, for instance, the rule that the most talented should occupy the highest office) and a principle of arithmetic equality (as in, for instance, the one man/one vote rule), he also teaches his readers how think through the diversity of institutional mechanisms available to realize those principles, or some combination of them, in varying demographic circumstances.

In our own time, it is worth both re-considering the basic ideals of democracy and rebuilding our capacity to see the diverse array of institutional forms that can be used to realize them, given specific demographic facts on the ground. I have taken up the latter project of institutional inventiveness elsewhere, so in this essay I take up the former project of a reconsideration of the basic ideals of democracy. This essay, in arguing for the primacy of political equality within any viable account of justice, provides the foundation for those other inquiries. The most significant contribution of this essay will be to articulate a principle—
difference without domination—that, I argue, should take up residence alongside the other principles that, since John Rawls, have commonly been taken to define democratic liberalism: equal basic rights and liberties, fair equality of opportunity, and the difference principle, which requires that economic inequalities “are to be to the greatest benefit of the least advantaged members of society.” Rawls intended the difference principle apply to social as well as to the economic domain. In this paper, I argue that in the social and economic domains “difference without domination” should replace the “difference principle” in the social realm and supplement it in the economic realm. “Difference without domination” is a more strenuously egalitarian principle than the Rawlsian “difference principle.”

2. Ancient vs. Modern Liberties

Why start an argument about the meaning of justice by asserting that justice must include political equality or democracy? There are two possible answers. Either one thinks that participating in democracy is in itself good for human beings or else one thinks that only by participating in a democracy, can human beings secure the elements of justice. The value of democracy may, in other words, be either intrinsic, deriving from what it itself is, or instrumental, deriving from the outcomes that it secures.

For the last two centuries, political philosophers in the West (in contrast, for instance, to scholars working on Chinese traditions of meritocracy) have argued that democracy has an undeniable instrumental value—in securing conditions for the exercise of autonomy—and that it may also have intrinsic value. It may be necessary to the full flourishing of human beings.

For John Rawls, for instance, liberal democracy is good because it secures the autonomy that individuals need if they are to choose their own comprehensive conceptions of the good and to be able to select from among possible ways of life that which they believe is best. Rawls generally tried to argue that his liberalism avoided imposing any particular conception of the good on the citizens of a liberal regime, but on this point he was being coy. His theory of justice did rest on the idea that autonomy is in itself good for people and that they ought to be given space to exercise it. In contrast, Rawls considered the value of democracy, that is, of political participation, to be purely instrumental; for him, it provided a way of securing the rights of freedom of thought, expression, and association that make autonomy possible. He objected to the
views of philosophers like Jürgen Habermas who argue that democracy is valuable in itself because political participation is necessary to human flourishing. Rawls rejected the idea that “civic humanism is true: that is, the activity in which human beings achieve their fullest realization, their greatest good, is in the activities of political life.” ¹ Some people, he argues, for instance, a George Washington or Abraham Lincoln, may develop such a conception of the good for themselves, but we ought not to impose that conception of the good on everyone else.

This argument between Rawls and Habermas unfolded on terrain that historians of philosophy identify as the battle between the liberties of the ancients and of the moderns, a contrast anchored by a famous early 19th century essay by Benjamin Constant with roughly that title. The ancients, Constant argued, prioritized their political rights, their right to participate in the government and to take ownership over collective decisions. The moderns, in contrast, he argued at the dawn of the industrial revolution, had discovered commerce and mostly wanted to be left alone. They wanted to be protected in their property rights and rights to thought, expression, association, and contract so that they could pursue their commercial ventures, tend to their affairs, and get rich. For the moderns, Constant argued, politics had only instrumental value; the intrinsically valuable activity was money-making.

Constant’s argument was influentially amplified by Isaiah Berlin who renamed the liberties of the ancients “positive liberties”; they involved a positive right, the freedom “to” participate in government. The modern liberties became, in his lexicon, the “negative liberties”; they involved freedom “from” interference, the right not to be bothered. These latter rights are the ones—thanks also to the work of Immanuel Kant and John Stuart Mill—that are understood to make the exercise of autonomy possible and to provide each individual the chance to develop and implement his or her conception of the good life, with minimal interference from others. These are the rights that Rawls prioritizes in his argument, and his theory of justice rests on this prioritization, despite his formal inclusion of the positive political liberties on his list of the basic rights that must be protected. Because those are understood by Rawls as instrumentally valuable for all, but fundamentally valuable only for some, they in fact take a subordinate place in his argument. Running below the surface of Rawls’ theory of justice is the argument that the ideal of equal autonomy (resting on the negative liberties) is a better starting point for a theory of justice,

