A Socially Constructive Social Contract:
The Need for Coalitions in Corrective Justice

by

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ABSTRACT

In my dissertation, I argue that the enterprise of corrective justice requires answering questions about what is unjust and how we ought to set and pursue corrective justice goals. To answer these questions in a way that will allow us to correct for the persistent and entrenched injustices which result from processes of stratification in our society, I'll put forward a two-tiered social contract theory, which will allow us to approach these questions in a way that will capture the *agreement* we can have and allow us to structure the persistent *disagreement* that we cannot and ought not avoid.

In the first tier—the *cooperative position*—the parties know only that they're in what I'm calling the ten *circumstances of cooperation*—the circumstances in which modern cooperation takes place. These circumstances includes the social complexity and opacity inherent in complex cooperative arrangements which have epistemic effects on our social cognition in ways that make our view of our social arrangements at best partial, and work to obscure important features of our social reality, especially those affecting those at the bottom of our stratified social relations. This tier generates four cooperative ideals—proficient rationality, democratic equality, social understanding, and dignity—that function as a theory of justice which can gain an overlapping consensus in society but still allow for meaningful disagreement to take place.

In the second tier—the *corrective position*—the parties have access to the circumstances of cooperation, four cooperative ideals, and a general and specific *domination contract*. These domination contracts model how stratified social relations operate to constrain people within social systems, including the ways that people think about those systems. I argue that the parties would affirm a principle of corrective justice as involving coalitions of differently-situated actors working together over time to dismantle unjust mechanisms, and five desiderata for applying that principle to circumstances as we confront them. They would do so because that is the only way to overcome the practical and epistemic barriers put in place by the domination contracts.

CHAPTER 1

Social Contract Theory and Corrective Justice

I.   Introduction: Towards a Socially Constructive Theory of Corrective Justice

Rousseau begins his book The Social Contract, with the famous line "I mean to inquire

if, in the civil order, there can be any sure and legitimate rule of administration, men

being taken as they are and the laws as they might be" (3). The project of corrective

justice is a slightly different one because it begins with already-existing institutions

which constrain not just laws but also the people who have lived their lives against a

social background, and who could have been different had background conditions been

different. In this dissertation, I put forward a theory of corrective justice which uses

models of *people and society* as they *are* to prescribe better ways for *both to be*.

The enterprise of corrective justice requires answering questions about what is

unjust and how we ought to set and pursue corrective justice goals. To answer these

questions in a way that will allow us to correct for the persistent and entrenched

injustices which result from processes of stratification in our society, I'll put forward a

two-tiered social contract theory, which will allow us to approach these questions in a

way that will capture the *agreement* we can have and allow us to structure the persistent

disagreement that we cannot and ought not avoid.

This chapter aims to justify the framework that I have used to answer these questions. In the final section of this chapter, I'll set forth the path for the rest of my dissertation. First, however, I'll argue that answering these questions well requires more than a model of a perfectly just society. It requires a model of how injustice in society works and a conversion schema that takes us from that model to the circumstances we confront.

I'll then argue that social contract theory is well-placed to answer these questions because of four of its features: it models institutions as social processes over which we have collective control, models the normative commitment of social contract theory to justifying our social relations to each participant in our social arrangement, aspires after principles free of bias, and aspires after collective agreement and action. The first two of these virtues are important if we are to model society in a way that views it as capable of going wrong and model ourselves as capable of correcting for that injustice. The second two are important if we are to use these models well. We need to be able to accurately characterize injustices and why they are unjust, and we need to do so in a way that others can connect with, if we are to successfully correct for these injustices.

Though my dissertation relies on the normative commitments of social contract theory, it does not defend them. My justification for this is as follows. First, there are serious space limitations, and defending my account of corrective justice has taken more space than I anticipated. Second, the normative ideals which the first tier of my contract produces and the principles of corrective justice with its attendant desiderata which the second tier produces are not very normatively controversial—people who

affirm many different moral conceptions will have strong reasons to endorse them. They will, of course, want to supplement them with considerations from their different moral theories, be they consequentialist, deontological, virtue-theoretic, or something else. But for my prescriptions to do their work—for them to get the uptake necessary for coalitions to be effective—they need to be of the type that can be affirmed from the perspective of many different comprehensive doctrines.

As I'll argue below in §*1.3.4*, this potential for agreement is one of the greatest advantages of the social contract tradition. So, third, though I give no direct arguments for it, my dissertation functions as an *indirect* argument for social contract theory. If social contract theory can produce the kinds of prescriptions that allow us to make society more just—on most if not all reasonable or tenable theories—then this is a major consideration in favor of its precepts, whatever they are. Put another way, if social contract theory can produce a workable conception of corrective justice that allows us to correct for injustice—recognized on other moral theories as unjust—then it has to be doing *something* well. Given that on most normative theories our society is seriously unjust, and that this is of serious concern, if social contract theory can help us make it less unjust, there are instrumental reasons to support it and epistemic reasons to think that it captures something important about our social world.

II.   The Need for Nonideal Theory in Corrective Justice

In this section, I'll argue that whatever stance you have on the value of ideal theory, there is clearly value to nonideal theory in corrective justice. Ideal theory cannot straightforwardly apply to nonideal circumstances because those circumstances bring in additional considerations that ideal theory is not designed to confront, and which complicate implementing prescriptions. As such, to use ideal theory for corrective justice requires not just a model of the injustice in society, but also a conversion scheme for applying its prescriptions in circumstances in which they were not designed to apply.

To make this argument, I'll explain the above three questions of corrective justice in greater detail, and then explain the nonideal obstacles to answering these questions which inhere in unjust societies. I'll first argue that using ideal theory for corrective justice would require a *model of injustice* and then argue it would require a *conversion schema*.

Before we proceed, however, I need to explain what I mean by *ideal* and *nonideal* theory. I'll argue here that this distinction isn't clear cut, but rather scalar, because all models of justice for humans incorporate models of humans, and these models can be more or less ideal. Laura Valentini argues that there are three different ways in which the ideal versus nonideal debate can be cast. Theorists disagree about whether we ought to model people in society as complying fully with the principles of justice, how realistic a theory of justice ought to be, and whether we ought to pursue principles which govern a perfectly just society or a less just society (654).

There are no clear cut distinctions between ideal and nonideal theory within these disagreements, however. Theories which incorporate models of human behavior cannot be fully ideal because they have to make assumptions about human beings. Even the most ideal theories of full-compliance and perfect justice make basic assumptions about humans needing nourishment, shelter and oxygen—if there weren't conflicts over anything, we wouldn't need a theory of justice. Theories are therefore *more* and *less* ideal to the extent that they incorporate more or less detailed models of human capacities and behaviors. Theories of full-compliance and perfect justice model people as having more ideal interests, whereas less ideal theories complicate their models with additional interests which they take to be relevant. The question for political philosophy is what level of idealization of humans and society is most helpful for our projects.[1]

When doing corrective justice, it is clearly important to model people in society as perpetrating injustice by failing to comply with laws and norms, so the debate about full compliance is irrelevant to our purposes. The last two debates are relevant. Theories of corrective justice can be better and worse to the extent at which they incorporate relevant details about people and society, which means that it matters how realistic our models of human being and society are and ought to be. It also matters

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[1] Carens and Valentini make this point regarding the second ideal-nonideal debate about how realistic our social theory should be. I have extended the analysis to the other two debates because I believe that these debates also turn on claims about the helpfulness of models. Why model full-compliance or a perfectly just society if these idealizations have no theoretical utility? The argument for their value has to come as an argument for the usefulness of these simplifying assumptions.

whether and how a theory of a perfectly just society is relevant to the enterprise of corrective justice.

In this dissertation I defend an account of how realistic our empirical models ought to be in a theory of corrective justice. I argue that theorists ought to incorporate social and cognitive mechanisms of social stratification, and that serious consideration of these mechanisms and the way they function leads to an account that places coalitions at the center of corrective justice. My account of corrective justice does not rely on any reference to a perfectly just society, which places me on the nonideal side of the third disagreement. I argue in §3.2.2 that ideals are well suited to the task of corrective justice because they help us frame disagreement in a useful way, and are more likely to motivate people to work together. I argue below that an account of corrective justice which relies on end-state principles needs to be supplemented by a conversion schema to be able to be of any use to us. However, I have no settled view on the value of a conception of a perfectly just society itself. I'm open to the idea of the ideal of a perfectly just society having theoretical utility, and though I believe that my arguments give some reasons to doubt how useful such a conception could actually be, a well-designed ideal theory could overcome the objections as raised here.

1.2.1 To Answer Nonideal Questions we Need Empirical Models of Injustice

I argued above that the enterprise of corrective justice involves answering three questions. Here they are in more detail:

1. **What is unjust such that it needs to be corrected for?**

2. **How ought we set priorities and goals if there are multiple injustices?**

3. **How ought we pursue our corrective justice goals, in light of possible tradeoffs and obstacles?**

A theory of a perfectly just society can tell us that our social arrangement *is* unjust, *that we ought to correct for it*, and perhaps it can *set some limits* on what is permissible for us to do in correcting for the injustice, but that won't be very helpful unless we supplement the theory with nonideal information. Take the operation of the Chicago Police Department (CPD). Without supplementation, all that Rawls's two principles of justice (discussed below) can tell us is that the CPD *is unjust* for violating each component of those principles in its operation, *that we should correct* for CPD's injustice, and that when we correct, we should *avoid violating those two principles* if it is possible. These answers approach a tautology: if there's an injustice on a theory, (a) it is unjust on that theory, (b) it should be corrected for on that theory, and (c) on that theory, it should not authorize action that goes against the theory.

We ought to engage in corrective justice as an enterprise because we have theories of justice and morality which say that the status quo is unjust, and requires amelioration—something is *wrong* and *needs to be corrected for*. Theories of corrective justice are better and worse, *on their own lights*, to the extent that they help us answer the above three questions in a way that helps us go about the task of corrective justice. Put another way, insofar as we care about corrective justice, we believe that wrong things ought to be ameliorated. Therefore, any justification for engaging in corrective justice

requires that we engage in it well.[2] Effective correction requires successful

identification of its target and guidance on what goals to set and pursue.

Nonideal information is vital to answering each of these questions well.

Regarding the first question, it is not enough to just point at the CPD and proclaim,

"unjust!" We need to understand the mechanisms which produce injustice if we hope

to bring about an end to that injustice—saying *that* the CPD is unjust is far less helpful

than saying *how* it is unjust. Empirical models of injustice are important to the project of

corrective justice because they're important to understanding that injustice.

Those models are also essential to setting our goals and priorities. To set good

goals, we need to know the relative badness of injustices, which requires empirical

information. We need to know what mechanisms are unjust in themselves and what

mechanisms are unjust because of their results. We need to know how these various

mechanisms interact with one another, and the causal roles that they play in other

mechanisms of injustice. We also need to understand the social background in which

they operate, and how that background might impact our ability to successfully change

the unjust mechanisms. In particular, we need to understand if and how there are

unjust mechanisms which are *acting on us*, and could cause us to be mistaken about how

unjust something is. We will set better goals if we understand how the various

injustices *are unjust*, *persist*, and *contribute to other injustice*. It is only by understanding

the circumstances and ramifications of the mechanisms of injustice that we can

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[2] I have a broad understanding of engagement, such that one can engage in corrective justice by clearly elucidating a theory that others then use to go about correcting. I am engaging in corrective justice if the way that I write my theory inspires activists, social scientists, or theorists to do things that further justice.

understand their relative perniciousness and set the appropriate goals aimed at dismantling them.

To pursue these goals well, we need to understand the circumstances in which we pursue them, which will require nonideal models. Specifically, we need to understand what obstacles stand in the way of successful correction and the tradeoffs successful correction will require us to make. When it comes to tackling injustice, the relative badness of the mechanisms or their origin is often irrelevant. If I have no practical possibility of changing something, then even if it *is unjust* and I ought to *set ameliorating it as a goal*, I probably ought not to *pursue* correction for it. What matters is what people care about or could be made to care about now or in the near future—what matters is where successful correction is *possible*, and determining this requires empirical information about obstacles to corrective justice.

What's worse, in the case of persistent injustice, it is actually likely that people's priorities *won't* track their normative priorities. As I'll argue with the general and specific domination contracts in Chapters 2 and 5, entrenched social stratification is achieved only with the help of obfuscating mechanisms. I'll argue that the CPD are unjust, in part, because officers, supervisors, and administrators have a hard time seeing the negative implications of their actions on black and Latino residents of Chicago, due to rationalizing mechanisms such as stereotypes about black criminality and system justification bias.

Pursuit of our corrective goals can thus be hampered *by the injustice itself*, whose badness licenses the very correction. This needs to be taken into account in how we

pursue these goals, and taking it into account requires detailed empirical models. Say, for example, that we want to correct for the inattention that CPD officers pay to crimes committed against victims in predominately black neighborhoods (discussed in §5.2.2). If prejudicial racial stereotypes cause CPD officers to treat residents of black neighborhoods differently than white neighborhoods, then deploying more police officers to black neighborhoods isn't going to correct for this injustice. We would need to change the way that CPD officers view these residents for meaningful correction.

Theories of corrective justice require information about the operation of injustices in order to do their job, and give us a hope of correcting for the injustice they diagnose. How much information we need—how detailed our models of society and its inhabitants ought to be—is up for debate, but *that we need this information* is not. Without it, we will not be able to understand the task of corrective justice or whether our prescriptions help with that task.

We need *models* as opposed to sets of facts because facts on their own do not relate the mechanisms of importance. That there are racial disparities in the way CPD polices is not, on its own, helpful. What is helpful is understanding why these disparities exist and continue to exist, despite many officers' good intentions. Theory is *underdetermined* by data. As Louise Antony explains, citing Quine,

> "If we had to rely on nothing but logic and the contingencies of sensory experience, we could never get anywhere in the process of forming an opinion because we would have *too many choices*. There are an infinite number of distinct and incompatible hypotheses consistent with any data, never mind that there are always more data just around the corner, and

never mind that we're logically free to reinterpret 'data' to save our hypotheses" (211).

Theoretical underdetermination means that we can explain facts in a number of different ways. So when we incorporate empirical information into our accounts of corrective justice, we have to make theoretical choices, and these choices matter to our answers to the above three questions—to determining what's unjust, and how to set and pursue corrective justice priorities and goals.

This dissertation is an argument that we need *detailed models of injustice* to do corrective justice well. The mechanisms of stratification that we face are entrenched and self-obfuscating in ways that we are likely to miss if we are not explicit with ourselves and others about the way that we understand their operation, effects, and normative significance. The empirical models in accounts of corrective justice do important work, and they do that work best when they do it openly in a way that invites others' scrutiny and help. By including detailed models about how stratification works generally and in a specific instance, we will have a better chance at correcting for the injustice that our theory says we ought to correct for.

1.2.2 Using Ideal Theory for Corrective Justice Would Require a Conversion Schema

Even with an empirical model supplementing a theory of a perfectly just society, the theory would not be equipped to offer satisfactory answers to the questions of corrective justice because it would not give us the right kind of guidance to setting and pursuing our corrective goals. There are nonideal problems beyond the scope of ideal

theory which make the principles of justice for a society which realizes justice inapt for a society that doesn't. The problem isn't just that nonideal societies confront problems which ideal societies do not, such as crime, discrimination, and animosity between social groups in society—though this is a very important point that should be stressed. The problem is also that being raised in a society with these social problems marks people, changing their social cognition in ways that if unchecked, can undermine justice.

To illustrate this, I'll give the example of discretion, which I develop more with a specific example in §2.4. In a just society, the inertia is towards justice. If someone acts unjustly, their institution and other institutions will act as a check on that injustice, pulling society back towards justice. Ideal agents need not worry that the environment in which they operate has tainted their ability or motivation to notice injustice and do something about the injustice that they notice. While (depending on compliance-assumptions) they may need to worry that there are a few bad actors in their social system, they need not worry that the majority of people in society—or that *they themselves*—function as perpetrators of injustice, without being aware that that is what they are doing.

Perfectly just societies, therefore, don't need principles to deal with our inability to detect and monitor injustice, or to motivate ourselves to do something about the injustice we do notice. Societies in need of corrective justice, on the other hand, need such principles—they need principles geared towards addressing persistent and entrenched injustice.

It would not be enough for effective corrective justice to use a straightforward application of Rawls's two principles of justice to a good model of how CPD operates unjustly because we would not be in a position to set or pursue effective goals. The CPD's practice violates both principles in complicated and interlocking ways. To effectively apply these principles, we would need additional guidance on how practical concerns ought to interact with normative concerns—when, for example, the fact that people around us do not care about an injustice counts as a good reason to focus on other, less-wrong injustices. This guidance cannot come from ideal theory alone because it results from practical matters not faced by perfectly just societies. So even with the unrealistic caveat that our model of CPD captures the effects of injustice on people's cognition, we would still need additional guidance or we wouldn't know how to weigh the effects of people's use of their infected social cognition.

A theory of a perfectly just society, therefore, needs a *conversion schema* to work for corrective justice—it needs a way to take the principles which apply to a perfectly just society and change and adapt them for the circumstances of an unjust society.

How detailed and nuanced this schema ought to be, and whether such a schema could ever be successful or would be worth pursuing, are beyond the scope of this dissertation. This dissertation does, however, function as an argument that such schemas would have to be very complicated and detailed to accomplish the important work of corrective justice, because applying the principles of a non-stratified society to a stratified society would be very difficult. Stratification, represented by the domination contracts, impacts not only the major social institutions, but every facet of people's lives

from the way they think about the world, to how they treat other people, to where they live and work. It is considerations such as these, and doubts expressed below in §*3.2* that lead me to pursue a two-tiered social contract, which utilizes ideals as a normative standard instead of principles designed for a perfectly just society.

III.   Four Virtues of Social Contract Theory for Corrective Justice

In this section, I'll argue that social contract theory is well-equipped to answer the three questions of corrective justice, because of four of its features, which I will discuss in turn. (1) It models an empirical commitment to institutions as social processes over which we all have collective control, which will be important to understanding how mechanisms of injustice operate and change. (2) It models the normative commitment that social arrangements ought to be justifiable to each of their members, which will be important to understanding and vindicating the claims of victims of injustice—it gives us a reason to care about the concerns of every social position. (3) It embodies the aspiration after principles that overcome our biases, which will be important to identifying effective principles of corrective justice that work for people like us. (4) It embodies the aspiration after collective action and agreement, which will be necessary for us to overcome entrenched mechanisms of injustice. These considerations move me, in Chapter 4, to argue for the use of two different domination contracts.

Though the defense of social contract theory is beyond the scope of this dissertation, I argued above that these considerations, taken together, constitute an argument in favor of this approach. If I'm right that social contracts can do each of

these things well, and that doing them well will allow a social contract theory to give good answers to the questions of corrective justice, then this constitutes an argument in favor of social contract theory.[3]

1.3.1 Institutions as Social Processes over which we have Collective Control

Following Jean Hampton and Charles W. Mills, we should view social contract theory as having two components: one descriptive and the other prescriptive. The *descriptive* component represents society itself and the subjects engaged in social cooperation. The *normative* component, discussed in the next section, models cooperators as deserving justification for the system of cooperation. We use devices of representation in the form of initial situations to model the normatively significant features of these components. The question of social contract theory, then, is what suitably situated parties would agree to, given how they ought to understand their world and the people in it.

Social contract theory is equipped to represent our social arrangement and those in it in a way productive to corrective justice because it models social institutions as processes over which we all have collective control, and thus can work to improve.

Hampton argues that all social contract theorists, going back to Locke and Hobbes, are committed to the 'modest' factual claim that "the creation of the state is the creation of the people who constitute it" (481). Society isn't something that has been here from the beginning of time or is sustained by some metaphysical entity outside of

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[3] Another limitation to my argument here is that I only consider a handful of recent contractualists, leaving out important contributions by historical figures and members of the contractarian tradition. My argument about the value of social contract theory would be strengthened by incorporating the insights of more social contract theorists and proving that these four virtues are widespread in the tradition.

our understanding. According to Hampton, social contract theorists see society as a

matter of *social conventions*: "Certain institutions, practices and rules become

conventionally entrenched (in a variety of ways) in a social system, and insofar as the

people continue to support them, these conventions continue to prevail, and thus

comprise the political and legal system in the country" (481). We make and remake our

society when we participate in and act against its social conventions. She says that

social contract theorists "explain the *existence* of morality in society by appealing to the

convention-creating activities of human beings" (482).

Rawls shares this commitment to an interpretation of social institutions as

changeable within the limits of human psychology and institutional innovation. Rawls

argues that citizens of a democratic society "do not regard their social order as a fixed

natural order, or as an institutional structure justified by religious doctrines or

hierarchical principles expressing aristocratic values" (Rawls 6). They must view it as a

construction of sorts, and its structure matters for the people in it. Rawls argues that

the primary subject of justice is the *basic structure*—"the way in which the main political

and social institutions of society fit together in one system of social cooperation, and the

way they assign basic rights and duties and regulate the division of advantages that

arises from social cooperation over time" (10). His social contract is designed to

generate principles of justice for a basic structure that is *well-ordered* by the conception

of justice—one in which everyone accepts and knows that others accept the same

principles of justice such that they share a common basis for adjudicating claims with

one another (9). This requires the contracting parties to ask whether those who grow up

and live in the well-ordered society will "acquire a sufficiently strong and effective sense of justice so that they normally comply with just arrangements and are not moved to act otherwise, say by social envy and spite, or by a will to dominate or a tendency to submit" (181). Without the stability that widespread support for the arrangement and its justification provides, the basic structure won't remain just for long.

Accomplishing this task of creating a stable and just social arrangement requires knowledge of how people and institutions work. Individual psychologies and good institutional design matter because social institutions will only be stable if people's actions do not undermine the just social institutions in place (184-85). Rawls therefore gives his parties access to "the presently accepted facts[4] of social theory" (87), or the "general commonsense facts of human psychology and political sociology" (101). He also[5] gives them access to his *circumstances of justice*, discussed below in §*3.2.1*, which model some of these facts, such as persistent disagreement and the need for cooperation (84). Rawls recognizes the importance of human action in maintaining society, and therefore sees human society as a human creation, which needs to be modeled in his initial situation.

Mills seeks to expand the empirical knowledge modeled in social contract theory by enlarging the empirical component of his initial situation to enable greater interrogation of the background against which social actions take place. He argues that the full "revolutionary significance" of the idea of social construction "has yet to be

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[4] For reasons discussed in §1.2.1 I think that this is an unhelpful way to put this. The parties cannot rely on facts alone. They need a model or set of models from which to choose between principles.
[5] He also gives them access to the fact that their society is under relatively favorable conditions.

fully appreciated and exploited. For once we understand how far the 'construction'

extends, we will recognize that it can be shown to apply to gender and race also"

(Contract & Domination 85). To understand the depth of social construction, especially

its effects on cognition, the parties need access to the *domination contract* – a model of

how stratified social relations are created, maintained, and evolve over time through the

coordinated action of people throughout the social arrangement (84-101).

I agree with Mills about the value of this information to the project of corrective

justice, because clear models of social stratification are needed in order for the thought

experiment to overcome some of the forces of stratification and affirm principles of

corrective justice which can do the work we need them to do. I devote Chapter 2 to

explaining two domination contracts and Chapter 4 to arguing for their inclusion in one

of my initial situations, the *corrective situation*. I also incorporate the sociological and

psychological insights of the domination contract into my *circumstances of cooperation*

from which my parties reason to the cooperative ideals in Chapter 3, and use these

contracts to argue for my corrective principles in Chapters 5 and 6.

1.3.2 Justification is owed to Each Member of a Cooperative Scheme

The major prescriptive element embodied by social contract theory is the idea that our social arrangements ought to be justifiable to each member of them. Social contracts always start with some initial situation where agreement is necessary. As Stephen Darwall explains in his introduction to Contractarianism/Contractualism, "The idea is that morality is deeply implicated in the very notion of agreement, and vice versa, so that whether an action is right or wrong must depend on whether the act accords with or violates principles that are, or would be, the object of suitable agreement between equals" (Darwall 1). This idea of agreement between suitably-situated parties is the normative heart of social contract theory, and is potentially valuable for corrective justice because it gives us grounds for taking seriously objections from any social position in society, and grounds for caring about the circumstances for each of these social positions.

Hampton says that contractualists use the social contract as a "*device* used in their theorizing to reveal what is just, or what is moral" (Hampton 486). She continues, contractualists' "use of the contract language is meant to show that moral principles and conceptions are provable theorems derived from a morally revealing and authoritative reasoning process or 'moral proof procedure' that makes use of the social contract idea" (486). The prescriptive side of the contract comes "By considering 'what we *could* agree to' if we had the chance to reappraise and redo the co-operative conventions in our society," which allows us to "determine the extent to which our present conventions are mutually acceptable and so rational for us to act on. This

hypothetical contract then informs what we believe our political life *should* consist in—

and thus what our state should model" (482).

The interesting work of this element of social contract theory comes in how we

understand the parties to be "suitably situated." Social contract theorists[6] take the

parties to be *rational*—acting to pursue their interests—and *reasonable*—willing to

regulate their conduct by a set of standards so long as everyone else is (Rawls 6-7).

These conditions are necessary for cooperation to take place—if people weren't acting

to advance their interests they'd have no reason to cooperate, and cooperation

presupposes the idea of some shared background rules and conditions (6).

Social contract theorists also take the parties to be *free* and *equal*, though they

disagree on how they conceive of freedom and equality. For *contractualists*,[7] in which I

include myself, the parties are conceived of as morally equal, and we proceed "from an

ideal of *reasonable* reciprocity or fairness between *moral* equals" (Darwall 1).

Rawls is explicit about this. The Rawlsian social contract starts by descriptively

modeling citizens as possessing two moral powers. The first is the capacity for a *sense of*

justice which is "the capacity to understand, to apply, and to act from (and not merely in

accordance with) the principles of political justice that specify the fair terms of social

cooperation." The second is the capacity for a *conception of the good* which is "the

capacity to have, to revise, and rationally pursue a conception of the good," defined as

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[6] I know of no social contract theorists who do not affirm these tenants.

[7] One of the major disagreements within social contract theory is between contractarianism and contractualism. In *contractarianism*, "the parties' equality is merely *de facto* and their choice of principles rationally self-interested" (Darwall 1). I have omitted discussion of these differences for the sake of space. My discussion is limited to the contractualist point of view.

"an ordered family of final ends and aims which specifies a person's conception of what is of value in human life, or, alternatively, of what is regarded as a fully worthwhile life" (Rawls 18-19). These two moral powers make citizens capable of engaging in social cooperation over a complete life. It is in virtue of having the potential for these capacities that Rawls argues all persons ought to be considered free and equal—we're free because we can set rules for ourselves and follow them, and we're equal because we all have these capacities to a sufficient degree (20-21).

Rawls models the freedom and equality of citizens by using the *original position*. In the original position, the parties are charged with selecting principles of justice that would regulate a perfectly just society. The two moral powers also mean that we should represent the parties as *rational* in the sense that they are pursuing their advantage, and *reasonable* in the sense that they are "ready to propose, or to acknowledge when proposed by others, the principles needed to specify what can be seen by all as fair terms of cooperation" (6-7).

In order to ensure the parties' equality, it is essential that the parties be situated symmetrically such that no one has more bargaining power than anyone else. Rawls ensures this with the *veil of ignorance*, which keeps out obfuscating information such as the parties' social locations or the arrangement of social positions (87). Specifically, it keeps out knowledge of the parties' social positions (including any social group membership), comprehensive doctrines, talents, and even the generation into which they're born. It also keeps out information about society, such as its resources, history, and reward structure for talents. As we've seen, it does not keep out the general facts of

social science, and the parties know that their society is in the circumstances of justice (Rawls 84,87,101). The idea is that cooperative schemes should be justifiable to people in each social position, and what social position one person is contingently in is irrelevant to justice and should be excluded. This has the value to corrective justice of excluding information that could lead to undervaluing the interests of some or overvaluing the interests of others.

Rawls argues that his suitably-situated parties in the original position—who are *free* because they can use their two moral powers and *equal* because they have them, and modeled as *rational* in the sense of pursuing their interests, and *reasonable* in the sense of being willing to follow fair terms so long as others do—and who are tasked with choosing between principles of justice which will govern a well-ordered society, would affirm two principles of justice on prudential grounds. First, "Each person has the same indefeasible claim to a fully adequate scheme of basic rights and liberties, which scheme is compatible with the same scheme of liberties for all." Second, "Social and economic inequalities are to satisfy two conditions: first, conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle)" (42-43).

As I argued above, these principles can indict injustice in the real world. In looking at the CPD, some of the most strikingly wrong features of the way it operates come in the ways in which it violates people's basic rights, treats members of black and Latino neighborhoods poorly, and how its practice redounds to *no one's* advantage, including the officers themselves, but has a disproportionate harm on black and Latino

residents. These principles, thus give us good grounds for criticizing unjust social

relations because such relations aren't justifiable to each.

Mills has a much thinner veil of ignorance in his initial situation because his

parties have a different task: corrective justice. Therefore, rather than having his parties

choose principles to regulate a perfectly just society like Rawls, Mills has his parties

choose between different social arrangements that are possible for us, given our

sociopolitical reality. While he keeps the parties ignorant of their social locations—

keeping their "*self*-ignorance"—he relaxes restrictions on *social* ignorance. This means

that in his initial situation, the parties know nothing about their social group

membership but they know something about what social groups are in society and

what the relations of subordination and domination are between these groups (Contract

& Domination 119). This knowledge comes in the form of the *domination contract,*

discussed above, which models stratified social relations and the mechanisms that

preserve them. Mills does this, in part, because information about the social

arrangement is necessary to understand what needs to be corrected for. His other

reasons involving the effects of domination on social cognition will be discussed in the

next section.

To simplify matters when running his thought experiment, Mills gives the

example of a society whose only domination contract is a *racial contract* whereby the R1s

systematically discriminate against the R2s through social mechanisms similar to those

that operate in the contemporary U.S. to enforce a racial hierarchy (121). The parties

then choose between societies where discrimination on the basis of race has been corrected for *strongly*, *weakly*, or *not at all* (119).

Mills argues that the parties would choose to correct *strongly* for racial discrimination, and would (1) "seek simply to eliminate illicit racial differentials," and (2) use a principle derivative from formal equality of opportunity to determine what counts as illicit (121). Such a principle would call for the correction of disparities that result either directly from law or custom, or indirectly from a history of discrimination by law or custom (129-30). His argument is that since race is morally arbitrary, "What racial justice requires is that people not be differentially and invidiously treated by race, and that where such treatment has left a legacy, it should be corrected for" (121-22). So, for any racial disparity, if we can trace its origin to a law or custom that enabled, encouraged, or legitimated R1 domination and/or R2 subordination, corrective justice requires that it be eliminated. Hence his principle of corrective justice: *eliminate illicit racial differentials*.

