Coming to Terms with Equality

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COMING TO TERMS WITH EQUALITY

Ronald C. Griffin

To David, Jason and Meg... who want a world where people don’t worry about harassment.

1

This article is written in free form. There is an introduction, letter to father, sketch of the article, imagined kingdom where Joseph Raz and the author vie for the king’s ear on equality, recent cases about equality, international incidents, and a conclusion. When you read the article you should think about jazz and the definitions for equality at paragraph 59.

2

Dad I understand you now. To live like a man means to walk through the dark with a candle. Behind, where a moment ago it was light, darkness envelopes everything. Ahead, where it will soon be light, darkness lies undisturbed. Only where one stands now is there enough light to see anything. It is a flickering light illuminating strange objects; and like everything in my past, as one moves forward, the objects (visible in the light) fold into the darkness.

3

Of course, the things I’ve seen befuddle me. Let’s take equality. Does it crop up from instinct? Is it natural in nature? Is it a societal cultivation? And the answer? It is all three. The question is: how do I

† Professor of Law, Washburn University of Topeka; B.S., Hampton Institute, 1965; J.D., Howard University, 1968; LL.M., University of Virginia, 1974.

†† There is something mysterious out there. There is something ominous. There is something difficult to describe. Jazz (eclectic reasoning) captures this. It is intellectual improvisation, in a crisis, to synthesize conflicting information, to cope with change. It is the use of literature and poetry (where they’re relevant), law and philosophy, mathematics and symbolic logic (where they’re relevant), to describe a situation, define a problem, and concoct a remedy. Kellis Parker, Professor of Law, Columbia University, Address at the Symposium on Critical Race Theory, Washburn University School of Law (Jan. 28, 1993).
prove it? In this essay I use a dialogue with Joseph Raz; a critique of his reasoning; a proposal to a mythical king; and a memorandum (brimming with citation) to establish my claim. In the memo, I state explicitly my views about equality.

Let me outline the text. Raz believes that liberty and autonomy are society’s central values. That equality is a marker measuring the nearness or the distance of objects boasting comparable qualities. Equality, he claims, is both ambiguous and problematic. Everybody (society even) would be better off if (1) people stopped obsessing about equality; (2) government was lifted from everybody’s back and (3) people were given control over their own lives.

Alas. Raz champions a pipe dream. In the 1990s, inequality is the ultimate reality. Although liberty and equality might improve the lot of some people, e.g., Norris v. Ireland and Attorney General v. X, in the text, it can’t correct or reverse the social inequalities (the poverty, hunger, humiliation, and mayhem) swirling around us.

In the text, Raz promotes individualism. By contrast I champion civilization. It’s my view that civilization—the legal forces and social graces tempering a man’s impulse to prey on a neighbor to preserve

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3. I can hear Raz. JOSEPH RAZ, ETHICS IN THE PUBLIC DOMAIN 155-76 (1994) [hereinafter ETHICS IN THE PUBLIC DOMAIN]. Inequality is the natural state. MORALITY, supra note 2, at 217, 225-27. Cf. Robert P. George, Recent Criticism of Natural Law Theory, 55 U. CHI L. REV. 1371, 1377 (1988). It is the product of luck, competition, culture, and the genetic cards dealt to everybody. ETHICS IN THE PUBLIC DOMAIN, supra, at 162, 164, 166, 173. The government can create inequality when it breaks faith with everybody, i.e., breaches its promise to be a non-partisan, to help somebody. MORALITY, supra note 2, at 110, 120. Equality makes sense when one’s talking about objects that are scarce. Id. at 222-26. When equality is pragmatically applied to various situations it amounts to everybody’s faithful adherence to the non-diminishment principle. Id. at 235-36, 239. We (collectively) shouldn’t needlessly nor recklessly deprive somebody of something given to everybody. What is that something? Raz would say its freedom and autonomy. Id. at 400, 416, 424-29.
4. Ethics in the Public Domain, supra note 3, at 348-53. Raz would put it this way. We have privatized society. Government has been invested with business traits to wedge it into that arrangement. Government has a public persona and a private persona. When it dawns its public face the question is: When must people accede to government claims? The answer is “trust and qualified consent.” Id. at 348-52. When giving-in to government claims enhances personal autonomy, people should accede to government. When giving-in to government invests somebody with the power to deprive others of autonomy, whatever else one might gain from the arrangement, people should not accede to government. See Ruth Gavison, Natural Law, Positivism, and the Limits of Jurisprudence: A Modern Round, 91 YALE L.J. 1250, 1263 n. 84 (1982).
7. MORALITY, supra note 2, at 18, 245, 369. It is a qualified endorsement. There must be a society that promotes and sustains individualism. Id. at 391. See Waldron, supra note 2, at 1129.
himself—can’t survive without equality—a sense of sameness, and a conviction that we share traits like life, reason, and a craving for mental health.

Equality squelches our worst impulses! In the text, autonomy, difference, multiculturalism—divisive terms—figure into Raz’s remarks about Bosnia and Haiti. Sameness—a collaborative term—and equality—a call to promote group solidarity, well-being and/or note the humanity we share—figure into my remarks about these international hot spots.

Initially, I was overwhelmed by this equality work. I couldn’t capture an image of equality. I needed a foil and a foe. Joseph Raz and Ruth Adler came to my rescue. I had to duel with Raz to get my ideas and images straight. I had to imagine a society, much like Ruth Adler did in her work, and make Raz counselor to some king. My task? Debunk Raz. Now imagine a society in which no one has rights. People are kind and gentle, compassionate and generous, and act out of a sense of duty. People treat each other well. There is a system of rewards for services. All obligations are to the sovereign notwithstanding the contracts assembled by the sovereign’s subjects. The sovereign is invested with all rights. There are no other rights-holders. When an obligation is breached the sovereign is the only wronged party. (Having said that) the sovereign has decided to change society. He consults Raz for advice. What does Raz tell him?

If you assemble a prosperous society; seed it with freedoms like freedom of expression, political participation, and occupational choice; then furnish everybody with the basics; you’ll grow autonomous people. The goal is to create liberty: a realm where your subjects can make uncoerced choices. You’ll have to referee some squabbles to keep the peace. You must avoid squabbles about equality for these reasons. First, equality’s reality is problematic. Second, the word makes nonsense. Third, pursuit of equality creates waste.

8. Morality, supra, note 2, at 1-431.
10. Id. at 32.
11. See Morality, supra note 2, at 198-216.
12. Id. at 391.
14. Id. at 333-34.
15. Id. at 332.
Now this is poor advice. First, Raz's definition of liberty is out-of-fashion and out-of-date. Second, Raz's conception of liberty has been displaced by another conception (freedom from control by economic forces; liberation from mass media politics; and the restoration of original thought). Third, Raz's promotion of autonomy is sick. This notion rationalizes and nourishes predators (people who have soiled society to inculcate the questionable belief that "resources are scarce" and "society belongs to the fit"). Fourth, Raz's remarks about equality are half truths and short sighted. People are innately equal in terms of biology, intellect, and spirit. Fifth, Raz overlooks the work of Rousseau and Locke. If you accept the observations of these philosophers, equality was (is) the original state, man was born into equality; man couldn't have evolved without equality; society broke the bond between man and equality; men to this day crave the remnants of equality; nations have fought wars over equality; contemporary scholarship is about the amount of inequality men must tolerate.