and the pursuit of justice, than the ideal of political equality (resting on the positive liberties). The consequences of this prioritization come out most pointedly when Rawls argues, in the revised edition of *Theory of Justice*, that while historical situations may sometimes justify lesser political liberty, they can never justify “the loss of liberty of conscience and the rights defining the integrity of the person” (rev edition, sec. 39). He continues: “Under conditions that cannot be changed at present, there may be no way to institute the effective exercise of these freedoms [political liberties]; but if possible the more central ones should be realized first” (revised edition, sec. 39). Although Rawls never offers an explicit definition of “the more central freedoms,” in his argument these are clearly the rights supporting private, not public autonomy, the rights of the moderns, not of the ancients.

3. Rawls’ Mistake

Despite what I have just laid out, however, Rawls believed, and argued, that in his theory of justice he had consistently treated the liberties of the ancients and the moderns as co-original and co-equal. He writes: “The ancient and the modern liberties are co-original and of equal weight with neither given pride of place over the other. The liberties of both public and private autonomy are given side by side and unranked in the first principle of justice. These liberties are co-original for the further reason that both kinds of liberty are rooted in one or both of the two moral powers, respectively in the capacity for a sense of justice and the capacity for a conception of the good” (*Political Liberalism*). Yet, as we have seen, Rawls in fact came to prioritize the liberties of the moderns over those of the ancients. This is because he believed that the exercise of private autonomy is universally an intrinsic good, while the exercise of public autonomy is of instrumental value to all but of intrinsic value only to some.

Rawls’ mistake is to imagine that private and public autonomy can be disentangled from one another, an idea that is conceivable only in contexts of great social homogeneity. He envisages a state that can do all the things that states do--make decisions about whether and how to go to war; adjudicate contests when the rights of adversarial parties come into conflict with one another; tax and distribute state revenues in the form of public goods—without tilting the playing field in the favor of some conceptions of the good rather than others. But no such state exists—a point being driven home now by controversies over secularism and the veil in France,
over marriage equality and the limits on freedom for religious minorities in the U.S., over the confounding relationship between gender equality and income inequality. Such a “neutral” state is imaginable only when the cultural universe of those who hold the levers of power in a state is reasonably close to the cultural universe that characterizes the population governed by the state. In such circumstances, public decisions read as “minimalist” or “neutral” not because they are or aren’t minimalist, but because they implicitly track the conceptions of the good that predominate within the population. When the distance is greater between the cultural universe, and conceptions of the good, of those who hold the levers of power in a state, and the array of conceptions of good in the general population, public decisions will more frequently be experienced as imposing on private autonomy. In these circumstances, there is no cure for the experience of imposition on private autonomy other than participation in the crafting of public decisions, not merely in order to protect one’s private autonomy but also in order to be a co-author of the restraints on that. To be a co-author in this way is an intrinsic, not an instrumental good.

Public autonomy, in circumstances of cultural heterogeneity, is a necessary extension of private autonomy, not something separate and separable from it. To the degree that private autonomy is intrinsically valuable, so too is public autonomy, if not always then certainly at least in conditions of diversity. If it has sometimes seemed otherwise, that was only because the advocates of private autonomy could rely on a state that tracked their own cultural interests and general conceptions of the good. In conditions, then, when a population is characterized by a high rate of diversity in the conceptions of the good adopted by members of the polity, the ancient and modern liberties are genuinely co-original and co-equal, and a theory of what justice requires must treat the political liberties, or political equality, as indispensable, no less central than freedom of conscience and bodily integrity to human flourishing.

While agreeing with Rawls, then, that any theory of justice must start by insisting on the provision of equal basic liberties, I re-define that principle in order to eschew any assignment of lower priority to the political liberties, and to political equality. Instead, I argue that, at a minimum in conditions of high diversity, the liberties of the ancients are intrinsically valuable, and not simply instrumentally valuable, because under conditions of diversity citizens cannot develop their autonomy only through private action; under conditions of diversity, the development of autonomy also requires political participation and participation in civil society.
4. Starting over with Equality

Rawls’ second principle of justice—the difference principle— tackles the question of how to think about social and economic questions, against a backdrop of political institutions that secure the equal basic liberties. But the answers about the social and economic domains change once one restores equal priority to political equality (equal political liberty), alongside equal rights to freedom of conscience, freedom of association, and the right to bodily integrity. To see how a view of justice in the social and economic domains must change, we must elaborate more fully the nature of an analytical starting point in which political equality and public autonomy, on the one hand, and the rights relevant to private autonomy, on the other, are genuinely co-equal. Let’s return to the basics.