Mills argues that people who have suffered invidious discrimination on the basis of race confront different circumstances than those who have not, so if we want to address the injustice they face, the parties need access to the domination contract whereby injustice is perpetrated and sustained. In other words, given that real social relations are stratified, this is an important empirical detail that needs to be modeled, and the parties need access to that model. If we want to prescribe ways to make justifiable social relations, we need to understand the ways in which they are currently unjustifiably constraining people and affecting their social status.

I agree with Mills completely that social stratification is a normatively significant detail which we need our accounts of corrective justice to capture. For this reason, I give my parties access to domination contracts in my *corrective position*. I'm dissatisfied with the ways he deploys the domination contract, however, and discuss my concerns in §3.2.2 and §6.3.

1.3.3 Aspiration for Prescriptions Free from Bias: An Archimedean Point

One of the problems of generating principles of corrective justice is that we in fact generate them from specific social locations even if we are trying not to, and those social locations prime us to hold sets of background beliefs and dispositions which lead us, for example, to be more sensitive to some evidence and less sensitive to other evidence. A person who is socialized as white in a racially stratified society, and who has never experienced discrimination on the basis of race as a result, might be pulled by norms of colorblindness and convinced of the need to apply them to her society because she has not been exposed to evidence of racial discrimination on account of her social location, and falsely believe discrimination is not prevalent. She might further be unable to see the real ways in which her social position shapes her experience, the urgent need to dismantle mechanisms which harm nonwhite members of her society, or the fact that sometimes the only way to dismantle these mechanisms is to acknowledge and work against them by contravening them and favoring nonwhites. This is a problem for corrective justice because we do not want our prescriptions to further the injustices that we are trying to correct for.

Put another way, "We do not want to build the flaws and limitations of existing arrangements into our moral inquiry" (Carens 166). Hampton, following Rawls, argues that this requires "reflecting from an 'Archimedean point', surveying the terrain of morality from an acceptably impartial and morally revealing vantage point" (Hampton 486). This Archimedean point is supposed to free us from bias, leading us to principles that all bias-free people could agree to and could be justifiable to each member of a social arrangement, which can be helpful for corrective justice in a society where bias limits people's abilities to understand and be properly motivated by injustice.

As we've seen, both Rawls and Mills rely on initial situations with *veils of ignorance* to do this. Rawls's veil of ignorance keeps social and personal information, and lets in the general facts of social science knowledge that society is in the circumstances of justice. Mills's veil trades out the general facts of social science for the domination contract, which models the mechanisms of social stratification in society, relaxing conditions of social ignorance.

Susan Moller Okin is in favor of using the Rawlsian social contract for feminist ends, but thinks that we need to reconceptualize the original position to do that. She is concerned by the ways in which formal and informal norms disadvantage women, discounting the value of the dependent care tasks that they perform, and that the traditional liberal distinction between the public and private sphere might lead us to import sexist social structures into our conceptions of just social institutions (Chapter 5, "Justice as Fairness for Whom"). She thinks that when we, as people marked by a patriarchal society run the thought experiment, we might do so with bias, leading to the

wrong kinds of prescriptions. So despite his focus on the basic structure, for example, Rawls "fails entirely to address the justice of the gender system, which, with its roots in the sex roles of the family and its branches extending into virtually *every* corner of our lives, is one of the fundamental structures of our society" (101).

To combat this, she argues that the parties in the original position must "think from the perspective of *everybody*, in the sense of *each in turn*" (101). Since institutions affect each member of society and people are free and equal, our institutions must be justifiable to *each* member of society, and that's the best perspective from which to evaluate our social institutions—that's how we should run the thought experiment.

Such considerations encourage thinking of the parties, as Rawls does for example in §24 of <u>Justice as Fairness: A Restatement</u>, as trustees who do not know who their client will be, and need to think through the social arrangement from every social position to make sure that each social position could be acceptable to their client, whoever their client ends up being. It also requires cultivating "a considerable capacity to identify with others" in order to do it well (Okin 108).

Okin's conception of corrective justice is that "public policies and laws should generally assume no social differentiation of the sexes" (175), and when she explains what we ought to do about gendered injustices in society, her approach is to advocate reforming current policies that perpetuate gender's influence, and enacting new policies, such as subsidized childcare, to reduce gender's influence (175-86). She argues that we need to "take into account" people's current preferences, views, and choices, but "only insofar as it can be ensured that these choices don't result, as they do now, in

the vulnerability of women and children" (172). So while a man should be free to believe that women's place is in the home, any woman should be free to prefer such a man, and both should be free to marry one another, we need to move away from a social and legal environment where people's preferences for inegalitarian marriages constrains *other women's* choices. It is fine if some women want to stay home and raise their children. It is not fine if our employment system assumes that all workers have a wife at home who will take care of all the domestic particulars, and therefore doesn't feature affordable childcare.

Because she argues that gender is not a legitimate basis for the distribution of rights, duties, benefits, and burdens, and she argues that her parties would want to "absolutely minimize gender," I think we can characterize her principle of corrective justice for gender as *eliminate illicit gender differentials*. A differential is illicit if it is not in accordance with what the parties in the original position, behind the veil of ignorance, would agree with.

Mills argues that despite intentions otherwise, social contract theorists have let their normative belief in equality get in the way of seeing our society clearly. He says, "While it is true that society and the state are human creations, it is obviously false, as mainstream contract theory classically implies, that all (adult) humans are equal contractors, have equal causal input into this process of creation, and freely give informed consent to the structures and institutions thereby established" (Contract & Domination 86). He views the parties to our actual social contract as unequal, and society as "the outcome of the collusion among themselves of *a social group* with far

greater influence, who have their own self-seeking agenda" (87). By representing the parties as equal and society as a fair system of social cooperation, Mills thinks that Rawls and other social contract theorists "completely mystif[y] the creation (in the ongoing rather than *ab initio* sense) of society, denying or obfuscating the various structures of domination" (88) and leading them to wrongly think that ideal theory is what is philosophically interesting, not nonideal theory ('Ideal Theory' as Ideology).

Social contract theory can be dangerous to the project of corrective justice if, in its setup, it encourages an overly individualistic and voluntarist social ontology. In other words, if we use models of society which obfuscate the ways in which social group membership affects people's freedom and equality in the real world—if we can't account for the ways in which our social arrangement constraints people—we risk misdiagnosing injustice and prescribing faulty corrections. We risk, when thinking about each person in turn, failing to represent significant details of their social situations which undermine their freedom and equality.

The domination contract, discussed above, is a solution to this problem. It allows the parties to cash in on the normative value of freedom and equality while paying attention to people's constraints and unequal social positions. By modeling stratified social relations and their implications, it gives the parties the tools they need to overcome our bias, and figure out what social arrangements could, in fact, be justifiable to people in different social positions. This insight factors heavily into my argument for including the domination contract in my *corrective position*.

1.3.4 Aspiration for Collective Agreement and Action

Part of the reason for setting up moral and political theorizing as an agreement reached

under the right circumstances is a recognition two things: the fact that we're all in this

together, and the fact that all people play a role in setting, enforcing, and revising

prevailing normative standards. These two facts are encouraging for the project of

corrective justice because they mean that if we can get the right kind of normative

agreement, we can get the kind of collective action that we need to correct for injustice.

Rawls captures the significance of agreement to social cooperation in what I'm

calling his *ideal of social cooperation*, which plays a role in my argument for the setup of

my *cooperative position* in Chapter 3. His articulation is as follows:

> "The central organizing idea of social cooperation has at least three
> essential features:
>   (a) Social cooperation is distinct from merely socially coordinated
>   activity—for example, activity coordinated by orders issued by an
>   absolute central authority. Rather, social cooperation is guided by
>   publicly recognized rules and procedures which those cooperating
>   accept as appropriate to regulate their conduct.
>   (b) The idea of cooperation includes the idea of fair terms of cooperation:
>   these are terms each participant may reasonably accept, and
>   sometimes should accept, provided that everyone else likewise
>   accepts them. Fair terms of cooperation specify an idea of reciprocity
>   or mutuality: all who do their part as the recognized rules require are
>   to benefit as specified by a public and agreed-upon standard.
>   (c) The idea of cooperation also includes the idea of each participant's
>   rational advantage, or good. The idea of rational advantage specifies
>   what it is that those engaged in cooperation are seeking to advance
>   from the standpoint of their own good" (6).

Cooperation isn't haphazard or imposed on us. It is something that we actively engage in within a background that fixes rules, norms, and expectations. We conform to cooperative institutions because it is in our interest to be a part of them—there are great gains to be made from social cooperation, and many if not all of the conceptions of the good life that people hold require the participation of others in fulfilling our important ends. For example, we need others to provide us with food while we devote our time to writing, or to laugh at our jokes when we make them. The rules only work if others follow them too, which is why we need norms to enforce those rules. The rules themselves and the enforcement of those rules can be to the advantage or disadvantage of cooperators. The role of principles of justice, Rawls argues, is thus to "specify fair terms of social cooperation" (7)—to give an account of where the burdens and benefits of social cooperation can justifiable lie.

Rawls recognizes that in order for a theory of justice to be effectively maintained over time, the citizens governed by those principles need to "accept the political order as legitimate, or at any rate as not seriously illegitimate" and hence be willing to abide by the social institutions that embody the principles (124-25). Rawls's principles aspire to be a "shared point of view" from which citizens "can resolve questions concerning the constitutional essentials" of their society (32). The problem in our world, is that it exhibits what he calls *reasonable pluralism*[8]—"profound and irreconcilable differences in citizens' reasonable comprehensive religious and philosophical conceptions of the

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[8] I'll discuss Rawls's justification for this view and my agreement with it when I talk about the circumstances of cooperation in Chapter 3.

world, and in their views of the moral and aesthetic values to be sought in human life" (3). People disagree about what the benefits and burdens of cooperation are, and what a fair allocation of them would be. A consensus on how our social arrangement ought to be organized is impossible.

This need for a shared point of view on justice persists, however, which is why Rawls introduces the idea of the *overlapping consensus*. The goal is for the principles of justice to be "shared by the reasonable though opposing religious, philosophical, and moral doctrines that gain a significant body of adherents and endure over time from one generation to the next" (32). The parties in Rawls's original position aim at choosing principles of justice that can and are likely to be affirmed from every social position and thereby stable over time.

Principles of corrective justice that could be supported by an overlapping consensus would be very potentially powerful because they would serve as shared ground on which the questions of corrective justice could be answered. Mills, however, doubts that Rawls's overlapping consensus can do the work we need to do because of its subject matter and the fact that it does not get sufficient support in our current society. He thinks that his initial situation generates a better overlapping consensus.

The problems of subject matter were discussed in Section II and §*1.3.3* above. Mills argues that the circumstances of a society in need of corrective justice are so different from those of a perfectly just society that not only will principles designed to govern that society likely fail to give us the kind of guidance we need, we also need to worry about the effect of the domination contract on those principles and how we apply

them. We could formulate and deploy its principles under the influence of the domination contract, for the ends of the domination contract, and without our awareness.

The second problem with Rawls's overlapping consensus is that it has not served as an effective rallying cry in our own society. It is just too controversial. Mills argues that ending racial injustice is compatible and encouraged by leading egalitarian, Rawlsian, and libertarian theories, and more importantly, doesn't come with the extra, contentious, normatively-laden baggage of requiring that society be completely reorganized according to the theory's principles of justice. Since each of these sets of theories hold that race is morally arbitrary, "What racial justice requires is that people not be differentially and invidiously treated by race, and that where such treatment has left a legacy, it should be corrected for" (121-22). Rather than being a comprehensive theory of justice, racial justice is just a correction for recognized injustice "*by the actual standards that prevailed in the polity* for the 'superior race, R1" (122).

When we narrow the scope of agreement from what a perfectly just society would look like to condemning a specific set of practices, the potential for achieving agreement and collective action increases. Mills argues that since there are nonliberals in our society, the "normative core" of corrective justice must meet with their approval (though we are justified in ignoring racists, who, by viewing some cooperators as non-cooperators, are unreasonable, and thus not felicitous participants in a scheme of social cooperation) (Contract & Domination 124). His argument is that when the parties see the full measure of the racial contract (a particular domination contract), they will see

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that white supremacy is a social arrangement, and see that they would never want to live in a cooperative arrangement where being a member of a subordinated group could harm their interests so much (124-26). So, they would affirm the principle of derivative formal equality of opportunity discussed above, which prescribes eliminating racial differentials.

I am generally supportive of Mills's claims about the deficiencies of an unsupplemented version of Rawls's theory. I maintain that obfuscatory social mechanisms are a lurking concern for those engaged in corrective justice because if we are not forced to be explicit about how we are understanding injustices, we risk incorporating our bias in our prescriptions. Further, many of the injustices we face as the result of processes of social stratification are such that understanding and addressing them does not require signing on to all of the normative commitments of justice as fairness. If we can lower the normative barriers of entry to our theory of corrective justice, we can get more agreement among more differently situated people, which will be important to successful correction.

I do not, however, think that Mills can get the kind of overlapping consensus we need to answer all three questions of corrective justice. I argue in Chapter 3 that while Mills can probably get convergence on indicting current racial differentials as illicit, he can't get convergence on what disparities we should eliminate first or how we should go about eliminating them because the parties will have strong reasons to outweigh considerations of corrective justice. The problem is that racial injustices have been happening for a long time and are deeply entrenched in our social institutions (two

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facts central to Mills's domination contract). Libertarians and classical liberals will worry about the massive amount of bureaucracy and market intervention that would be necessary to eliminate racial differentials. When evaluating difficult counterfactuals, thinking about the loss of utility that the privileged might suffer if their life expectations were radically altered, or calculating the risk of building up massive corrective institutions, the parties will have reasons to doubt the all-things-considered value of pursuing corrective justice. In other words, *the actual standards that prevail in our polity* settle that racism is wrong, but they in no way settle what we ought to do about racism's legacy. Our account of corrective justice will be better if we can say more about what to do given the institutional ramifications of stratification.

With my account, I will pursue what I take to be a better overlapping consensus on an *approach* to corrective justice, as opposed to the *solution* of elimination that Mills and Okin seem to pursue. Rather than treating the normative or practical questions as settled, my account leaves room for structured, persistent disagreement which I will argue is a permanent feature of our stratified society. I have made this choice because I think that this is the best way to get the kind of agreement that we need if we want to succeed in the enterprise of corrective justice, and, like Mills and Okin, I strongly believe that we ought to make as great of strides in this endeavor as we can.

IV.   The Structure of my Argument in this Dissertation

Rather than give a *solution* to the problems of corrective justice, my dissertation is an argument for an *approach*. I argue that given how the domination contract operates to

obscure the operation of unjust mechanisms, we will not be able to effectively set or

pursue corrective justice goals without involving coalitions of differently situated

actors. My social contract appropriates *relational egalitarian concerns* by modeling the

normatively significant ramifications of social stratification—because processes of social

stratification have profound influences on our social and cognitive environment, we

need to take into account relations of domination and subordination in formulating our

principles of corrective justice.

To make this argument, I'll go into more detail on domination contracts in

Chapter 2, making a distinction between the *general* domination contract—a model of

how social stratification works through categorization, subjecting ingroup and

outgroup members to different constraints, and the systematization of those

constraints—and the *specific* domination contract which models a specific instance of

social stratification. I'll give examples of both types of contracts, relying on the

stereotype-content model, common ingroup identity model, and system justification

theory for the general contract, and relying on a Department of Justice report on the

Chicago Police Department for the second. The explanation of these contracts sets the

stage for my account of corrective justice, by providing the basis for my claim that

society is complex and opaque—which factors into the first tier—and by serving as the

basis for my arguments in the second tier.

In Chapter 3, I'll present my *cooperative position* in which the parties are charged

with generating ideals which will govern any cooperative arrangement. I'll argue that

social cooperation as we encounter it—and could conceivable encounter it—happens

under conditions that, playing off Rawls's circumstances of justice, I call the *circumstances of cooperation*. My argument is that cooperation, which, following Rawls, I take to be inescapable and beneficial, takes place within complex and opaque social structures which place practical and epistemic barriers on us depending on our social locations, including on our ability to understand the social arrangement. This causes persistent disagreement, which will place a limit on the effectiveness of our moral prescriptions. I argue that ideals will allow the parties and us to effectively make intelligible claims on and to one another and deal with their normative and empirical disagreements in a way that will be productive to corrective justice—they allow us to appeal to people *as they are*, while giving us the tools to frame how they *ought to be*.

In the cooperative position, then, the free, equal, reasonable, and rational parties are tasked with choosing ideals which will govern a cooperative arrangement which exhibits the circumstances of cooperation. I argue that they will choose four ideals: *proficient rationality* so they can set, revise, and pursue their conceptions of a good life; *democratic equality* in the senses of equal treatment and equal consideration, *social understanding* such that, in principle, each participant can come to know what it would be like in each social location; and as a failsafe, *dignity*, affirming that each person is unworthy of a degraded social status.

I present my *corrective position* in Chapters 4-6. First, in Chapter 4, I argue for the inclusion of a general and specific domination contracts on the grounds that the background conditions in which people act are normatively significant, that doing so will advance the virtues of social contract theory discussed in Section III of this chapter,

and that the specific domination contract is necessary to overcome the obfuscatory mechanisms of the general domination contract. I also extend my analysis from Section II of this chapter by arguing that the use of discretion is important to nonideal theory in a way that it is not important to ideal theory, and that corrective justice requires agents to buy in to reform efforts.

Chapter 5 is the heart of my account. In it, I present my argument for my corrective justice principle:

Build and maintain coalitions for undermining or reforming the social mechanisms which are unjust or result in injustice, understanding that this will require continued vigilance.

Using the example of the CPD, I argue that overcoming the practical and epistemic barriers we face to undoing the mechanisms of social stratification requires working with differently-situated actors. Domination contracts work to obscure their operation, so if we want to figure out what needs to be corrected for, how we ought to go about correcting, and what obstacles stand in our way to successful correction, we are going to need coalitions working together consistently who can pool the advantages of their social locations and avoid the disadvantages. Thus, we ought to approach corrective justice from the perspective of building and maintaining coalitions.

Chapter 6 extends the implications of my corrective principle by giving more action-guiding prescriptions in the form of desiderata for its application, based on the features of my social contract. The five desiderata I put forth apply both to the goals set—preferring (1) actions against powerful mechanisms and (2) actions that will benefit

those affected by multiple serious mechanisms—and to the pursuit of those goals—

preferring (3) solutions that are currently politically possible, (4) solutions which will

affect multiple mechanisms, and (5) solutions which will avoid alienating possible

coalition members. I then close my dissertation by arguing that one of the greatest

advantages of my approach is its ability to encourage agreement and helpfully

discourage disagreement.

CHAPTER 2

The General and Specific Domination Contracts

I.   Introduction

I argued in Chapter 1 that corrective justice always starts with an injustice, and that

pursuing corrective justice therefore requires careful consideration of the facts about the

injustice. In this chapter, I follow in the footsteps of Charles Mills, and argue for a

specific way in which facts can be incorporated into theorizing about corrective justice:

the *domination contract*. Unlike many of the normative contracts in contemporary moral

and political theory, this is an *actual* contract. It can be understood as a model of the

patterns of domination and subordination in society and how they are established and

maintained through implicit or explicit norms and other agreements between members

of differently-situated social groups.

I'll incorporate domination contracts into the second tier of my social contract—

the *corrective position*—covered in Chapters 4 through 6—and use them to argue for a

principle of corrective justice that emphasizes the need for coalitions. I make a

distinction which Mills doesn't explicitly make, and argue that the parties ought to have

access to the *general* domination contract which explains the means by which relations

of domination and subordination are maintained, and to a *specific* domination contract

which can serve as a concrete example to focus their attention on how injustice is

perpetuated and maintained.

I'll argue that we need to include both of these contracts in the corrective position

because background conditions are normatively relevant to corrective justice, and when

there is a domination contract, there are practical and epistemic barriers to corrective

justice which stand in the way of understanding the injustice, what can be done about

it, and even the barriers to understanding or pursuing corrective justice, themselves.

Both contracts model different aspects of these barriers, and thereby focus our attention

on different aspects of injustice, giving us the chance to confront how bias works on us,

and update our models as needed. I'll argue in Chapter 5 that differently-situated

actors working together in the form of coalitions are necessary to overcome these

obstacles, and are therefore important to the enterprise of corrective justice.

In this chapter, I'll introduce two domination contracts and make some

arguments about their significance to normative theory. First, in Section II, I'll give an

account of the general domination contract using the terminology of *stratification* and

social constraints, and argue for a theoretical account of group-based stratification which

relies on three stages: category maintenance, ingroup and outgroup differences in social

constraints, and systematization of constraints.

In Section III, I'll turn to the specific example which I will use throughout this

dissertation when talking about corrective justice: the Chicago Police Department

(CPD). I'll use the Department of Justice (DOJ) report released in January of 2017 as the

basis for a specific domination contract, and explain the report's findings about how

CPD officers systematically use unjust and unlawful force, harming real people (but especially black and Latino residents), and *making their job as police more difficult* by eroding the trust that they need to do their jobs safely and well. I'll argue that CPD officers are set up to fail, despite the fact that the CPD and many of its officers are aware, and have been aware for a long time, of the fact that there are major problems with the way they police.

In Section IV I'll draw out two of the consequences of the particular domination contract which I will argue generalize to other particular contracts: ideally and nonideally situated agents are differently situated, and changing the contract will require the buy-in of agents within the unjust institution.

II.   The General Domination Contract

As I said in the previous chapter, I agree with Mills that corrective justice requires a model of injustice in society, and I find his idea of the domination contract to be helpful for how we ought to construct this model. I think, however, that we can and ought to be more fine-grained in how we construct these models, which is why I have made a distinction between general and specific domination contracts. This distinction is implicit in Mills's discussion of intersecting contracts in Chapter 6 of Contract and Domination and in his use of the racial contract in explaining the reasoning of the parties in his initial situation.

This section proceeds in two parts. First, I argue for the use of some additional terminology which extends Mills's concept of the domination contract, and put forward

a definition of the general domination contract as a model of group-based social stratification whereby members of dominant groups are systematically subjected to more favorable social constraints in virtue of their group membership, and members of subordinate groups are subjected to less favorable social constraints. I then put forth a model of how social stratification works, arguing that it proceeds in three stages: category maintenance, differential subjugation to social constraints on the basis of ingroup or outgroup status, and systematic subjugation on the basis of group membership.

2.3.1 The General Domination Contract as Stratification through Social Constraints

Put into different words, the general domination contract is a model of how social *stratification* starts, is maintained, and changes. Sociologist Douglas S. Massey explains that "Stratification refers to the unequal distribution of people across social categories that are characterized by differential access to scarce resources," which can be material (income and wealth), symbolic (prestige and social standing), and emotional (love and affection) (1). For our purposes, it is important to also consider epistemic resources: the all-purpose means that we need in order to gain knowledge of the world (whether through deduction, induction, or testimony) and share that knowledge with others. Examples include *testimonial* resources like credibility, and *hermeneutical* resources such as concepts of social phenomena one encounters (see Fricker 2007 for an in-depth discussion of these resources and their significance).

When members of certain groups have privileged or exclusive access to such resources—such as during chattel slavery when blacks were formally barred from having social or political rights, such as owning property and voting—social groups can be characterized as being vertically ordered, with some at the top and others at the bottom (Massey 2). When society is vertically ordered, and this ordering is persistent, we can model this phenomenon with a domination contract.

I think it is helpful, following Cudd, to think of people as being subject to sets of *social constraints*—"facts that one does or ought to rationally consider in deciding how to act or how to plan one's life, or facts that shape beliefs and attitudes about other persons," which can take the form of "preferences, choices, common beliefs, strategies, and payoffs" (Cudd 41). Sometimes social constraints are something that an agent rationally considers, such as when the parents of young black men decide to teach their children behavioral strategies for if they are stopped by the police. Other times they function "as the default assumptions that agents use when they act on intentions that are not fully or rationally considered" (Ibid.), such as when someone feels unsafe around young black men due to a prejudicial racial stereotype, but is unaware of the origin of the feeling or that they even have it.

Constraints are social when they are the result of social processes. Cudd lists the following examples: "legal rights, obligations and burdens, stereotypical expectations, wealth, income, social status, conventions, norms, and practices," which are all assigned to people on the basis of voluntary and nonvoluntary social group membership (Ibid.). Some group memberships encumber people with constraints not faced by others or

with stronger constraints, making it more difficult to access valuable resources. So long

as there are stereotypes about black men being violent, black men will have to act

within a set of background assumptions that cause others to interpret their peaceful

actions as though they were dangerous and hostile. These less favorable social

constraints, then, will impede black men's ability to access resources they care about,

leaving them at a comparative disadvantage to members of other groups who don't

confront these constraints or who confront more favorable versions of them.

Society, then, is *stratified* when the social constraints faced by some social groups

are systematically greater than those faced by other groups, such that some social

groups have a much more difficult time than others in accessing material, symbolic,

emotional, and epistemic resources. This stratification becomes entrenched through

cognitive and social processes which place social constraints on people within the social

arrangement, obscuring their operation as well as many of the aspects and

consequences of the stratification itself. We can refer to the processes of stratification,

both cognitive and social, as a *domination contract*. As I'm concerned with it, *corrective*

justice is the enterprise of dismantling and reforming domination contracts by making

the social constraints faced by members of dominant and social groups more equal.

2.3.2 A Model of How Stratification Works through Social Constraints

Massey argues that all social "stratification processes boil down to a combination of two

simple but powerful mechanisms: the allocation of people into social categories, and the

institutionalization of practices that allocate resources unequally across these

categories" (5-6). It is helpful to split the second part into two steps. We can say that in order to get stratification off the ground in any circumstances in which humans have found themselves so far, people in society need to be able to reliably (A) differentiate social group members from nonmembers, (B) ensure that members and nonmembers are subject to the different social constraints befitting their ingroup or outgroup status, and (C) extend the domain of the category to entrench the social significance of group memberships vertically, reliably subjecting members of groups to systematic social constraints. I'll go over each of these processes in detail shortly, but first, two clarifications.

First, it is important to note from the outset that these processes are usually not distinct in people's lived experience. Because of the automatic and effortless aspects of these processes, and their resource ramifications, categorization generally comes with immediate stratification. The difficulty of separating these three steps plays out in my discussion of the CPD in Chapter 5.

Second, there are many cognitive and social mechanisms that aid in stratification, and thus account for its near universality in human societies. These mechanisms have been described in many different ways. Following Massey, I'll use the language of the *stereotype content model*, and then add in insights from *system justification theory* and the *common ingroup identity model*. I'm not, however, committed to these being the *right* ways to describe these real phenomena, though I am committed to them capturing certain salient facts about social relations. In fact, I think that there are good epistemic and practical reasons to be a pluralist about social explanations. For different purposes

it can make sense to describe social phenomena in different terms, emphasizing different mechanisms.

Epistemically, the models we construct of a phenomenon allow us to foreground and background different aspects of it, focusing our attention differently, thus better helping us understand its relevance to corrective justice. As I argued in §*1.2.1*, theoretical underdetermination by data means that we always need to employ theory in interpreting them—there is no objectively *right* way to model social phenomena absent a question or problem that we are trying to solve. When it comes to correcting for injustice, we have lots of problems, so we will almost certainly need different models in solving our different problems. In Chapter 5, I go back and forth between explanations that involve stereotypes as the most powerful mechanism and explanations in which stereotypes are just one mechanism among many. I do this because stereotypes can be very powerful on their own, and they can be structurally powerful by influencing many different people in subtle ways. Both aspects of how stereotypes operate are important, and our models need to be flexible in order to capture them.

Further, many different people are able to devote their research lives to different schools of thought and analysis. This is good evidence that any research program is getting at something of empirical import; it would be cognitively difficult to devote that much time and attention to something that didn't capture reality in *some* way. This is not to say that every research paradigm is valuable, but rather that given the epistemic limits we face on the basis of our social positions, we should take the fact that people

have devoted energy to a paradigm as evidence in favor of that paradigm having *some* theoretical utility.

Practically, I'll argue in Chapter 5 that if we are to successfully correct for the domination contract, we're going to need to form coalitions. Differently-situated actors can find different explanations of phenomena to be more salient than others, and if our articulation of the domination contract isn't able to connect with their judgments of salience, it will be difficult for us to form a coalition with them. If a group of people's lived experience makes psychoanalytic explanations the only kind they find convincing, then we had better be able to articulate the domination contract in at least some psychoanalytic terms if we want them to join our coalition. If we are unable to articulate the domination contract in ways that people can connect and agree with, we'll have a difficult time identifying the injustice we need to correct for and agreeing about which tradeoffs are worth making when we go about correcting.

I think that the enterprise of corrective justice, therefore, encourages theoretical flexibility. We ought to strive to understand and articulate the social phenomena we think are important in different terms using different theories. Doing so will enable us to see different aspects of the phenomena which may help us understand corrective justice better, and it will help us connect with differently situated people whose help we'll need for successful correction. An important theoretical extension of this project will be articulating this domination contract in different terms which will be receptive to different audiences. Here, for the sake of space, I articulate just one that I find, in

part because of my lived experience, to be particularly helpful. It proceeds in three stages which track the three stages of stratification.

A. Social Category Boundaries

Massey argues, following Fiske 2004, that "In a very real way, stratification begins psychologically with the creation of cognitive boundaries that allocate people into social categories" on the basis of observable characteristics (Massey 8). While some of our thought is careful and rational, that kind of thinking is resource-intensive and thereby unsustainable, such that much of our thought takes place in what can be characterized as an automatic, effortless, and quick system (8-9). This system relies on *schemas*— conceptual categories about our world that we use to classify and evaluate the stimuli we encounter, including our social roles, social groups, selves, social events, and other people (9, citing Fiske 2004). *Stereotypes* are schemas that classify people into categories based on perceivable traits, and they can be conscious or unconscious. Schemas are often associated with emotional valences—some of them leave us positively disposed and others negatively. When there is a strong association between affective attitudes and a particular category of people, we can say there is a *prejudice* (10).

Massey argues that "Human beings are psychologically programmed to categorize the people they encounter and to use these categorizations to make social judgments," such that all people harbor prejudicial stereotypes, whether they're conscious of them or not (9-10). We cannot help but classify people as belonging to different social groups, we cannot stop ourselves from making affective judgments

about those groups, and we are often unaware of the role that these automatic judgments play in our cognition.

Importantly, these categories and the processes of categorization are *flexible*, and vary across social arrangements and contexts (Gaertner and Dovidio 34). Depending on context, we could classify a person simply as a mammal, such that they belong in a category broader than all social contexts. Or, as we do more frequently, we could classify the person as a member of a racial group, a gender group, a height-based group, or some combination of these groups. Gaertner & Dovidio argue that "By modifying a perceiver's goals, motives, past experience, expectations, as well as factors within the perceptual field and the situational context more broadly, there is opportunity to alter the level of category inclusiveness that will be primary in a given situation" (Ibid.). Thus, though we cannot help but categorize people, we can be helped to categorize them differently.