Shakespeare (a philosopher in his own right) captured some of what Raz overlooked. In an ode to disparaged men he wrote the following. “What is a Jew?” (It could be a Tutsi or a Croate-Muslim, etc.) “Hath not a Jew (Tutsi) eyes? Hath not a Jew (Croate-Muslim) hands, organs, dimensions, senses, affections, passions?—fed with the same food, hurt with the same weapons, subject to the same diseases, healed by the same means, warmed and cooled by the same winter and summer, as a Christian? If you prick him, does he not bleed? If you tickle him, does

20. See WOJCIECH SADURSKI, GIVING DESERTS IT'S DUE: SOCIAL JUSTICE AND LEGAL THEORY 1-5 (1985); AYN RAND, THE VIRTUE OF SELFISHNESS 147-50 (1964). On the broader issues of individualism and capitalism my views clash with the views expressed by Rand. Property rights is the sticking point. Id. at 156-57. Now, having said that, I endorse her views about racism, predation, and her condemnation of these things. What did she say? Racism is bred among undistinguished men who've decided to use the achievements of their clan to lord it over other men. Racism is the philosophy of brutes and parasites. Id. at 147-50. It arises out of prehistorical tribal warfare and the notion that the men of one tribe are the natural prey for the men of another. Id. at 150.
he not laugh? If you poison him, does he not die? And if you wrong him, shall he not revenge?"22

9

There is a bottom line. Raz didn’t get it right. When we lived at a lower level of productivity (where starvation was probability) autonomy produced security for some and liberty for all. In the modern world (where freedom from want is a distinct possibility) his notion has become an anachronism. It’s stymied society’s attempt to stuff individual initiative into corporations; to wed men to machines; to hide man’s loneliness and alienation.23 Society regrettably has taken counter-measures to dull our senses to this. It’s mobilized people and machines with phony crises to distribute society’s largess on a propagandistic basis.24 What’s the propaganda? Starvation in the midst of plenty is a possibility.25 People should work to get a piece of society’s largess.26 Inequality (getting less than one’s share of society’s goodies) is a possibility.27 Competition is a remedy.28 Toil and unhappiness are normal.29 “Modes of relaxation [should] soothe and prolong stupification.”30

10

Raz’s views are too imperial, abstract, and syllogistic for me. He shuns dialectical reasoning (mediating contradictions). He marginalizes what he does not understand. He creates order out of nature, claims his order is nature, and strives with syllogistic verve to impose his order upon

22. Id. at 87.
23. DIMENSIONAL, supra note 17, at 4, 32 & 33 n.23.
24. Id. at 25, 26, 32, 76-77.
25. Id. at 128-29. See HERBERT MARCUSE, EROS AND CIVILIZATION 16-17, 35 (1966) [hereinafter EROS].
26. DIMENSIONAL, supra note 17, at 5, 7-8, 128; EROS, supra note 25, at 132.
27. DIMENSIONAL, supra note 17, at 32.
28. Id. at 7.
29. Id. at 7, 25. See EROS, supra note 25, at 154. See also ARTHUR M. OKUN, EQUALITY AND EFFICIENCY: THE BIG TRADEOFF 1 (1975). White culture is predatory, scientific, and individualistic. People use the market to vent their competitive impulses. See Kermit Gordon, Foreword, in EQUALITY AND EFFICIENCY: THE BIG TRADEOFF vii (1975). White culture is not organized around mutual respect. Indeed mutual respect is neither a goal nor a desired outcome. It is based on domination and the establishment of a clear pecking order. See REICH, supra note 16, at 121-25. See Benjamin Schwarz, The Diversity Myth: America’s Leading Export, ATLANTIC MONTHLY, May 1995 at 60, 62.
30. DIMENSIONAL, supra note 17, at 7.
others. Put another way, Raz is a logical positivist. He's hinged language to mathematical and scientific proofs; logic and observed behaviors, as if they constituted the entire universe, to make other expressions about the world (and what's in it) nonsense. Raz abhors universals like equality and, in his abhorrence, impoverishes conversation about the stuff that captures the conditions of men and things, which occur momentarily and vanish, and in vanishing manifest what can be.

What Raz asserts about equality is true as far as it goes. Interestingly enough the observations he presents against equality count as evidence of the stuff. Regrettably equality exists beyond Raz's understanding. Man would never crave something he'd never experienced. (Plato might put the inquiry this way). There is a form called equality. It is a reality. What we see are poor replicas in the world. What we perceive are aspects. What we have to do is gather everyone's perceptions to see equality in its entirety. What's its composition? It is freedom and liberty; peerage and autonomy; what is metrically "the same" about somebody; privacy and collective goods. What's inequality? It is ignorance and starvation; arbitrary deprivations; wickedness sprouting from schemes administered by crazed men; discrimination and hopelessness.

31. Id. at 154, 182. Raz appears to be a champion of science, scientific thought, and the application of science to social reality. He perceives the world in terms of biology, chemistry, and physics. Beyond this realm everything is unreal. Id. at 147. (At any rate that's my belief.) See Thomas A. Cowan, The American Jurisprudence Reader 17, 213 (1956); M.D.A. Freeman, Lloyd's Introduction to Jurisprudence 814 (1985). Of course, Raz's attitude about things might have nothing to do with his views about equality. Equality may be a marker in his mind. It measures the nearness or distance of people boasting the same qualities. Conversation with D. Neil MacCormick, Professor of Law, University of Edinburgh, Scotland (June 1995). MacCormick calls Raz a legal positivist. See D. Neil MacCormick, Legal Reasoning and Legal Theory 61-65 (1978).


33. See Veronica Gentilli, A Double Challenge For Critical Race Scholars: The Moral Context, 65 S. Cal. L. Rev. 2361, 2368-69 (1992). Although Marcuse doesn't address equality conundrum per se, he does endorse the strategy unveiled in the Gentilli article. See Dimensional, supra note 17, at 133, 147-52. He says moral ideas are unreal and have little value in the business of life. Id. at 147. He says that scientific reasoning explains what we perceive with our senses.

Now some inequalities can't be corrected. Here is an example. Jorge is a cop. He works for the New York City Police Department. Jorge is gay and his peers (some of them) abhor homosexuals. Jorge is a foot patrolman. He walks a beat in the Bronx. One evening he interrupted a robbery. Jorge chased the thief. He ran into an ambush (set up by the thief's accomplice) and called on his radio for help. Three policemen who loathed Jorge heard the plea. They were five minutes driving distance from the scene. They waited fifteen minutes before responding to the call. When they arrived Jorge was dead. The D.A. filed charges against the policemen. He claimed they were guilty of negligent homicide. The D.A. had a star witness. It was a fellow officer (working in the same precinct as the defendants) who had not declared his gay status. What was the inequality? Giving damaging testimony opened the witness to ridicule by fellow officers. Was it correctable? No. It was hopeless. The witness had broken the code of silence. He was shunned by his fellow officers and labeled a pariah. He had no future with the police department, and there wasn't much that he could do about it.

Of course, many inequalities can be corrected. Here is an example. David Norris was an active homosexual. He'd been an active campaigner for homosexual rights in Ireland since 1977. In 1974 he became a founding member and chairman of the Irish Gay Rights Movement. He instituted proceedings in the Irish High Court to challenge the nation's sodomy statutes. He claimed that the law (which criminalized private acts between consenting adults) had no force and effect because of Article 50 of the Constitution. He claimed that he was depressed about his sexuality and fearful that public exposure would subject him to criminal prosecution. He said that he suffered from

37. Id.
38. Id.
39. Id.
40. Id.
41. Id.
42. Id. at 188.
anxiety and was under psychiatric care. He said that he was interviewed on television about Gay Rights and, in the course of that interview, admitted to being a homosexual. He said that the audience's response to his television revelation was somewhat negative; and that postal authorities had opened his mail.

Based upon the harm to David, and the conviction that the sodomy statutes conflicted with the nation's Constitution, he asked the Irish High Court to overturn these laws. The court (regrettably) sided with the government. What was the inequality? The adulteration of the petitioner's right to privacy. Was the situation hopeless? No. Was it correctable? Yes. The European Court of Human Rights (having jurisdiction over this matter) resolved the issue in favor of the complainant. Ireland was a party to the European Convention on Human Rights. By virtue of Ireland's participation (in the Convention) Irish nationals acquired (under Article 8) a broad right to privacy. Since there wasn't a body of public opinion hostile to homosexuals or evidence of a sodomy epidemic, that threatened the fibre of Irish Society, the maintenance of the sodomy statutes violated Article 8. The Court said that the laws degraded the complainant's right to privacy and overturned the statutes.

Suppose the sovereign solicited my advice. What would I say to him? Raz has "short sheeted" you. He failed to say that autonomy is good for some — societies biased towards individualism — and bad for others; that autonomy has its limits; and that autonomy is subject to manipulation. In his haste to trumpet facts he has forsaken context. (Life was organized around kings and clerics. The economic order was in the background. It funded wars and foreign trade. Time and events eroded the power of kings and clerics. As they faded from the world stage the economic order took their place). Today the economy (a fancy word for social cohesion and cooperation) is the power over us.

43. Id.
44. Id.
45. Id.
46. Id. at 192.
47. Id.
48. Id. at 197-98.
49. Id. at 197.
corporations do its bidding. We have sanitized its negative features (overproduction, waste, exploitation, unemployment, insecurity and oppression). We call it the other side of progress. What's the result? Autonomy has become a fiction. (The economy has eliminated the isolation which individuals, turned in on themselves, needed to think and question and find). Raz's autonomy has become a dwarf of its self. It's a bogus explanation for competition, domination, and conquest. Worse. It is a source of deep moral blindness. It atomizes people and promotes the illusion that people are self-sufficient. It accommodates depravity, coercion, and manipulation. It undermines friendship and camaraderie. It stymies guileless conversations and the formation of stable communities.