An ideal democracy comprises a population of free and equal citizens, whose equality must first and foremost be understood as a matter of both political equality and equality in the rights constituting private autonomy. Indeed, these two bodies of rights are co-original in additional ways that have not yet been specified. The right to association is not, in fact, simply a right of private autonomy, one of the sacred rights of the moderns. If anything, its earliest appearances on the historical register fully conjoined the right to private autonomy—to join in religious associations of one’s choice—with the right to public autonomy. In 17th century England, dissenters gathered together not merely to celebrate religious rites but also to raise challenges to the legitimate authority of the monarch. In our own era, the Chinese government currently imposes great restrictions on the freedom of association not or not only to limit freedom of conscience but also to minimize the likelihood that political solidarities will form capable of challenging its authority.

When citizens have political equality (which we still have to define), they have both the intrinsic and instrumental value of democracy. But, of course, equality is a big concept, and one might immediately ask if the sense in which these citizens are “free and equal” is limited to the concept of political equality. How precisely do moral equality, social equality and economic equality relate to the centrality of political equality, on this argument? And what is the content of political equality anyway?
We might begin by saying that human moral equality provides the foundation for recognizing democracy as both an intrinsic and an instrumental good. Because human beings generally, as a species property, have the capacity for autonomy—not merely choosing their own way of life but also shaping the necessarily shared aspects of life through participation in politics—democracy is a good thing for them. It supports the flourishing of human beings as the kind of being they are. Democracy rests on the underlying moral equality that resides in this general capacity for autonomy. Rawls would describe this capacity for autonomy as consisting of “the two moral powers, respectively in the capacity for a sense of justice and the capacity for a conception of the good.” Democracy is the only type of polity that recognizes these capacities. The justice of democracy as a type of polity therefore derives from human moral equality, but the realization of democracy as a political form depends on the achievement of political equality. In other words, equality plays a role in the conceptualization of democracy at two different points, at least. Where Rawls sees the pursuit of private autonomy as leading over time to the protection of the political liberties in addition to the “more central liberties,” I see the connection flowing the other way round. The pursuit of democracy—which is to say of public autonomy—necessarily brings with it pursuit of the protection of the rights supporting private autonomy.

To understand how political equality, which includes protection of rights supporting private autonomy, relates to matters of social or economic justice, however, we will first have to understand the content of political equality. After we have defined political equality, we can ask a subsequent question, which is this: given the protection of basic liberties, including equal political liberty, what will be the dynamics in social and economic realms? And how can these dynamics be directed so as not to undermine those basic liberties including, importantly, equal political liberty or political equality? This question then turns out, upon reflection, to require us to return our attention to how we protect basic equal liberties in the first place. For there is more than one way to do this, and some approaches to protecting the equal basic liberties are more likely than others to develop dynamics that support non-domination in the social and economic realms. It turns out that the question we have to ask is this: What basic structure protects equal basic liberties in such a way as to generate social and economic dynamics that don’t undermine those very liberties? Asking this set of questions will leads us, as we will see, away from Rawls’ difference principle, and to a new principle: “difference without domination.”
5. Defining Political Equality

The time has come to define political equality. Following on the argument of the Declaration of Independence, which makes a coherent philosophical argument about political equality, I take political equality to consist of five phenomena: freedom from domination; egalitarian access to the instrument of government; epistemic egalitarianism; equality of agency based on practices of reciprocity; and co-creation and co-ownership of our political institutions and their broad consequences.

A. Freedom from Domination

To be free from domination, in the argument of Philip Pettit, is to be free from the prospect of arbitrary interference or “reserve control.” In his brilliant book, “Just Freedom,” Pettit explains freedom from domination with reference to the expression “free rein.” If you give a horse free rein, it may be able to go where it wants, but the rider retains “reserve control” and can reassert constraint at any point. Or consider Nora in Henrik Ibsen’s play, “A Doll’s House.” Nora’s husband, Torvald, a late-19th-century bourgeois gentleman, applies few restrictions to his wife, who is able to spend her time as she pleases. And yet she’s unhappy. She is at liberty thanks only to his good graces; she is dominated by his reserve control.

To have freedom from domination requires more than just protection of the basic liberty to choose your religion, political party, associations and employment. It also requires an equal share of control over the institutions — the laws, policies, procedures — that necessarily interfere with your life but that do so, ideally, only to protect each individual from domination by another, and any group from domination by other groups.