These judgments also vary in *social significance*, as we find some categories to be less socially significant than others. You see someone with a red ball on their nose, heavy makeup, and an orange wig, classify them as a clown, and have a positive or negative affective response. This judgment is generally socially benign because this categorization is not very socially significant: in general, being a member of the social group "clown" does not have strong implications for the social constraints a clown faces. While individual clowns may be treated in certain ways while in costume, when they are out of costume people can't reliably distinguish them as clowns and thereby continue to treat them as clowns. And though some people have really strong negative

reactions to clowns (there's even a word for the fear of clowns: coulrophobia), most people don't, such that even if people were to learn, say, that I was a clown, that wouldn't systematically mark me for different treatment.

Categories' social significance is determined by the next two processes considered below. Were it not for these processes—which happen automatically once categorization has taken place—categorization itself wouldn't pose a problem for justice. However, because the role that these categories play in social cognition, categorization presents a major epistemic and practical barrier to corrective justice in the world as we find it.

B. Social Constraints for Ingroup and Outgroup Members: Creating Stratification

Were all social group classifications an equally mixed bag of positive and negative stereotypes, stratification wouldn't get off the ground because though we'd be able to reliably classify people, we wouldn't be able to fulfill Massey's other condition necessary for stratification: reliably subjecting people to social constraints on the basis of group membership. All group memberships would be like being a clown today: some people give clowns more money, esteem, affection, and credibility, whereas other people give them less, such that there aren't really resource ramifications to being a clown. You only get stratification if enough people consistently treat other people differently because of their social group membership(s), such that concentrations of material, symbolic, emotional, and epistemic resources develop on the basis of group membership(s) which create impactful social constraints.

The *stereotype content model* says that people automatically evaluate one another along two dimensions: warmth and competence. Someone's warmth measures how likeable we find them to be, whereas competence measures someone's ability to act purposively and accomplish their goals. These evaluations allow for four general categories of evaluation: warm & competent (esteemed ingroup), warm & less competent (pitied outgroup), less warm & competent (envied outgroup), and less warm & less competent (despised outgroup) (Massey 11, citing Fiske et al. 2002). We tend to evaluate[9] people who are in the same group as us as both warm and competent, hence the term *ingroup favoritism* – people tend to view members of their group positively and want to help them (Kinder and Kam 1). People in the last group above, who are thought neither warm nor competent, can be subject to *outgroup animosity*—they can be evaluated as strange, discomforting, and even dangerous (22, 31).

Liking the members of our group more than other groups can have major impact on resource distribution and allocation. Two important mechanisms involved in this, according to Massey (following Tilly 1998), are opportunity hoarding and exploitation. "*Opportunity hoarding* occurs when one social group restricts access to a scarce resource, either through outright denial or by exercising monopoly control that requires out-group members to pay rent in return for access" (Massey 6). You like the members of your group because they are warm and competent, so you are more likely to share what you have with them, including advantages in attaining scarce resources. Over time,

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[9] Though this is a general tendency, people vary in the degree to which they exhibit these tendencies. See Kinder & Kam for a discussion of this variance and its significance.

with enough ingroup sharing, a monopoly can form, and then ingroup favoritism can subject nonmembers to severe social constraints. So, for example, I could form a business producing widgets, choose to hire people from my social group because I rate them more favorably than members of other groups, and train them in highly-technical widget production. With that training, members of my social group would then be in a position to start their own firms, so my social group could, by the same process, corner the market on widget production. Neither I nor members of my social group need have any negative feelings towards members of other social groups to get this process started—we need only have really positive feelings towards members of our group.

The second mechanism, *exploitation*, "occurs when people in one social group expropriate a resource produced by members of another social group and prevent them from realizing the full value of their effort in producing it" (Ibid.). This is more likely to involve negative feelings towards outgroup members, but can also happen as the result of pro-ingroup bias alone. Let's say that widget production involves two principal kinds of labor, both of which require equal skill and subject workers to equal risk, but one of which is considered to be more prestigious because of some historical contingency: it was the first kind of labor and the people who did it were well respected members of the dominant group. We should expect that due to this historical contingency, members of the dominant social group would be more likely to get the prestigious jobs—as they will be rated more favorably by ingroup members already in those jobs—leaving members of the subordinated group to be relegated to the second set of jobs. We should expect that exploitation will occur here. Though both types of

jobs are equally valuable, members of the subordinated group will be paid less because

members of the dominant group will continue ingroup-favoring practices which

overvalue the contribution of their group members.

Ingroup favoring mechanisms can have major consequences for the distribution

of society's material, symbolic, emotional, and epistemic resources. Anyone who has

ever walked into a party where everyone else is already friends has likely experienced

how local esteem hierarchies can form, and how behavior that makes you cool with

your friends can make you uncool with others. In the extremes of opportunity

hoarding and exploitation, ingroup favoritism can have even graver practical

consequences for members of outgroups. People who face severe social constraints in

any area of their lives will have to work harder to gain the valuable resources available

in that area, leaving them with less energy, time, and attention to pursue resources in

other areas of their lives.

Two biases enter into these processes, purporting to rationalize them, and

making life more difficult for outgroup members: fundamental attribution error and the

actor-observer effect. *Fundamental attribution error* is "'the general tendency to

overestimate the importance of personal or dispositional factors relative to

environmental influences,' in accounting for behavior" of others (Massey 14, quoting

Ross, et al. 184). So, whereas most of us lack the control and attention to purposively

act in ways that we would fully endorse, we tend to view others as *choosing* to act in the

ways that evince their character. We see that someone has arrived late to a meeting,

and we ascribe to them character traits that can account for their tardiness, despite that

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fact that circumstances beyond their control—traffic, an urgent phone call, and such—almost certainly played a role in it.

The *actor-observer effect* is the general tendency to do the opposite: to overestimate the importance of situational or environmental features relative to personal or dispositional factors in accounting for our own behavior, and the behavior of people who we take to be like us (Massey 14). We see that we're late to a meeting, but overstate the role that circumstances beyond our control played in our tardiness, ignoring, for example, that this somehow happens to us all the time such that we have good evidence to suggest problems with our time management.

In combination, these biases can work to rationalize ingroup favoritism as well as outgroup animosity. They purport to give justification for why members of my group deserve more and/or other groups deserve less through poor evidence collection. This is important, because "These cognitive biases help to perpetuate social biases and stereotypes even in the face of countervailing evidence" (Gaertner and Dovidio 39, see 38-40 for a review of the literature on the ways in which this happens). If it really *is* the case that members of my group have good character but consistently confront difficult circumstances—as my evidence will reflect if these two biases are in operation—then I *am* justified in treating ingroup members better than outgroup members, due to their higher merit and undue hardship. Similarly, if outgroup members really have poor character and face easier social constraints—which I am likely to believe with these two biases—then I am justified in allocating them less. Opportunity hoarding and

exploitation then appear to be more justified than they are—they appear to be the result of evaluative judgments based on neutral evidence.

This poses a major epistemic problem for us, because these biases cause us to discount some salient evidence and overvalue other salient evidence, obscuring important features of our world. We automatically collect evidence in ways that favor members of our groups and thereby disadvantage members of other groups who do not benefit from our rose-colored glasses. We are primed to notice social constraints which harm us and to fail to notice social constraints which affect differently-situated others. We are thus more likely to identify stratification that harms us and less likely to identify stratification that impacts others.

And note that this can all happen without outgroup disdain—if enough people like their group enough, and consistently act in ways that favor them, successfully hoarding opportunities and exploiting others, outgroup members will be subjected to more severe social constraints, and thereby be harmed by comparison.

C. Systematizing the Social Constraints: from Stratification to Domination

I've argued that categorization along observable traits is automatic, and that once we've categorized people, we can't help but have stratified categorizations. We favor those like us in such a way that allows us to favor them in resource allocations, and we can dislike members of outgroups in ways that purport to justify subjecting them to additional social constraints. These tendencies are reinforced by other social processes

which extend the ramifications of social categorization and purport to rationalize it in a way that makes it systematic.

Two of the most powerful such mechanisms are "*emulation*, whereby one group of people copies a set of social distinctions and interrelationships from another group or transfers the distinctions and interrelationships from one social setting to another," and *adaptation*, whereby "social relations and day-to-day behaviors at the microsocial level become oriented toward ranked categories, so that decisions about who to befriend, who to help, who to share with, who to live near, who to court, and who to marry are made in ways that assume the existence and importance of asymmetrical social categories" (Massey 6-7). These processes are what make stratification possible—they're what make the social constraints people are subjected to systematic, by allowing us to track group membership beyond the domains where it is relevant.

Some emulation and adaptation are caused by social constraints overtly. If you face severe social constraints to getting a good education, that will constrain your employment options and social circles. Other uses of emulation and adaptation are caused covertly by social and cognitive mechanisms that run in the background—if someone views you as potentially dangerous on the street because of a prejudicial racial stereotype, they're likely to view you as potentially dangerous at work too because the stereotype constrains cognition in a way that is hard to turn off.

Fundamental attribution error and the actor-observer effect, discussed above, are two examples of post-hoc rationalizations for a social order, but there are many more which function to covertly constrain people on the basis of social group membership.

For our purposes, system justification bias is the most important. *System justification bias* is a cognitive and motivational process that can operate outside of conscious awareness, whereby "people actively defend and bolster existing social arrangements, often by denying or rationalizing injustices and other problems, even when doing so comes at the expense of their personal and group interests" (Jost and van der Toorn 414). This bias is a part of a larger set of biases in favor of the status quo, which lead people to prefer states of affairs that actually exist, have been around longer, and to which they have had more exposure (Eidelman and Crandall). So, for example, when given the task of aesthetically evaluating two galaxies, two trees, or two soft drinks, people generally prefer the one they are told is older (273-74).

Kay & Friesen (2011) discuss four contexts in which people are prone to exhibit system justification bias. First, when they encounter threats to the system that potentially jeopardize its legitimacy. Second, when people feel dependent on a system. Third, when people feel like the system is inescapable. And fourth, when people feel like they lack personal control over the system (361-62). These are all circumstances where people are socially constrained such that they alone cannot make much of a difference.

System justification bias is a *motivated* bias because it "serves the palliative function of alleviating emotional distress and enhancing subjective well-being" (Jost and van der Toorn 414). When we benefit from an unjust social arrangement, we have motivation to believe that we deserve the benefits we have gained from cooperation. When we see others who are being harmed by the social arrangement, we have

motivation to see them as deserving their limited share of resources. When we find

ourselves in an unjust system that we cannot change, we have motivation to not waste

our resources fighting windmills. We want to believe that we are good people living in

a good world, and that we deserve all of the good in our lives.

Of course, there is a rational basis to believing that something's existence and

duration are proof of some amount of value—if it went contrary to people's interests,

people would have had reason to get rid of it. System justification theory explains how

the social constraints we are currently subjected to can constrain our ability to recognize

the social constraints that we and others confront, thereby causing us to fail to

understand the ways that ours and others' interests are furthered and hampered by our

social arrangement. This is a bias which preserves power relations between social

groups by obscuring them in problematic ways.

To see these problems, let's return to the stereotype content model. We've

already seen how our social cognition can cause ingroup favoritism and outgroup

disdain. The impact of these biases increases when a dominant group who have better

access to society's resources acts in ways that further benefit their already-privileged

group or further harm an already-subordinated group. People with social power are in

a better position to lift their own social constraints and place additional social

constraints on others.

In addition to these biases, though, there are special cases of ingroup animosity

and outgroup favoritism which track relations of domination and subordination. One

of the interesting new findings of system justification theory is that members of

subordinated outgroups, such as poor people and people socialized as black or Latino, tend to show less ingroup favoritism than members of dominant social groups, more implicit *ingroup animosity*, and—of greater importance—they also show *outgroup favoritism* towards members of dominant social groups (Jost, Banaji and Nosek 897). Jost et al. (2003) found, for example, that African Americans and people with low incomes were more likely than others to believe that economic inequality is legitimate and necessary (27-29). There is research that suggests that members of subordinated social groups also exhibit depressed entitlement, thinking that they deserve less for difficult work than members of dominant groups think they deserve (Blanton et al., 2001; Jost et al., 2004; Pelham & Hetts, 2001).

The subordinated do this to some benefit: people who endorse meritocratic ideologies are more satisfied with their economic situations, increasing their subjective wellbeing (Jost, Pelham and Sheldon 29). So, as Jost et al. (2003) put it, "people who suffer the most from a given state of affairs are paradoxically the least likely to question, challenge, reject, or change it" (13). That is, people with the greatest *individual* and *group* interest in changing the social arrangement face additional social constraints to working towards reform, because furthering their *system* interests is palliative in that it helps them feel better. This operates in addition to the practical constraints on reform placed on the subordinated by their lesser access to important social resources.

This means that not only do members of dominant social groups use mechanisms like opportunity hoarding and exploitation to increase their advantages,

members of subordinate groups can *help them* by believing and acting as though those dominant groups deserve their material, social, symbolic, and epistemic advantages.

This is what makes stratification so widespread. If everyone acted all the time in ways that furthered their interests, then the subordinated's actions would undermine the dominant's attempts at subjecting them to greater social constraints—after all, they are usually in the majority. The fact is, however, that in a society with a domination contract, the subordinated have a much more difficult time effectively advancing their individual and group interests. The mechanisms of extension and rationalization which operate in a stratified society create systematic differences in the ways that members of dominant and subordinate groups set, pursue, and revise their interests and their conceptions of their interests.

These three levels of stratification work to reinforce one another. Categorization, in- and out-group attitudes, and the mechanisms of extension and rationalization are all automatic processes which can operate outside of our attention and control. These are cognitive processes which *we cannot help but engage in*, and which have created social stratification in every society of which we are aware. It is thus a normatively relevant, inescapable feature of our world, or so Mills and I argue.

We strengthen the domination contract when we think and act in ways that preserve the systematization of group dominance in social constraints—in our everyday interactions. As Massey argues,

"Through such two-way interactions, however asymmetric they may be, people on both sides of a stratified social divide actively participate in the construction of the boundaries and identities that define a system of stratification. No matter what their position in the system, people seek to define for themselves the content and meaning of social categories, embracing some elements and rejecting others, simultaneously accepting and resisting the constraints and opportunities associated with particular social status. Through daily interactions with individuals and institutions, people construct an understanding of the lines between specific social groups (Barth 1981)" (Massey 16).

Calling it a "contract" can be a little misleading, because the domination contract isn't something that one needs to explicitly accept in order for one to count as a signatory. For most of us, the domination contract is just the background to our lives which we tacitly support by going about our daily business. When our expectations, plans, and actions reinforce the relations of domination and subordination in society—when, for example, we hear that a violent crime was committed and automatically assume the perpetrator was a black man—we strengthen the domination contract, regardless of what we intended to do or explicitly believe about justice.

It follows that if we want to change the domination contract—if we want to change the social constraints that people face on the basis of social group membership—we need to either redraw social categories or change their social significance. I'll argue in Chapter 5 that these tasks are best done by expanding our conceptions of our ingroups by building and maintaining coalitions among members of dominant and subordinate social groups.

III. A Specific Domination Contract: The Chicago Police Department

A particular domination contract is a model of how a particular set of social constraints function to maintain stratified social relations, at a particular place and time. Such domination contracts can have different scope. They can be very particular, modeling how one social location is constrained when compared to other locations—for example, how young black men in Chicago are constrained by police practices as compared to young white men. They can also be very broad, modeling how one social group is constrained in society as compared to all other groups. I take this to be what Mills's racial contract is up to.

The advantage of a particular domination contract is that it allows us to see the mechanisms of the general domination contract at work in society. I'll argue in Chapter 4 that this is important if we want to overcome the obfuscating mechanisms of the general domination contract.

In this section, I'll relate some of the key findings of a particular domination contract, governing the operation of the Chicago Police Department. I'm using a report published by the Department of Justice in January 2017, called "Investigation of the Chicago Police Department" as the basis for understanding this contract, as it models problems with CPD policies and practices that contribute to stratified social relations. My analysis will center on stratified racial and ethnic relations: what social constraints black and Latino residents of Chicago face as compared to white residents, with special emphasis on the role that neighborhood segregation plays in the disparities.

I'll first give some background on the report and relate its main findings. I'll then dive deeply into the CPD's use of force, and the practices and policies that sustain it. In Chapter 5, in which the parties to the corrective position use this and the general domination contract to derive a principle of corrective justice, I explain more about these mechanisms and how they are domination. In this section, my focus is on relating the factual information which forms the basis for those arguments.

2.4.1 Background on the Chicago Police Department & the Findings of the DOJ's Report
The report I'm using was commissioned after video of a high profile shooting of a black teenager sparked protests in Chicago. In October 2014, 17-year-old Laquan McDonald was shot 16 times by CPD Officer Jason Van Dyke. The city settled for $5 million in a lawsuit with his family the following April, but a Freedom of Information Act request by a journalist led to the release of dashcam video in November of 2015, which resulted in public outrage and mass protests (Husain). The investigation was conducted by the DOJ's Civil Rights Division, Special Litigation Section and the US Attorney's Office for the Northern District of Illinois, and looked at both the CPD and the Independent Police Review Authority (IPRA), "to determine whether the Chicago Police Department is engaging in a pattern or practice of unlawful conduct and, if so, what systematic deficiencies or practices within CPD, IPRA, and the City might be facilitating or causing this pattern or practice" (1). Investigators reviewed thousands of pages of documents, and spent hundreds of hours in Chicago meeting with affected and involved people and organizations as well as local experts who have studied the CPD. In addition to the

team of DOJ investigators, they enlisted the help of 11 "independent subject-matter experts," most of whom were current or former law enforcement officials (2).

The CPD has approximately 12,000 sworn officers who are charged with protecting the approximate 9.5 million residents of the metropolitan area of Chicago, of whom 2.7 million live within the city limits. In Chicago, "33% of current residents are black, 32% are white, 29% are Latino, and 8% identify as Asian or multi-racial." Citywide, 22% of Chicago residents live below the federal poverty line, but 35% and 25% of black and Latino residents, respectively, live below the poverty line, as opposed to only 11% of whites (16-17).

The DOJ found several systematic deficiencies within the CPD that result in unlawful and unjust conduct in the way officers use force, are held accountable, are trained, are supervised, and are promoted, as well as the ways in which officer wellness and safety are maintained and how data is collected, used, and made available to the public (4-13). These systematic deficiencies, moreover, result in CPD officers' jobs and lives being *more* difficult. For example, CPD's suicide rate is 60% higher than the national law enforcement average (123). Also troubling: CPD is only identifying the suspected killer in 29% of homicide cases. That's less than *half* the national clearance rate (4). This is a huge problem for the people of Chicago because in 2016 there were 726 homicides (nearly 300 more than in 2015) and 3,550 shootings in Chicago with 4,331 victims (approximately 1,100 more than 2015) (3). People need the police to enforce the law and protect them from such harms.

The problems with CPD are not felt equally by all Chicagoans, but fall

disproportionately on the black and Latino communities. As per the report,

> "our investigation found that Chicago's black residents collectively have a
> very different experience with CPD than do Chicago's white residents.
> Many low-income black and Latino neighborhoods suffer the greatest
> harm of violent crime in Chicago. Residents in these neighborhoods, not
> surprisingly, have more frequent police interactions. With these
> interactions come the harms of unreasonable force that arise from CPD's
> systemic deficiencies outlined here and throughout this Report. The result
> is that Chicago's black and Latino communities experience more incidents
> of unreasonable force. These are the very communities who most need
> and call on the police to fight violent crime, and where police and
> community trust and cooperation is most important" (145).

In fact, "Raw statistics show that CPD uses force almost ten times more often against

blacks than against whites. As a result, residents in black neighborhoods suffer more of

the harms caused by breakdowns in uses of force, training, supervision, accountability,

and community policing" (15).

2.4.2 Some Particularly Problematic CPD Policies and Practices & the Use of Force

The entire particular domination contract governing CPD's operation includes

information about all of the problems identified in the report listed above: use of force,

system of accountability, supervision, training, promotions, wellness and safety, and

transparency. I'll focus here on some of the more striking findings about the CPD's

unlawful and unjust use of force and the mechanisms that sustain it. Regarding force,

the report concludes that

"The pattern of unlawful force we found resulted from a collection of poor police practices that our investigation indicated are used routinely within CPD. We found that officers engage in tactically unsound and unnecessary foot pursuits, and that these foot pursuits too often end with officers unreasonably shooting someone—including unarmed individuals. We found that officers shoot at vehicles without justification and in contradiction to CPD policy. We found further that officers exhibit poor discipline when discharging their weapons and engage in tactics that endanger themselves and public safety, including failing to await backup when they safely could and should; using unsound tactics in approaching vehicles; and using their own vehicles in a manner that is dangerous. These are issues that can and must be better addressed through training, accountability and ultimately cultural change" (5).

Some cases of foot pursuits are especially egregious, and I'll return to them in Chapter 5. The report details one incident in which a man had merely been walking down a residential street with a friend, such that there was no reasonable basis to believe that he had committed a crime. Police officers drove up and shined a light at the man, at which point he purportedly fidgeted with his waistband. Police told him to freeze, he ran, and the officers gave chase and fired a total of 45 rounds at him, killing him (25). Again, the man was merely walking, so there was no reasonable basis to shine a light at him in the first place. And while fidgeting with one's waistband can indicate the presence of contraband—which would be dangerous if it were a gun—it is not a crime, and the fact that the man ran away indicates that even if he did have a gun, he did not plan to harm anyone with it. Even if the initial stop had been justified, using lethal force on someone for whom you have only weak evidence that he *might* possess a gun is not a proportionate or just response to the potential threat.

I want to focus on two mechanisms involved in encouraging the use of bad

tactics, which, as seen above, disproportionately impact black and Latino residents:

poor training and poor accountability practices. CPD fails to train its officers on how to

effectively police in a bias-free way and fails to supervise its officers effectively in a way

that would incentive non-racialized practices. The problems with training and

supervision discussed here would be a problem for a police department in any society

because good training and supervision are necessary for safe, effective, and

constitutional policing anywhere. But, as I'll argue below, they're especially

problematic in a society with a domination contract, because sloppy, haphazard, and

laissez-faire practices cannot effectively challenge our system of social stratification, and

are likely to reinforce it.

CPD's problematic training begins at its Academy, which "has, for many years,

suffered from severe deficiencies that impede recruits' preparedness to police

constitutionally and effectively," such as relying on outdated pedagogical techniques,

relying on "outdated materials that fail to account for updates in legal standards,

widely accepted law enforcement standards, and departmental policies," low standards

for graduation, and poor facilities (95-96). This is reinforced by a poorly-designed and

implemented Field Training Program, which comes after the Academy, and furthers

some of its deficiencies. The position of Field Training Officer (FTO)—the officers who

are tasked with training new recruits on how to police in the city—is not considered to

be prestigious, and does not come with sufficient training (98). As per the report,

"In addition to supervising too many PPOs [probationary police officers] at one time, we observed that FTOs do not operate according to any uniform protocols. One more experienced FTO we spoke with reported receiving no training prior to becoming an FTO. Although there is now a five-week FTO training program in place, more senior FTOs may have not received any training at all. Even with a five-week training, we observed that there is no consistency in how FTOs teach and mentor their PPOs, meaning that the quality and content of instruction varies significantly Department-wide. Our retained law enforcement training expert observed FTOs and PPOs interacting and found that the FTOs did not provide proper redirection. For example, our expert observed a PPO driving erratically and making rude and disrespectful comments about the community in the presence of the FTO, but the FTO did not correct this behavior. And further demonstrating how problematic CPD's poor FTO instruction and overall training program can be, CPD's FTOs frequently tell PPOs to 'throw out' what they learned in the Academy because the FTOs will show them how to 'be the police.' The quality of the supervision and training a PPO receives from his or her FTO directly impacts whether the PPO's policing will reflect the Department's values. FTOs' unwillingness to reinforce Academy training, whether because they accurately judge it to be inadequate or because they do not respect CPD's core values, sends a perilous message to recruits and undermines any improved polices or procedures intended to inculcate a culture of respectful and constitutional policing" (99).

So, police officers are not trained at the academy on how to effectively, safely, and constitutionally police, and then their training in the field is likely to reinforce the weaknesses of their academy training, and depending on the FTO, could even *undermine* the academy training's strengths.

These issues are compounded by the lack of supervision and training once recruits become members of the police department. First, there is not regular, mandatory in-service training, which is a problem because "Without regular, mandatory training, CPD officers do not receive ongoing instruction on critically

important topics" that they might have missed in earlier training or need a refresher on, or "changes in law, technology, community expectations, and developments in national police practices," or even changes to CPD policy. This "prevents officers from accepting and emulating a culture of constitutional and fair policing. It also inhibits officer confidence that they know how to do their jobs safely and effectively" (100).

Further, supervisors in the CPD have the wrong incentives. They are encouraged by institutional design and practice to stick their heads in the sand because they have too many responsibilities (107-09); are not trained well (109-10); operate within a context where there is a "code of silence" that is "apparently strong enough to incite officers to lie even when they have little to lose by telling the truth" (75), such that they are not held accountable when they fail to report misconduct (110-11, see my discussion in Chapter 5); and don't have access to meaningful data with which they could discover individuals who need early intervention for potentially problematic conduct and intervene to provide meaningful help (111-118) or evaluate the system as a whole for problems in training, practice, or supervision (124-29). The DOJ's assessment is that "Instead of encouraging the chain of command to instill proper policing tactics and respect for constitutional policing in CPD officers, CPD provides little incentive, or even opportunity, for supervisors to meaningfully guide and direct CPD officers. CPD provides even less incentive for supervisors to hold officers accountable when they deviate from CPD policy and the law" (105). So even if police officers were trained well at the academy and in the field, the strengths of their training are unlikely to be

reinforced because they do not have proper continuing education or supervision to ensure that they are using good police practices.

Another main reason that these unsound and unsafe tactics are used is that officers who engage in resulting misconduct rarely face punishment. In the above foot pursuit case, a gun was recovered one block away from the scene, which was used by investigators to rule the shooting justified. However, it was later determined that the gun could not have been fired because it was broken, and that it had not been fired because it was fully loaded and there was no gunshot residue on the man's hands (26). The IPRA investigated the incident—as they are required to investigate all cases of officer weapon discharges and death or serious injury in police custody (48)—but never addressed with their investigation "the efficacy of the pursuit or the number of shots fired." They found the shooting to be justified (26).

This is just one example of CPD's accountability measures failing to hold officers accountable for excessive and unlawful uses of force. The report relates many more. There are many institutional obstacles to investigating the use of force:

> "CPD policy requires officers to report force but, in practice, officers are not required to provide detail about the force they used that is sufficient for an adequate review, and most officer force is not reviewed or investigated. Although shootings where a person is struck are investigated…, those investigations are inadequate. As a result of so few force incidents being even nominally investigated, and the low quality of the force investigations that do occur, there is no meaningful, systemic accountability for officers who use force in violation of the law or CPD policy. Nor is there any opportunity for meaningful assessment of whether policies, training, or equipment should be modified to improve force outcomes in the future for officers or civilians. The failure to review

and investigate officer use of force has helped create a culture in which officers expect to use force and not be questioned about the need for or propriety of that use. In this way, CPD's failure to adequately review officer use of force on a regular basis has combined with CPD's failure to properly train and supervise officers to perpetuate a pattern of unlawful use of force within CPD" (6-7).

This is especially problematic for black and Latino residents of Chicago, because as related above, due to CPD deployment tactics, they are subjected to more police force and more encounters where force could be used.

This is also problematic for the city of Chicago, which can be held civilly liable when victims of police misconduct or their families sue, as was the case with Laquan McDonald's family. CPD's investigations of police misconduct are conducted so poorly, that it *closed* investigations in most of the cases where lawsuits were successful (51). Think about this: the standards for successfully proving civil litigation are more demanding than those for successfully proving misconduct, and yet the courts are routinely able to sustain complaints the CPD and IPRA are not. This comes at substantial cost to the City: it pays millions of dollars to victims without changing its misconduct procedures to deter and detect misconduct.

The most frustrating thing about all of this is that, as with the case of misconduct investigations, these practices make CPD's job of protecting and serving citizens more difficult. One of the main reasons the homicide clearance rate in Chicago is so low is that there is little trust between community members and the CPD. This is especially true in black and Latino communities, who make up the majority of residents of

Chicago's South Side and West Side neighborhoods, in which a lot of the violence in concentrated (4). In one of the reports more striking passages, the report explains that

> "many residents in those neighborhoods feel, as we were told often in conversations with community members, as if CPD is an *occupying force*. One youth told us that the nature of the police presence in his neighborhood makes him feel like he is in 'an open-air prison.' One resident told us, 'they patrol our streets like they are the dog catchers and we are the dogs.' One officer told us that the law is unquestionably enforced differently in some neighborhoods: when 'kids' on the North Side of Chicago get caught with marijuana, they get a citation; kids on the South Side get arrested. This officer's commander confirmed this approach when he told us that his policing philosophy in areas with violence is to make arrests because that was how he 'was brought up'" (143, my emphasis).

When community members don't trust the police, they are less likely to report criminal activity, provide the police with information about criminal activity, work with them in investigations, testify in court, and otherwise help them do their jobs. Without community members' help, the police officers' jobs are more difficult. Either they have to do more work to successfully solve cases, or their lack of success will lessen the deterrent effective that police enforcement is supposed to have, creating more crimes that the police will then be tasked with preventing and solving. The recent dramatic rise in the murder rate and low closure rate indicate that in Chicago, the latter is happening more than the former.

Even when CPD's officers and supervisors are aware of the systematic deficiencies, they are rarely in a position to do anything about them. Much of the evidence on which the report is based comes from conversations with officers who are

dissatisfied with the status quo, and Chicago has seen several different investigations of its police department. However, the recommendations from past investigations were never more than partially adopted (18-20). Further individual officers who complain can be subject to retaliation (cf. the discussion of misconduct in Chapter 5), and officers' promotions and job performance rely on working with other officers who do not perceive their practices to be problematic. The low prospects for improving the CPD from within might help explain the CPD's comparatively high suicide rate (and so might the fact that CPD uses harsh and dangerous tactics which subject officers to unnecessary and stressful risks).

The CPD polices black and Latino neighborhoods more harshly than it polices white neighborhoods, subjecting the residents of these racialized social groups to harsher social constraints. It does not train its officers on how to effectively use force or to avoid using it in racially biased ways. Moreover, it fails to hold its officers accountable when they use unreasonable force. The CPD's pattern of its use of force, then, subjects blacks and Latinos who are in Chicago to additional social constraints, as they need to be mindful of the danger that the police could pose to them. This is in addition to the attention they need to pay to keeping themselves out of harm's way — something that they need to do because violent crime is not effectively deterred or punished in their neighborhoods. The CPD, then, functions as a domination contract to reinforce relations of domination and subordination in society, by subjecting black and Latino Chicagoans to harsher and more numerous social constraints.