What is Raz's autonomy. It is an ideal and an aspect of equality. It describes the physical and psychological situation of men. It comes in many forms. It's abandoning a project foisted upon a man for a reason, continuing a project, or modifying it. It is doing something based upon an evolving plan in one's head. Raz's autonomy needs collective goods to flourish and a society biased towards individualism. There must be a choice of projects, relationships, and causes for the individual. The individual must have the mental capacity to make choices; and for Raz the choices must be based upon reasons like courage, temperance, prudence, love, greed, affection, etc.

Of course, owing a duty to the sovereign adulterates everybody's autonomy. When something goes awry, paternalism (the sovereign's option to resolve a spat between subjects) supplants autonomy. How would the sovereign resolve this problem? In Kozup v. Georgetown University, a hospital furnished a patient with a blood transfusion. The blood was tainted with the human immune virus. The patient sued the hospital and the Red Cross. She (the patient) claimed the blood was

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51. DIMENSIONAL, supra note 17, at 19, 225.
52. Id. at 225.
53. Id. It robs people of the opportunity to win something without destroying others. It plunges people into a world of duplicity and "me" versus "thee" situations. It makes an individual's deeds, in the pit of competition, the source of horrific misdeeds down through the ages.
54. Waldron, supra note 2, at 1106, 1112.
55. Id. at 1115.
56. See MORALITY, supra note 2, at 290-91. These words typify the personal qualities and reasons, if you will, that Raz had in mind.
58. Id. at 1050.
59. Id.
60. Id. at 1050-51.
The question was: whether the sovereign should use contract-for-goods or contract-for-services to resolve this dispute?

18

If the sovereign adopted the former scheme (contract-for-goods) paternalism would supplant autonomy. The defendants would be absolved of serious wrongdoing and the plaintiff would lose autonomy and by implication some equality (i.e., in this case, the option to press her claim on the basis of contract-for-goods, to exact vengeance against the defendants, and siphon money from them to compensate for the longevity cut short by their misdeed).

19

On the positive side, the sovereign's decision would enhance the defendants' autonomy, preserve the autonomy of the sovereign's other subjects, and in the process chill the temptation in the defendants to hike the price for a life-giving fluid. Put another way: autonomy analysis produces positives and negatives. The negatives exceed the positives. Regrettably, the word "autonomy" conceals the thread-bare nature of the plaintiff's autonomy. The sovereign's paternalism, in the final analysis, trumps the plaintiff's choice.

20

Now, assuming autonomy is a facet of equality, and equality is a higher order of value, there is a temptation (at least in me and perhaps in others) to salvage somebody's autonomy by sacrificing somebody else's equality. That's the utilitarian thing to do. It promotes the public good; and that's frankly too crass for me. What's the motivation? Hospitals and blood banks are important to society. They enrich people's lives by supplying everybody with a life-giving fluid. Society needs their industry. We want a safe industry. They need time to reform.

21

Let's come at this from a different angle. Maybe Raz doesn't have a quarrel with the idea of equality. Maybe egalitarians and egalitarianism upset him. No. It is the confusion produced by the rhetorical use of equality, (i.e. the temptation to insert equality into a statement to

61. Id. at 1058.
62. Id.
63. Id. at 1058-59.
64. Id. at 1059.
promote a humanitarian goal or some social gain derived from the good name equality enjoys in the culture).\footnote{Id.} Equality deals with materialities. Strict egalitarianism produces strict equality. Any other use of egalitarianism makes nonsense. What is egalitarianism? It is a social prescription for the equal distribution of goods.\footnote{Id.} What is Raz's critique of egalitarianism? It is too expansive. Scarcity makes egalitarian sentences (beginning or ending with the word all) ambiguous.\footnote{Id.} When ambiguousness is the issue folk wisdom of some sort; mathematical solutions (i.e. furnishing everybody with a quotient of a scarce good); general deprivations (stripping everybody in society of a coveted good because there isn't enough to go around); and humanism (doing something to promote somebody's well-being) save egalitarianism.\footnote{Id.} Put another way equality is a limited term. It deals with materialities. Strict egalitarianism—giving people a quotient of something or denying them something because there isn't enough to go around—produces strict equality.\footnote{Id.} Any other use of egalitarianism or the word "equality" produces confusion and nonsense.

22

Having said that: how would Raz resolve this problem? A fourteen year old girl was raped by a friend.\footnote{Id.} The girl was impregnated by her attacker.\footnote{Id.} The crime occurred in the Republic of Ireland.\footnote{Id.} The child's parents made arrangements with a doctor (in England) to perform an abortion.\footnote{Id.} The attorney general for Ireland got wind of the youngster's plan.\footnote{Id.} He obtained an injunction against the youngster and her parents which prevented them from leaving the country for a period of nine months or from procuring or arranging a termination of the pregnancy.\footnote{Id.} The Trial Judge (who granted the injunction) wrote the following:

The failure of the legislature to enact laws regarding the manner in which the right to life of the unborn and the right to life of the mother could be reconciled does not inhibit the court from applying the clear rule of law laid down in Article 40.3.3o of the Constitution. If the court is appraised of the situation in which the life of the unborn is threatened

\footnote{Id.}
the court would be failing in its constitutional duty to protect if it failed to act merely because the legislature had failed to legislate on how it was to have regard for the life of the mother. Because the risk that the defendant might take her life—if the order preventing the termination of the pregnancy was made—was much less and of a different order of magnitude than the certainty that the life of the unborn would be terminated—if the order was not made—the court is obliged to protect the life of the unborn and to grant the order sought.77

23

Now it’s true that the courts must enforce European Community law; and where community law conflicts with Irish law, community law must prevail.78 Under European Community law, medical termination of pregnancy in accordance with the law of the state is a service within the meaning of Articles 59 and 60 of the Treaty of the European Economic Community, and the freedom to provide services includes the freedom to receive services without being subject to restrictions. But the freedom to supply and receive services is subject to a member state’s right to derogate on the ground of public policy.79 Article 40.3.3o is an expression of public policy.80 It memorializes the deeply held moral conviction that the right to life of the unborn is sacred and (as such) counts as a reason for trimming the defendants’ European law rights.

24

This matter was appealed to the Highest Court in Ireland.81 After the Justices reviewed the trial transcript, particularly testimony of the youngster’s psychiatrist, they vacated the injunction.82 They said that life was sacred under the Irish Constitution; that the Attorney General was under an obligation to protect the life of the unborn; that the life of the unborn could be compromised when (to a biological or psychological certainty) the pregnant mother would self-destruct. The court conceded that European Community law on travel and services was relevant. But the Court didn’t have to decide or refer that matter to another court (the European Court) if something could be found in Irish law to address the abortion question.83

77. Id. at 12.
78. Id. at 23.
79. Id. at 19.
80. Id. at 4, 14.
81. Id. at 5.
82. Id. at 4.
83. Id. at 19, 23.
What's Raz's take on this abortion case? *Strict equality,* he'd say, isn't an issue. This is a case about *autonomy* and achieving an *humanitarian objective.* The defendant wants to achieve a state of well-being for herself and people like her. That's *rhetorical equality!* What does it take? A person must be a self-starter. She should do things which spark pride and joy in herself. Well-being is derived from doing something which qualifies body and soul for a task. Somebody's love for a person can enhance well-being. Neighbors can help a person achieve well-being. Neighbors should furnish one another with a chance to do something (here defined as projects which are by no means certain or easy). Everybody should have access to societal goodies like life, marriage, mobility, travel, jobs, shelter, security, sanitation, abortions, etc., which enable people to achieve well-being. Finally, neighbors shouldn't deny one another access to a societal goody because it would lead to the transformation or the disappearance of a much cherished form of a good (life).

In this case the question is: whether the state (representing the youngster’s neighbors) can compromise her well-being? Put another way the question is: whether neighbors may deprive the defendant of her “right to travel” to cope with a psychological disorder which threatens her life? And the answer? No. In Ireland, everybody has the right to travel. The Constitution bars the state from erecting obstacles—which impede a

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84. ETHICS IN THE PUBLIC DOMAIN, supra note 3, at 13. Read pages 3 through 28.
85. Id. at 25.
86. Id.
87. Id. at 10.
88. Id. at 24.
89. Id. at 15, 17.
90. Id. at 23.
91. Id. at 24. There is a collectivity (something large and precious about human beings) that cannot be scaled with autonomy analysis. It is treating everybody with respect, doing what you can to preserve human life, conversing with everybody, living without anxiety, or the feeling that you're being regimented by somebody. Raz’s views about human beings are partial and atomistic. He plants autonomy at the center of society. Maybe collectivity and equality should supplant it.