Pettit offers three simple tests for assessing whether freedom from domination exists in a society: the straight-talk test, the tough-luck test and the eyeball test. Can the people and their representatives speak forthrightly to one another and to other citizens, or do some find themselves bowing and scraping, for instance, to those with deep pockets? If the latter, domination exists. If your side loses a vote in a political dispute, do you have good reason to view it as tough luck, rather than as the “sign of a malign will working against you or your kind”? If you do not, again there is domination. And, finally, can citizens look others in the eye “without reason for fear or deference”? 
B. Egalitarian Access to the Instrument of Government

A democracy consists of the establishment of impersonal forms of corporate decision-making. That is, group decision-making institutions are established whose legitimacy is tied to a conception of “the people” who authorizes them and whom they represent. Democracies can structure these institutions in a variety of ways. For instance, the world has seen the direct democracy of the ancient Athenians and the representative democracies of the moderns, in forms both presidential and parliamentarian. The relevant decision-making institutions are typically legislative, executive, and judicial. Executive decision-making includes the regulatory apparatus of executive agencies.

A second important element of political equality is that all citizens have equal access to this decision-making apparatus. We are accustomed to arguing for such equal access in the context of voting rights protections. We are currently engaged in fierce debates about campaign finance law and whether one or another legal regime generates unequal access to the decision-making apparatus. The issue of pro bono provision of defense counsel for the indigent is also relevant here. The question of precisely what institutional arrangements count as ensuring egalitarian access to legislative, executive (including regulatory), and judicial decision-making processes at all levels of the state (federal, state, and local) is open to debate, but the ideal is clear: a pathway to pull the levers of power that is open to one should be, in fact as well as in principle, open to all, contingent on each individual’s acquiring the legitimately established qualifications relevant to the use of that particular lever of power.

C. Epistemic Egalitarianism

A third feature of political equality is what I call epistemic egalitarianism. Like all polities, democracies depend on effective knowledge management practices to make good decisions. In contrast to other regime types, they have access to a technique for strengthening collective decision-making, by drawing on the knowledge resources of the whole citizenry.

Human beings are sponges, taking in information about their environment. Some are better sponges than others, but all of us are absorbent. All people are created equal in that we are all born to absorb. Recognizing this fact, we can cultivate collective intelligence that is better than what any individual can achieve. Of course, to say everyone is an equal participant in the project of coming to see the course of human events does not mean that everyone is equally good
at it. Only that everyone has the capacity to pick up some bit of information, some observation, which is relevant to the whole picture, and which no one else will have noticed. Some people will pick up more than others, but everyone picks up something. Experts have a crucial role to play within the larger democratic community, but the value of their contributions should not obscure the fact that contributions are needed from every quarter to achieve a complete view.

Democracies can strengthen our individual and collective capacities to analyze the relation between present and future, and to make the related policy judgments, by drawing everyone into the work of understanding the course of human events. They can build a collective intelligence superior to what any individual or even a closed group of experts can achieve, by developing egalitarian approaches to knowledge cultivation. Experts are most valuable when they work hand in hand with a well-educated general population capable of supplying useful social knowledge to deliberations.

This sort of egalitarian epistemic practice can strengthen democratic decision-making, supporting consideration of decisions in the round, but deploying it also re-enforces political equality. When the knowledge and understanding that flows into a political decision is closely controlled by a limited few, their control of knowledge resources pulls decision-making power to them as well. Broadening the engagement of the citizenry in the discovery, analysis and deliberation processes that feed into policy-making decentralizes power, supporting political equality. The place of epistemic egalitarianism in political equality thus underscores the need to treat education as a public good, insofar as an effective educational system is necessary to maximize the potential of citizens to participate effectively in the knowledge management processes and deliberations of their democracy. It’s not accident that forty-nine of the fifty U.S. state constitutions include a right to education, and that they commonly ground that right in preparing people for citizenship.2 A good educational system is an important foundation for realizing political equality, precisely because of the epistemic egalitarianism required of political equality.

D. Reciprocity

The fourth element of political equality concerns egalitarian practices of reciprocity. Justice in human relationships requires the kind of equality expressed by principles of

2 Michael Rebell book in progress.
reciprocity. Such principles provide the basis for interaction through which both friends and fellow citizens can achieve equality of agency in their relationship with one another.