IV.   The Difference between Ideally- and Nonideally-Situated Agents

Ideal theory can focus on the basic structure alone because discretion isn't an issue when an agent is acting within a just institution situated in a system of just institutions which function as a check on the use of individual discretion. As the CPD so vividly illustrates, nonideal theory has to focus on differently-situated actors at every level because the incentives they face are not towards justice, and there is not effective oversight. The use of discretion by each agent is therefore relevant to justice, and this is theoretically complicated and messy. In this section, I'll first go into more detail about the differences between ideal agents in CPD officers. I'll then use those differences to make the argument that nonideal circumstances make individual discretion more theoretically important than it is in ideal theory.

2.4.1 The Differences between Ideal Agents and CPD Officers

Consider the following five ways in which CPD officers are situated differently than ideal agents.[10] First, ideally-situated agents have better structural support within society. They are part of a just institution which works within a framework of other just institutions. These other just institutions help keep each other just, such that the norm is justice. In an ideal society, there's no history of injustice or unjust institutions that pull institutions away from justice. So, when there is a deviation away from justice, the other institutions work together to encourage a return.

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[10] My arguments in this section are indebted to Mills's "'Ideal Theory' as Ideology."

The CPD is not like this. For example, Chicago has a long history of racism (cf. Wilkerson, Coates), and this infected how neighborhood lines were drawn and maintained, the education system, how city government works, who is prosecuted for what crimes, and many other institutions that work to pull the CPD towards racialized injustice. The CPD's racial disparities in their use of force are overdetermined by these other mechanisms, such that it would be a major surprise if they *didn't* exist, given racism in Chicago.

Second, ideally-situated agents have better structural support within their institutions. They have training and retraining, clear guidelines, mechanisms to report misconduct, mechanisms to discover problems or misconduct, good supervision and oversight, and so on. Should a person working within the institution act unjustly, their unjust action will be noticed by coworkers, supervisors, or those charged with oversight of the system, and the institution will promptly be returned to its just equilibrium.

CPD, as we saw in the last section, is not this way. Their systems for monitoring and correcting for injustice are so bad that the report states that reform is "not likely to be successful without a consent decree"—a "court-ordered, overarching plan for reform that is overseen by a federal judge"—"with independent monitoring" (16). Absent structural support, it is hard for any CPD officer to act justly.

Third, ideally-situated agents are in a better epistemic position to evaluate their current practices. I'll argue in Chapter 3, based on my above analysis of the general domination contract, that our society is opaque: living in it does not entail understanding how it works. Our social locations—the intersections of our different

social group memberships and their attendant relationships and responsibilities—influence what we experience, which influences our access to evidence and beliefs about knowledge practices. We all, therefore, have limited views of how society works. This isn't problematic if we're equally likely to fail to understand everyone, as would be the case in an ideal society. However, with the CPD there are particularly pernicious barriers to understanding the situation of black and Latino residents, as is shown in disparities in the use of force and crime rates in neighborhoods (15). Mechanisms such as stereotypes, the code of silence, and system justification bias lead CPD officers and supervisors to discount evidence that they are unjustly harming members of these traditionally subordinated groups, and more likely to act in ways that help members of traditionally dominant groups.

Fourth, ideally-situated agents face fewer structural impediments to pursuing corrective justice. In an ideal society, such as a Rawlsian well-ordered society, there is a normative consensus on justice: everyone accepts and knows that others accept the same principles of justice. Everyone shares an understanding of what justice is, and "the public conception of justice provides a mutually recognized point of view from which citizens can adjudicate their claims of political right on their political institutions or against one another" (Rawls 9). The only persisting disagreements in an ideal society are over the effectiveness of means and tradeoffs of shared values. Claims about these subjects can be clearly articulated to other members of society using shared concepts, understandings, and values. Should something unjust somehow occur, it will be understood by every member of society to be unjust, and the amelioration of that

injustice can be discussed against a background of a commitment to cooperation and shared values.

In our nonideal society, not only is there no agreement on what constitutes justice—such that there is no common means of assessing claims of injustice—there are mechanisms that *actively obfuscate many systematic injustices*, and there are also blatantly unjust mechanisms which encourage injustice. We can divide these structural barriers into two categories: epistemic and practical. First, CPD officers face epistemic barriers to seeing their actions as unjust, three of which I'll explain in §*5.2.2*. Second, those CPD officers and members of the public who do identify the injustice are in a poor position to do anything about it, because ameliorating the injustices of the CPD will require a cultural change that no one alone is capable of achieving (137).

Fifth, ideally-situated agents are in a better position to set and pursue corrective justice goals. They aren't knowingly or unknowingly biased, they work within effective institutions, they share a theory of justice that gives them terms with which to make claims on other people, and their work is checked and supported by other just institutions. So once they identify an injustice, they are in a good position to determine its relative badness, give its amelioration high priority, and work with other similarly well-situated agents to go about correcting.

CPD officers, on the other hand, were, and continue to be, socialized into different biases, of which they are unlikely to be aware—especially if those biases are against members of subordinated groups (which they're likely to be). They also lack a common set of values with which to make claims on other police officers and members

of the community. They are ineffectively supervised and monitored within CPD, and find themselves situated in a conglomerate of other unjust, criminal justice institutions, situated within a society that has many other unjust institutions, such that injustice is the *norm*, and not the exception. They are not ever in a position of needing to correct for just *one* injustice — they find themselves in a position where there are many unjust practices, no agreement on the relative badness of these injustices, there are any number of different ways to set priorities, and there are major obstacles in the way of pursuing corrective justice goals.

Setting and pursuing corrective justice goals is almost *incomparably* easy for ideally-situated agents versus nonideal agents. In the ideal case, injustice is easy to detect, report, and ameliorate because it is abnormal, universally condemned, and separate from the normal functioning of institutions. CPD officers, on the other hand, have access to none of these benefits.

2.4.2 The Importance of Discretion in Nonideal Cases: Beyond the Basic Structure
Given the vast differences between the situations of ideally- and non-ideally situated agents, we should expect some normative differences as well. The biggest such difference is that nonideal theory must go beyond the basic structure, and focus on more than just the major social institutions. Minor social institutions are capable of great, normatively significant harm, and meaningful change of the domination contract will require the buy-in of differently situated actors.

We can see this in the above arguments. Because the actions of people working within unjust institutions aren't effectively monitored, and because those institutions are unjust, people working within them are capable of great, unchecked injustice. And because these unjust practices are entrenched and widespread, the mechanisms which sustain them are likely to adapt and change in ways that will compromise our attempts at amelioration. Without the people who sustain these institutions buying-in to reform efforts, they are unlikely to succeed. Successful change will require people on the ground assessing, monitoring, and course correcting.

Corrective justice principles, then, cannot be effectively aimed at the basic structure alone. They must be aimed at *all* of the social constraints which pull action in an unjust system towards injustice, even those which constrain people in minor ways. If they are not, even the best-intended attempts at reform may be coopted in a way that strengthens the entrenched social stratification.

In this chapter, I have put forth and defended two domination contracts. The *general* domination contract was a model of how social stratification works through systematically unequal social constraints, imposed on people who fall into socially significant categories. The *specific* domination contract was a model of how the injustice of the CPD is caused by and causes social stratification. I then extended my analysis of these contracts by arguing that they jointly imply that nonideal agents are situated differently than ideal agents, in ways that our theories need to capture.

In the next chapter, I will use the analysis of the general domination contract to undergird my analysis of the circumstances under which cooperation takes place. I will then use these contracts and the subsequent analysis in Chapters 4-6 where I put forward my arguments for my corrective principle and the desiderata for its application.

CHAPTER 3

The Cooperative Position

I.   Introduction

One of the major obstacles to corrective justice is a lack of a normative consensus on

what needs to be corrected for and what tradeoffs are normatively acceptable when we

go about correcting. There exist persistent disagreements about what we owe to

different members of society and how we ought to redistribute illicit gains or

compensate victims of injustice. The first tier of my social contract, the *cooperative*

position, is an attempt to overcome these obstacles. The idea is that inherent in the ideal

of a fair system of social cooperation are ideals that govern whether cooperation is

going better or worse, and we can use these ideals to diagnose and talk about the

injustice we confront as members of a cooperative arrangement.

In this chapter, I put forth an argument for cooperative ideals and argue that

they can function as a minimal theory of justice in the second tier of my social contract.

I'll argue that the parties would affirm four ideals:

1. **Proficient Rationality**—the ability to set, revise, and pursue their conceptions

   of the good, given the opportunities available in the social system.

2. **Democratic equality**—equal consideration in the system of governance and an equal say in decision making, such that each person and their concerns count the same.

3. **Social Understanding**—the ability to overcome epistemic limitations based on social location, such that, in principle, each participant can come to know what it would be like in each social location.

4. **Dignity**—affirmation that each person counts and protection against degraded status, such that the rules which social govern cooperation are justifiable to each participant.

My argument is that modern social cooperation takes place within a context governed by rules and norms that subject differently-situated actors to different social constraints which they *do not* and *cannot* fully understand. Consideration of these circumstances leads to an ideal of social cooperation which emphasizes the importance of publicly recognized rules and procedures, fair terms of cooperation that embody reciprocity, and the idea of cooperators advancing their rational advantage. This ideal informs the setup of the cooperative position in which the parties deliberate about ideals to govern social cooperation, using their interests as cooperators which they derive from the circumstances of cooperation.

To make this argument, in Section II I'll argue that normative standards play an important role in corrective justice because they determine what needs to be corrected for and they are vital to sustaining the collective action necessary for successful correction. I'll do this by first arguing for the *circumstances of cooperation* — the ten

features that all cooperative schemes in modern liberal democracies have. These are based on Rawls's *circumstances of justice* with one modification: what he calls the "burdens of judgment," I'm splitting into five further categories which capture the social complexity and opacity of modern liberal democracies, as well as the epistemic obstacles that come with them. I'll argue that the persistent disagreement that plagues unjust societies makes *ideals* the best kind of normative standard for corrective justice because they leave room for persistent disagreement but allow members of that society to productively debate within the context of common values. These ideals alone, however, will not be able to do all the work we need a theory of corrective justice to do, so we will have to divide our theory of corrective justice into two tiers.

In Section III, I'll explain and argue for the setup of the cooperative position. I'll first explain the ideal of cooperation and how it relates to the circumstances of cooperation. Then I'll argue that the parties ought to be symmetrically situated as free, equal, reasonable, and rational, and that the only information they need access to about their society is that it is in the circumstances of cooperation. The question faced by the parties in the cooperative position is,

What ideals should govern social cooperation?

Put another way, social cooperation can go better or worse. What ideals, if followed, would make social cooperation better? What ideals could be justified to each social cooperator?

In Section IV, I argue that the parties in the cooperative position would affirm the four ideals listed above: proficient rationality, democratic equality in the senses of equal

treatment and equal consideration, social understanding, and dignity because of the

interests that all cooperators have in virtue of the circumstances of cooperation, as

people subject to constraints caused by features of social cooperation, such as its

inescapability and our limited social vantage points.

I'll also discuss the limits to my inquiry into the value of social cooperation to

corrective justice. A full defense of this view would rely on more empirical sources to

prove the truth of these cooperative circumstances and more normative analysis to

defend the precepts of social contract theory. What I aim to offer in this chapter is a

preliminary defense of this approach to corrective justice and the ideals this approach

affirms.

II.   Normative Standards, Agreement, and Corrective Justice

I argued in Chapter 1 that corrective justice presupposes that something has gone

wrong and needs to be corrected for. Carrying out corrective justice requires that

people with social power share that conviction and work together to correct for the

identified problem. Therefore, for my social contract to work for corrective justice, it

needs to have a normative standard by which injustice can be identified and which

people in the real world can agree with and rally around.

But, as I argued in the last chapter, corrective justice also presupposes a

domination contract which obfuscates its operation, such that there are additional

obstacles to people in society identifying injustice and working together to correct for it.

An effective account of corrective justice needs to take this into account as well, because

if it does not, the prescriptions of the account risk being self-defeating: if the way a prescription is articulated makes people unwilling to pursue corrective justice, then what is the point of articulating the prescription in that way? Part of the justification for doing corrective justice is the urgent, identified need to correct for injustice, and thus a theory of corrective justice needs to be sensitive to the stratified social relations in which it will be operationalized, and take into account the effects of those relations on social cognition.

Normative standards for corrective justice, then, need to perform three functions. They need to (1) help us identify injustice, (2) help us characterize its relative badness, and (3) do so in a way where there is potential for agreement. A further question therefore arises as to what kind of agreement we ought to aspire to. Do we, like Rawls, want an overlapping-consensus? If so, how specific do we want the normative standards or principles agreed upon to be? If not, what is the best we can do?

In this section, I'll argue that a two-tiered social contract is the best answer to these questions and the problem of corrective justice. We need an overlapping consensus on our normative standards, but that overlapping consensus will be most valuable if it is made over *ideals* and not *principles* because ideals leave more room for helpful contestation. I'll argue, first, that the best way to get such an agreement is to leave out as much information as possible, and generate ideals from the inescapable features of social cooperation. I'll articulate ten such features, which are inspired by Rawls's *circumstances of justice*, but split his *burdens of judgment* into five different circumstances which are of normative import: *social complexity, asymmetrical effects of*

cooperation, social opacity, epistemic limits on the basis of social location, and *ingrained*

cognitive biases against members of subordinated groups.

Then I'll argue that ideals are the right approach because they are better suited to

the persistent disagreement we should expect in unjust societies than principles are.

They speak to people as they are, and enable them to articulate better ways for them

and their societies to be. While such a thick veil of ignorance will be helpful to

generating the agreement we need on a normative standard, it will be unhelpful in

attempting to correct for real injustice, so I'll argue briefly, at the end of this section, that

an additional tier will be needed to generate the kind of principles of corrective justice

that we need.

3.2.1 The Circumstances of Cooperation

For the parties in our initial situation to deliberate, they have to have some empirical

understanding of how society works, so that they have some way to determine whether

their deliberation is successful (see discussion in Chapter 1). I will argue here that the

parties need access to what I'm calling the *circumstances of cooperation*—the social

conditions under which cooperation in modern democracies takes place. These are

based on Rawls's six *circumstances of justice*. I will argue in the next section that this is

all that the parties in this tier need access to.

I take these facts to be mostly uncontroversial among social scientists such that

almost all social scientists would endorse the ten facts below. They are general

assumptions that function as the background for the arguments that I made about the

general domination contract in Chapter 2: if society does not have these features, then it is unlikely to also have a domination contract, because stratification is unlikely to arise and even less likely to persist.

I also believe that almost all reasonable lay people would come to accept these facts if given the opportunity to engage with the empirical basis for them, as I believe that these facts influence every member of our social arrangement's lived experience. Were social cooperation avoidable, social constraints easy to understand, and unavoidable disagreement lacking, living with other people would be *easier*, and we would notice. These facts do a lot of work for my argument, so if I am mistaken about these facts, that would be damaging for my account. Unfortunately, I do not have the space to fully argue for them. I will rather elucidate Rawls's arguments, and then use contemporary analysis to break his sixth circumstance into five further circumstances.

The first two circumstances that I'm importing from Rawls[11] follow, and characterize common sense features of social cooperation in our world: *(i)* The fact of moderate scarcity such that social cooperation is necessary for people to live well (84, 197). It just isn't the case that people can live like Robinson Crusoe—even if you want to be self-sustaining, you at least need others to cooperate by staying off your land. *(ii)* "The fact of there being numerous possibilities of gains from well-organized social cooperation, provided it can be established on fair terms" (197). I take this to include the fact that cooperative economic and social activity is generally a non-zero-sum game;

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[11] Rawls's list is on page 197 of <u>Justice as Fairness: A Restatement</u>. I've renumbered it.

cooperation, when done right, can be a rising tide that lifts all boats, though some boats are generally lifted quicker than others.

These facts are important to my project. They jointly imply that cooperation is *unavoidable* and *inescapable*. Because of moderate scarcity, we are in regular competition for resources. Further, given the interests that humans seem to have, they need the regular help of others to successfully pursue their interests. This undermines parties' credible threats to exit cooperative schemes. That is, because we cannot help but cooperate, one person alone cannot use their withdrawal from cooperative schemes when bargaining to improve their bargaining position. Only groups of actors working together have such a credible threat.

The next three circumstances characterize the persistent disagreement that we will have to contend with in any modern democracy: *(iii) The fact of reasonable pluralism*—the fact that reasonable people disagree about what the good life consists in—what Rawls calls people's *conceptions of the good* or *comprehensive doctrines*. As Rawls explains, "Under the political and social conditions secured by the basic rights and liberties of free institutions, a diversity of conflicting and irreconcilable yet reasonable comprehensive doctrines will come about and persist, should it not already exist" (34). *(iv)* The fact that reasonable pluralism is *permanent*, meaning, among other things, that "an enduring and secure democratic regime, one not divided by bitter doctrinal disputes and hostile social classes, must be willingly and freely supported by at least a substantial majority of its politically active citizens" (34). This is related to *(v)*, what

Rawls calls *the fact of oppression*—that massive amounts of continuing oppression would be required to gain consensus on a single comprehensive doctrine (32-34, 84).

The argument for these three facts is partly historical: various societies have tried to snuff out dissent, but none have ever been successful for very long. But Rawls also makes an empirical argument for them, based on his sixth circumstance of justice: *the fact of the burdens of judgment* (197)—the fact that there are many "sources of reasonable disagreement" due to the "many obstacles to the correct (and conscientious) exercise of our powers of reason and judgment in the ordinary course of political life" (35). Rawls lists five such obstacles involving the complexity and indeterminacy of evidence and values, which makes them hard to evaluate and weigh, as well as the role experience can play in how we do that. His argument for the three above circumstances of justice, then, is that there are practical and epistemic barriers in society to agreement, which are unavoidable.

I'll split this fact into five different facts, because the implications of these burdens of judgment fall into two helpful subcategories—material and cognitive—and characterize important facts about complex cooperative schemes in which people like us cooperate. First, we can capture the *material* sources of these burdens as the following three circumstances: *(vi) the fact of social complexity*—social interactions are complex and have ramifications beyond the interests of those directly involved in the interaction. As such, it is unlikely that any one actor would be in a position to understand the social arrangement itself or the effects of any instance of social cooperation: to do so, that person would have to assimilate a large amount of information.

The fact of social complexity has the further consequence of *(vii) the fact of asymmetrical effects of cooperation*. Elizabeth Anderson explains this fact when she says that social cooperation has "asymmetrically distributed effects on individuals according to their geographic location, social class, occupation, education, gender, age, race, and so forth" (The Epistemology of Democracy 11). The idea is that social cooperation doesn't affect all people the same way because our cooperative systems are complex, such that social factors impact how differently-situated people are affected by cooperative acts and institutions. Recall the terminology of *social constraints* discussed in the last chapter—the preferences, considered choices, common beliefs, strategies, expected payoffs and so on that factor into an agent's deliberation either directly or as background conditions (Cudd 41).   The benefits and burdens of social cooperation will be distributed asymmetrically according to the different social constraints people are subject to. These social constraints make patterns of distribution possible, giving some social positions in the cooperative scheme preferential access to material, symbolic, emotional, and epistemic resources.

This circumstance captures the fact that modern cooperation takes place against an iterative background, whereby past cooperation affects future cooperation by establishing norms and expectations. Social cooperation does not take place in a vacuum: it takes place within an arrangement laden with social constraints which impact present and future cooperative acts asymmetrically.

These two facts jointly imply *(viii) the fact of social opacity*—our social world is not luminous to us; we face barriers which make understanding the entirety of our social

arrangement, and its effects on every social location, a practical impossibility. The complexity of background social constraints makes it impossible for any one actor to come to understand all of its features which are relevant to the participants in the cooperative arrangement. This doesn't mean that we cannot come to understand most of it, and its most important parts. Rather, I'm arguing that just as we can never understand every feature of our own minds (see Williamson 2000 for an argument to this effect), we can never understand every feature of our society (see Antony 1993 for a version of this argument).

Second, we can split the cognitive burdens of judgment into two further categories: *(ix) the fact of epistemic limits on the basis of social location*—people in a society have different epistemic access to their system of cooperation, and less access to the way that the system affects members of other social groups than to how it affects them and their groups. I've already argued that in any complex cooperative system, each person will only have a partial view of the patterns of benefits and burdens and the concerns of other cooperators. A person's *social location* is a function of her *ascribed social identities*—what social groups (race, gender, ethnicity, and so on) others take her to be a member of—and her *social roles and relationships*, such as her occupation, political affiliation, and institutionally supported ties to others (parent, coworker, student, and so on). Our social roles are often tied to our voluntary and non-voluntary group memberships, and these roles give us different powers, duties, goals, expectations, and interests and are subject to different norms about how we ought to conduct ourselves (Anderson, Feminist Epistemology and Philosophy of Science).

The argument made by social epistemologists is that our social locations come with different social constraints, and some of these constraints are epistemic. What social location one is in affects one's access to information, the terms in which one represents knowledge, attitudes one has towards beliefs, beliefs about standards of justification, what is taken to be significant, and the authority one takes one's own and others' claims to have. Therefore, one's social location affects what and how one knows (Ibid).

For example, in a society where there were only two social groups—greens and blues—and where group membership impacted social roles and relationships, we should expect that greens would face stronger social constraints to coming to know about blues' social situations than they would to knowing about greens' situations. We should expect that greens would have more access to evidence about greens' lives, share terms with which their experience as greens is represented, share certainty or doubt about common beliefs, and have similar standards of justification and for who counts as an authority. This isn't to say that greens couldn't come to know about blues' lives, but rather to say that coming to know about blues' lives would be harder than coming to know about greens' lives, because greens have less access to knowledge about groups of which they are not a member.

The more complex the social system—the more social locations there are—the less possible it is for one person within this system to understand the patterns of the distribution of benefits and burdens and the concerns. Modern democratic societies have a proliferation of social locations, and this severely limits what one actor can know

about the system of cooperation and each of the cooperators. That's why I call this circumstance of cooperation the fact of epistemic *limits* based on social location: our social locations in modern democracies will limit how and what we come to know.

Note that this would be true even in a society that realized Rawls's two principles of justice. So long as the above material facts inhere—so long as society is complex enough to be opaque and the effects of social cooperation are influenced by social constraints based on group membership—cooperators will face epistemic and practical barriers to coming to understand the situations of other cooperators who occupy different social locations.

I consider the fact of epistemic limits and the three material facts to be friendly extensions of Rawls's project. All three elucidate aspects of the burdens of judgment that he expresses—ways in which the complexity of our social world and lived experience impact our epistemic practices. The last circumstance of cooperation, however, is a greater stretch from Rawls's concept of the burdens of judgment, though it also straightforwardly comes out of these burdens. This departure is necessary because our project of corrective justice is different than Rawls's project of ideal justice. In a Rawlsian well-ordered society, there would not be the entrenched social stratification to which corrective justice attends (Rawls 65-66). As such, how stratification works is irrelevant to his project, and he leaves it out of the circumstances of justice.

This second cognitive burden of judgment is *(x) the fact of ingrained cognitive biases against members of subordinated groups.* This fact summarizes the main insight of the

general domination contract: once social stratification exists—and such stratification has existed, in some form, in every society we know about (Massey 2-5)—social mechanisms work to obscure its operation, placing more social constraints on understanding the situation of members of subordinated groups. These mechanisms create and reinforce motivated cognitive biases that rationalize the social order, thereby hiding the suffering of those at the bottom of the stratification.

This insight is something that Rawls's project does not capture because he is aiming at principles of justice that would apply to a society where the basic structure realizes the principles of justice which would prohibit stratification. He says, "we view democratic citizens not only as free and equal but as reasonable and rational, all having an equal share in the corporate political power of society, and *all equally subject to the burdens of judgment*" (191, my emphasis). We, however, are designing an initial situation to deal with the question of corrective justice, for a society where political power is not equal and the burdens of judgment affect people differently on the basis of their social locations. Parties concerned with cooperation under these circumstances ought to be concerned about how systems of social stratification can impact their cooperative activities, because even if they are somehow lucky enough to be in a cooperative scheme where there is currently no stratification, there is no guarantee that the equality will last. If the social-scientific community is right that we have cognitive mechanisms that orient us towards stratification, then the parties should be concerned that their cooperative scheme could devolve into a stratified scheme, and take measures to protect against that and its attendant disadvantages. In other words, *domination*

contracts happen. This fact is relevant to modern cooperation, and is something that our normative theory ought to be attendant to.

I've argued that these ten facts characterize cooperation in the circumstances in which modern liberal democracies find themselves. For our principles of corrective justice to apply to people like us, they need to attend to these ten empirical facts—they need to encourage us to benefit from the potential gains of cooperation in a way that's sensitive to our entrenched differences, complicated and difficult to understand social arrangements, and the practical and epistemic effects of different social locations confronting different social constraints. Our account of corrective justice, therefore, ought to take the significance of these circumstances into account.

3.2.2 Persistent Disagreement & the Advantages of Ideals over Principles

I'll argue here that, given the circumstances of cooperation discussed above, we should expect a society in need of corrective justice to have pervasive disagreement. Then I'll argue that ideals are more helpful than principles when there is disagreement, so that if we want helpful principles of corrective justice, we ought to affirm ideals as normative standards.

My argument is that whether there is a domination contract in society or not, the asymmetric effects of social cooperation mean that people will face different social constraints in cooperating, and the epistemic limits on the basis of social location mean that people will face different social constraints to understanding how their society functions. When there is a domination contract, these constraints will grow in strength,

making it more difficult materially for the subordinated and more difficult cognitively for all people to understand the situation of the subordinated. Either way, therefore, the social terrain is rife for disagreement because people have different interests and different epistemic access to their own and others' interests and situations—though it will be rifer in the case of a domination contract.

For our moral standards to be useful for people like us, they need to take into account the diversity of social locations and their attendant social constraints on how we understand our society and its problems. Ideals do this by giving people room to contest their meaning, application, and significance while also affirming agreement on the terms of the debate. Because they are disputable and flexible, ideals are more apt than principles for use by cooperators who find themselves in complex social situations. They are therefore more likely to be affirmed by people who have different comprehensive doctrines and who occupy different social positions, than are principles which are more fixed.

The advantages of ideals come in two places: in their ability to apply to people as they are, and in their ability to give guidance on how people ought to be. Regarding their ability to apply to nonideally-situated people, Joseph H. Carens argues that as people interested in the enterprise of corrective justice, we have an interest in paying attention to the factors that will make our prescriptions effective (160). It matters, therefore, what is psychologically, sociologically, and epistemically possible. We do not want our prescriptions to be overly demanding on those they govern, to introduce interests which are far from the interests which people take themselves to have, or

which ignore the widespread knowledge and knowledge practices which have resulted from our particular social and historical context (160-63).

As people situated in an unjust society, we could easily be overloaded with the demands of facing up to the ramifications of all of this injustice, could easily be asked to care about things we take to be irrelevant to our current situations, and could think about the world in ways that will make these prescriptions seem alien. If we want our prescriptions to be used by people like us, we need them to speak to the circumstances we confront—we need for people to be able to understand what the prescriptions ask of them, and to be motivated to act on these prescriptions.

One such important circumstance, I have argued, is persistent and deep disagreement which will make an overlapping consensus on principles and their application very difficult. In a society where such disagreement exists, it is important for a theory of corrective justice to capture the significance of this disagreement, and allow for its productive expression. Anderson characterizes three levels at which disagreement is not only inevitable, but can also be productive. My argument is that ideals better facilitate productive disagreement at each of these levels, and therefore will appeal to people as they are and enable them to make claims about how we ought to correct for injustice that will get the required uptake we need for successful correction.

First, prior to when a decision is made, disagreement can draw "decision makers' attention to asymmetrically distributed information and diverse problem-solving strategies that may be relevant to the solution of public problems" (The Epistemology of Democracy 15-16). Because of the asymmetric effects of cooperation and the epistemic

limits on the basis of social location, occupants of different social positons will have different access to information relevant to how we ought to characterize and correct for our problems. People need to be able to express dissent about prevailing understandings, in order for all of this information to be available to decision makers.

Second, when the decision is made, if parties are pressured to achieve a consensus, this "often leads to undue pressure on and even coercion of dissenting minorities" (16). People who are engaged in cooperative endeavors are constrained by social norms and expectations to get along, which can have a chilling effect on the expression of minorities who don't want to hold up making an agreement. Third, having achieved consensus sends the message that everyone has agreed such that, afterward, everyone is "expected to hold their peace once a decision is made, on the pretense that all their reservations were met" (16). Aiming at consensus, then, gives what has been agreed upon an air of finality and unassailability which will be unhelpful if, as we should expect, not everyone actually agreed in the first place, but also if the agreement was suboptimal and should be revised.

The overlapping consensuses pursued by Rawls and Mills risk chilling discussion at each stage of decision-making because they take normative matters to be settled in ways that unhelpfully simplify our normative and empirical concerns. In Rawls's case, the two principles of justice *are* the normative standard, and they prescribe correcting for violations of the two principles according to whatever conversion scheme we add (see my discussion in §*1.2.2* for why such a scheme is necessary). There isn't room to ask whether something is *really so bad* or whether things

outside the principles' purview are wrong. People's actual concerns, therefore, might be left off the table, as would means for addressing these concerns.

Further, there isn't actually an overlapping consensus on Rawls's principles. Despite having been in circulation since 1971 when A Theory of Justice was published, they do not have widespread popular or academic support. Since Rawlsians will have to debate questions of corrective justice with people who hold other philosophical doctrines, being able to make claims on these people without all of the Rawlsian machinery will be helpful. If they insist that people acknowledge the persuasiveness of the two principles before discussion starts, we should expect any agreement to be fleeting and shallow. And should people who agree to take the vantage point of the principles for the sake of argument, decide that the principles get things wrong, they need to feel comfortable articulating this. I'm not arguing here that Rawlsians, in affirming the two principles, are required to affirm them *as helpful to corrective justice* because that is incorrect. I'm rather arguing that this represents another place where a conversion schema is necessary for end-state principles. How are we to apply principles which aim at universal affirmation to a society where they are not universally affirmed?

In Mills's case, we are to aim at eliminating racial differentials using a standard derivative of formal equality of opportunity (see §*1.3.3*). We are to take as fixed that formal equality of opportunity condemns holdings which result from processes which have their origin in racist law or custom. This is unhelpful for framing disagreement because it papers over two important sources of disagreement. On the one hand, there

is a lot of disagreement in society about *what* disparities derive from formal racist laws or customs, so affirming this normative consensus papers over important disagreements and could chill discussion of the mechanisms of social stratification. We could all agree that formalized racism is wrong but disagree about what constitutes formalized racism.[12]

On the other hand, some people hold other moral beliefs—such as beliefs about the significance of property rights and the dangers of bureaucracy—which could outweigh corrective justice considerations, such that pretending there is a consensus papers over disagreements about important moral matters. Agreeing that elimination of racist disparities would be a *good* thing is not the same as agreeing that it is *the all-things-considered best* thing to do. In our world where there is pervasive comprehensive disagreement, normative standards that encourage us to frame this disagreement in productive ways can capture this nuance and enable us to communicate our beliefs about corrective justice to one another.