Raz would say that *Attorney General v. X* is an autonomy case. The state is championing the unborn to preserve her opportunity to control her life. The parents are championing the pregnant youngster to preserve her exercise of autonomy. We have a Solomon like problem that demands a Solomon like solution. Whatever one does, in this case, if one subscribes to Raz’s way of thinking, somebody gets hurt. What’s at stake? Life, death, murder pushed along by the state, and murder effectuated by the plaintiff. *Quaerere.* If there is a different order of value constraining the excesses of the individuals, and the state, what does it prescribe in this case? First, there is a collectivity to protect (life). Second, neither party should have the absolute authority to kill anybody. Third, when a killing is inevitable, there must be a good reason for it (e.g., more life is preserved under one solution than another).
person's right to travel—because the traveler's intent is to do something (lawful in another country) that isn't lawful in Ireland. Since that's what we have in this case the injunction against the defendant should be lifted.\textsuperscript{92} The youngster is (should be) free to get an abortion anywhere.\textsuperscript{93}

27

Up to now we've examined rhetorical equality cases. For contrast—and I hope that it's not a distraction—here is a strict equality case.\textsuperscript{94}

Debtor is party to a contract with Gyro Supply Company. Under the contract Gyro is obligated to deliver five gyroscopes every other month for one year. Debtor is obligated to pay for the delivered gyroscopes thirty days after delivery. At Gyro's insistence the following terms were put in the contract.

I. CONDITIONS ON GYRO'S OBLIGATIONS

(1) In the event of:
Debtor's dissolution, termination of existence, insolvency or business failure; appointment of a receiver of all or any part of the property of Debtor; an assignment for the benefit of creditors by Debtor; the calling of a meeting of creditors by Debtor; or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Debtor or any guarantor, surety or endorser for Debtor.

II. CONSTRUCTIVE BREACH

(1) Debtor shall be deemed in material breach of this contract upon the happening of any of the following events or conditions:

(a) Debtor's failure to pay when due any indebtedness due under this contract
(b) Debtor's dissolution, termination of existence, insolvency or business failure, the appointment of a receiver of all or any part of the property of Debtor; the calling of a meeting of creditors by Debtor; the calling of a meeting of creditors of Debtor; or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Debtor or any guarantor, surety or endorser for Debtor.

\textsuperscript{93} Id. (Egan, J., concurring). Justice Egan took a different position.
\textsuperscript{94} THEODORE EISENBERG, BANKRUPTCY AND DEBTOR-CREDITOR LAW: CASES AND MATERIALS 560-61 (1988). In this hypothetical, the state has furnished everybody with the same rights. The rights are materialities in the sense that they are inscribed in statutes.
III. ASSIGNMENT

Debtor's rights and obligations under this contract may not be assigned or assumed without the prior written consent of Gyro. Debtor will give Gyro at least thirty days notice of any proposed assignment.

IV. TERMINATION

Either party may terminate this contract on thirty days written notice to the other party.

28

At the time of Debtor's bankruptcy petition, the Debtor was fifteen days late on one of the payments due to Gyro. In addition, Debtor's financial condition on the date of bankruptcy was such that it was in default under some other provisions in the contract. May Debtor's trustee in bankruptcy assume the contract? On the date of the bankruptcy petition, Gyro sent a letter to Debtor exercising its right to terminate the supply contract in thirty days. If Gyro sent this letter solely because of the Debtor's bankruptcy—[Gyro was concerned about that]—will the letter be effective to terminate the contract thirty days later? [What would Raz say? (Beyond all this the)] Debtor supplies video game components to Curari, a manufacturer of video games. Debtor and Curari are in the midst of a long-term supply contract that is favorable to Debtor. The contract contains an anti-assignment clause similar to that in the Gyro contract. Debtor now lacks the manufacturing capacity to fulfill the Curari contract. May the trustee assign the contract to another supplier of video game components?

29

Raz would say that this problem is about the efficacy of ipso facto clauses and preserving rights allotted to everybody (strict equality). The United States Congress furnished Debtors with a handful of rights. They were materialities in the sense that they were reduced to writing. The question is: whether a creditor may divest a Debtor of these rights with a contract? The answer is No. Creditors can't use "ipso facto clauses" to deprive a trustee (in this case the debtor-in-possession) of objects which qualify as property of the estate. Creditors can't use "ipso facto clauses" to deprive a debtor-in-possession of his option to keep

95. Id.
contract benefits. Creditors can't use “ipso facto clauses” to deprive a Debtor of his opportunity to avoid a breach of contract. Creditors can’t use “ipso facto clauses” (posing as contract remedies) to take property out of the Debtor’s estate. Lastly, creditors can’t use “ipso facto clauses” to block the Debtor’s right to delegate his contractual duties. The contract must be assumed by the Debtor. The federal statute requires that. The delegation must be compatible with state law and consented to by the other party.

30

In this case, we'll assume that the Debtor is a party to a Chapter 11 proceeding. He may assume these contracts. Gyro's letter to the Debtor (terminating the Gyro contract) will be rendered inoperative. Debtor can (may or will) assume the Curari and Gyro contracts provided: (1) he cures defaults; (2) he pays the damage claims arising from default; and (3) he gives an assurance that his behavior will track with the time schedules in these contracts. As regards the Curari contract, and nothing else, the debtor may delegate his duties, provided, the aforementioned takes place; the delegation of duties is compatible with state law; and the other party to Debtor's contract (Curari) consents to the delegation.

31

Now I don't want to get off track. Raz is the object of my ire. Summing up. . .Raz believes that he's stumbled upon something new. Candidly speaking, there is nothing new in the world. There are simply new ways of thinking about what’s been in our midst. Equality was and is the original state. It is a form. People have different perceptions of equality. What we have to do is gather everybody's perceptions to see equality in its entirety. Liberty (a fancy word for independence); freedom (a situation where people don't worry about harassment); and autonomy are aspects of equality. The latter surfaces after people have secured their basic needs like food and clothing, shelter and sanitation, security and

education, rest and relaxation. It is in evidence when people can make
uncoerced decision amidst a sea of information and options. Constitutions,
statutes, bills of rights, treaties, conventions, protocols, and politics are
instruments people use (should use) to achieve equality or restore it. If
you (the sovereign) are favored with assets and circumstances; where you
can create situations in which people can secure their basic needs; your
subjects have a right (may demand) or force you to do something.

You must remember this. Raz is a logical positivist. He is a
champion of humanitarian goals. He can't grasp equality beyond what he
can prove. He believes in strict equality. He abhors rhetorical equality.
He's made autonomy and liberty his central values and, as to that, Raz and
I must part company. Autonomy is a fiction these days or (at best) a
dwarf of itself. Liberty (regrettably) is independence inside regimes
thematically driven by domination. Let's look at the individual (first).
He is composed of an id (animal impulses); an ego (mental processes
which explain the external world to the id); and a super-ego (a bowl in the
brain brimming with authoritative do's and don'ts). From the moment
of a person's birth the super-ego asserts dominance over the ego—the
mental process which tells the id what's true and false and what's useful
and useless about the world—to both (1) eschew the ego's reports to the
id and (2) repress the id. This experience, beginning with parents
lording it over children, haunts people into adulthood. In adulthood,
parents are replaced by restrained educational and economic authorities to
continue the onslaught. There is no autonomy!

Let's look at western civilization. It demands that somebody or
something bind mankind to a closely knit mass. To achieve that end
it uses authoritative do's and don'ts implanted in a person's head, business
organizations (like the government) with its do's and don'ts, and the media
(a formless mass that promotes ignorance with mindless entertain-

108. Id. at 243-52.
110. Eros, supra note 25, at 29-33, 92.
111. Id. at 32-33.
112. Id. at 32.
113. Id. at 58.
114. Id. at 32.
115. Id. at 80.
What's the result? Everybody gets stuff (consumer goods) and the means to get it (money), assembled with toil (domination of men-by-men), and destructive acts. What's the price? Liberty gets defined for everybody by some overbearing authority. Individuals pay by sacrificing time, consciousness, and personal dreams. Civilization pays by not delivering on its promise to provide everybody with unconditional liberty, justice, and peace for all. (Put another way) civilization gets to practice regression on everybody—persuading folks that we live in a bygone age of strife and danger—to keep the goods flowing. What's the result? There is no liberty, except, the liberties furnished by authorities!