Whether in friendship or politics, each participant wants a sphere of agency unfettered by others. Each has the capacity to engage, through talk, in a project of responsiveness to make sure that none is encroaching on the sphere of agency of another. The achievement of freedom depends on this egalitarian engagement in a constant recalibration to undo, or redress, or fix encroachments. A free people grounds its problem-solving methods on this sort of egalitarian basis, in habits of reciprocity. Doing things with words is at the heart of those egalitarian problem-solving methods and mutual responsiveness. Reciprocity—or mutual responsiveness—is at the heart of justice.

Two practices define the reciprocity that is at the core of political equality: practices making redress of grievances possible and practices that make it possible to acknowledge and reciprocate benefits that have been supplied to one by one’s fellow citizens. No political decision is equally good for all members of the polity, even when all members of the polity have had equal access to the instruments of government and have been equally able to contribute their knowledge to group-decision making practices. Even in these conditions, some members of the polity will incur losses. When settled patterns emerge in who is bearing the losses that result from political decision-making, political equality has come undone. The goal instead is to establish practices that result in political losses circulating through the citizenry over time.

To some extent this is achieved through practices of redress for grievances, as in the civil legal system. To another extent this is achieved through legislative and deliberative practices that recognize and reciprocate sacrifices that some members of the polity bear on behalf of others. This idea of reciprocity identifies the kind of equality that needs to be in play in relations between people in order for freedom to obtain. This is an equality in which, when one person does injury to another, the other person can push back and achieve redress so that there can be a balancing of agency in their relations. Securing conditions in which no one dominates anyone else requires a form of conversational interaction that rests on and embodies equality in the relationships among the participants. It is not merely that the ideal of equality requires securing conditions free from domination—the first facet of equality that we looked at—but also that equality of agency, achieved through reciprocal responsiveness, itself provides the means for securing freedom.
E. Co-Ownership of Political Institutions

The fifth component of political equality is cultivation in all members of the polity of an understanding that each has an equal ownership share in existing political institutions. This is an ideal of equality as co-creation, where many people participate equally in creating a world together. They do so under conditions of mutual respect and accountability by sharing intelligence, sacrifice, and ownership. The point of political equality is not merely to secure spaces free from domination but also to engage all members of a community equally in the work of creating and constantly re-creating that community. Here the topic of re-districting is relevant, for instance. Current approaches to re-districting that put that work in the hands of political parties rather than in those of the people at large make political institutions the possession of political elites. If, instead, they are properly understood as the possession of the people themselves, then control over their most basic and routine re-organization should lie with the people directly.

On this expansive definition of political equality, protecting equal basic liberties, including the political liberties, requires securing freedom from domination, equal access to the instruments of government, educational resources that support egalitarian participation by all in the polity’s processes of knowledge management and deliberation, a culture of reciprocity and turn-taking, and an asset-based conception of political institutions that assigns the ownership stake in that asset to all citizens and blocks capture of those institutions by a subset of the population. The question, then, of how to design the institutional structure of protections for equal basic liberties so as to generate social and economic dynamics that don’t undermine those very liberties turns out to be a question of which versions of basic rights protections support non-domination, equal access to the instruments of government, epistemic egalitarianism, a culture of reciprocity and a co-ownership conception for political institutions. When we have choices to make among different strategies for protecting equal basic liberties, we should select the options that do a better job with regard to cultivating the five facets of political equality. Then, dynamics in the social and economic domains will not undermine the equal basic liberties we sought to secure in the first place.
6. Equal Basic Liberties and the Paradox of Their Potential to Generate Inegalitarian Dynamics

Protecting political liberty requires not merely the provision of the rights to vote, hold office, and serve on juries but also the freedoms of association and expression that make political participation possible in the first place. Of course, these latter rights are also valuable as foundations for the expression of private, and not merely public, autonomy. If we start a theory of justice from the need to protect equal basic liberties, with the liberties supporting public autonomy and those supporting private autonomy equally weighted, how should we assess what is required of justice in the social and economic domains?

First and most importantly, the dynamics of the social and economic domains cannot be such as to undermine equal basic liberties, including political liberties. On this point, I now break more decisively from Rawls. While Rawls is willing to say that the basic liberties supporting private autonomy must never be sacrificed for the sake of material well-being, he does argue that in some circumstances it might be reasonable for people to forfeit their political liberties, as least temporarily, to achieve material well-being. In my argument in contrast, if the ancient and modern liberties are truly given equal weight, then it is also inadmissible for the dynamics in the social and economic realm to unfold in such a way as to abrogate the political liberties, or political equality, just as it is inadmissible for them to abrogate the rights that support private autonomy.