If we want to get all of the morally-relevant details on the table, we need means by which parties can articulate disagreement on normative and empirical matters. Ideals do this, because though they take their *value* as fixed, they make no claims about their *relative value*. A libertarian who recognizes her holdings to be the result of racist policies can therefore frame her concerns: using the ideals I advocate in §*3.4.2*, she

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[12] Inclusion of the domination contract is designed to fix this by modeling the mechanisms of racist stratification. However, the domination contract itself can only be helpful in such debates to the degree to which it persuasively characterizes social phenomena. My use of ideals brings the contestation that needs to take place in corrective justice to the forefront, encouraging us to be explicit about how we are modeling our social problems and why they're problems. I see this as an advantage for corrective justice.

might argue that while the racist policies were wrong for undermining each of the ideals, and her holdings perpetuate those wrongs, the costs of correction to her democratic equality are too high for society to pay.

They also encourage the parties to bring the connections between empirical and normative concerns into focus. When contesting the priority or application of ideals to a particular injustice, the parties will need to articulate what empirical considerations are at issue. This will, of course, also happen in discussions of corrective justice which involve principles, but I believe that the contestability and flexibility of ideals will encourage the kinds of experimental and open discourse about factual matters that we will need to come up with creative solutions to deeply entrenched social problems.

In other words, agreement on the condemnation of racism alone doesn't get us very far. If we want to answer the questions of corrective justice, we need to condemn it in a way that makes us capable of successfully sharing our concerns with others. In taking normative matters to be settled subjects of consensus, principles fail to give the people who seek to apply them the tools that they need to communicate how they should be applied. The ability of ideals to model people's different normative concerns and express them in empirical contexts makes them better suited to the task of corrective justice.

3.2.3 The Need for a Second Tier

I've argued that the parties ought to aim at ideals which will apply in the circumstances of cooperation. Here I'll argue that the parties ought to do so at a level of abstraction

which excludes the domination contract. The reason for this is that there exist pervasive disagreements about how forces of stratification work, but less disagreement on when cooperative schemes in general go better or worse.

The task of corrective justice is so vast and important, and correction will be so difficult, that we want as big of an overlapping consensus as possible. We therefore want to avoid as much controversy as possible in the normative standards we employ. Though my circumstances of cooperation rely on some factual claims about the world, they rely on far fewer such claims than do my domination contracts. They therefore provide people with fewer reasons to get out of the corrective justice boat.

My argument justifying the first tier takes the form of my explication of it. If we can generate cooperative ideals solely based on the ten circumstances of cooperation, then even if we face persistent disagreement about how to characterize the domination contracts and what to do about them, we will at least be able to make claims on one another using shared values which communicate concern for our fellow cooperators. I now move to that project.

III.   **The Setup of the Cooperative Position as Embodying the Ideal of Social Cooperation**

As I argued in Chapter 1, social contract theory has at its core the idea that there is something normatively significant about social cooperation. In this section, I'll first take Rawls's articulation of the ideal of social cooperation—which embodies publicly recognized rules and procedures, fair terms that embody reciprocity, and the idea of

each person working to advance their rational advantage—and then use it to justify my setup of the cooperative position, including a thick veil of ignorance that keeps out everything but the fact that society is in the circumstances of cooperation. Last, I'll import my arguments from the previous section about the value of ideals, and argue that the parties ought to search for cooperative ideals and not a more substantial theory of justice.

3.3.1 The Ideal of Social Cooperation as an Organizing Conception
Rawls explains what I'm calling the *ideal of social cooperation* as involving three features: (a) organizing norms, based on (b) fair and reasonable terms, which allow (c) each participant to pursue their rational advantage (6, see §*1.3.4* for the full account). This ideal comes directly from the ten circumstances of cooperation, and has a lot of potential normative power which we can capture in the cooperative position.

The ten facts related above require us to model society as a complex set of social constraints faced by members of different social groups. These social constraints come from the norms and rules that are consistently followed by members of society, so this feature of cooperation—that it takes place within a social arrangement governed by norms and rules that people follow—is important to understanding the cooperation that takes place in modern societies.

Further, that cooperation can go better or worse, based on how publicly available the norms which govern it are. Take for example greeting customs that function as a precursor to cooperative engagement. Having shared norms for how to greet people is

important because for social cooperation to take place, the parties to it need to acknowledge one another and determine that they are engaged in social cooperation. In France, it is customary to greet someone with kisses on their cheeks, but the number of kisses isn't standardized and runs from one to five based, generally, on geographic region (see Rankin for a map of regions). The lack of standardization can create cooperative problems such as anti-social feelings like awkwardness, misunderstandings about expression of social distance, and judgments that someone purposefully violated cooperative norms. It can also make people less willing to engage in cooperation because they fear these possible negative consequences of getting the greeting wrong.

The second two features come from the fact that rules and norms place social constraints on people, and can be to cooperators' advantage and disadvantage. We justify those rules and norms in reference to the first two circumstances of cooperation. Given persistent moderate scarcity, we need cooperation to advance our interests, whatever they are. And having these rules and norms increases the gains from cooperation. This is why participating in an iterative cooperative scheme like society is to everyone's advantage.

But given the way that social constraints operate on our material situations and cognition, these rules and norms can work in ways that harm us, undermining our rational advantage. The social constraints which derive from burdens of judgment tell us that cooperative schemes can, with certain sets of rules and norms, subject cooperators in some social locations to severe social constraints that render them unable to pursue their conception of the good, and, even worse, unable to understand the ways

in which these social constraints harm them. Cooperators, then, can have their rational

advantage protected in a better or worse way by the rules and procedures, and these

rules and procedures can exhibit reciprocity and mutuality in better and worse ways.

In explaining why Rawls's ideal of cooperation is attractive—why our system of

cooperation ought to live up to this ideal—it is hard to escape the voluntarist language

of classical liberalism. It is easy to argue that since people *choose* to engage in

cooperation, the rules of cooperation ought to be to everyone's advantage and embody

reciprocity if we want everyone to continue to make this choice. But, as Mills and

others have argued, there is a real danger to this way of characterizing social

arrangements because it makes them seem more purposeful and voluntary than they

actually are. The burdens of judgment, and the domination contracts set out in the last

chapter, show how all social action is undertaken against a background of social

constraints that influence and impede people's ability to do what an ideally-situated

agent would choose to do.

So, rather than use voluntarist language, I will say this: cooperation is a social

process that relies on background norms and rules. That process can go better or worse

for the people in it along the three above dimensions. Everyone affected by that process

has an interest in it going better, not only because of the one-off gains they stand to

make by participating in cooperation, but also because of the benefits of stable

cooperative institutions over time (c.f. Rawls §55 for an argument on the importance of

stability) to advancing their interests. Therefore, a cooperative arrangement ought to

embody the cooperative ideal. Therefore, in setting up an initial situation which will

produce normative standards which govern social cooperation, we ought to think about the ideal of social cooperation.

3.3.2 The Setup of the Cooperative Position

The ideal of social cooperation gives us guidance on how to set up an initial situation from which we can derive ideals which govern social cooperation. Like the parties in Rawls's *original position* (see discussion in Chapter 1), the parties in my *cooperative position* are free, equal, reasonable, and rational. We represent this by ensuring that the parties are situated symmetrically such that no one has any bargaining advantages through a *veil of ignorance* that keeps out information irrelevant to the task at hand.

As for that task, I argued in *§3.2.2* that because they are contestable and flexible, ideals are better normative standards for corrective justice than are principles. Thus, the question posed to the parties in the corrective position is,

What ideals should govern social cooperation?

Social cooperation takes place in the context of norms and rules. How can these norms and rules go better for participants in a cooperative arrangement, and how can we prevent them from making things go worse?

For this task, the parties only need access to the ten circumstances of cooperation, which, I argued, straightforwardly generate the ideal of social cooperation. These circumstances provide the parties with an abstract model of how society functions which will allow them to represent ways in which the system of cooperation can go better and worse for people.

My argument for this claim comes in the rest of this dissertation. If I can derive cooperative ideals from the rather uncontroversial circumstances of cooperation—the task of Section IV of this chapter—then the circumstances of cooperation have enough empirical content to get my project off the ground. If these ideals can help us identify injustice, pursue corrective measures, and understand the obstacles to those measures' success—the task of Chapters 5 and 6—then this means they can accomplish the three functions we require of normative standards in an account of corrective justice discussed in Section II of this chapter: identifying injustice in a way that can get the right kind of agreement.

IV.   The Cooperative Ideals

In this section, I'll put forth and argue for the four cooperative ideals that will function as a theory of justice in the next tier of my social contract. My argument proceeds in two stages. First, using the ideal of social cooperation and the circumstances of cooperation, I'll argue that though the parties do not have access to their particular or general interests as people or human beings, they do have access to their interests in overcoming the barriers to advancing their other interests, whatever they are. These barriers are cooperation's unavoidability, reasonable pluralism, social complexity and opacity, limited social vantage points, and burdensome social constraints to understanding the circumstances of the disadvantaged.

Then, I'll argue for my four cooperative ideals as advancing the parties' interests in overcoming these barriers. I'll argue that four cooperative ideals will be especially helpful in overcoming these barriers—proficient rationality, democratic equality, social understanding, and dignity. A complete defense of these ideals would require proving their superiority to other candidate ideals. This is a project that I hope to take up in the future.

3.4.1 The Interests of People Engaged in Social Cooperation

The parties in the cooperative position are interested in using social cooperation to advance their interests, whatever they are. Unlike Rawls's parties, they don't have access to general theories of social science from which they can discern the primary goods they would need to advance their interests, whatever their conception of the good. They only have access to the circumstances of cooperation discussed above—the social conditions under which cooperation in modern democracies takes place.

From these circumstances, the parties can derive interests that members of a cooperative system will have, and use those interests to derive standards by which we can measure whether cooperation is going better or worse. Rawls frames his primary goods as positive interests: the basic liberties, income and wealth, and the social bases of self-respect are all things that people will need to strive to get more of, if they want to set, revise, and pursue their conception of the good. The parties in the cooperative position, due to their inferior social knowledge, are better served framing their interests

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in the negative: their interests, whatever they are, will be better advanced if they face

fewer practical and epistemic barriers to advancing them.

The barriers faced by people in cooperative situations are its unavoidability,

reasonable pluralism, social complexity and opacity, limited social vantage points, and

social constraints that make learning about subordinated social locations more difficult

than dominant social locations. I'll discuss each in turn.

Cooperation's *unavoidability and inescapability* are the result of the first two

circumstances of cooperation—that moderate scarcity makes cooperation necessary for

people to advance their interests. As a result, the parties will know that they won't

have a credible threat to exit the cooperative scheme,[13] decreasing their bargaining

power. It also means that people have no choice but to work together, such that the

rules which govern their system of cooperation are of great importance. The risks of

being marginalized by the rules are potentially grave, and since marginalized people

will not be able to opt out, the parties will consider the inescapability of the system to

function as a barrier to their interests. So whatever other interests they have, the parties

will have additional interests in ensuring that the position of the marginalized is not too

bad.

Entrenched reasonable pluralism means that the parties will know that they will

disagree with members of their cooperative scheme about factual and normative

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[13] Unlike Rawls, we need not limit our consideration to a closed system of cooperation to get this result. If I'm in a cooperative social arrangement and take myself to be able to exit and join another distinct arrangement, that just means I incorrectly identified the scope of my original cooperative arrangement. There are most likely additional obstacles to cooperating with people in what I took to be the second arrangement, but given that I *can* cooperate with them, we are in a cooperative arrangement together.

matters. People in the cooperative arrangement will have different understandings of social constraints faced by members of society and differences in evaluating the normative significance of those constraints. This comes from the third through fifth circumstances of cooperation, about ways in which a consensus on comprehensive doctrines would require oppression, and from the last five circumstances which function as burdens on judgment.

Entrenched reasonable pluralism functions as a barrier to the parties' interests because it means that not everyone will share an understanding of what interests people have and how important they are. Absent this agreement on a comprehensive doctrine and on empirical matters, the parties to social cooperation will be forced to contest what ought to guide the rules and norms of cooperation, what the effects are of current or possible standards, what means of enforcing and enacting these standards will be effective, whether standards are being followed, and so on.

It also means that there are multiple different ways to conceive of the good life, such that the parties will have an interest in setting and revising their conceptions of what interests they have and the relative importance of those interests, as they collect new information. There is, as of yet, no uncontroversial account of human interests. Reasonable pluralism, then, also functions as a barrier to the parties' interests in that it will require them to invest time and energy into *figuring out what their interests actually are* and how to advance them publically in society. Thus, the parties will have an interest in understanding and articulating their interests.

A third obstacle to the parties' interests is the *social complexity and opacity* discussed above in the sixth through eighth circumstances of cooperation. The parties will know that they will be unable to fully understand their social arrangement, such that they will be incapable of always acting in ways that further their interests, as they conceive of them. They will confront social constraints of which they are unaware or are mistaken, act in ways that subject themselves to unanticipated social constraints, and act in ways that subjects others to social constraints which they and others fail to fully comprehend and may not endorse.

This functions as a barrier to acting on their interests, and designing rules that advance them. It therefore gives the parties additional interests in becoming socially informed about the ways in which their actions affect themselves and others. This is especially the case in light of the fourth obstacle—their *limited social vantage point*. The parties' ability to collect evidence will be impacted by their social locations, as their evidence and epistemic attitudes will be influenced by their experience, which takes place against a set of background constraints shaped by their social group memberships. This functions as a barrier because the parties will not be able to take an all-things-considered approach to setting, revising, or pursuing their conceptions of their interests. They, on their own, will have at best a *partial* view of those interests. If the parties want to come to better understand their social positions, they are likely to need the benefit of others' social perspectives—people who can share their different partial views can help the parties correct for some of the deficiencies in their own partial

perspectives. This means that the parties will have an interest in social practices which encourage the sharing of such information.

The last barrier the parties would be concerned with, and one of the most serious ones, is the fact that there are *greater social constraints on understanding the social position of the subordinated.* These constraints derive from the last circumstance of cooperation, the ingrained cognitive biases against members of subordinated groups. The parties will know that the more stratified their cooperative arrangement is, the greater the obstacles will be towards understanding the social constraints confronted by the subordinated. As they know nothing about the degree of stratification in their cooperative scheme, nor the social constraints created by the stratification, the parties will have no basis to estimate the probability of ending up in a subordinated group.

They will know two things though. First, that if they end up in a subordinated social position, the lack of understanding of that position by them and others will create additional powerful social constraints which they will have an interest in dismantling or preventing. Second, if they end up in a different social position, their relative difficulty in understanding the position of the subordinated could still harm their interests, by causing them to have false beliefs and poor epistemic practices which undermine their attempts to advance those interests. The point is that given the other obstacles above, the parties will know that they will be forced to cooperate with members of subordinated groups and that they won't fully understand the consequences of their system of social cooperation. With this obstacle, we add in the wrinkle that they will face additional constraints to understanding the position of the

subordinated. The parties will have an interest in that information no matter where they end up in the scheme of cooperation, because the actions of the subordinated will impact them. They thereby have an interest in undermining the mechanisms that obscure the position of the subordinated from their view, no matter where they end up in the cooperative scheme, but especially if they end up being subordinated.

I've argued that the parties have interests in overcoming the barriers to pursuing their interests. This includes interests in improving the position of the subordinated members of society who have the least bargaining power, the resources and tools necessary to understand and publicly share their interests, information about their and others' social locations as well as social practices that encourage the sharing of that information, and undermining the mechanisms that obscure the position of subordinated.

3.4.2 The Argument for my Cooperative Ideals

Given the above interests, I will argue in this section that the parties would affirm the four cooperative ideals presented at the start of this chapter: proficient rationality, democratic equality in the senses of equal say and consideration, social understanding, and dignity. These ideals are the best way for the parties to advance their cooperative interests, whatever their other interests might be. They are therefore what the parties behind the veil of ignorance in the cooperative position — who are free, equal, rational, and reasonable — would agree to.

Recall that the parties are faced with the question, *What ideals should govern social cooperation?* The answer is that social cooperation should be governed by ideals that foster the interests of all participants in the system of cooperation. I'll discuss the argument for each ideal in turn.

1. **Proficient Rationality—the ability to set, revise, and pursue their conceptions of the good, given the opportunities available in the social system.**

I argued above that the parties would have an interest in being able to understand their own interests and articulate their interests to others. Proficient rationality is just that— it is the ability to determine what considerations are relevant to your situation, what the relative importance of those considerations is, and to revise these beliefs as you gather more information. I have added the qualifier "proficient" because the degree to which one needs these capacities will vary in the cooperative context. If, once the veil is lifted, I find myself in a society where there are only two possible occupations—hunter or gatherer—then I will not need many resources to figure out what I should do with my life. If, on the other hand, I find myself in a very complex system where I have many different life paths available to me, I will need more to be able to proficiently assess and choose what the best course for me is, and course correct should things work out poorly for me.

The parties have an additional set of grounds for affirming this ideal, though. It is also in their best interest for *other people* to be proficiently rational, given their partial access to society and their corresponding dependence on others' ability to share with

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them the information the parties will know they will need in order to better design the rules of their cooperative scheme. Since the social arrangement constrains everyone, and no one actor will have access to all the relevant ways in which people are constrained by it, the parties will have an interest in others being able to effectively share with them matters of empirical and normative relevance, and they will expect to get better information from cooperators who are proficiently rational.

2. **Democratic equality—equal consideration in the system of governance and an equal say in decision making, such that each person and their concerns count the same.**

The parties will recognize the importance of the rules and norms that govern their cooperative arrangement, and will want—on self-interested grounds—for their interests to be advanced as much as possible by that system. The system will better advance their interests if it takes their considerations as seriously as possible. The *greatest consideration* the parties can hope for, given the fact that they do not know their social position, is *equal consideration*, so they'll affirm this ideal in saying that cooperative schemes are better which treat the concerns of each cooperator equally.

In order to ensure that their considerations are given their proper weight, the parties will need to ensure that they have a say in the rules that govern social cooperation. Again, the *biggest say* they can reasonably and rationally expect is an *equal say* in forming and reforming rules. The parties will therefore affirm this ideal, which

says that cooperative schemes are better which give all people affected by them an equal say in creating the norms and rules which affect them.

Note also that this interest isn't limited to the formal rules of cooperation, and nor is the ideal. As my example of French greeting norms above shows, informal norms can have a major impact on how people are affected by a cooperative arrangement, subjecting people—for example, people who have major social anxiety—to burdensome social constraints. The parties will want all the social constraints they face—both formal and informal—to embody the ideal of equal consideration so that they will have the best shot at advancing their interests, whatever they might be.

Put another way, the parties have an interest in minimizing the distance between the social positions available in the cooperative arrangement, and the ideal of democratic equality is a way to do that. The parties have epistemic and practical interests against ending up at the bottom of a system of social stratification, and against others ending up there because systems of stratification obscure their operation, and prevent people from understanding the social constraints confronted by people in the social arrangement. Democratic equality is affirmed to discourage stratified gaps between social positions.

3. **Social Understanding—the ability to overcome epistemic limitations based on social location, such that, in principle, each participant can come to know what it would be like in each social location.**

This is one of the most important ideals that the parties will affirm because it advances so many of their interests. The parties' abilities to overcome the barriers to cooperation will be enhanced as their social understanding is enhanced, because it will allow them to better understand the social system in which they act. If they can understand the social constraints they and others face, they'll be better able to pursue their interests within these constraints, figure out what constraints are harming their interests, and provide others with reasons to help them change the social constraints in ways that are mutually beneficial. For this reason, they'll prefer cooperative schemes which enable their participants to model that arrangement well and communicate these models to differently-situated others.

The need to share models of social constraints requires more than the ability to form and analyze social models; it requires the right affective attitudes. This is captured by José Medina's conception of the *democratic sensibilities*, which "consist in cognitive-affective attitudes that facilitate and promote the capacity to relate, to listen, to feel concerned, and to care for the interests and aspirations of others" (Medina 9). The parties to the cooperative position will understand the role that others play in their pursuit of their interests, and will thus want others to be able to listen to, relate to, and empathize with their situations, and to care about their interests and conceptions of the good. These attitudes are important because they *encourage* understanding, not just enable it.

The parties will see that they will have the best chance at successfully setting, revising, and pursuing their conceptions of their interests if others are eager and able

assistants in this endeavor, motivated to felicitously give and receive social information. Further, for the reasons articulated above, they have an interest in understanding others' social situations, so that they can supplement their partial views of society and better model the social constraints they confront. This will also be enhanced if others are motivated sharers from whom they can effectively learn the information they need about background conditions, if they are to advance their interests.

4. **Dignity — affirmation that each person counts and protection against degraded status, such that the rules which social govern cooperation are justifiable to each participant.**

The term "dignity" has a long history, and comes with a lot of philosophical associations with which I'm not fully comfortable. But it also comes with a long history of affirming the worth of people, and having been used by members of subordinated groups to make claims on others, which is why I've chosen to use it. If it comes with bad connotations for you, please substitute a different term which better captures the explanation which follows.

This is arguably the most controversial ideal, and my argument for it relies on a conceptual claim that I am not yet in a position to fully argue for. The claim is that it is possible that the other ideals, including democratic equality, may be insufficient to guard against degraded social status — despite people's equal say and their concerns mattering equally, the social arrangement could be such that some people have

ineffective voices in decisions, or their concerns are given equal consideration, but consistently outweighed by others' interests.

Imagine that you're in the cooperative position, knowing that you represent someone who will take part in social cooperation under the ten circumstances of cooperation, trying to advance their cooperative and other interests. You have affirmed that cooperative schemes are better to the extent that they encourage their members to be proficiently rational and to cultivate dispositions that will help them understand one another. You've also affirmed that cooperative schemes are better to the extent that they give people an equal say and take their concerns to be equally important. You still ought to be concerned that, once the veil is lifted, your client will find her interests unprotected by the rules of social cooperation because she has been consistently outvoted in the processes that generate these rules. If she is in the minority, or if she finds herself at a unique intersection of social groups, her concerns might be effectively ignored by the social system—not because she couldn't formulate and pursue them, others couldn't understand them, they weren't given air time, or she was excluded from the decision-making process—but rather because others decided sacrificing here interests was worth the tradeoff for the way it advanced others' interests. Dignity is meant to protect against this possibility by affirming that those social arrangements are better which protect the interests of *each* cooperator.

Put another way, there are some mechanisms of social stratification which are unjust in themselves because of the ways in which they subordinate people, and the parties will want to protect themselves against being affected by such mechanisms.

This ideal is not, as it may seem, incompatible with consequentialist reasoning that would authorize outweighing the interests of a minority if the payoffs for the majority were great enough. Consequentialists argue in these cases that the social arrangement *is* justifiable to the person who loses out, because that social arrangement produces the best consequences, and that is what social arrangements ought to do.

Though my ideal of dignity is inspired by Kantianism and sounds Kantian, it is meant to embody the social contract ideal that social arrangements are better which are justifiable to each participant. This ideal represents one of those places where contestation and flexibility are important, because participants in the scheme of cooperation disagree about what is in fact justifiable to each member.

The cooperative position is meant to embody the ideal of social cooperation, and use that ideal and the minimum facts required to characterize social cooperation as we encounter it to generate normative standards in the form of ideals which govern when cooperative arrangements go better and worse and allow people in cooperative schemes who disagree to effectively communicate with one another. I've argued that the suitably-situated parties would affirm four ideals: proficient rationality, democratic equality, social understanding, and dignity. Cooperative arrangements in which these ideals are realized enable cooperators to overcome practical and epistemic barriers to cooperation, which arise from cooperation's inescapability, society's complexity, and our epistemic limitations.

In the next tier of my social contract, covered in the following three chapters, I employ these ideals as a theory of justice that we can use to formulate an approach to corrective justice. I argue that this approach requires the use of coalitions because of the same types of concerns that the parties to the cooperative position have: there are practical and epistemic barriers to understanding and changing social constraints.

CHAPTER 4

The Setup of the Corrective Position

I.   Introduction: The General Setup of the Corrective Position

I think that the main advantage of my approach to corrective justice is that it allows

people who disagree about factual and normative issues involved in corrective justice to

productively frame their disagreements, and it encourages them to go about working

with others to answer and operationalize their answers to the three questions of

corrective justice laid out in Chapter 1—how to understand injustice, set goals and

priorities for correction, and pursue corrective measures.

In this tier, as in the previous tier, the parties to this position are represented as

free, equal, reasonable, and rational. They're also behind a veil of ignorance that keeps

out considerations irrelevant to corrective justice, such as knowledge of their specific

social locations and the information parties would need to calculate the odds of being in

each social position. In order to put our theory of justice from the last chapter to good

use—the four *cooperative ideals* affirmed in the *cooperative position*—we need a story

about how the facts about the injustice we confront get into our initial situation. In

other words, since the search for corrective justice is much more expansive than the

search for cooperative ideals, the parties in the corrective position need access to

additional information in order to generate principles of corrective justice: they need to know what needs to be corrected for, what possible ways there are to go about correcting, and what obstacles stand in the way of corrective justice. As I discuss in Chapter 2, I follow Charles Mills in arguing that the parties ought to have access to a *domination contract*—a model of how patterns of domination and subordination are produced and reproduced by social processes.

Therefore, I'll argue below that the parties need to have access to the two forms of the domination contract, discussed in Chapter 2. First, in Section II, I'll argue that they need access to a *general* domination contract, which models how the patterns of domination and subordination in society are established and maintained through social mechanisms that create unequal social constraints and affect social cognition. And second, in Section III, I'll argue that they need access to a *specific* domination contract, which models how relations of domination and subordination are maintained in a particular, concrete instance, by modeling the specific social mechanisms that operate to influence social cognition and constraints. I'll then argue that examining a specific issue is the best way to go about running this thought experiment, because it is the best way for us, as theorists, to overcome the obstructive mechanisms of the general domination contract.

Armed with these two domination contracts--in addition to knowing that their society is in the circumstances of cooperation and using the four cooperative ideals affirmed in the cooperative position as a theory of justice, the parties will be in a

position to consider the question of corrective justice. That question can be productively posed to the parties in the following manner:

Given the general domination contract, what principle(s) of corrective justice would be necessary to correct for the injustice of the specific domination contract?

I'll discuss the parties' answer to this question in the next chapter.

II. An Argument for the Inclusion of the General Domination Contract

In this section, I'll argue that the parties need access to the general domination contract in order to successfully engage in the enterprise of corrective justice. In making this argument, I'll first explain why the background against which nonideal actors act is necessary to explain their actions and understand prescriptions of corrective justice, and argue that this makes background conditions normatively relevant. I'll then return to the four virtues of social contract theory I discussed in Chapter 1: modeling institutions as human processes over which we all have collective control, embodying the normative significance of persons' freedom and equality, reducing bias, and focusing our attention on the right kinds of agreement. I'll argue that the general domination contract helps us to embody each of these virtues.

4.2.1 Why Background Conditions are Normatively Relevant to Corrective Justice

The general domination contract is necessary for the parties to be able to understand what needs to be corrected for, how they could go about correcting, and what obstacles

stand in the way of successful correction. Without it, they are unlikely to understand the scope and systematic nature of the injustice that we face.

Many actions that appear to be just on one model of background conditions are clearly unjust against a different model. Imagine, for example, that an experienced police officer attempts to stop a teenager because the teen is behaving suspiciously according to that officer's experience. Imagine further that the teen's response to the attempted stop is to run off, and that the officer's partner then pursues the teen because the partner takes the teen's flight as confirmation of the first officer's suspicion of criminal wrongdoing.[14] Against a just background, there is nothing morally suspect here. Police officers learn from their experience, and they have a dangerous and stressful job which requires quick reaction times, so if an experienced police officer flags someone as behaving suspiciously, that it is a good reason to stop that person and pursue that person if they resist the stop by fleeing.

But against various unjust background conditions, different features of this example can become unjust. Say, for example, that the teen is a black male and there is a background of racial stratification enforced by a stereotype of black criminality, but especially black *male* criminality. If this is the case, the suspicion which initially licensed the stop is called into question, because we no longer know whether the teen was stopped because he was behaving suspiciously or because the police officer took stereotypically black male characteristics and mistook them for criminal characteristics.

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[14] I'm imaging here that the partner does not have an opportunity to observe the teen prior to the teen's flight, and that, perhaps because of physical location, the partner is in a better position to initiate a foot pursuit.

Further, if the partner knew about the operation of this pernicious stereotype in society, and had, say, witnessed the first officer unreliably stopping black males in the past, there may be no good justification for engaging in a dangerous and taxing foot pursuit which could end in violence.[15]

Or say, for example, that the officer, his partner, and the teen are all men, and live in a culture of toxic masculinity whereby one proves his masculinity by physical feats of aggression, particularly around and to other males. If this is the case, then both officers should consider that it is likely that the teen ran because he was afraid of being subjected to arbitrary violence by the hyper-masculine officers. Rather than taking for granted that flight was evidence for criminal conduct, the partner ought to model the teen as responding to a potential physical threat, and ought to gather more information about the first officer's suspicion before considering pursuing the teen.

We therefore need something like the general domination contract to do the work of specifying the background conditions within which institutions and individuals operate, if we want to evaluate injustice in society. As theorists, we need to clearly specify the empirical mechanisms that we believe constrain and explain people in our society because our understanding of these mechanisms does normative work for our prescriptions.

For a prescription of corrective justice to be understood and acted upon, background assumptions need to be fixed and understood. Consider, for example, the prescription "police officers ought not to engage in foot pursuits unless they think

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[15] See discussion in *5.2.2 C* on the dangers of foot pursuits.

suspects are likely to engage in criminal activity which poses an imminent threat to themselves or others." The justification for this prescription is more than the *normative standards* in play, such as a standard which says harming people unnecessarily is wrong; the justification for such a prescription would have to be an *empirical claim* that foot pursuits are potentially very dangerous, so much so that engaging in a foot pursuit generally leads to more harm than not doing so. Without that factual understanding, the claim is very difficult to defend or understand.

Empirical claims also do work for higher-order corrective principles. Consider Mills's corrective justice prescription, "eliminate illicit racial differentials." The justification for this standard would have to include a normative component that fixed illicitness and an empirical component that explained how illicit differentials operate, what is pernicious about those mechanisms, and why elimination is the best option. Without a specified model of how illicit differentials work, this prescription will be unhelpful because there's widespread disagreement about why the differentials exist, who should bear the burdens of social change, what we owe to the victims of past injustice, the best way to modify the mechanisms which produce the differentials, and many more empirical and normative issues. We could all agree that if we *could* snap our fingers and make these differentials instantaneously disappear by lifting the subordinated up to the level of the dominant, we *ought to,* but completely disagree about what we ought to do in our *actual*, unjust circumstances where snapping one's fingers isn't efficacious.