Let's turn to some cases. The strife in Bosnia and Haiti might illuminate where my views about equality converge with and diverge from Raz. Let's start with Bosnia. It (is) was a part of Yugoslavia. The crisis began (in 1990) when Slovenia and Croatia voted to replace their communist governments. Macedonia and Bosnia followed suit. In June, 1991, Slovenia and Croatia declared their independence from Yugoslavia. They received diplomatic recognition from the United States, the European Economic Community and other countries. Serbia and Montenegro (by contrast) voted to maintain their communist governments and connections with Yugoslavia. Political clubs were established in these republics to stir unrest in the breakaway republics and bring them back into the fold.

Now Bosnia (one of the breakaway republics) was (is) a multicultural state. Of 4.4 million people, eighteen percent were Croats (Roman Catholics); thirty-one percent were Serbs (Orthodox Christians); and forty-five percent were Muslims. Despite the peace negotiations to quell the rancor among the feuding groups, fighting—fueled by Serbian political

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119. Wing & Merchán, supra note 118, at 7.
120. Id.
121. Id.
122. Id.
123. Id. at 7-8.
125. Wing & Merchán, supra note 126, at 8.
126. Id.
clubs operating in Bosnia—broke out between Muslims and Serbs.\textsuperscript{127} A nightmarish number of rapes (crimes against the civilian population) were committed by the combatants.\textsuperscript{128} Many of them were inflicted by Serb forces upon Muslim women.\textsuperscript{129} The tactic damaged 60,000 women and produced 25,000 unwanted pregnancies.\textsuperscript{130} It instilled terror in the Muslim women; guilt and shame in Muslim men. The campaign (tactic) upset or destroyed Muslim family life in Bosnia; disrupted the procreation process; and uprooted Muslim communities in the Serb held territory. In effect, the Serbs utilized organized rape—a fancy phrase for terror—to rid themselves of their neighbors. Muslims called the rapes the scourge. (To date they are sickened and damaged by their occurrence.) The Muslims want somebody to put a stop to them; compensation from somebody for the harm done to them; permanent injunctions against the Serbs and punishment of the rapists. What would Raz say to the victims? Is there an equality issue? I think so. How would Raz start the analysis? How would I start the analysis? Would I sign-on to Raz’s remarks or say something different?

36

Raz would say that equality isn’t an issue. Freedom is an issue in the sense that Muslims can’t live in Bosnia without anxiety and harassment. Autonomy, he’d say, is an issue in the sense that Muslim women can’t make uncoerced decisions about their associates; where they live; and the use of their body. He’d cite treaties and charters (the Nuremberg Charter for example), conventions and protocols, upholding freedom and autonomy, and (then) slap the law on the Serbs.

37

Let’s start with the Nuremberg Charter.\textsuperscript{131} It defines war crimes as violations of the laws and customs of war by soldiers and civilians.\textsuperscript{132} Crimes against humanity is defined in Article 6.\textsuperscript{133} It lists murder,
extermination, enslavement, deportation and other inhuman acts committed
against any civilian population, before or during a war, or persecution on
political, racial, or religious grounds as crimes. (Now) if the
Nuremberg Tribunal proclaimed that war crimes (committed in a
widespread systematic manner on political, racial, or religious grounds)
was a crime against humanity; and the 1949 Geneva Convention pro-
claimed that war crimes were “grave breaches” subject to the universal
jurisdiction of each contracting party; that means any state that’s a party
to the Convention may put the officials of another state on trial if they
orchestrated, participated in, or managed these events.

Several international actors have called rape a war crime. Rape
was prosecuted to a limited extent as a war crime in the Tokyo Trials.
(Japanese military and civilian officials were found guilty of rape and other
war crimes because they failed to carry out their duty to insure that their
subordinates complied with the international law.) The International
Committee of the Red Cross has read rape into Article 147 of the Fourth
Geneva Convention (stating that the words “willfully causing great
suffering or serious injury to body or health” was broad enough to cover
rape.) The United States Department of State has called rape a war
crime and a grave breach under customary international law and the
Geneva Conventions. The Islamic Conference has defined rape as a
crime against humanity. The Special Reporter for the U.N.
Commission on Human Rights has said that rape (in Bosnia) was a war
crime according to the Geneva Convention of 1949 and the Additional
Protocols of 1977, and should be treated as such by the international
community. In summary, there is enough law to hold somebody
accountable for what’s happened.

How would I start my analysis and what would I say to the victims?
I’d muse a bit to open my mind to the possibilities. Behind everything

Id.
134. Wing & Merchan, supra note 118, at 13.
135. Id.
136. Id. at 14-15.
137. Charter of the International Military Tribunal for the Far East, Jan. 19, 1946, Apr. 26, 1946,
T.I.A.S. No. 1589, 4 Bevans 20; JOHN ALAN APPELMAN, MILITARY TRIBUNALS AND INTERNATIONAL
139. Id.
140. Id. at 15.
141. Id. This appears in documents submitted by seven countries on behalf of the Conference.
142. Id.
good and bad in the world - I'd say to myself - you can bet there is an intellectual. I'd slap a fantasy and a economic fiction on the facts, seize the moral ground (focusing upon equality), cite the law upholding equality, and apply it to the Serb.

40

Let's begin with the fantasy. (It resurrects memories of man before civilization.) Everybody coped with scarcity.\(^{143}\) Civilization was invented to address scarcity.\(^ {144}\) People were persuaded to abandon sex for toil to ward off scarcity.\(^ {145}\) War was both a by-product of civilization and its instrument.\(^ {146}\) It created and deepened scarcity; provided a justification for civilization; and the need to repress sex.\(^ {147}\) There was an unfolding tragedy in the world. Man learned that “he would not last”; that every pleasure was short lived; that, for all finite things, the hour of their birth was the hour of their death; that time had marked everybody and everything; and that the march of time—which ground everybody down—had helped civilization maintain law and order, conformity,\(^ {148}\) and institutions that relegated freedom to some utopia.\(^ {149}\) (Is that Bosnia?)

41

In time civilization conquered scarcity.\(^ {150}\) It had to find something else to justify its existence. It adopted “sustaining human life” as a goal.\(^ {151}\) It (civilization) would abolish toil, ameliorate the environment, wrestle with disease and decay, and produce luxuries where it could.\(^ {152}\) It would make the human body an instrument of pleasure; doing what it could to make human beings healthy and vibrant.\(^ {153}\) It would promote the spread of good feelings like affectionate relations between parents and children; feelings of friendship; or the emotional ties that arise in marriage after sexual attraction; and respond (generally) to freely developing human needs.\(^ {154}\) (This can't be Bosnia!)

143. EROS, supra note 25, at 151.
144. Id. at 35, 36, 154.
145. Id. at 154.
146. Id. at 78, 87-88.
147. Id. at 36, 40-47.
148. Id. at 99-100, 231.
149. Id. at 231.
150. Id. at 151-52.
151. Id. at 221 n.87.
152. Id. at 157, 212.
153. Id. at 201, 202.
154. Id. at 207.
In civilization's new phase, people were replaced with machines. The machines did the drudgery stuff to which men had become accustomed. The alienation of labor gave rise to freedom. What was that freedom? It was living in the world without anxiety and harassment. It was self-sublimation of one's instincts—which were beyond good and evil—for an idea like equality. What was that equality? It amounted to treating people the same because they needed food to sustain themselves; and an education to overcome ignorance and superstition. It was doing something for a neighbor or co-worker to help him (or her) achieve good mental health (spirit) so that she could make something out of her life. (That's not Bosnia!)