Yet here we reach a paradox. It is precisely the type of rights protection that lies at the heart of protecting equal basic rights—and particularly the right to freedom of association—that generates forms of social and economic difference that often come to be a source of domination in any given society, ultimately coming to undermine pathways to political equality. We must confront the fact that our choices about how to protect the equal basic liberties already affect the structure of the social and economic domains.

Segregation is the easy, obvious example of this. The entire structure of Jim Crow was defended on grounds of the need to protect freedom of association, an equal basic liberty. Yet from this ostensible protection of a basic liberty flowed a variety of forms of domination. A segregated society, for instance, undermines political equality by establishing patterns of domination and limited access to the levers of power. That said, it does not necessarily undermine private autonomy. This was in effect the meaning of the segregationists’ argument
that it should be possible to build two separate but equal worlds. Surprisingly, then, the segregationist outlook is compatible with the Rawlsian notion that only the rights supporting private autonomy should be considered utterly sacrosanct. But once the political liberties, and political equality, are also considered sacrosanct, then segregationist social structures are plainly revealed as antithetical to a just society. This example shows the importance of considering the political liberties as equally central to the liberties that protect private autonomy.

Moreover, Jim Crow’s effects on the social structure of the U.S. in the first half of the twentieth century also laid down rigid patterns for the distribution of economic benefits. As economic productivity boomed, in the mid 20th century, its fruits were distributed in patterns determined by the underlying allocations of land and labor controlled through segregation. In other words, the specific protection of an equal basic liberty attempted in the Jim Crow system established a basis for domination of some citizens by others in social, political, and economic domains.

We would now look at the case of segregation and critique it with the argument that, in fact, the Jim Crow system rested on only a false claim to protect a basic associational liberty. We would point out that, in failing to protect the rights of African Americans, Mexican Americans, and Chinese Americans to move freely through society, the Jim Crow system was actually violating their rights of association while putatively protecting those of others. Jim Crow may have been protecting the basic liberties of some but it wasn’t protecting equal basic liberty. One might therefore be tempted to say that, in the era of Jim Crow, the only reason the patterns of domination sprang up in the social and economic realms was that equal basic liberties were not in fact protected. But this would be to miss another basic point about the equal basic liberties and their paradoxical potential to generate inegalitarian effects in both the social and the economic realm. Freedom of association does inevitably lead to social difference, and social difference has historically had a high likelihood of generating domination. In the next two sections, I will elaborate this point first in relation to the social realm and then in relation to the economic realm.
7. Difference without Domination: Equal Basic Liberties and the Social Question

A fundamental expression of the right to free association is the right to marry whom one pleases. As people with affinity to one another pair up in marriages, they form the building blocks of units of cultural homogeneity. Regardless of precisely how marriage markets are constituted in different historical and geographic contexts, they have typically generated distinguishable ethnic communities, and there is every reason to think that freedom of association is more likely to reinforce than to undermine that pattern. Scholars of social network theory have identified “homophily,” the tendency of those who are like one another to flock together, as a basic building block of human social organization. Even imagining a world in which free association was protected not only from government intrusion but also from the limitations imposed by social sanction, there is still every reason to think that homophily would drive the formation of distinguishably different social groups.

And where there is social difference there can easily also be domination. Even without antipathy toward out-groups, members of social groups will often focus on gathering opportunities and resources for their own group, on the basis of nothing more than in-group preferences. Social differentiation, in other words, very often connects to opportunity hoarding, and other efforts at resource control that can lead to the domination of some groups by others. At its most extreme, protection of free association can generate social differentiation that leads to caste societies, although these societies are marked by stiff social sanctions that in fact limit free association. The articulation of difference with domination in this fashion undermines a society’s prospects for achieving political equality. Consequently, the goal of protecting political equality requires that we ask how we can have difference without domination.

We know what difference with domination is. It is the situation in which patterns of social difference align with some groups having active, or reserve, control over other groups. Difference without domination, therefore, identifies social patterning that does not eventuate in any group’s having either direct or reserve control over another group, nor any individual having direct or reserve control over another merely because of each party’s social background. Difference without domination should be the principle guiding our choices about the basic structure, the laws and institutions that establish the basic rules of the game for a society.
Protection of the equal basic liberties must instead be crafted in ways that ensure protection of those liberties not merely at some imaginary $t_1$ state of nature, when a society is founded, but also at $t_2$, $t_3$, $t_4$, and so on, after social difference has developed settled patterns. Only such protections of the equal basic liberties can, in the end, count as protections. This is the point conveyed by the figure below (Figure 1). The idea is that human equality necessitates protections of the equal basic liberties, but these protections must themselves be crafted so as to meet the standard of difference without domination, if they are to succeed in protecting and not undermining the equal basic liberties and political equality specifically. Protections of the equal basic liberties that are crafted in such a way as to meet the standard of achieving difference without domination in the social and economic domains should result in social equality and economic egalitarianism.
But what exactly is required of the principle of difference without domination in the social realm? How can we support social difference while disconnecting it from domination? The question is what is required of the basic structure, the fundamental political and social institutions, such that the social dynamics that emerge out of practices of free association do not articulate with hierarchy and domination and thereby undo the pathway to political equality.