The plausibility of both prescriptions rests on an empirical and normative background which other people need to share if we want the collective action necessary to overcome the injustice we identify. So not only does articulating this background help us as theorists articulate the justification for our corrective justice claims, it also, *if done well*, helps persuade others that our prescriptions apply to them, and they ought to work to correct for injustice.

And, we need to do all this specification against a background in which we are socially and cognitively constrained by that very unjust background. Given the epistemic limits based on us by our social locations and the biases we are likely to have against members of subordinated groups (see §*2.3.2 & 3.2.1*), we should be wary of empirical assumptions we have about the impact of social constraints on differently-situated actors, especially if they are subordinated in some manner.

4.2.2 How the General Domination Contract helps us Live up to Social Contract Theory's Promise

To demonstrate the value of the general domination contract, I'll return to my arguments from Chapter 1 about the suitability of social contract theory for corrective justice and explain how the general domination contract encourages the parties to live up to social contract theory's corrective promise. My argument is that it helps us model society in a way that is conducive to formulating programs of corrective justice and helps minimize the consequences of the domination contract on our own cognition. In

the next section, I'll argue that adding in the specific domination contract allows the parties to do these things even better, especially the last two.

First, I argued that for corrective justice to succeed, we need to model society and its institutions as human processes over which we have collective control. If we view these institutions as immutable and mysterious, then the enterprise of corrective justice seems impossible. The general domination contract models society as consisting of human institutions that change over time, and has the additional advantage of showing us the potential gap between what we intend a social institution to do and what it actually does. More than that, it shows the parties how our intentions can go *systematically awry* in ways we need to pay attention to *according to our theory of justice*, and in ways that might prevent us from detecting injustice. Say, for example, we design and implement a criminal justice system with the intention of it functioning in an impartial way. If the actors in that system harbor prejudicial racial stereotypes, they may consistently act in racially partial ways that they are unaware of, thereby thwarting society's just intention.

So while we are all the authors of our society—while our actions every day make and remake our social world—this doesn't mean that we are aware of what we have collectively written, and what individual role we've played in the manuscript. Society isn't the sum of individual intentions, and institutions can exist that no single member of society would endorse upon reflection. The general domination contract models the ways in which processes of stratification can take on a life of their own, entrenching their stratification in ways that are obscured from our view. While it models society as

consisting of human processes over which we all have collective control, the general

domination contract does not model our social world as something that is luminous and

intelligible to its members. In a society with a domination contract, I can harm and be

harmed without ever even knowing it because the forces of domination are obscured

from my view.

Second, regarding the status of persons as free and equal, the general

domination contract models the ways in which peoples' freedom and equality can

be undermined by mechanisms of stratification, with and without their knowledge.

Once stratification exists, group membership becomes theoretically important

because only by understanding group membership and its significance can we

understand the social constraint (see discussion in §2.3.1) faced by any given

individual. If we model people living where there is a general domination contract

as though there is no stratification, we will systematically fail to pay attention to

normatively relevant facts, such as the ways in which group membership makes it

so that people have different opportunity sets, are subject to different norms, or face

different prospective payouts. It matters to the above example why the police stop

the teen, and why the teen flees from the police officers, and the general domination

contract allows us to see the features of group membership which are relevant to

explaining and evaluating their actions.

Thus, in order for us to normatively treat persons as free and equal, we need

to model them as facing different social constraints on account of their group

memberships that differentially impinge on their freedom and thereby differentially

undermine their equality. If there is a stereotype about black criminality that operates in the background of a society, that stereotype will, among other things, influence the way that the police treat black people and the way that black people act. This will constrain blacks more than it constrains whites, making black people unjustly less free than white people. And, because of how forces of stratification work, this will likely lead to (or reinforce) the unjustly degraded social status of blacks.

Stratification affects people differently, and, as I argued in Chapter 2, those at the top are invested in maintaining their advantages. If we want to cash in on the liberal promise of justifying our social arrangement to each of its members, then we need to model the ways in which occupants of distinct social positions are differently constrained by our social arrangement, and the ways in which these social constraints can affect social cognition. It is only by representing people and institutions as they *are*—including the facts of group membership that constrain them—that we can hope to draw a feasible path to egalitarian social relations that embody the kinds of freedom we think are important. The parties in the corrective position, therefore, need a model of how stratification works so that they can understand the nuanced ways in which differently-situated actors' freedom and equality can be undermined, and so that they can prescribe corrective measures that could be justifiable to each member of society.

Third, I think that one of the most attractive features of social contract theory is that it aspires to remove pernicious bias from our deliberation. I strongly believe that

we as theorists should be concerned that if we don't design our initial situation correctly, our own bias might seep into the parties' deliberation. In other words, we should be concerned that our own cognition has and will be affected by the domination contract in which we find ourselves. I think that Mills is right to argue that there is a lot of potential danger in representing the unequally-situated members of society as being equally situated in an initial situation. As Mills says, "the group interests of the privileged, and their resulting desire to maintain their privilege, will become both an ideational obstacle to achieving social transparency and a material obstacle to progressive change, which will need to be taken into account in theorizing the dynamics of social cognition and the possibilities for social transformation" (Contract & Domination 99). If we don't have room in the initial situation for representing the real inequality and differences in freedom that people in society experience, there is a danger that idealizing people as free and equal might lead us to biased prescriptions that ignore people's current lack of freedom and equality.

If we want to get away from bias, and get the most out of the aspirational-Archimedean point, we need the parties to be aware of how members of society's social cognition might go systematically awry such that they fail to notice injustice *because of their society's injustice*. And, equally as important, for this thought experiment to generate a working conception of corrective justice for *people like us* as we find ourselves, it needs to get *us* to check *our own biases*. We need to be constantly asking ourselves whether we believe that something is unproblematic because we're used to it, or whether we have strong theoretical grounds. Do we think, for example, that foot

pursuits are permissible because we've seen so many TV detectives engage in them, or do we have principled reasons? Do we think, as Rawls seems to say in the original Theory of Justice, that we can model the parties as heads of households[16] because households really do have a singular interest, or do we only think this because of some patriarchal ideology that we've absorbed from background gender domination? I'll argue below that a specific example is particularly important to doing this well because it makes us more able to examine specific intuitions and factual claims.

Fourth, I think that the general domination contract balances concerns about being general enough to serve as the basis for agreement, while being specific enough to generate meaningful agreement on the basis of which corrective justice can be pursued. There are tradeoffs in the enterprise of corrective justice: be too general, and there won't be agreement on what priorities we should set or how we should pursue them; be too specific, and more people will disagree with us and lose interest in working together to correct for injustice.

In my defense of incorporating ideals in the cooperative position as opposed to principles in §3.2.2, I argued that disagreement is a pervasive and healthy aspect of our social situation. Because we cannot capture all of the socially significant aspects of social constraints in the way we think about society, it is important that we be able and encouraged to disagree in a socially productive way, and contest empirical and normative claims made by others. I argue for José Medina's conception of *democratic sensibilities* in §3.4.2 as a way to go about doing this.

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[16] Okin cites Rawls as saying this in the original edition of A Theory of Justice on pages 128 and 146 (92).

My articulation of the general domination contract is not without controversy, and people have grounds with which to reasonably disagree with it. My understanding of how stratification works does a lot of work for my principle and the desiderata for its application, so this disagreement, if widespread, could undermine my account of corrective justice. One of the advantages of my approach, however, is that I am explicit in the way that I represent the social structure, and therefore open to others contesting my interpretations of the domination contract, and updating my empirical models as needed. If I'm right that background models play a theoretically significant role in accounts of corrective justice, then making these kinds of empirical assumptions is unavoidable. It is better to make them in the light, so that productive disagreement can take place, then to make them in the dark and form superficial agreements that cannot be the basis for collective action.

I've argued in this section that since the background conditions set the social constraints within which people in a stratified society act, these conditions are normatively relevant. Representing them in a general way allows us to really cash in on the value of social contract theory, by helping us better understand how society and its members act and conceptualize their actions. This, in turn, helps us free ourselves from bias and aim for the right kind of agreement. This is why members in the corrective position need access to the general domination contract.

III.   An Argument for the Inclusion of One Specific Domination Contract

The general domination contract, however, runs the risk of being too abstract and therefore leaving some of the promise of social contract theory on the table. It is one thing, for example, to believe in the abstract that prejudicial racial stereotypes *can* exist. It is quite another to actually see them in the world with their attendant obfuscating mechanisms. The general domination contract is also potentially overwhelming in a way that undermines its potential effectiveness. Attempting to think about all the social categories in our society, all the social constraints that people face because they're taken to fall into these categories, and all of the ways in which this results in stratification is a recipe for disaster, not corrective justice.

I'll therefore argue in this section that the specific domination contract is necessary for two reasons: diminishing the obfuscating effects of the general domination contract and making the project of corrective justice manageable. I'll then argue that methodologically, it makes the most sense for the parties to focus on one particular domination contract at a time, designed to tackle a specific problem, but that for this principle to work as a general principle of corrective justice, this thought experiment needs many iterations with many concrete examples.

4.3.1 An Argument for the Inclusion of a Specific Domination Contract

First, the specific domination contract is necessary to understand the significance and consequences of the general domination contract, thereby helping us as theorists reduce our bias and aim at the right kind of agreement. Put another way, the specific

domination contract encourages us and the parties to overcome some of the obfuscating

mechanisms of the general domination contract by forcing us to articulate how we

understand a specific social phenomenon, which gives ourselves and others a chance to

check our models for bias.

I don't think it is enough, even, to just point to the Department of Justice's report

on the Chicago Police Department, and say that it is a domination contract. Articulating

an understanding of what mechanisms are operating in Chicago and why they are

important is important to my theoretical goals because it makes me, as a theorist, check

my factual and theoretical assumptions, including the assumptions that went into my

articulation of the general domination contract. It also gives me the chance to receive

feedback from other, differently-situated people, whose different perspectives can help

me check my bias. Checking these assumptions is important because of the theoretical

work that they do for my account of corrective justice. If the injustices we face aren't

systematic, my arguments for the need for coalitions are less relevant. If, in other

words, we are using bad social theory, we will likely have bad prescriptions that *do not*

and *cannot* lead to corrective justice.

Explaining our models to others also gives us the chance to get on the same page

with other people, and thereby form common understandings of what is going wrong,

what we can do about it, and why some people aren't on our page. I'll argue in the next

chapter that for corrective justice as an enterprise to be successful—for us to generate

prescriptions that help people identify and ameliorate injustice—we need to work with

other people, and this will require us to discuss our empirical models of society.

Another reason to incorporate a specific domination contract is that the implications of the general domination contract can be intimidating and overwhelming in ways that compromise the potential effectiveness of correction. Our system of social stratification is robust and operates in many different kinds of ways, such that there will be tradeoffs in pursuing corrective justice. There will be times, for example, when the only solutions available will help one social group and harm another, and there will be times when a situation is so problematic that articulating it in any helpful way will require leaving out the suffering of some — particularly the people at the intersection of multiple groups who are affected differently than the majority of people who share one of their group memberships. It will be easy, at such times, given the complicated and overwhelming nature of the task of corrective justice, to lose hope that corrective justice as an enterprise is even possible.

The specific domination contract allows the parties to narrow their focus and, using the general domination contract, pinpoint the specific mechanisms at play which will need to be dismantled if society is to be made more just. Successful corrective justice requires tackling specific problems, and it is our ability to tackle these problems well that will tell us whether our account of corrective justice is working. Though the parties will still be forced to make practical and theoretical tradeoffs in articulating the problems and our goals, the specific domination contract allows them to do so within a specific arena where we can *check our work* — where we can look out into the world and see what acting on our models would look like, and how we would feel about that. It

allows us, as theorists, to focus on a manageable injustice with which we can check our convictions about the general domination contract and corrective justice.

The specific domination contract, therefore, helps us—and thereby the parties—check the biases that come from the domination contracts which operate in the background of our social world. The specific articulation of one social problem gives us a chance to put forward and examine our empirical convictions about how institutions work, and how that affects people's freedom and equality. This allows us—and thereby the parties—to aim at the kind of agreement that we would need to tackle these contracts, and live up to our normative convictions of justifying our social arrangement to each of its participants. This is why I think that the specific domination contract plays an important role in delivering on the promise of social contract theory.

4.3.2 An Argument for the Inclusion of only One Specific Domination Contract

In the corrective position, the specific domination contract functions as the empirical basis for the parties' deliberation, with the general domination contract serving as a background theory that helps clarify and illuminate the specific social mechanisms in which the parties are interested because of their theory of justice—the four cooperative ideals.

I believe that one specific domination contract,[17] focusing on one specific problem, will be enough to generate meaningful principles of corrective justice, mostly

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[17] One specific domination contract may be enough, even if it characterizes a case of stratification where traditionally dominant groups are subordinated. I will have to give this issue more thought.

because I'm convinced that the general domination contract illuminates the systematic nature of the injustice in our society which ought to be corrected for. Put another way, I think that our world's injustices are so interconnected, that any particular instance of injustice which is due to social stratification will be enough for the parties to see that these systematic mechanisms of injustice need to be targeted and ameliorated, and that no one social group will be in the practical or epistemic position to do this alone.

Note that this is an empirical belief that results from my general domination contract, articulated in Chapter 2. I believe that the corrective position is a helpful thought experiment because I think that it captures important truths about our world and its problems. I believe that many of our problems are the result of processes of stratification, and that most people subject to these forces would not endorse them upon reflection. If I'm wrong about this empirical belief, the project of corrective justice will be a disjointed and difficult one. We would have to treat each injustice as separate and do detailed empirical and normative analysis, generating different principles for each different situation.

Thinking about specific examples will be helpful to the enterprise of corrective justice because it will force us to pay attention to real people's suffering which needs to be addressed. If there is hope for a general account of corrective justice, then each domination contract we examine will have to point to the same normative principle(s). I believe that my account is general in that sense, but would have to run more iterations of this thought experiment to check this.

I therefore think that there is value in running this thought experiment with different specific domination contracts to both check that my prescriptions are general, and to gain all the theoretical benefits of generating a specific domination contract and thinking about correcting for it.

In §*3.2.2* I argued that persistent disagreement caused by our complex and obfuscatory social structure make ideals preferable to principles, because ideals help us frame disagreement in ways that are productive to corrective justice. This chapter has the seeds for an argument that the persistent disagreement of the type we confront also calls for standards of corrective justice will be better if they can help us so frame disagreement. Because domination contracts obscure their operation, we will need the help of other people to design our models well, and we should expect that people will have different conceptions of what aspects of society we ought to model and their relative normative significance. Moreover, given the complexity of our society and the asymmetric effects of cooperation, we should expect that *we*, ourselves, will have reasons to specify domination contracts in different ways, depending on the problems that we are seeking to solve.

The inclusion of two domination contracts will help us frame disagreement and contest the claims on which we need agreement if we hope to correct for unjust social constraints. The general domination contract works at a level of abstraction that lets us model systematic mechanisms and understand how they work together. The specific domination contract affords the opportunity to check our work and see whether the

general domination contract is indeed general. It also gives us our best chance at effective corrective justice, because it can give us prescriptions for correcting for the specific injustices it identifies and overcome some of the motivational problems of tackling a complex system which we will never completely solve.

I will circle back to these advantages of the domination contract in the last chapter, once the rest of my account of corrective justice has been explained. I turn now to articulating and defending that account.

CHAPTER 5

The Need for Coalitions: A Principle of Corrective Justice

I.   Introduction

In Chapter 3, I argued for four *cooperative ideals* that could function as a minimal theory

of justice. In this chapter, I use that theory of justice and the *domination contracts*

discussed in Chapter 2, to argue for a single principle of corrective justice, which says:

> **Corrective Justice Principle***:* Build and maintain coalitions for undermining or
>
> reforming the social mechanisms which are unjust or result in injustice,
>
> understanding that this will require continued vigilance.

My argument for this principle is that the systematic and intersecting nature of the

injustices we face makes coalitions both epistemically and practically necessary. The

powerful mechanisms that operate in unjust societies work to obscure themselves and

related mechanisms, making it difficult to gain knowledge of their operation and the

possibilities for ameliorating them, as well as to monitor whether and to what extent

reform efforts are effective. Only coalitions of differently-situated actors—generally

with members of both subordinated and privileged groups—will be able to overcome

the epistemic and practical barriers of the systematic injustice we face, and thereby

engage in effective corrective justice.

In order to make this argument, I return in Section II to the example from Chapter 2 of the Department of Justice's "Investigation of the Chicago Police Department" as a specific domination contract, arguing that the parties would be concerned with the ways in which Chicago Police Department (CPD) policies and practices reinforce social stratification. After explaining why the parties would be interested in having and maintaining a police force, I'll explain how CPD policies and practices engage in the three steps of stratification I discussed in Chapter 2. For each step, I'll explain a powerful mechanism in operation: *category maintenance* in the form of degrading and dehumanizing language, *ingroup favoritism* in the form of the CPD "code of silence" that disproportionately harms black and Latino suspects, and *system justification bias* evinced by CPD's use of dangerous and ineffective foot pursuits which go against police officers' individual and group interests. I'll argue that the parties would be concerned with the ways in which the CPD subverts each of the cooperative ideals discussed in Chapter 3, and with the fact that it does so without any real gains to police effectiveness. The parties, therefore, would affirm a need for community policing to correct for the injustices they uncover.

With this specific example on the table, I zoom out in Section III, and make the general argument discussed above, that the systematic nature of the injustice we confront makes coalitions epistemically and practically necessary. I use the operation of prejudicial racialized stereotypes of black criminality in each of the above three mechanisms of stratification to argue that domination in a stratified society creates systematic injustices that are mutually reinforcing. These mechanisms of stratification

throw up barriers to understanding what needs to be corrected for, how we could go about correcting, and what obstacles stand in the way of successful correction. I'll discuss three considerations that make coalitions epistemically necessary: the difficulties in understanding the situation of subordinated groups, the importance of understanding the nuanced positions of members of privileged groups who are committed to social justice, and the *intersectional* nature of people's group membership which can lead to complex problems that are difficult to understand. Then I'll discuss how these epistemic barriers and the mechanisms of the domination contract's tendencies for adaptation create practical problems whose solution requires coalitions.

In the last section, I put forward the above principle of corrective justice as embodying what the domination contracts can teach us about corrective justice: we need groups of differently-situated people working together over time in order for us to correct for the injustices of our world. In the next chapter, I'll argue that we can add more detail to my account of corrective justice by extending it to include five desiderata for applying this principle of corrective justice, which specify how we should set and pursue corrective justice goals.

II.   The Parties' Concerns about the Chicago Police Department

The parties will be concerned about the ways in which CPD participates in the US system of social stratification, at the expense of the cooperative ideals. In particular, they'll be concerned about the unjust social constraints on black and Latino Chicagoans,

which the CPD places on them through their deployment tactics—choosing to police

harshly in predominately black and Latino neighborhoods—as well as the racist

conduct of some of its officers and the CPD's woeful accountability measures which do

not hold these officers accountable, sending the message that their conduct is

acceptable.

In this section, I will first explain why the parties would be concerned with

having a police force, given their commitment to the cooperative ideals. I'll argue that

they will endorse a conception of community policing because the police are vital to a

system of complex social cooperation, and community policing minimizes many of the

risks associated with the domination contract. Then, I'll return to my articulation of the

domination contracts from Chapter 2, and explain how CPD policies and practices

contribute to each step of stratification by giving a specific mechanism for each level—

the use of racialized degrading and dehumanizing language, a code of silence, and

consistent use of irrational foot pursuits—and explaining some of the parties' concerns

with how these practices undermine the cooperative ideals. I'll close the section with a

discussion of why these concerns will reinforce the parties' belief in the ideal of

community policing.

5.2.1 Police and the Cooperative Ideals

As I argued in Chapter 3, cooperation requires norms in order for it to be successful. In

the cooperative position, with knowledge only that the parties would be in what I called

the *circumstances of cooperation* (see *§3.2.1*), I argued that the parties would affirm four

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ideals: proficient rationality, democratic equality, social understanding, and dignity. The police have an important role to play in furthering these ideals by enforcing the formal rules which govern a society's system of cooperation. Formal rules are needed to ensure that people get the education needed to be proficiently rational, that democratic equality is successfully institutionalized, that there are opportunities to develop social understanding and that social understanding is encouraged in important institutional interactions, and that people's dignity is protected. The parties will want the police to uphold cooperative laws, to enforce laws in a way that promotes social understanding, to treat each person as though their concerns are equally important, to police in a way that preserves people's social standing, and to treat all people with respect.

In a society with a domination contract, however, the formal rules might not further these cooperative ideals. There may be laws in place that directly contravene the ideals—like felon disenfranchisement, which take away the right of some citizens to vote, undermining their democratic equality. So the parties will have reason to be wary of an institution charged with enforcing laws that might undermine the ideals they affirm.

The parties will be supportive of having a police force in a country like the United States, however, because of the value of having common, enforceable, promulgated laws. I won't go into great detail here because the point is very intuitive. With so much complexity in our social arrangements, we need rules to coordinate our economic and social activity that everyone has strong incentive to follow. With so

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many differently situated actors, the people in our social arrangement won't be able to know every cooperator, so trust will require enforceable sanctions.

The rules that govern cooperation can embody the cooperative ideals in better and worse ways. The parties will be interested in a police force as a means to further these ideals, but wary of how the police might thwart them through enforcing uncooperative laws and engaging in practices that go against them. I'll argue in the last part of this section that they will want a police force that practices *community policing*. The DOJ report explains this ideal thusly: "True community policing is an overarching ethos that creates both direction and space for officers and communities to treat each other with respect and with trust. This relationship serves as the foundation for working together to establish crime prevention priorities and develop solutions to public safety problems. (134).

The dangers of the police are that they might reinforce domination at the expense of the cooperative ideals. The ethos of community policing combats that tendency by encouraging police officers to overcome the limits of their social locations and their ingrained biases against members of subordinated groups by talking with and working with members of subordinated groups (and all other groups) to tackle common problems. It also encourages the police to treat members of the community with respect. I therefore think that this ideal will be attractive to the parties. I'll defend this ideal below, in *§5.2.3*, and return to it when discussing my corrective principle in Section IV.

5.2.2 How Stratification Works through the Chicago Police Department

The CPD engages in processes that reinforce stratified social relations. In this section, I will focus on three different mechanisms the parties would be concerned with, which operate at three different levels of stratification: boundary-policing language, ingroup favoritism in the form of CPD's code of silence, and system justification bias in the practice of ineffective and dangerous foot pursuits. In each section, I'll first explain the empirical phenomenon, before explaining how it enforces stratified social relations and why the parties would thus object to it. In the next section, I'll revisit each of these mechanisms when discussing the role that stereotypes play in each of them, and how this is evidence of systematic injustice.

A. *CPD Officers' Use of Racialized Derogatory and Dehumanizing Language as Category Maintenance*

I argued in Chapter 2, following Massey, that stratification requires socially salient categories to get up and running. Without being able to reliably distinguish in- and out-group members, one cannot reliably subject them to unequal social constraints. Race is a very socially salient category in Chicago, especially to the CPD. It is clear that some CPD officers use racialized derogatory and dehumanizing language to reify the social significance of race as a category. Two paragraphs in the DOJ report are especially illustrative of this and its ramifications for how and where the CPD polices, so I'll quote them in full:

"Our investigation found that this pattern or practice of misconduct and systemic deficiencies has indeed resulted in routinely abusive behavior within CPD, especially toward black and Latino residents of Chicago's most challenged neighborhoods. Black youth told us that they are routinely called 'nigger,' 'animal,' or 'pieces of shit' by CPD officers. A 19-year-old black male reported that CPD officers called him a 'monkey.' Such statements were confirmed by CPD officers. One officer we interviewed told us that he personally has heard co-workers and supervisors refer to black individuals as monkeys, animals, savages, and 'pieces of shit.'

"Residents reported treatment so demeaning they felt dehumanized. One black resident told us that when it comes to CPD, there is 'no treating you as a human being.' Consistent with these reports, our investigation found that there was a recurring portrayal by some CPD officers of the residents of challenged neighborhoods—who are mostly black—as animals or subhuman. One CPD member told us that the officers in his district come to work every day 'like it's a safari.' This theme has a long history in Chicago. A photo from the early 2000s that surfaced years later shows white CPD officers Jerome Finnegan and Timothy McDermott squatting over a black man posed as a dead deer with antlers as the officers hold their rifles. Finnegan was later sentenced to 12 years in prison for being part of a corrupt group in the Department's Special Operations Section that carried out robberies and home invasions in predominantly black neighborhoods, while McDermott was fired when the photo surfaced. This mindset has desensitized many officers from the humanity of the people of color they serve, setting the stage for the use of excessive force" (146).

These hateful incidents related by the investigators above are not anomalous in Chicago and continue, in part, because there are few consequences for officers who use such language. Between 2011 and March of 2016, CPD received 980 misconduct complaints coded as verbal racial abuse, of which only 13 were sustained—a mere 1.3%! The 4 sustained cases of officers using the N-word—out of 354 complaints—all involved "audio, video, or other irrefutable evidence," which makes it unsurprising that the DOJ

found "repeated instances where credible complaints were not adequately addressed" (146). They also found some very alarming cases where CPD officers expressed discriminatory views online or over social media, against CPD policy, where the officers were not punished (147).

The parties would object to CPD's use of degrading and dehumanizing language because it goes against all four of the cooperative ideals. Here I'll discuss just one of the ideals—*dignity*—but as subsequent discussion will make clear, category maintenance in the form of degrading language can undermine each of the other cooperative ideals.

In §*3.4.2*, I argued that the parties would be so wary of the harms of degraded social status that they would adopt an ideal of dignity that affirmed the value of each person, and the need to justify our social arrangement to each member of society. The parties would be concerned that the CPD violates the dignity of some of Chicago's black and Latino residents by failing to treat them in ways that could be justified to them.

As I argued in Chapter 2, these boundary-policing activities are an important part of the domination contract because these categories play a major role in our cognition, and operate outside our consciousness such that we're often unaware of the role that they play in our concepts, observations, beliefs, judgments, and other epistemically important activities. We then engage in behaviors which subject members and nonmembers to different social constraints, generally favoring members of our social group. Through the uses of mechanisms such as opportunity hoarding and exploitation, a social hierarchy can form as groups concentrate material, symbolic, emotional, and epistemic resources and ensure themselves privileged access to them.

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The hierarchy is then systematized through mechanisms such as emulation and adaptation which extend the significance of a category beyond its original domain, and its systematicity is then obscured by a motivated rationalization of the status quo. The color of one's skin may have originally been relevant because it served as a proxy for one's ancestors' continent of origin, but through many different social processes—which have adapted and changed over time—it has come to serve as an indicator of social standing across most areas of one's life.

Category maintenance matters because, particularly in the case of race and ethnicity, it is stratification maintenance. CPD officers' language ties in to a historical narrative whereby black people are subhuman, and thereby entitled to less material, symbolic, emotional, and epistemic resources. This narrative has been used in the past to justify all sorts of degrading treatment—from chattel slavery to unequal access to home loans—and in channeling it, CPD officers are expressing that they still think that narrative is apt (cf. Coates and Wilkerson).

CPD officers use this derogatory and dehumanizing language to reinforce the categorization of black and Latino residents as members of despised outgroups, who are perceived as neither warm nor competent. They thereby mark them as less deserving of material, symbolic, emotional, and epistemic resources such that the social constraints they face are justified. *So what* if black and Latino neighborhoods are policed more harshly than white neighborhoods? People who use degrading category-maintaining language are saying, "They *are* more criminal so they *need* harsher police tactics."

CPD's treatment of black and Latino Chicagoans reflects this categorization, and as a result, many residents of these predominantly black and Latino neighborhoods do not feel like the police respect them. As indicated above, many people have heard the police use derogatory and dehumanizing language about them or their social group. Further, this use of degrading language appears to translate into degrading treatment. The DOJ's report says that

> "Strikingly, residents of Chicago's most challenged communities consistently expressed concern to us about their treatment when they or their family members are the victims of crime. An oft-repeated concern was that officers do not put sufficient emphasis on solving more significant crimes, or at least do not convey their concern to victims of such crimes…. Families told us of detectives not interviewing key homicide witnesses or suspects, declining to obtain relevant video footage, and failing to update parents on the status of investigations, or even return their calls" (140).

It is one thing to call someone a derogatory name in the heat of the moment. It is quite another to tell the middle-aged victim of an assault, as detectives did in one case, that he should go and obtain video footage *himself* (Ibid.)—as though obtaining evidence about a crime is not police business when the victim has the wrong color of skin—or to tell a mother of a murder victim, who the police hadn't even reached out to until a week after her son was killed, and who is desperate for information, that she "calls too much" (Ibid.)—as though *she* is the one showing an improper amount of concern for her slain child, not the detectives who seemed totally uninterested.

We make things illegal because we think that people shouldn't be allowed to do them, which is why we have the police to deter people from committing criminal acts,

and to enforce the law when it is broken. When the police treat certain social groups as though they are less worthy of protecting—as though it is not as big of a deal when they are the victim of a crime versus when someone else it—they send the message that the members of these subordinated social groups *are worth less*, and have degraded social status.

The parties will know from the general domination contract that this kind of treatment is only possible because of the operation of social mechanisms which are themselves unjust because of the ways in which they subordinate blacks and Latinos. The reason that we have to blame the domination contract is that these practices are clearly against the CPD's interests—they make the CPD's job more difficult. The police department ought to exist to keep all the people in Chicago safe, and this cannot be accomplished by treating people in certain neighborhoods as though they're less worthy of protection than others. As I argued in §*2.4.2*, Solving, preventing, and stopping crimes requires trust between the community and the police because the police cannot be everywhere, and they rely on community members for information on criminal activity. The CPD are worse at solving and preventing crimes and are subject to more dangerous encounters with residents of these neighborhoods because the residents of these neighborhoods don't trust them.

When asked by DOJ investigators what changes to the CPD he would like to see, one black teen responded that he'd like to see officers "'act as if you care,'" (147), indicating that he does not believe that officers in the status quo care about their duty to protect black people. This general lack of faith in the CPD helps account for how

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they only identified a suspect in 29% of homicide cases in 2016—a rate that is half the

national average for 2015 (135): why cooperate as a witness if you perceive the CPD as

not caring about the victim, uninterested in the contribution you could make to the case,

unwilling to look for supporting evidence, and unwilling to work with you in the

investigation and trial?

B. *CPD's "Code of Silence" as Ingroup Favoritism*

Once there are socially significant categories, social groups form, and members of these

social groups are subjected to different social constraints on the basis of their

memberships. In general, people tend to favor members of the groups which they are a

part of, so *ingroup favoritism* is a potentially powerful social mechanism, particularly

when employed by members of dominant social groups. Ingroup members are

generally evaluated as both warm and competent, which means, among other things,

that they're more likely to be believed and given the benefit of the doubt than outgroup

members, who are generally evaluated as less warm, less competent, or both.