What about the economic fiction? Bosnia is a battle field for a four hundred year old feud between the Romans (the Catholic Croats) the Byzantines (the Greek Orthodox Serbs) and the Turks (the Muslim population in Bosnia.) The Catholics have treated the Greeks like heretics. The Catholics and the Greeks—Christians who thought all Muslims were infidels—have ganged-up on the Turks. At one point, strife was ended when the Turks took control of the Balkans. (What is now Yugoslavia.) There was a war which the Turks won. There was a conquest; an enslavement; an expropriations of property; and a repression of both Roman and Greek subjects. These events fueled and inflamed ethnic hatred, animosity, suspicion, and an impulse to exact vengeance that’s burst upon the scene. The question is whether equality of welfare (a fiction) can bring peace to Bosnia? No. What is the equality of welfare? It is compensating a Bosnian for the

155. Id. at 152.
156. Id. at 152-53.
157. Id. at 187-88.
158. Id. at 225-26.
159. Interview with Liaquat Ali Khan, Professor of Law and Jurisprudence, Washburn University School of Law, Topeka, Kansas (Jan. 25, 1995).
160. Id.
161. Id.
162. Id.
163. Id.
164. Id. Yugoslavia was beset with problems from the time of its establishment in 1918. One might say that no sooner was the multi-ethnic state constituted than it started to fall apart. Over the course of its 70 year history, Yugoslavia has lurched from crisis to crisis, abandoning one unstable social formula for another. BALKAN BABEL, supra note 118, at 34-40. See High Stakes in Bosnia, THE ECONOMIST, June 1995, at 11.
anguish he’s endured in life because of the nation’s scarce resources.\textsuperscript{166} In this case, one can’t measure the depth of anguish; and assuming that anguish was measurable the questions would be: how much of the nation’s resources “would be enough” to fill the void created by the anguish in somebody’s life; and, would an expenditure of the nation’s resources on one person deny others comparable treatment?\textsuperscript{167} And the answers? “I don’t know” and “It is likely.”

What about equality of resources? (Dworkin gave me the idea.)\textsuperscript{168} Let’s build a society with 10,000 people marooned on an island. Let’s canvas the island; classify its resources; and put them in stocks or bins or whatever. Let’s establish markets to parade this stuff; furnish a set of prices (paraded in all the markets and approved by all the buyers one way or another); and distribute sea shells in an equal number to everybody so they can buy the equality (material goods) that’s compatible with the lives they have chosen to live. Everybody would be required to pay a tax (give society some shells) before buying stuff to cover the risk of dumb luck (adversities islanders couldn’t avoid.) Bargaining (because it is in man’s nature to envy what others possess), toil, and trade would (will or might) crop up. That will create inequality and unrest among islanders that will be addressed and quelled with “equal opportunity”—a fancy phrase for island approval of bargaining, toil, and trade. Would that work in Bosnia? No. It’s too late.

What about the moral ground? There is an equality issue in this case. Equality is a form. Everybody has a different perception of equality.\textsuperscript{169} Our task is to gather everybody’s perceptions to see equality in its entirety. What is it? It is freedom (living in a society without harassment) and autonomy (making uncoerced choices from a sea of information and options.) In this case, the Serbs have denied the Muslims both freedom and autonomy. The question is: whether there is a law to restore what’s been taken from them (\textit{Yes}), and, whether there is a law to compensate them for the harm done? (\textit{Yes}). Of course, multiculturalism (recognizing and restoring group autonomy) might be a part of the solution. The question is: whether there is any law for or against this?

\textsuperscript{167} Id. at 244.
\textsuperscript{169} Gentilli, \textit{supra} note 33, at 2368-69.
Let's look at multiculturalism. In international law there is nothing (I haven't found anything) against multiculturalism "per se". In Bosnia, it would be a step back from equality. It amounts to partitioning the country so that the feuding groups can occupy some land. That might end the strife in Bosnia. (That's what President Carter attempted to do.) But it will not put an end to the ethnic hatred, animosity, suspicion, and impulse to discriminate to perpetuate an abridgement of the freedom and the autonomy of rivals residing in one another's territory. Now, Raz has addressed the law (the legal materials) upholding equality in this case, and the international actors who could do something to the Serbs, and their agents. As to that—law, punishment, and compensation—I will join with Raz.

There is a post script to this. Article 27 of the International Covenant on Civil and Political Rights proclaims the following. "In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language." If these words were ascribed to multiculturalism that word (multiculturalism) would converge or become one with equality. They (both words) would frame the dialogue between the feuding parties about "how they might treat one another with respect." If the parties decided to partition the country the question would be: how would they uphold the equality of rivals residing in their territory? What would Article 27 tell them to do? If they decided to establish a confederation (like Canada) the question would be: how will they deal with cultural bigotry (the impulse to exclude outsiders

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170. ETHICS IN THE PUBLIC DOMAIN, supra note 3, at 155-76. The insecurity of existence in multicultural societies, especially where there is real or perceived discrimination against a group, encourages the conservative elements in the cultural group to resist all change in their culture. They equate change with dilution of their culture and extinction. Id. at 167, 170-71. It seems that multiculturalism works in countries where there are two or more cultural communities that wish and can perpetuate themselves. Id. at 159. It works best at the level of a European Economic Union. At that level people have the option to affirm themselves through national affiliations that makes them feel good, furnishes them with a self definition, and badly needed resources to spend on their life choices. At the national level multiculturalism balkanizes the state. It's a bad word for an over-worked melting pot theory. Id. at 159. See Swartz, supra note 29, at 60.

171. See supra text accompanying notes 35-37.


174. Id. It's how to win without defeating the other person.
for fear that they might contaminate the culture) and culture imperialism (the impulse to have one culture dominate the rest)? What would Article 27 tell them to do?

48

I should interject a comment before concluding this part. It's prompted by the observations of Ambassador Cardenas and Allen Jovett, at a meeting in Denver, Colorado.\textsuperscript{175} Bosnia has to be viewed in the larger context of man's sudden recognition—willingness to see—the world as a whole.\textsuperscript{176} This event has prompted two worldwide events. First, the disintegration and fragmentation of domestic institutions that are unwilling to engage in global conversations; and, second, the integration of commercial institutions that are prepared to play the global game.\textsuperscript{177} Bosnia's domestic paroxysm is phase one or development number one. Multiculturalism (a fancy word for cultural apartheid) is a thorn in the side of Bosnians seeking cooperation. The survival of cooperative forces is regrettably in doubt. If they survive things will get better in Bosnia.

49

What about Haiti?\textsuperscript{178} It's one of the oldest republics in the new world.\textsuperscript{179} Its history is marred by strife and poverty.\textsuperscript{180} The United States occupied Haiti—maintained a military presence—between 1915 and 1934.\textsuperscript{181} Prior to the U.S. invasion twenty-two presidents ruled Haiti.\textsuperscript{182} One served a complete term.\textsuperscript{183} Four died of natural causes.\textsuperscript{184} Thirteen were ousted by coups.\textsuperscript{185} One was blown to bits by a bomb.\textsuperscript{186} One was deposed and executed.\textsuperscript{187} One was torn to shreds in the streets.\textsuperscript{188} In 1957, after years of strife and misery, Francois Duvalier seized power.\textsuperscript{189} He used a paramilitary organization (the

\begin{thebibliography}{189}
\bibitem{176} Id.
\bibitem{177} Id.
\bibitem{179} Id. at 83.
\bibitem{180} Id.
\bibitem{181} Id.
\bibitem{182} Id. at 83 n.18 (quoting Frances MacLean, \textit{They Didn't Speak Our Language; We Didn't Speak Theirs}, SMITHSONIAN, Jan. 1993, at 44, 47).
\bibitem{183} Id.
\bibitem{184} Id.
\bibitem{185} Id.
\bibitem{186} Id.
\bibitem{187} Id.
\bibitem{188} Id.
\bibitem{189} Id. at 84.
\end{thebibliography}
Tonton Macoutes) to pacify the country. The Macoutes used torture, beatings, and murder to keep the Haitians in check. Bribing the Macoutes was the way to avoid them. In 1986, the Duvalier era came to an end.\textsuperscript{190}

There were attempts (beginning in 1986) to get a democratic government going. Leaders like Leslie Maginat, General Henri Namphy, General Prospero Avril, and Ertha Pascal-Trouillot tried to do something. Their efforts went for naught. On December 16, 1990, a Catholic priest (Jean Bertrand Aristide) was elected President of Haiti.\textsuperscript{191} Shortly after his election a military coup ousted him.\textsuperscript{192} Lieutenant General Raoul Cedras and his cohorts seized power.\textsuperscript{193} The coup sparked a reign of terror and repression. People fled the country in droves. Some took to rickety boats—bound for the United States, South America, Caribbean countries—to escape their government.\textsuperscript{194}

The United States Coast Guard netted 40,000 refugees on the high seas during this period. The vast majority were returned to Haiti.\textsuperscript{195} Most refugees claimed political refugee status consistent with the definition for that phrase under international law and the domestic law for the United States.\textsuperscript{196} They asserted that their exodus was prompted by government repression.\textsuperscript{197} They claimed that repatriation would subject some, if not all, to persecution or death.\textsuperscript{198}