The solution must lie in identifying features of the institutions of the basic structure that simultaneously protect free association and work against the development of phenomena like opportunity hoarding and group domination. These features of the institutions of the basic structure are those that permit and support difference but without domination. We judge the
institutions of the basic structure, then, for their likelihood of spurring difference without domination.

I encapsulate the features of the basic structure that can make the relevant difference under the category of “connected society” institutions. Scholars of social capital distinguish among three kinds of social ties: bonding, bridging, and linking. Bonding ties are those (generally strong) connections that bind kin, close friends, and social similars to one another; bridging ties are those (generally weaker) ties that connect people across demographic cleavages (age, race, class, occupation, religion, and the like); finally, linking ties are the vertical connections between people at different levels of a status hierarchy as in, for instance, the employment context. As I have argued elsewhere, an associational ecology that maximizes bridging ties should minimize the likelihood that social difference articulates with domination. Constructing an associational ecology that achieves this requires focusing on all of the policies that impact the use of land and space: transportation, housing, zoning, districting (including both for political representation and for education), public accommodations, and communications infrastructure (which affects spatio-temporal experiences). The question of how space and land use are organized affects whether the protection of the right to association will, over time, support or undermine the equal basic liberties, including among these the very right of association itself. In other words, more policies may be directly germane to basic rights protection than we often realize, and the standard of aspiring to achieve difference without domination requires us not so much to layer additional policies on top of the protection of equal basic liberties as to revisit the spectrum of possibilities for how equal basic liberties are protected in the first place.

A connected society is one in which people can enjoy the bonds of solidarity and community but are equally engaged in the “bridging” work of bringing diverse communities into positive relations while also themselves individually desiring and succeeding at forming personally valuable relationships across boundaries of difference. By recognizing that we should choose strategies for protecting the equal basic liberties that also accord to the principle of difference without domination, we bring a heightened salience to policy areas that have long gone overlooked. The goal of acting in this policy space would be the cultivation of an

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4 Toward a Connected Society, in Lewis and Cantor, eds.
associational ecology in which people do have the opportunity to choose their associates in order to realize their personal visions of the good life but also find themselves both routinely interacting with those whom they have not, so to speak, chosen, and routinely obliged to share power in a variety of public contexts with these unchosen others.

7. Difference without Domination: Equal Basic Liberties and the Economic Question

In the economic realm, the focus of policy-making generally falls not on land, but on labor and capital. Thus, Rawls’ difference principle—that any unequal distribution of material goods among members of a polity must in some sense redound to the benefit of the worst off—is usually taken as a justification of redistributive tax policy. The expectation is that institutions that protect equal basic liberties will result in economies in which the rewards of productivity accrue differentially to the owners of capital, the managers and the laborers. Such a result is acceptable, argues Rawls, only as long as the benefits accruing to the owners and managers are in some fashion beneficial to the worst off, as for instance when the managers’ work raises the productivity of the whole economy and the standard of living for the worst off, even as that group falls farther behind the owners and managers in income or wealth or both.

By asking the question of how we would build an economy that achieved difference without domination, we once again push the conversation back to the question of how we protect the equal basic liberties in the first place. As in the social realm, we can assume that the protection of equal basic liberties in property, contract, and, again, association, will generate difference in the economic realm. But can we protect the equal basic liberties in such a fashion as to avoid the emergence of domination from those forms of difference that do emerge in the economic realm?