In the case of the CPD, this creates problems for misconduct investigations

because there are major institutional social constraints on reporting misconduct or

assisting in misconduct investigations. The Independent Police Review Authority

(IPRA) are tasked (among other things) with investigating excessive force and bias-

based verbal abuse, and can investigate violations of CPD's Rule 14—which prohibits

making false statements—at their discretion (75). Sometimes, in the course of their

investigations, they uncover evidence that police officers have lied about or covered up

misconduct by other officers, which should be a *big deal* in an institution charged with enforcing the law and protecting people's constitutional rights. The DOJ found, however, that the IPRA and the other investigative units "treat such efforts to hide evidence as ancillary and unexceptional misconduct, and often do not investigate it, causing officers to believe there is not much to lose if they lie to cover up misconduct" (8). They develop this thought further:

> "We cannot determine the exact contours of this culture of covering up misconduct, nor do we know its precise impact on specific cases. What is clear from our investigation, however, is that a code of silence exists, and officers and community members know it. *This code is apparently strong enough to incite officers to lie even when they have little to lose by telling the truth.* In one such instance, an officer opted to lie and risk his career when he accidentally discharged his pepper spray while dining in a restaurant—a violation that otherwise merits minor discipline. Even more telling are the many examples where officers who simply witness misconduct and face no discipline by telling the truth choose instead to risk their careers to lie for another officer. We similarly found instances of supervisors lying to prevent IPRA from even investigating misconduct, such as the case discussed elsewhere in this Report in which a lieutenant provided a video to IPRA but recommended that the case be handled with nondisciplinary intervention rather than investigated, describing the video as only depicting the use of 'foul language' and affirmatively denying that it contained any inflammatory language or that the victim made any complaints — both patently false statements as demonstrated by the video. High ranking police officials and rank-and-file members told us that these seemingly irrational decisions occur in part because officers do not believe there is much to lose by lying" (75, my emphasis).

The lack of institutional concern about lying is likely both a cause and result of CPD's culture of silence, and I think that ingroup favoritism operates at at least two different

levels here. There's almost certainly something like fundamental attribution error[18]

operating in the minds of officers who are witnesses to, or perpetrators of, misconduct.

They see, hear, or perpetrate the excessive force or abusive language, but rather than

attributing this misconduct to the officer's character, they attribute it to situational

factors that excuse the wrongness of the misconduct, rendering it less of a big deal. An

officer hears, for example, their partner call a black suspect an animal, but classifies it as

a reference to the horse-like kicks the suspect was making, instead of classifying it as

belonging to a historically racist discourse of dehumanizing blacks. After all, they *know*

their partner, and know their partner's *not a racist*. These pro-ingroup biases then

makes the misconduct investigations seem less important to the officers, and therefore

felicitous participation in the investigation seems less important.[19]

Further, CPD officers are very concerned about the consequences for fellow

officers of a sustained violation. A former IPRA Chief Administrator told investigators,

"'we don't make Rule 14 allegations in a cavalier way, because we realize how

significant it is and how devastating it can be to a police officer's career . . . it impacts

their credibility as a witness, and in so many instances can be a career killer'"(76).

Police officers are highly dependent on one another to do their jobs, so teamwork is

essential, and they care about their teammates. CPD officers appear to weigh the

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[18] See discussion in Chapter 2.
[19] Some officers also exhibit *outgroup disdain* for people socialized as black as well, and perhaps recognize the harms perpetrated but rate them as less normatively significant, due to racist beliefs which license ill treatment of the 'inferior' race. I'm leaving these considerations out for the sake of simplicity, and because I think that it is very significant that stratification can take place solely from pro-ingroup feelings.

impact of misconduct investigations on their fellow officers heavily, thereby making the costs to participation in an investigation appear higher than they are.[20]

The resulting social pressure to support one's fellow officers by failing to disclose misconduct is powerful, and functions as another mechanism encouraging officers to actively avoid disclosing information about other officers' misconduct. The pro-ingroup sentiments license enforcement of this code of silence. According to the DOJ investigators, "One CPD sergeant told us that, 'if someone comes forward as a whistleblower in the Department, they are dead on the street'" (75). We know that this is not an anomalous sentiment because of the examples shared in the passage above: officers are consistently willing to risk their careers over covering up clear, serious, and even minor rule violations.

At an institutional level, the social constraints therefore favor nonparticipation in investigations. The expected payoffs for lying or failing to share evidence of misconduct are high because the risk of being caught is low (and the risk of serious punishment once caught is also low), and the payoffs for staying silent are high in terms of esteem. On the flip side, the costs of reporting misconduct are seen as very high. This means that the expected payoffs function as an additional social constraint

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[20] In actuality, the consequences aren't generally severe. As per the report, "our investigation revealed that there were only 98 Rule 14 charges sustained over the last five years. Only one of these sustained cases was initiated by IPRA against an officer witness who IPRA discovered lied to cover up misconduct of another. Moreover, in many of the cases where Rule 14 charges were brought and sustained against accused officers for lying, the discipline imposed was less than discharge. Almost one-third of all the sustained Rule 14 cases had a recommended punishment of 25-day suspension or less, and some of the discharge recommendations were reduced or overturned on appeal" (76).

favoring nonparticipation. Therefore the social constraints created by ingroup

favoritism contribute to the code of silence in Chicago's Police Department.

This code of silence, in turn, works to enforce racial stratification because, as

we've seen in Chapter 2, CPD officers aren't trained to police in a racially-neutral

manner and police predominately white neighborhoods differently than predominantly

black and Latino neighborhoods. The CPD are therefore more likely to have charged

interactions with residents of black and Latino neighborhoods, and they do: despite

roughly equal black, white, and Latino populations, from January 2011 to April 2016 the

CPD used force on blacks ten times more than on whites, blacks were the subject of 80%

CPD firearm uses and 81% of Taser contact-stun uses, and blacks were subject to 83% of

incidents where force was used on youth (with Latino children accounting for an

additional 14%). The DOJ found that "These data strongly support what we repeatedly

and consistently heard from both law enforcement and community sources: *Chicago's*

black and Latino communities live not only with higher crime, but also with more instances of

police abuse" (145, my emphasis).

With more opportunities for misconduct against black and Latino residents of

Chicago, the negative consequences of this code of silence are more likely to fall on

these communities. The code of silence thus subjects black and Latino residents of

Chicago to additional social constraints because misconduct is more likely to be

committed against them and they need to take this into account when they interact, or

could potentially interact, with the police. There's also potential for a feedback loop

here, whereby low rates of sustained misconduct complaints against black and Latino

suspects make misconduct against these groups even more likely. I'll discuss this in §5.3.1 when talking about how the low rate of sustained complaints can reinforce stereotypes.

While there are many problems here, I think that the parties would be especially concerned about the violation of two ideals: social understanding and democratic equality. Regarding *social understanding*, the CPD's code of silence represents a breakdown in credibility assessments and appropriate concern. In §*3.4.2*, I explained social understanding as the ability to overcome epistemic limitations based on social location, such that, in principle, each participant can come to know what it would be like in each social location. And I argued that this is especially difficult to do because of the ingrained biases we tend to hold against members of subordinated groups.

The parties will be concerned about the lack of trust and understanding between the community and the police, how this makes the job of the police more difficult, and how breakdowns in understanding harm members of subordinated groups. The code of silence is predicated on CPD officers having more valuable testimony and outsiders less valuable testimony, and it encourages community members to deprive the CPD of valuable information about where their practices are going wrong.

I've already covered how residents of these black and Latino neighborhoods see the police as an occupying force who aren't there for their protection. The CPD seem to see many black and Latino residents as *suspects*, and not *allies*. This general suspicion accounts for why young people provided DOJ investigators of many examples of "being stopped and searched by police, handcuffed, and having background checks

conducted before being let go, while doing everyday things like walking to the store"

(143). White young people are not treated in this way; they are treated like people in

need of police protection, not people the police need to protect others *from*.

It also, in part, explains part of why CPD officers think that the code of silence is

ok: the people reporting misconduct are not seen as *allies* providing the CPD with

important information about violations of its own rules—something the CPD ought to

care about if it takes its enforcement duties seriously. Rather, people who report

misconduct are seen as *hostile actors* intent on harming the CPD—suspects who want to

get out of trouble.

This breakdown in understanding operates as a barrier on CPD officers doing

their jobs because, as I argued above, the police rely on community members for

information about criminal wrongdoing. It is an even larger problem for black and

Latino Chicagoans, however, because once we have a police force that subjects residents

of predominantly black neighborhoods to different treatment, a practice that favors

police officers and their colleagues over those of the public will harm residents of these

communities more than other groups, as is the case here. The problem with ingroup

favoring mechanisms in a society with a domination contract is that negative

associations with outgroups repurpose these mechanisms to not just lift the ingroup up

but also push the outgroup down.

In other words, ingroup favoritism can undermine *democratic equality*. Recall

from §*3.4.2* that democratic equality has two components: an equal consideration in the

system of governance such that one's concerns are considered to be as valuable as

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others' concerns, and an equal say in decision making such that people have the ability to act for political purposes with similar efficacy as differently situated others. Because of the domination contract, CPD does not treat black and Latino residents' concerns equally and these residents do not have efficacious voices when they complain. *There are political consequences to stratification.*

The way that CPD polices and the way it investigates misconduct prevents residents of these black and Latino neighborhoods from having an equal say in how they're governed and from having their concerns are taken as seriously as others' concerns. The oft-repeated charge that CPD are an "occupying force" indicates a lack of political ownership on behalf of residents: if the police were a part of the community just like community members, they would have nothing to *occupy*, they'd just be in the streets like everyone else.

And while the CPD shows a lack of concern for all complaints about misconduct—sustaining a woeful 1.4% of all closed complaints—they appear to show even less concern for complaints made by blacks and Latinos. Overall, 2.7% of complaints by whites were sustained, versus 1% of complaints filed by blacks and 1.4% filed by Latinos. Things are worse when you look at the individual complaints. In complaints about excessive force, for example, whites were three times more likely than blacks, and six times more likely than Latinos, to have their complaints sustained (69). And again, these are complaints that were *filed*. There are good reasons to suspect that CPD practice has a chilling effect on all complaints, but especially complaints from residents of Chicago's problem neighborhoods (c.f. the discussion of differences in

policing different neighborhoods (139-150) such that black and Latinos face greater

threats of retaliation and the discussion of mandatory affidavits[21] on pages 50-51).

The city of Chicago received 30,000 complaints of police misconduct between

2011 and 2016 (7). This is valuable information for a police department to have because

the power that police officers have can be abused by officers in ways that break the law

and harm the people that the police are supposed to protect. CPD's code of silence

operates in a way that turns this ingroup favoritism shown to fellow officers into a force

of stratification, creating social constraints on police empathizing with black and Latino

Chicagoans and community members relaying to the CPD information vital to its

operation. It thereby undermines the democratic equality of black and Latino

Chicagoans, in both its senses.

C. CPD Officers' Use of Ineffective & Dangerous Foot Pursuits as System Justification Bias

The job of police officers is a dangerous one, with police officers subjected to potential

violence and other threats. It is in the best interest of police officers not to put

themselves in harm's way—to police in a safe manner that minimizes risks to their

health and wellbeing. As discussed in Chapter 2, CPD officers routinely engage in foot

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[21] CPD's union contract requires that the complainant sign an affidavit, which in practice requires a lengthy interview. Though there are procedures for investigating without an affidavit, in practice this is not done, and 40% of misconduct complaints are closed because of the lack of these affidavits. The report lists several good reasons for parties not to submit an affidavit: the complainant may have lost faith in the CPD and its ability to investigate itself, fear retaliation from police, not be able to "meet the logistical hurdles necessary to file the affidavit, including taking time off of work during a weekday to sit for a lengthy interview," or follow their attorney's advice to not give statements to the police that could affect any pending criminal or civil proceedings (51). Because of other social mechanisms, one could reasonably think that black and Latino victims or witnesses would face greater constraints to filing an affidavit.

pursuits that contravene these objectives with little expected value. Here's the DOJ's

gloss:

> "we found repeated incidents of unreasonable uses of force stemming
> from foot pursuits that were initiated with an insufficient basis to conduct
> the pursuit. We also identified other cases in which foot pursuits were
> conducted in a tactically unsound, often reckless manner, some of which
> culminated in an officer-involved shooting. We found multiple instances
> in which officers began pursuit without first broadcasting over radio
> dispatch critical information like location and direction of travel. In
> addition, officers frequently engage in a dangerous tactic known as
> 'partner-splitting,' in which officers split off from one another to pursue
> one or more suspects. In some cases, one officer drives away from the foot
> chase, seeking to cut the suspect off from the other side of the block.
> Partner-splitting covers more territory, but it also can compromise the
> safety of officers who lose their ability to assist or effectively communicate
> with each other. It also increases the risk that the officers or innocent
> civilians will be caught in cross-fire. Because it is dangerous to officers and
> the public, this tactic should be used only when absolutely necessary to
> protect the public or officers from imminent harm.
>
> "…A contributing factor to many foot pursuits that end in
> unnecessary force is CPD's use of a particular stop technique, often called
> a 'jump out.' The practice involves groups of officers, frequently in plain
> clothes and riding in unmarked vehicles driving rapidly toward a street
> corner or group of individuals and then jumping out and rapidly
> advancing, often with guns drawn. These actions often cause one of more
> members of the targeted group to walk away briskly or run from the
> scene. The officers then zero-in on the fleeing person, often with one
> officer tasked with chasing him on foot. Some of the most problematic
> shootings occurred when that sole officer closed in on the subject, thus
> greatly increasing the risk of a serious or deadly force incident" (30-31).

Many of these foot pursuits are directly against a police officer's best interest and the

CPD's best interest. Put yourself in the shoes of a police officer. You have an interest in

not subjecting yourself to unnecessary physical, psychological, or professional risks.

Foot pursuits are "inherently dangerous and present substantial risks to officers and the public. Officers may experience fatigue or an adrenaline rush that compromises their ability to control a suspect they capture, to fire their weapons accurately, and even to make sound judgments" (26, citing Pinnizzotto et al. 2002). So not only could you die or get injured, you are also more likely to make a mistake after your adrenaline spikes, subjecting yourself to possible institutional, legal, social, and personal sanctions that undermine your interests. Think about it: you could *kill someone by accident*! That's an *extremely* negative payoff you need to consider.

To make a foot pursuit rational, then, there needs to be a big upside. You need to be able to do something of great value—such as catch a dangerous criminal who poses an imminent threat to others or who would not be apprehended but for this chase. The fact that someone merely is walking away briskly or even running does not constitute evidence for either of these possibilities, and with such low trust between police and community members, it doesn't even constitute evidence that the person did anything wrong—the person might have a justified fear of being subjected to police harassment if they stick around.

Based on the above analysis, it is clearly against many individual CPD officers' best interests to engage in foot pursuits, especially the tactically unsound pursuits mentioned above. When they engage in partner splitting, officers lack a second set of eyes to identify suspicious behavior and hands to deal with a dangerous suspect. When they engage in jump outs, they add in confounding variables by approaching residents in a threatening and confrontational manner that can provoke a flight response. The

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risks of using these tactics are incredibly high, and the possible reward from busting

someone for possession or even a weapons violation is low. From the outside, it does

not make sense that CPD officers routinely use these tactics.

It is also in the *department's* best interest to deter dangerous foot pursuits. In

addition to looking out for the safety and wellbeing of its members, the CPD risks

exposing itself to costly lawsuits[22] and to a loss of public confidence that could make its

job much more difficult to do. It is unfortunate, therefore, that the CPD does not

provide its cadets or officers with adequate training on foot pursuits, and shocking that

the CPD *does not even have a policy governing foot pursuits* (26)! So not only are officers

free to innovate techniques like the partner splitting and jump outs discusses above—

practices that clearly go against officers' and the department's interests—when these

practices become widespread, there's no easy way to point at their wrongness and

retrain officers (see §*2.4.2* for more on CPD's training woes).

Recall from Chapter 2 that *system justification bias* is motivated reasoning that

causes people within a system to view that system as legitimate, even at the expense of

personal and group interest (Jost, Banaji and Nosek, A Decade of System Justification

Theory: Accumulated Evidence of Conscious and Unconscious Bolstering of the Status

Quo 883). I think that this is the best explanation of what is happening here. Police

officers are actively and consistently going against their best interests, with no active

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[22] The DOJ cites two rulings in which the court says the city could be liable for the results of dangerous foot pursuits if the department doesn't train its police officers well, including *Pelzer v. City of Philadelphia* in which the Report quotes as saying, "[F]oot pursuits tend to be strong in emotion, weak in tactics. . . . A reasonable jury could find the failure to establish [foot] pursuit policies creates a sufficiently obvious risk to the rights of pursuit subjects" (31).

discouragement by the CPD, whose best interest would be to minimize the use of foot

pursuits with little-to-no upside. The perceived rationality of these pursuits has to

come from *somewhere*, and system justification theory can give us a good account of how

this irrational practice might be understood to be rational by police officers who are

employing suspect mechanisms, such as stereotypes about black and Latino suspects

that increases the perceived danger, bad social theory about the stops' deterrent effects

that increases their expected payoffs, general status-quo biases that import justification

from the duration and steadfastness of the practice instead of its measurable effects, and

so on.

It is important to keep in mind that police officers, like all actors in unjust

institutions, make their decisions against an unjust background that can purportedly

justify unjust practices. When approaching a suspect, police officers ask themselves

questions, such as "How is this person going to react? Will this person respect my

authority as a police officer? Is this person likely to have a gun? Is this person likely to

react to being confronted with anger? Is this person going to shoot me?" (Ogeltree,

Smith and Wald 56). It is in police officers' best interest to get the answers to these

questions *right*, so that they can minimize exposure to risks and avoid alienating people

whose help they may later

"Such calculations," however, "are not made in a vacuum, but involve these

questions: Is this a 'high-crime' neighborhood? Is this a neighborhood where I believe

there is a high level of respect for police authority? Does this neighborhood look and

feel like my neighborhood—or is it different (richer, poorer, whiter, blacker, more or

less populated)?" (57). System justification bias can cause officers to answer these questions incorrectly, in ways that go against their interests and the interests of their department. Further, as I argued in Chapter 2, the low personal control that any officer has over CPD practice will make it *more likely* that an officer's judgment is obscured by this bias.

The use of ineffective and harmful tactics by the CPD violates each of the cooperative ideals, especially when considered in concert with the other mechanisms which make this irrational practice seem like a good idea. In other words, the parties will realize that the domination contract has to be especially vicious for actors in the social system to take on major risks with little expected payoff.

Consider the example from Chapter 2 of the an unarmed black man who was killed after 45 rounds were fired at him, merely because he fidgeted with his waistband and walked away from the police after they shined a light in his eyes (DOJ 25). This man's *dignity* was violated when he was shot at 45 times for no good reason: it is difficult to imagine the officers thinking this much force was appropriate, unless they conceived of this man as having degraded social status. This interaction represented a breakdown in *social understanding* because both the officers and the civilian were distrustful of one another, and the officers failed to appropriately evaluate the stakes involved. The ineffective misconduct investigation—in which a nonfunctioning gun found a block away was taken by the IPRA to be evidence that the shooting was justified—evinces a lack of *democratic equality*, as does the fact that this would never happen in a white neighborhood.

The case for a violation of *proficient rationality* is more difficult to make, but I believe that it would be possible for the parties to make such a case when armed with the general domination contract. I will not go into the specifics here, but the argument would have to be that such blatant disregard for police officers' individual and group interests at the expense of black and Latino Chicagoans could only be possible in a system where members of these despised outgroups suffered degraded social status, and that when a group's status is so degraded, we should expect to find major disparities in education, which we do (cf. Kadner).

5.2.3 The Ideal of Community Policing Revisited

By now it should be clear why the ideal of community policing would be attractive to the parties, as it was to the DOJ investigators. Highly stratified social arrangements, like the one in which the CPD is situated, thwart all of the cooperative ideals in systematic and reinforcing ways. They are therefore less cooperative, and less just, and need to be corrected for. Here's one articulation of the ideal, expanded from above:

> "True community policing is an overarching ethos that creates both direction and space for officers and communities to treat each other with respect and with trust. This relationship serves as the foundation for working together to establish crime prevention priorities and develop solutions to public safety problems. Implemented correctly, community policing helps people feel neither over- nor under-policed, and incentivizes and empowers many people to work with the police—and others to at least not work against them. To be successful in this way, community policing must be supported not just by an entire police department, but by an entire city." (134).

The idea is that both the police and civilians share common interests, and that each has differential access to distinct pieces of information about what needs to be done and what the best ways to go about doing it are. Neither alone has the power to understand and tackle these problems, so they need to work together to accomplish the important social work that they need accomplished. And, as we've seen dramatically throughout my dissertation, this kind of cooperation can be really hard work because the problems CPD and the residents of Chicago face are serious, systemic problems whose mechanisms obscure their operation.

The parties will see the ideal of community policing as attractive, and affirm it as a necessary corrective justice reform. CPD will be more cooperative, and hence more just, if it works with differently-situated others to implement policies, practices, and monitoring mechanisms embodying community policing. I believe, however, that they can say more about corrective justice in general if they consult more with the general domination contract. I turn now to that argument.

III.   **The Systematic Nature of the Injustices we Face Makes Coalitions Epistemically and Practically Necessary**

In this section, I'll lay the groundwork for my principle of corrective justice, which emphasizes the need for coalitions. I'll first argue that the injustices we face are systematic, such that many injustices make other injustices more likely, harder to detect, and more steadfast. I'll focus on the ways in which the stereotype of black criminality operates within the CPD and serves to make the CPD's injustices possible, by revisiting

the three CPD forces of stratification discussed above: derogatory language, the code of silence, and irrational foot pursuits.

Then I'll argue that coalitions are *epistemically* necessary because they both help us overcome biases against members of subordinated groups and help us attend to considerations relevant to those who are privileged by current injustice. I'll argue that intersectionality is especially epistemically complicated, such that if we are serious about overcoming its problems, we need coalitions in order to understand it. With that established, I'll argue that coalitions are also *practically* necessary because they allow us to harness the power of ingroup favoritism by recategorizing ourselves as part of a superordinate group and overcome system justification bias. In the fourth and final section of this chapter, I'll argue that the parties would affirm the principle of corrective justice that embodies the importance of coalitions, given the injustices that we face.

5.3.1 The Systematic Nature of Injustice

The dysfunctional nature of the CPD illustrates that there are powerful mechanisms at play in our society that work to obscure the nature of the injustice we face and what we can do about it. The parties will look beyond the surface dysfunction—at the mechanisms that cause and sustain it—when thinking about how the injustice works and what ought to be done about it: they'll use the general domination contract to interpret the specific domination contract. In this section, I'll build on my previous arguments about the systematicity of the injustice we confront by discussing the role that prejudicial racial stereotypes could play in each of the three mechanisms discussed

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above. This will form the empirical basis for my argument about the need for

coalitions: the systematic nature of the injustices we face requires coalitions as a

solution.

Recall from Chapter 2 that *prejudicial stereotypes* are affectively valenced,

conscious and unconscious schemas that classify people into categories on the basis of

perceivable traits. You see or hear someone and automatically put them into a category

about which you have conscious and unconscious feelings.

In reviewing the literature on implicit bias in criminal law, Ogletree et. al (2012)

argue that "the face of crime in America is black," such that many Americans across

many social groups, including many people socialized as black, hold stereotypes that

"blacks commit crime, blacks are prone to violence and are dangerous by disposition,

and blacks possess largely fixed personality traits and thus are incapable of change."

These false, prejudicial stereotypes then function to purportedly justify and reinforce

laws and law enforcement practices that disproportionately affect blacks (47). I'll

consider how stereotypes operate in three such practices: the use of derogatory and

dehumanizing language, code of silence, and dangerous foot pursuits.

The stereotype of black criminality marks blacks as subhuman, unable to control

violent impulses. CPD officers' use of derogatory and dehumanizing language

indicates that they rely on this stereotype in their cognition and that this helps to

strengthen it. To think of others as animals—enough so that one officer thought it

unproblematic to tell DOJ investigators that coming to work is like going on "safari"

(146)—is to think of them as not fully rational and not fully worthy of the respect that other, more human people are worthy of.

The department's unwillingness and inability to investigate and punish officers who use this language—even when they use it publicly—further evinces and strengthens the stereotype. Only 1.1% of complaints about the use of the N-word were sustained, indicating that the department does not take these charges seriously and is unwilling to invest resources into investigating them. It is hard to imagine that this low rate could be sustained without the operation of this stereotype in the background. If 354 people have complained about being called a derogatory slur, and this isn't viewed as a major problem deserving of investigatory resources, then I can think of only three plausible explanations as to why: no one noticed this trend, those who noticed it thought that the rate of complaints was greater than the use of the slur, or those who noticed it did not think it was problematic enough to warrant addressing.

Because stereotypes operate unconsciously, we're not in a position to know which if any of these possibilities are true for CPD officers, but we can see how the stereotype could function in each explanation. The stereotype could help explain why concerns about racialized language aren't perceived to be important such that tracking and monitoring data on slur use isn't standardized and prioritized. It could also explain why people wouldn't think that complainants are credible, why this wouldn't be taken to be offensive and wrong, why someone might undervalue this category-policing language's wrongness, or why someone might think that this isn't evidence that racism has infused other police practices. This leads me to believe that it is likely

that prejudicial racial stereotypes operate in the background of misconduct investigations for abusive language.

The code of silence discussed earlier functions as a major barrier to sustaining complaints of misconduct. This code, itself, strengthens the stereotype by delegitimizing those who complain, and it is hard to imagine its operation without the stereotype in place for the reasons I just discussed: if misconduct is not viewed as seriously as the CPD ought to view it, then it is likely that something is diminishing the credibility of complainants or their perceived value, and the stereotype of black criminality does both.[23]

The low rate of sustained complaints can produce additional barriers to overcoming this stereotype, by creating a motivated need to justify the injustice. I think that it is likely that many people both within and outside the CPD take the low rate of sustained complaints as evidence that CPD does not have a problem with racist language. If officers were really using slurs, someone would have noticed and taken corrective action! If this is the case, CPD's inept investigations strengthen the stereotype of black criminality by falsely indicating that these complaints are illegitimate—the result of people trying to take advantage of the system because they are law-breakers who do not want to be held accountable.

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[23] Even if the credibility judgments go the other way—even if ingroup favoritism does not impact credibility assessments of black complainants but rather inflates the credibility of officers or the importance of reasons to honor the code of silence—this is unlikely to be maintained absent stereotypes about black criminality. This is due to the fact that this code of silence prevents the CPD from enforcing its own rules, which it has institutional interests in enforcing. It is hard for me to imagine people not realizing this and working to change the code of silence, absent stereotypes operating in the background that support system justification bias.

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This is an example of the system justification bias we saw with the CPD's irrational foot pursuit practices. These foot pursuits, especially when engaged solely because a suspect flees, are hard to imagine without the operation of stereotypes of black criminality that make these suspect appear to be more dangerous and threatening than they actually are. The stereotype of black criminality can make it seem more likely that a black person is engaged in criminal activity, more likely to be violent, and less likely to reform and change their ways. This makes a black person appear more suspicious, dangerous, and in need of being stopped, all adjusting the expected payoffs.

The stereotype also helps explain CPD's reluctance to have a policy governing foot pursuits and enforce their policies about investigating and punishing excessive force. If residents of these troubled neighborhoods are viewed as more violent, uniform, and resistant to change, then this justifies harsher tactics.

Another place that this stereotype certainly operates is in the CPD's deployment tactics, which serve as the background condition for these foot pursuits. Given the disparities in how neighborhoods are policed, victims are treated, and harsh tactics are used, it is likely that many CPD officers harbor racial stereotypes. We know of a least a couple who do: the ones who refer to policing these neighborhoods as going on 'safari.'

The injustices that we face, which need to be corrected for, are not isolated incidents unconnected to other injustices in the past or present. They are systematic social processes which reinforce one another, by working to obscure each other's operation and purportedly justify one another. A stereotype in one area adapts to another area.

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Stereotypical explanations purport to justify unjust and even self-undermining practices. These mechanisms operate so as to entrench a system of injustice. Corrective justice, therefore, *has to be systematic in scope*. It is not enough to identify one wronged party and establish a causal chain for the injustice: without looking at connected mechanisms one cannot capture the systematic nature of the injustice in its relevant details.

Corrective justice has to be more than changing unjust rules as well, because, as I argued at the end of Chapter 2, without the buy-in of people who operate within unjust institutions, change will just be cursory and not address the systematic injustice. For policies and paperwork to be effective, they need to be accompanied by a culture of accountability and institutional checks.

5.3.2 The Epistemic Necessity of Coalitions for Corrective Justice

The parties in the corrective position understand the potentially poor epistemic condition of people in oppressed societies from two of the circumstances of cooperation considered in the previous tier: that there are epistemic limits on the basis of social location, and that there are ingrained biases against members of subordinated groups. They learn from the domination contracts that there are systematic injustices in their society which work to entrench the advantages and disadvantages of different social positions and that the operation of the mechanisms which perpetuate injustice is often obscured from people acting within the system by other unjust mechanisms.

In particular, they learn that category maintenance, ingroup favoring, and system rationalizing mechanisms can distort people's perception of social reality, making them less able to identify injustice, solutions to that injustice, and obstacles in the way of those solutions.

Taken together, I argue that these considerations lead to three different ways in which coalitions are epistemically necessary: to gain knowledge of the oppressed, to assess the impact of reforms on the privileged, and to address the problems of intersectionality. In this section, I'll argue for each the above considerations.

The situation of the oppressed. Coalitions are epistemically necessary because, as I argued in Chapter 3, members of different social groups occupy different social locations, and these social locations influence what we know, and especially what we know about the subordinated. We need coalitions because we need to understand the problem to be corrected for and what corrections are possible. We are less likely to understand the situation of the disadvantaged in society, and the disadvantaged are the ones most likely to suffer injustice, so if we want to correct for injustice, we are going to have to form coalitions with people from multiple social groups so that we can better understand the problem and what would be a good solution.

We can see this clearly in the case of the CPD. Stereotypes, ingroup-favoring mechanisms like their code of silence, and motivated rationalizing mechanisms like system justification bias obscure our ability to monitor and assess CPD practice. Despite the fact that people take themselves to be making unbiased, untheoretical

observations and judgments, in a society with a domination contract such an epistemic feat is improbable without interpersonal checks and pooling of information. Being subject to or signatories of the domination contract does not enable us to understand it. Police calculate the payoffs of engaging in foot pursuits or misconduct investigations, and blacks and Latinos make decisions about how to go about their day and whether to cooperate with police, against a background that subordinates blacks and Latinos through complex, interlocking mechanisms which obscure their operation.