50

Although Haitians were routinely characterized as economic refugees by the United States, Haiti’s human rights record during the Cedras era confirmed what the refugees claimed.\textsuperscript{199} In a blistering report, the Lawyers Committee for Human Rights wrote the following: “The Human Rights situation in Haiti is worse than at any other time since the Duvalier era. The military has executed, tortured, and illegally arrested countless Haitians. Government harassment and intimidation of journalists, human rights monitors and lawyers, priests and nuns, and grass roots leaders is intense.”\textsuperscript{200} Popular expressions of support for ousted President Aristide have been routinely met with violent reprisals by the military.\textsuperscript{201} The

\textsuperscript{190.} Id.
\textsuperscript{191.} Id.
\textsuperscript{192.} Id.
\textsuperscript{193.} Id.
\textsuperscript{194.} Id. at 85.
\textsuperscript{195.} Id.
\textsuperscript{196.} Id.
\textsuperscript{197.} Id.
\textsuperscript{198.} Id.
\textsuperscript{199.} Id. at 86.
\textsuperscript{200.} Id. (quoting LAWYERS COMMITTEE FOR HUMAN RIGHTS, HAITI: A HUMAN RIGHTS NIGHTMARE 1, 8).
\textsuperscript{201.} Id. at 86 n.33.
Organization of the American States wrote a similar report. Civilians, they said, have been subjected to unlawful detention; execution without due process of law; and torture by members of the military, police, and civilian collaborators. In its Country Reports on Human Rights Practices for 1992, the United States Department of State noted that “political and extra-judicial killings continue” in Haiti. Many of those murdered were individuals associated with deposed President Aristide.

Now, the United States had a policy for screening refugees seeking asylum. On May 24, 1992, President Bush rescinded that policy. By executive order he put an end to the minimum due process rights—i.e., the opportunity for one to establish a right to asylum—granted Haitians by Treaty, Executive Order, and Immigration and Naturalization Service Guidelines. In effect the President told the Coast Guard to net these people and return them to Haiti.

This Order and Coast Guard actions prompted Haitian immigrants to sue in federal court. They posed two questions. Did the Coast Guard’s interdiction action violate section 243(h)(1) of the Immigration and Naturalization Act as amended by the Refugee Act of 1980? Yes. Did the Coast Guard’s interdiction action violate Article 33 of the 1967 Refugee Protocol signed by the United States? Maybe. Given my earlier commentary about equality: how would I decide this case? Would Raz endorse my opinion or say something different?

As to the first question I’d muse a bit. I’d have to say something. Let’s see. Animals have integrity. They never pretend to be what they are not. Human beings are fragile things. When they step up to virtue one can’t be sure of what he’s getting. For the most part they are like dust stirred up by a summer breeze. They are flakes in the cosmos in random motion doing some universal law’s bidding. For some people mankind is like a group of shipwrecked sailors on a raft in a vast sea at night. One
by one they fall off the raft into the water and disappear. When the last man falls off, the sea rolls on, and the holes, made in the water by their bodies, get covered over. The sea, as it turns out, is indifferent to them. But to the last man his lost compatriots meant something to him. Their ingenuity, love, acts of courage, and self-sacrifice sustained the last man and gave human life meaning. Isn't the refugee crisis in Haiti about men on a raft, sustaining life, and giving human life meaning?

Suppose for the moment that I was a Haitian; that I believed in nothing; that I perceived the world to be absurd; and that I was in an agitated state of rebellion that illuminated both the order of things that repressed me and rights—here a bright line or limits—beyond which I couldn't tolerate anything. What would I do? I'd flee Haiti. My flight would be an act of rebellion; a bold sign that I was aware of something; that I desired something different; that I thought something—in this instance the defilement of my freedom and autonomy—was wrong. In effect, my act would be a statement that, in this unique situation, I'm entitled to freedom (a situation where I'm not pestered by my neighbors) and autonomy (the opportunity to make life choices that are agreeable to me); and equality (to be treated like an equal by my oppressor . . . to more or less . . . enjoy the same psychological freedom as the people who pester me).

Let's try another tact. What would a genuine rebel say? God doesn't want anything from man in the Haitian case. If he did, he'd stamp out the misery in that country. If God is useless, in the Haitian situation, does that mean that his morality is meaningless? If the world is absurd (it appears to be directionless these days), and God is meaningless, then nothing is forbidden (including crimes against humanity) and everything is permitted. In this hell man has got to find a morality for himself. What is it? He should take responsibility for every living thing.

209. ABLERT CAMUS, THE REBEL 13-16, 23 (1956). Rebellion arises in societies where theoretical equality conceals great factual inequalities. Id. at 20. The phenomenon is acute in Western societies. Individualism and pleas for freedom have much to do with this situation. Id.

210. Id. at 14.

211. Id. at 25, 34, 38. If man has done everything to avoid self destruction, and God hasn't helped him, God (the word) must be empty and God (the being) must be worthless. Id. at 62. If this is the truth about the human condition, and mankind in general, man should experience everything before death. The supreme value is pleasure—something intangible to be milked from what's good and bad in the world. Id. at 37. The game of life amounts to struggling against the environment and domination of somebody. The sweetness in life is found in the eyes of others, i.e., their expressions of terror, envy, lust, love, pleasure, hate, and admiration. Id. at 51, 58.

212. Id. at 70.
shouldn’t add a whit of unhappiness to the world. He should deify the world and live. Necessity—the struggle for life—illuminates freedom.

The question is: what do human beings need in the Haitian situation to sustain themselves and flourish? They need equality! They need life and sex; procreation and affection; freedom and autonomy. These are valuable things because of the logic behind them and (or) the correlation between these things and vibrant human beings. In this case, a gangster morality has taken hold of Haiti. Pogroms, personal slights, and resentments mark life in Haiti. The Cedras government—ignoring its duty to take responsibility for every living thing—has deprived the plaintiffs of freedom and autonomy. The United States has compounded their misery by repatriating them to Haiti.

Now, in the broad sense, this is an equality case. But we can dispose of the plaintiff’s gripe with a strict equality analysis. In a Treaty, the United States promised the family of nations that “it would furnish political refugees with asylum.” The United States broke that promise when Congress failed to enact a statute to implement that promise. Congress, around the time the United States (the President) made its promise to the family of nations, amended the Immigration Act to read that “political refugees had a right to asylum in the United States.” Like the Treaty whose dictates it embodied, Section 243(h) was (is) unambiguous. It reads: “The Attorney General shall not deport or return any alien . . . to a country if the Attorney General determines that such alien’s life or freedom would be threatened in such a country on account of race, religion, nationality, membership in a particular social group, or political opinion.” These words create a materiality (rights) for refugees. The President of the United States is trying to take them away. If the plaintiffs qualify for asylum (which seems to be the case) they should be granted asylum; and the Coast Guard should be enjoined from repatriating them to Haiti.

213. Id. at 68.
214. Id. at 73-74. Nietzsche’s says that “[t]here is, in fact, a god—namely, the world.” Id. To participate in its divinity, all that is necessary is to consent. Id.
215. Id. at 72.
217. Id. at 2568.
218. Id. at 2573.
58

What would Raz say about my opinion? He might say that “it’s interesting” or “the author has taken a novel approach.” Would Raz’s remarks diverge from my own? Yes. But the result would be the same. Raz would highlight freedom, autonomy, strict equality, and the pursuit of a humanitarian goal. The Cedras government has repressed self expression in Haiti.\textsuperscript{219} It’s taken freedom and autonomy from the plaintiffs. Congress, in an amendment to the Immigration Act, furnished the plaintiffs with some rights to deal with this. Strict equality analysis restores what the President took from them. In this case, the plaintiffs seek justice—an act (judgment) against self interest based upon ethics. Because of the harm to freedom, that’s compounded by the mischief of the United States Government, I (Raz) would side with the plaintiffs. Their rights under the Immigration Act should be restored to them; and the Coast Guard should be enjoined from repatriating them to Haiti.