There are at least three issues here in relation to which we must judge which strategies for protecting equal basic liberties are most desirable. As Elizabeth Anderson argued in a recent set of Tanner Lectures, there is the question of how to ensure that the vertical or linking relationships within organizations, like firms or other units of economic activity, are not characterized by domination. There is the question that Larry Lessig has put on the table of whether accumulations of financial capital are converted into forms of political domination. And, finally, there is the question of whether the patterns of distribution in an economy are the result
of decision-making procedures that rely on domination. Rawls’ difference principle serves to establish a constraint in the final area. But a focus on achieving difference without domination in the economic realm widens the lens beyond Rawls’ distributive question and, as in the social realm, requires recognizing a broader swathe of the policy landscape than we typically acknowledge as relevant to the question of how to protect equal basic liberties. This is the sense in which the principle of “difference without domination” is more strenuously egalitarian than the difference principle. It establishes a higher standard for our decisions about how we protect our equal basic liberties and pulls a larger swathe of the policy landscape under the umbrella of that to which the equal basic liberties pertain.

Importantly, on the final distributive issue, which is the focus of Rawls’ difference principle, the question of how our mode of protecting the equal basic liberties affects the empirical dynamics of the economic realm is not a question of economics merely. We should seek a mode of protecting the equal basic liberties that can ensure that the distributive patterns that develop in a society are not the result of practices of decision-making that rely on domination. But protection of our equal basic liberties has an impact on economic outcomes through the social domain too. Recall, again, the example of segregation. That type of social structure itself eventuates in specific, inegalitarian distributive patterns. As I have argued elsewhere, the emergence of a connected society, in the social realm, can be expected, in the inverse of the picture with segregation, to have more egalitarian impacts on patterns in the distribution of economic resources.\(^5\) Particularly in conditions of pluralism, we can achieve an egalitarian economy, in which we have managed to achieve difference without domination, only if the underlying pluralistic social structure is also egalitarian.

And this is the point at which we reach the true import of placing equal emphasis on political equality and private autonomy. When the goal of a theory of justice is, above all, to protect private autonomy and the capacity of individuals to pursue the good life as they define it, questions of social structure are often seen as separate from the economy and politics. In Rawls’ effort to hive of private experience as the thing that justice ought especially to protect, he failed to attend to the necessary public consequences of how our private, social spaces are structured, as his critics from Susan Okin to Jerry Cohen pointed out. The invisibility of the necessary connections among the social, economic, and political can exist only for actors whose private

experience has not been generally impinged upon by either the political or the economic realm, namely those who are in the cultural or political majority or who sit in an economically privileged position. But in conditions of pluralism, the minoritarian viewpoint is defined by the permanent salience of the mutual entanglement of the political, the social, and the economic. A truly universal theory of justice will incorporate this minoritarian viewpoint and therefore start from a recognition of the full entanglement of the intrinsic value of private and public autonomy.

8. Conclusion

The time has come to revisit the basic grounds for a theory of justice. As many have pointed out, Rawls’ arguments were too dependent on an expectation of social homogeneity. But that expectation was not merely a problem on the margins. It had a deep consequence. It led Rawls to place political equality in second place to the liberties supporting individual autonomy. This is a non-viable starting point in conditions of great diversity, where public decisions will routinely impinge on one’s ability to deploy autonomy in fashioning one’s life course. In such contexts, autonomy itself is accessible only through participation in the collective effort to shape the parameters of a society’s life together. As W.E.B. DuBois put it in the first chapter of Souls of Black Folk, “The power of the ballot we need in sheer self-defence,—else what shall save us from a second slavery?” But DuBois’ point is not merely instrumental. It is not merely that the power of the ballot blocks the re-emergence of a socio-economic institution of slavery. It is also that the exercise of political power is itself an element of the intrinsically valuable experience of non-slavery, which is to say, of non-domination.

In conditions of demographic diversity, at least, if not in human life generally, human moral equality requires protections for equal basic liberties that always fully encompass the political liberties. Attention to the political liberties will always bring with it attention to the liberties that support private autonomy; the inverse, however, is not true. Once we re-focus on protecting the political liberties—for which freedom of association and the other elements of private autonomy are fundamental—we realize that we have to find strategies for protecting the equal basic liberties that preserve them over the long run and that avoid triggering social dynamics that will eventually undermine those liberties themselves. We need strategies for
protecting the equal basic liberties that generate egalitarian social and economic spheres; such egalitarian social and economic spheres will anticipate, support, and protect difference but hinder the emergence of any articulation of that difference with domination. The standard we need for identifying policy solutions in the social and economic domain is that we want to be able to choose alternatives that protect social difference but that also disconnect it from domination. Failing that, the dynamics that develop in the social and economic domains will eventually undermine the equal basic liberties even if those dynamics, in some sense, originally flow from those liberties.

The aspiration to realize a principle of difference without domination should help us select protections for the equal basic liberties that will constitute a genuine and durable foundation for just political, social, and economic institutions.