Though we're all, in principle, subject to the same mechanisms, those mechanisms constrain differently-situated actors differently, generally harming the subordinated the most. Residents of Chicago's most challenged neighborhoods have superior access to police practices directed toward them than do residents of white neighborhoods, because the police engage in different tactics and hold different suspicions in these neighborhoods. Even within these challenged neighborhoods, the police and residents have different interactions with the mechanisms of domination, such that what a community member might perceive as undue, degrading scrutiny, a police officer might perceive as proactive policing aimed at protecting the rights of residents.

Because the domination contract works in such a way to obscure the situation of the subordinated to a greater degree, it is epistemically important that those in a position to overcome these obfuscatory mechanisms and understand the situation of the oppressed be involved in setting and pursuing corrective justice goals. This will generally mean that we need to involve the oppressed themselves, because they are in a

superior epistemic position with respect to their experience. But since the oppressed are subject to these same obfuscatory mechanisms, we will often need the help of others as well, including academics and community activists who may have better access to paradigms for interpreting the experience of the subordinated.

The effects of reform on the privileged. Social change is complicated, people are in all sorts of different social locations, and it is impossible to predict how any proposed solution will affect all people in society. Though I have the strong empirical belief that correcting for injustice will be to the advantage of members of all social groups—that a rising tide will lift all boats—in the short run, there is a lot of potential for people to suffer as their expectations get thwarted or they're asked to bear the burdens of social change. Because of the benefits they receive from the system of social stratification, the privileged members of dominant social groups have the most to lose in the short-run. If we care about our cooperative ideals, we will need to take into account the harms that the privileged will incur through corrective justice.

Say we were considering guidelines that would restrict when police officers may pull a weapon on a foot pursuit. If we don't talk to police officers about why they feel threatened and use force, we risk failing to attend to the ways in which their jobs will change, and the ways in which we may not be able to justify to them. This is especially the case in the CPD where I've argued that changes in official policy have often resulted in more paperwork with little change to police practice. If we want our reforms to fix the problems we've identified, we will need the buy-in of those carrying the reforms

out. We therefore need to involve police officers in our efforts to reform the police department.

Another group who could potentially see major effects from reform are residents of predominately white neighborhoods. Most of my above discussion is premised on the idea that black neighborhoods should be policed more like white neighborhoods, but the reverse is also possible. Sometimes fairness means being harsher to those who escape harm in the status quo. Another possible effect could come in the form of increased taxation. The retraining and redesign of the CPD that are required for corrective justice will not be cheap, and the costs that will be placed on all residents of Chicago are morally important, even if they are only short-term.

It is epistemically important to include members of privileged social groups, therefore, for three main reasons. First, they will be affected by change in ways that could be harmful to them, and ways that they will be in a better position to understand. Second, they bring to the table a different set of experiences—in the case above, what it is like to be policed in a way that does not make one feel they're subject to an occupying force—which will be important in reimaging our social institutions. And third, they are likely to have to pay some of the costs of the reform, and they'll be in a good position to understand which of these costs they will judge to be worthwhile and which they won't. These obstacles to reform are important to understand, if we are to pursue successful correction.

The problems of intersectionality. If we try and pursue corrective justice without attending to the concerns of those who are differently situated, we risk failing to realize the harms they will incur in the present and with social change. For simplicity sake, it is easy to characterize blacks, whites, Latinos, and police officers as though members of these social groups have uniform experience. In our social world, however, every member of every social group is also a member of a different social group, and these social group memberships interact in complex ways that are difficult to determine in advance.

This is the problem of *intersectionality*—the meaning and consequences of multiple categories of social group membership" (Cole 170), and it is a problem that it is impossible to solve without involving differently-situated members of different social groups. Returning to the above example, it could very well be the case that policewomen have a more difficult time conveying authority than policemen, for example, so they use force under different circumstances for different reasons. If we were to eliminate the option of drawing a weapon, we could compromise policewomen's authority in ways that put them at risk or that undermine their performance relative to male officers. It is easy to imagine that only women in law enforcement could be sensitive to the conditions they face, such that we need to be in conversation with them if we want to attend to the normatively relevant circumstances.[24]

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[24] I experienced some of the gendered differences in rule enforcement as a soccer referee. Many of us female referees have found, for example, that when we were officiating men's soccer games, it is important that we stand tall and convey confidence from the moment that we arrive at the soccer field, and that we run hard and fast in the first five minutes of the game to prove our athleticism. I experienced a few games at significant soccer tournaments where my inability to run my pre-game or early game like

The intersectionality of human experience means that if we want to understand how we ought to set and pursue corrective justice, we're going to need many differently-situated people to come together and share their experience, and we're going to need differently-situated people to make sense of that experience in a way that is helpful to corrective justice.

Taken together, these three factors explain why we need differently-situated people to work together to overcome some of the epistemic limits that people in our unjust society face. Without involving members of subordinated groups, it will be difficult for us to accurately characterize their social situations. Without involving members of privileged social groups, it will be difficult to understand obstacles to reform as well as the ways in which reform might perpetuate new injustices against the privileged. Moreover, because of intersectionality, we will need to recruit members of different combinations of groups in order to make sure we capture the injustices they face as well as how they would be affected by reform.

I'm using the term *coalition* to refer to differently-situated actors working together towards common goals, in ways that incorporate the epistemic advantages of different social locations. I've argued that coalitions are epistemically necessary

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I wanted —like my experience told me I needed to for game management—because of structural constraints on when and how I could arrive on the field or because it was too hot to sustain multiple sprints, undermined my ability to control the match.

because social experience is fragmentary, and no one social group has privileged access to all of the normatively relevant social facts.

5.3.3 The Practical Necessity of Coalitions

There is a trivial sense in which coalitions are a practical necessity: since no one social group holds all the power, any political action will require cooperation between differently-situated actors. But there are also two more theoretically interesting senses in which we need coalitions, and they involve the two steps in systematic stratification discussed above.

First, I've discussed throughout my dissertation how ingroup favoritism can distort perceptions of our social reality. When we see others as members of a salient social group we share, we evaluate them as warmer and more competent, giving them the benefit of the doubt in ways we would not extend to outgroup members. Gaertner and Dovidio's *common ingroup identity model* says that we can reformulate social boundaries and their significance through processes of recategorization. Their argument is that our social categories are flexible, as is the way that we use them (35). I'm capable, for example, of thinking of myself as a woman, an Alaskan, someone who lives in Michigan, a white person, and so on.

Recategorization into the same group has the advantage of harnessing the mechanisms of ingroup favoritism to the benefit of former outgroup members. The common ingroup identity model aims "to structure a definition of group categorization at a higher level of category inclusiveness in ways that reduce intergroup bias and

conflict" (46). In the status quo, many police officers have an "us versus them"

mentality, whereby the police constitute an ingroup and black and Latino residents are

a despised outgroup. If, however, they could come to see themselves and these

residents as *Chicagoans*, blacks and Latinos might come to benefit from ingroup

favoritism, as opposed to suffering from it like they do in the status quo.

> Gaertner and Dovidio argue that
>
> "if members of different groups are induced to conceive of themselves
> within a single group rather than as completely separate groups, attitudes
> toward former outgroup members will become more positive through the
> cognitive and motivational processes involving pro-ingroup bias….Thus,
> for example, the newly recategorized ingroup (formerly regarded as
> outgroup) members will become the beneficiaries of more generous
> reward allocations, more positive personal evaluations, more empathetic
> helpful, cooperative and generally more prosocial behaviors, more
> forgiving situational attributions to explain failure and more dispositional
> attributions to explain success, and information about them will be
> processed, stored and recovered differently than when they were
> regarded only as outgroup members" (46-47).

I argued above that ingroup favoritism leads to police officers failing to disclose

misconduct involving other officers. The common ingroup identity model says that if

we could get the police to see themselves and the victims of police misconduct as

members of the same group, say *Chicagoans*—or still better, *Chicagoans who are invested*

in helping the CPD police in a safe and lawful manner—then they would be more

concerned with the fact that the misconduct occurred, more disturbed by the fact that

others aren't taking this misconduct seriously, and less concerned by the impact of

investigations on their fellow officers.

The idea is that these cognitive processes which favor ingroup members are well entrenched in the way we think. Good epistemic practice, therefore, has to mitigate the epistemic harms of ingroup favoritism. The best way to do this, Gaertner and Dovidio argue, is through extending the scope of our ingroup so that it contains all of the normatively relevant members of society. We need coalitions, in other words, because we're going to engage in biased epistemic activity no matter what, and we're more likely to get things wrong if our ingroup is homogeneous as opposed to diverse and inclusive, encompassing many differently-situated actors concerns.

But, in order to get the epistemic benefits of common ingroup membership, people need to be working together consistently in the right institutional setting. After all, the CPD and residents of Chicago's worst-off neighborhoods interact frequently in the streets and at community meetings, and this has not led to better policing. Gaertner and Dovidio argue that "recategorization from different, potentially competing groups to one group can be achieved by inducing intergroup cooperation, calling attention to existing common superordinate group memberships (e.g., their common university identity) or by introducing new factors (e.g. common goals or fate) that are perceived to be shared by members" (6). These processes need to happen in the right institutional contexts for them to take hold.

Second, we need coalitions to overcome motivated rationalizing mechanisms such as system justification bias. Recall from §2.3.2 that system justification bias gets activated in contexts where there is system threat, system dependence, system inescapability, and low personal control. Coalitions have the potential to eliminate all

of these contexts from criminal justice reform. The system is only under threat if *they* are trying to destroy *our* system, where who "they" are and what's "ours" are determined in reference to outgroups and ingroups. As I discussed above, coalitions have the potential to change outgroup members into ingroup members, reducing bias but also diminishing external threat to the system.   If all Chicagoans are engaged in securing peace and safety, then misconduct complaints and reform efforts do not threaten the system—they protect it against rule breakers and bad policy.

Similarly, while it is unlikely that one resident or police officer could ever change the system on their own, a coalition consisting of multiple people from multiple different roles really can enact change, making it less inescapable and more open to the possibility of personal control vis-à-vis one's membership in a coalition. The DOJ's report is full of examples of individual officers who are trying to police in a safe and constitutional manner, but who feel like their success in the department—and in extreme cases, their lives—are tied to following unjust practices. Working with a coalition of people inside and outside the police department would increase the personal control that a police officer had over the department, and show how there is real hope for changing the system such that it isn't inescapable. And, as the potential for change ramps up, people can see how their dependence on the current system goes down. Thus coalitions are a potentially powerful solution to system justification bias, and the epistemic errors it leads us to make.

The barriers that we face to engaging in successful corrective justice are serious and systematic. I've argued here that the only way that we can expect, or maybe even *hope*, to overcome them is by working in coalitions with differently-situated members of society.

IV.   An Argument for my Principle of Corrective Justice

We now have the resources that we need to tackle the problem of corrective justice. Recall from the previous chapter that the parties in the corrective situation are tasked with answering the following question:

Given the general domination contract, what principle(s) of corrective justice

would be necessary to correct for the injustice of the specific domination contract?

The specific domination contract that we're considering is the contract by which the CPD operates.

I argued in Section II that the parties would see community policing as a solution to the problems of how CPD operates in the use of category-maintaining degrading language, ingroup favoring code of silence, and system-rationalizing dangerous foot pursuits. These are entrenched and complicated problems that can only be solved with community members and the police working together.

I then argued, in Section III, that we can learn from how the stereotype of black criminality operates, that the problems CPD confronts are systemic and interlocking. Community policing cannot be effectively implemented from above—community members, and especially police officers, need to *buy in* and change the unjust social

processes. It is only by working together that these interested parties can overcome the epistemic and practical barriers discussed in the previous section. Without working together, they are unlikely to be able to get the information that they need to understand and solve CPD's problems. Further, the *way* that they work together matters. If these coalitions can work together over time, and with members of each social group situated symmetrically, they are much more likely to be successful.

These features are not unique to the CPD, but rather inhere because of the nature of the general domination contract. Once a system of social categorization takes hold—as it has in every society known to humankind—ingroup-favoring and system-rationalizing mechanisms take hold and shape social constraints. These constraints then shape our social cognition, and distort it in ways that preserve relations of domination and subordination. This means that every society with a domination contract will have problematic social cognition that will stand in the way of corrective justice.

The parties will therefore maintain that corrective justice as an enterprise requires, as a practical and epistemic matter, that people work together in coalitions. The cooperative ideals will not be fully realized in social arrangements that have stratified social relations, and overcoming the processes of stratification will only be possible if differently-situated actors work together to over tone them. The parties can embody this insight by adopting a single principle:

<u>Corrective Justice Principle</u>: Build and maintain coalitions for undermining or reforming the social mechanisms which are unjust or result in injustice, understanding that this will require continued vigilance.

Corrective justice is needed in societies with domination contracts, and domination contracts cannot be rewritten without differently-situated actors working together over time. Thus, from the way that domination contracts operate on social constraints and social cognition, the parties can decide on an approach to corrective justice which will be helpful to all those engaged in the enterprise of corrective justice. Since correcting for entrenched injustices will require the knowledge and help of differently-situated people, coalitions are the unique solution to the unjustified social stratification.

In the next chapter, I'll argue that we can say more about how this principle ought to be applied, and I'll argue for five desiderata for how we ought to set and pursue corrective justice goals.

CHAPTER 6

Five Desiderata for Applying the Principle of Corrective Justice: The Value of Specificity in a Theory of Corrective Justice

I.   Extending the Machinery of my Two-Tiered Social Contract

I said from the outset that the theory of corrective justice I am proposing is an *approach* to corrective justice and not a *solution*. Rather than mapping a normative conception onto the domination contract and arguing for solutions, my approach to corrective justice gives us concepts with which to answer the three questions of corrective justice:

1. **What is unjust such that it needs to be corrected for?**

2. **How ought we set priorities and goals if there are multiple injustices?**

3. **How ought we pursue our corrective justice goals, in light of possible tradeoffs and obstacles?**

My cooperative ideals and principle of corrective justice do not *answer* these questions so much as *tell us what a satisfactory answer would look like*. They tell us that the way in which we characterize injustice and what ought to be done about it *matter*—that we ought to be concerned with spelling out our conceptions in ways that coalitions of differently-situated actors could get behind. By providing ideals that conceptualize important aspects of cooperation about which people can disagree, models which are open to contestation of how injustice works and what would need to be done to change

the constraints by which it operates, and a principle that explicitly calls for people to work together in setting and pursing corrective justice goals, my approach to corrective justice sets us up to succeed at ameliorating injustice: it helps us manage our inevitable and important disagreements in a way that redounds to all cooperators' advantage.

In this chapter, I take this approach another action-guiding step. I argue that the domination contract operates in certain systematic ways that counteract the cooperative ideals, and will require coalitions to overcome. Thus, the parties can go beyond the principle of corrective justice in answering the question of the corrective position: **Given the general domination contract, what principle(s) of corrective justice would be necessary to correct for the injustice of the specific domination contract?** They can give *desiderata* for how those coalitions ought to be used to set and pursue corrective justice goals. These desiderata will be helpful for framing the disagreement which cooperation under unjust circumstances brings.

I argue for five desiderata which I split into two categories. For **setting corrective justice goals**, I argue that the parties would affirm:

1. *Dismantle Powerful Mechanisms*—Give priority to undermining those mechanisms involved in multiple mechanisms of injustice or which play a major role in a mechanism responsible for a large amount of injustice.

2. *Prioritize Helping the More-Constrained*—Give priority to addressing the injustices of social groups who suffer multiple serious injustices.

For deciding where and how to **pursue corrective justice**, I argue that the parties would affirm:

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3. *Go for the Low Hanging Fruit*—Continually monitor and assess what's politically possible, and take action to dismantle unjust mechanisms when possible, no matter how small the mechanism.

4. *Pursue Multiply-Effective Solutions*—Give priority to solutions that dismantle multiple unjust mechanisms.

5. *Avoid Making Unnecessary Enemies*—Give priority to solutions that avoid alienating potential coalition partners, including so-called "rug-pulling" solutions.

The desiderata for applying the corrective principle depend directly on the characterization of the domination contract. My characterization, offered in §*2.3.2*, depended on the stereotype content model, system justification theory, and the common ingroup model. The three processes of social stratification that these theories support—categorization, subjecting in- and out-group members to different social constraints, and the systematization of social constraints—when combined with my cooperative ideals, have normative implications which we can capture with desiderata.

My argument for this extension of my theory proceeds in two steps. First, in Section II, I argue for the five above desiderata by showing how they are each supported by the domination contracts, cooperative ideals, and corrective principle. Then, in Section III I return to previous arguments about the kinds of agreement and disagreement that are productive for corrective justice, and argue that my full account can be action guiding in a helpful way.

This argument is just preliminary. I do not argue for why the parties would choose these and only these desiderata, and why this is the all-things-considered best way to approach corrective justice. Rather, in the continuing pragmatist-inspired spirit of this dissertation, the arguments of this chapter serve as an indirect argument for my approach to corrective justice. In demonstrating the theoretical utility of my approach to tackling the injustices of the CPD, I am arguing that this approach can helpfully answer the above three questions of corrective justice, and that this is a consideration in favor of my account.

Though my arguments depend on the domination contract as I explained it, it is my hope that these desiderata could be endorsed by people who have different plausible models of the domination contract. If this is the case, we would have strong reasons to believe that these desiderata hit on important aspects of our world. An important extension of this project would be to see how much potential for agreement there is here, on different plausible domination contracts.

II. Desiderata for Applying the Principle of Corrective Justice

Before I argue for the following five desiderata as being apt to tackling the CPD's problems, it will be helpful to take another look at what the parties to my two tiered social contract have affirmed so far. Recall from the last chapter, my principle:

Corrective Justice Principle: Build and maintain coalitions for undermining or reforming the social mechanisms which are unjust or result in injustice, understanding that this will require continued vigilance.

Recall also, my four *cooperative ideals* from Chapter 3:

1. **Proficient Rationality**—the ability to set, revise, and pursue their conceptions of the good, given the opportunities available in the social system.
2. **Democratic equality**—equal consideration in the system of governance and an equal say in decision making, such that each person and their concerns count the same.
3. **Social Understanding**—the ability to overcome epistemic limitations based on social location, such that, in principle, each participant can come to know what it would be like in each social location.
4. **Dignity**—affirmation that each person counts and protection against degraded status, such that the rules which social govern cooperation are justifiable to each participant.

The parties used suitably-constructed models to generate these prescriptions. In the cooperative position, the parties only had access to the fact that they were in the circumstances of cooperation. In the corrective position, they had access to the domination contract.

In this section, I'll use this machinery to argue that the parties would also endorse five desiderata for applying the principle of corrective justice. I'll first explain the desiderata that guide setting corrective goals and then explain the desiderata for pursuing them. My argument is that these desiderata capture important aspects of our the practical and epistemic dimensions of living under a domination contract.

6.2.1 Desiderata for Setting Corrective Goals

We will be able to set better corrective goals if we can identify common goals that differently situated actors ought to share and be able to build lasting coalitions around. I'll argue here that there are two such common goals—dismantling powerful

mechanisms and prioritizing helping the more-constrained—and that formulating and pursuing these goals will help us overcome the epistemic and practical barriers that my principle of corrective justice was designed to overcome.

1. *Dismantle Powerful Mechanisms*—**Give priority to undermining those mechanisms involved in multiple mechanisms of injustice or which play a major role in a mechanism responsible for a large amount of injustice.**

My argument for this desideratum is that it captures the important practical and epistemic insight that not all mechanisms of injustice are equally as powerful, and that insofar as participants in a social arrangement have reasons for dismantling or reforming unjust mechanisms, they have—all-things-equal—stronger reasons for dismantling stronger mechanisms.

Mechanisms can be powerful in different ways, working to constrain people in a specific resource-intensive way, such as requiring an excess of emotional resources; constraining people across their access to multiple different resources; constraining people's access to a cooperative ideal or multiple cooperative ideals, such as social understanding; constraining many people; or constraining members of many different social groups. This dictate doesn't privilege any one kind of social power, but leaves it open to the members of society to contest which kinds of social constraints matter most.

The parties in the corrective position have many powerful mechanisms that they could consider to be powerful. One of the sources of the most resource-implicating and

ideal-contravening is the CPD's deployment tactics which subject black and Latino neighborhoods to harsher police tactics and less protection from others' harm. Stereotypes of black criminality are another powerful mechanism, in the sense that these stereotypes track people throughout different areas of their lives, constraining their ability to access valuable resources.

The parties will see that they will need grounds on which to set corrective justice goals, and see the importance of dismantling the mechanisms that are most powerful. Once the veil is lifted, this standard and the cooperative ideals can be used to contest and argue for what actual corrective justice ought to be prioritized.

2. *Prioritize Helping the More-Constrained*—**Give priority to addressing the injustices of social groups who suffer multiple serious injustices.**

The parties would affirm this desideratum for the same reasons that they would affirm the cooperative ideals in §*3.4.2*: they would be worried about ending up in a subordinated social position where social constraints prevented them from pursuing their interests, and worried about their epistemic access to an accurate model of their social arrangement and the constraints which affect them and others, should the situation of some of its members be obscured by highly stratified social relations.

Put another way, should they end up in a poor social position to advance their interests both in terms of practical and epistemic constraints, they will want others to work to improve that position. If they end up in a different social position, they'll have

reasons to want to the obfuscating impact of stratified social relations reduced, and reducing the social constraints faced by members of subordinated groups will have this effect. More-constrained social positions are a problem for justice because their existence thwarts the cooperative ideals by unjustifiably constraining those positions and by subjecting others to epistemic constraints that prevent them from pursuing their cooperative interests.

The residents of black and Latino neighborhoods are arguably more constrained by CPD's practices than black and Latino residents of Chicago who live in more affluent neighborhoods, who are arguably more constrained than black and Latino visitors to Chicago. That gives us reasons to prefer, for example, dismantling mechanisms that impact CPD's deployment over dismantling mechanism that impact its use of the code of silence, because CPD's deployment tactics subject residents of these neighborhoods to multiple unjust constraints, leading to less ideal social cooperation.

That said, there is no clear cut way to determine who is more subordinated than whom, and the reasons to prefer helping the more-constrained are defeasible, especially in light of the above considerations about powerful mechanisms. This is another case where the desiderata allow for meaningful contestation of how we should set goals, by allowing for existing normative and empirical disagreement over what fits the criteria for inclusion in a salient social category and how we should weigh the effects of this category membership.

6.2.2 Desiderata for Pursuing Corrective Goals

These desiderata similarly capture the insight that there are no settled standards for how we should weigh tradeoffs in pursuing corrective justice, how risk averse we should be, how we should model the expected effects of reform, and many other important questions to the pursuit of corrective justice. There are, however, considerations that ought to weigh on the parties minds, given how the domination contract operates. I will relate each of them below.

3. *Go for the Low Hanging Fruit* — **Continually monitor and assess what's politically possible, and take action to dismantle unjust mechanisms when possible, no matter how small the mechanism.**

I argued above that we face interconnected, systemic injustices in our criminal justice system. We saw how unjust mechanisms within the CPD compound one another. By addressing powerful mechanisms and the injustices faced by those who find themselves enmeshed in multiple unjust mechanisms, we can begin to untangle the systematic injustice. My argument for this desideratum is that we should start tackling this system *anywhere we can*, because, so long as we keep the other desiderata in mind, *everywhere will help*.

When we help people who face more constraints, we can affect them in multiple ways because of the ways mechanisms reinforce one another. Focusing on the harms of derogatory language by working towards effective racial-abuse misconduct investigations might, for example, weaken the CPD's code of silence in ways that make

excessive force less likely. Further when we go after powerful mechanisms, we can

disrupt multiple injustices. Given the interconnectedness of the mechanisms involved

in CPD's injustices, *any* effort to disrupt a powerful mechanism or to improve the

situation of the subordinated will make *some* difference (assuming we keep the last part

of my corrective justice principle in mind, and remember that mechanisms of injustice

adapt and change).

So, all-things-equal, we should do whatever we can most easily do. We should

attack the unjust system *anywhere we can convince people to attack it*. This will have the

added benefit of giving our coalition more victories, which can help retention rates and

strengthen our coalitions. Recall from above that system justification bias is activated in

contexts where people think that change isn't possible. Small actions will show that

change is possible, and will encourage people to keep up the good fight. Given the

popularity and prominence of the Black Lives Matter movement today, this may mean

that efforts to change the use of force by police or more effectively investigate

misconduct might be more effective than attempts to change the CPD's deployment

patterns, no matter what we think about these mechanisms' relative badness. My

argument is that any well-designed, successful efforts will make a difference, so we

should take advantage of our political climate and enact whatever change we can.

4. *Pursue Multiply-Effective Solutions*—**Give priority to solutions that dismantle**
   multiple unjust mechanisms.

This desideratum says that if more than one solution is possible, we should prefer those solutions which will be most effective in terms of dismantling powerful mechanisms or helping the position of those most subordinated. The parties would affirm it because it is in their epistemic and practical interest to dismantle such mechanisms, which they might be subject to in our cooperative arrangement.

This desideratum also has the benefit of encouraging coalitions, because multiply-effective solutions are likely to benefit more people. Corrections for injustices can have side-benefits which help others. So, goes the oft-cited example, adding small ramps to sidewalks at intersections was a necessary measure of corrective justice for the physically disabled who rely on wheelchairs that couldn't make it over curbs. But it also helped people pushing strollers, delivery workers, and people with luggage. When thinking about solutions it is best to keep a broad view in mind, thinking about who else could possibly benefit, and how we can use that to marshal their support for our cause.

We can see the potential for this in how CPD operates, as well. I argued above that CPD officers' jobs are made more dangerous when they have to police hostile neighborhoods, more difficult when there is no community cooperation in investigations, and that their use of irrational foot pursuits subjects them to unnecessary personal, social, and professional risks. Creating and enforcing a policy on foot pursuits which discourages them when there is little gain would therefore benefit officers in addition to the residents of these problem neighborhoods who are currently subject to social constraints that arise from this CPD practice. Such a change would put

black and Latino residents and CPD officers at less risk, and reduce the number of encounters where excessive force is needed.

Aiming at such agreement of interests is at the heart of social contract theory and, I have argued, at the heart of corrective justice. Pursuing solutions that help everyone involved will put us in the right mindset to look to build and maintain coalitions, and it will encourage us to follow the common ingroup identity model by looking for superordinate groups and common goals that we are a part of in virtue of the constraints we face based on our common interests.

5. *Avoid Making Unnecessary Enemies*—**Give priority to solutions that avoid alienating potential coalition partners, including so-called "rug-pulling" solutions.**

Given the enormity of the injustices we face and the need for coalitions to tackle them, the parties will be want to avoid alienating anyone that they could potentially work with. The main reason for this is practical: we will need allies, and people who are angry about our reforms are unlikely to want to be our allies. Also, often the parties most affected by solutions—such as police officers, prosecutors, and judges—are also the most important to the implementation of solutions, and failing to attend to their concerns could render any solution ineffective (see discussion in §2.4).

Another reason is epistemic. We are all raised in unjust societies, and those societies have marked us by serving as the background against which we make our

judgments and form our expectations. Members of dominant social groups will have

formed their expectations against a background where more was possible for them, so

they will probably expect more. Dramatic social change disrupts that background, and

changes what's possible. People's expectations rarely change that quickly, and this

generates an objection to so-called rug-pulling: it is wrong, on some level, to pull the

rug out from under people by dramatically changing what they can legitimately expect.

The epistemic dimension comes in when determining the level at which any

particular instance of rug-pulling is wrong, as I think that this is almost impossible to

do in advance. Social change is complicated, people are in all sorts of different social

locations, and it is impossible to predict how any proposed solution will affect all

people in society. As I argued in §5.3.2, if we build and maintain our coalitions without

attending to the concerns of those who are differently situated, we risk failing to realize

the harms they will incur with social change. We risk doing serious harm when

attempting to correct for injustice, and the likelihood of us harming increases if we

demonize or otherwise stigmatize the people who we take to be responsible for the

injustice—something that is itself wrong.

The point is not just that our solutions might go awry if we alienate the people

affected, it's that proceeding inclusively is the best way to ensure that our solutions *are*

effective. Members of privileged social groups often have important knowledge about

obstacles to successful correction and what it is like to not be unjustly constrained, and

we will want access to that information when we go to correct. If we want the police to

felicitously follow our new policies, they will need to see the benefits of those policies.

So, for example, correcting for the injustice in racially disparate uses of force will *require* attending to the different situations of those who use that force.

The injustices we face are systemic, and those who perpetrate them often take themselves to be doing good—they just don't understand how their actions support a system that does bad. By viewing all members of society as potential coalition members, and working hard to avoid alienating them, we increase our chances of actually doing the work we seek to do.

Therefore we should avoid making enemies, not just because we need large coalitions to accomplish our needed corrections, but also because our corrections will affect differently situated people differently, and we need to attend to all those affected if we truly want to make our society more just. We especially need to attend to those through whom the mechanisms of injustice operate—to the police officers, prosecutors, and judges whose help we will need in our corrective measures. If we want to pursue corrective justice effectively, we cannot afford to categorically exclude social groups, or we risk perpetuating new injustices.

III.   The Advantages of my Approach: Framing Disagreement

I began this dissertation paraphrasing Rousseau, and arguing that we should take people and society as they are, and think about how they might be. I have argued that the constraints under which we are born and against which we are live our lives *mark us*, and as a result, this background is morally significant. The epistemic and practical obstacles to understanding these background conditions require others' help to

overcome. Since we have an interest in successfully overcoming these obstacles, if we are to helpfully characterize injustice, set corrective goals, and pursue those goals, corrective justice, we will need coalitions of differently-situated actors.

Concerns about our unavoidable difference and the resources that this difference brings motivated me to affirm ideals as a normative standard. No one has a privileged vantage point of our whole society—there is no one Archimedean point which we can go to and answer the questions of corrective justice in the *right* way. We need to be able to contest answers to each question of corrective justice—we need to be able to communicate to others our concerns about what injustice there is, what priorities we ought to set, and how we ought to pursue them.

I advanced the ideals, principle, desiderata, and dominations contracts of my two-tiered social contract because I believe that they are the kinds of things that people engaged in social cooperation—even unjust social cooperation such as ours—can *agree* to. This affirmation will not, however, be uniform because people's different vantage points on our social structure and different normative commitments give them good reason to hold the corrective beliefs that they do. Police officers' and community members' vantage points capture important facts about how the CPD operates, and people in these social positions have important concerns and judgments.

So while agreement on a *solution* to the major problems of injustice is unlikely, my account of corrective justice offers hope that we can create an *approach*, which, in modeling socially significant facts that apply to all the circumstances in which we find

ourselves, give us concepts with which to contest our answers to questions of corrective justice.

There is no right way, I have argued, to characterize how we *are*. It is unlikely that there is a right way to characterize how we *ought to be* in a way that would make realizing that standard possible. But there is undoubtedly value to engaging with differently-situated others about how we ought to make these characterizations, and using the same values and concepts will better facilitate this. If my ideals, principle, desiderata, and domination contracts do this, then we can say that my social contract is *socially constructive*: it will enable us to make and remake our social institutions in the way that justice demands.

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