59

Suppose the sovereign was impressed by my general remarks and asked me to submit a memorandum. What would I write? Nowadays, people are at odds with the order around them.\textsuperscript{220} Rebellion illuminates equality in that instant when the rebel takes action. It is a sign that Rousseau was right. Equality was (is) the original state,\textsuperscript{221} man was born into equality; man couldn’t have evolved without equality; society broke the bond between man and equality; remnants of equality float around in society; man craves the remnants; he’s fought wars over them; the question these days is: how much inequality must man tolerate? Now, in an earlier incarnation, I thought that grappling with inequality was the only way to get at equality issues. I thought that equality was being the master of one’s self. Since that incarnation, I’ve come to a different conclusion. First, one strategy to eke out equality is no better than another. Second, these days I am willing to take flights into nihilism and (or) critique other people’s strategies, etc., if it helps matters any. In the final analysis, equality (I believe) is a form. People have different

\textsuperscript{219} Jones, supra note 178, at 85.
\textsuperscript{220} See Albert Camus, \textit{Moderation and Excess}, in \textit{The Rebel} 294-301 (1956). Nihilism - something Camus addresses in great detail - has produced fascism (freedom for some), communism (enslavement for everyone), terror, and mass murders. In a world of absurdities, moderation is the only way to deal with these excesses. \textit{Id.} at 300-01.
\textsuperscript{221} See Jean Jacques Rousseau, \textit{A Discourse on Inequality} 77-137 (1984). The discourse sets out to demonstrate how the growth of civilization corrupted man’s natural happiness and freedom by creating artificial inequalities of wealth, power, and social privilege. As societies grew and became more sophisticated, the strongest and most intelligent members of the community assumed a station above their weaker brethren. The constitutions set up to rectify the situation, through peace and justice, did nothing but perpetuate the status quo.
perceptions of equality. Our task is to gather everybody’s perceptions to see equality in its entirety. What is it?

**Sameness:** The perception that people are the same in terms of biology (people need food to live); intellect (people need knowledge to overcome ignorance and superstition); and spirit (mental health).

**Situational Equality:** Psychological states of well-being shared master and slave, or employer and employee, that are illuminated in that instant when the slave (or employee) rebels against oppression.

**Strict Equality:** A scheme for dividing or restoring scarce resources to a group until everybody’s need gets met. Either everybody gets something because some members have it, or none get it, because there’s not enough to go around.

**Rhetorical Equality:** A verbal flourish which signifies the utterer’s pursuit of a humanitarian objective.

**Resource Equality:** Fancy words for a scheme that accounts and apologizes for inequality.

**Freedom:** An aspect of equality. The word describes a situation where people live without anxiety.

**Autonomy:** An aspect of equality that describes a situation when a person implements decisions that are agreeable to him. Basically, it’s taking control of one’s life. Sometimes it’s a physical existence that’s part personality and part relationships with somebody.\(^{222}\)

**Welfare Equality:** It’s a human aspiration that is not achievable.

Of course there are others—social equality, political equality, economic equality, etc.\(^{223}\) I’ll discuss them before concluding my comments.

\(^{222}\) **David Riesman,** *The Lonely Crowd* 239-60 (1961). An autonomous person works to detach himself from shadowy entanglements with peers and their powerful psychological cues. He is self conscious. He wants to taste life. He is prepared to fight like a samurai against the dominant group in society (the adjusted middle class) that knows what it wants and strives to impose its wishes on others. *Id.* at 257, 259.

\(^{223}\) See Ronald C. Griffin, Raggedy Beginning (1995) (unpublished manuscript, on file with author at Washburn University School of Law). The working definitions are found on pages 1, 3, 4 and 5 of the unpublished manuscript. *Social equality* is a shared sense of well-being. *Political equality* is best defined by examples like contract rights, and property rights, doled out by statutes. *Economic equality* is access to courts to defend property rights and contract rights. For some equality amounts to individual rights guaranteed by property, competition, and a limited government. **George C. Lodge,** *The New American Ideology* 10 (1975). Aristotle identifies justice with equality. See Carritt, *supra* note 16, at 136 n.3.
What about Raz? How do we differ? First, he is a logical positivist. He does not subscribe to the transcendent nature of equality. Second, he is a champion of strict equality. Third, he is a foe of rhetorical equality. Fourth, he is a promoter of multiculturalism and humanitarian goals. He believes that "incommensurabilities" have more to do with reality than equality. His position makes sense when viewed in the larger context of the values which propel him forward. What are they? Freedom and individualism. That's why he (Raz) would side with the Irish teenager who sought an abortion in England; side with efforts to partition Bosnia on multicultural—group individualism—grounds; side with efforts to punish Serb rapists to somehow (or in some way) redeem the autonomy of Muslim women; and side with the Haitians who sought asylum in the United States.

What is incommensurability? It is a word that describes options drifting through somebody's life which cannot be made equal by manipulation. Being indifferent to options—operating on the conviction that choosing one option will do little or no harm—is a sign of incommensurability. It crops up in autonomy. What are its roots? Indeterminate language, or words that have ill-defined boundaries, is one answer. False consciousness—operating under the illusion that one option is better than others, or, that some options are equal—is another. Incommensurability means that among options, independent values, not reason, will determine one's choices. What are these values? Love, fidelity, integrity, prejudice, friendship, and one's accommodation with evil and justice.

226. Id. at 321, 334.
227. ETHICS IN THE PUBLIC DOMAIN, supra note 84, at 159-63.
229. MORALITY, supra note 2, at 321.
230. Id. at 325-26, 328.
231. Id. at 321. Choosing tasks which promote personal well-being is a part of a general discussion about autonomy.
232. Id. at 324, 327.
233. Id. at 325.
234. Id. at 333-34.
Now, in the context of my earlier remarks about Raz, incommensurability explains why Raz wouldn't subject the HIV (Blood) case\textsuperscript{235} to equality analysis. Incommensurability was the issue in that case. Should one do something to redeem the autonomy damaged by the defendants? Should one furnish the defendants with time, through some legal slight of hand, to purge whole blood of dangerous contaminants? What are the values at stake in this case? A values analysis—not equality analysis—furnishes the answer.

What is Raz's recipe for you? What does he want you to do? He wants you to embrace incommensurabilities, treat them like reality, and truncate equality. He wants you to sow indeterminant language like liberty, freedom, and autonomy into your society to grow people driven by independent values. Is that an improvement? I don't think so.

Let me try one more time to distinguish myself from Raz. John Locke is the inspiration for this.\textsuperscript{236} God—I am assuming that you are a Christian—dispatched men and women to the world to do his bidding.\textsuperscript{237} If that is true, if people are literally God's property, then, there are no masters and slaves in the world.\textsuperscript{238} Everybody's independent.\textsuperscript{239} Men are masters of themselves.\textsuperscript{240} Everybody is equal in the sense that people can't do anything which damages the life, health, liberty, or possessions of other people.\textsuperscript{241} Put another way, there is nothing in Nature to support a contrary position. Regrettably, Raz's personal recipe, given his exegesis on multiculturalism, and autonomy, does just that.

As regards Raz and myself, it is not the results which distinguish us. It is how we arrive at them. I believe man is an unfinished experiment. As such I want to do something to support man to see how the experiment turns out. On that basis, and to that end, I've adopted the broad view of equality. It magnifies people's similarities. Raz, on the other hand, has adopted a narrow view. (It magnifies people's differences). Raz's view (in my opinion) truncates conversations about equality and slows the

\textsuperscript{236} Locke, supra note 18, at 269-71.
\textsuperscript{237} Id. at 271.
\textsuperscript{238} Id.
\textsuperscript{239} Id. at 269.
\textsuperscript{240} Id. at 270-71.
\textsuperscript{241} Id. at 271.
process which helps man to see his neighbors as human beings. His embrace of multiculturalism suggests that he might accommodate abominable ideas like separate-but-equal.

Let me distinguish myself from Raz with an example. Assume for the moment that I am a judge and the Haitian case was before me. In my written opinion, I would adopt Raz's view that freedom and autonomy were the issues. But I would put them with the philosophical properties associated with equality, e.g. liberty, autonomy, and justice. The question would be: whether freedom had survived the fracas between the President and the plaintiffs? And the answer? It would be no! If freedom didn't emerge from this situation, in tact, the Presidential order and the Coast Guard's actions would be called unjust; and, as a judge, simple justice would require me to restore what the President took away. I would use Raz's strict equality instrumentally to achieve that end. If the Haitians literally qualified for asylum, under the 1980 Immigration Act, I would enjoin the Presidential order and bar the Coast Guard from repatriating the plaintiffs to Haiti.

In this case, I am influenced by sameness—the impulse to magnify people's similarities without denigrating, or dealing with, their differences or inequalities. In the Haitian case, unfortunately, I am hounded by (and regrettably can't avoid) two questions. First, when do differences turn into inequalities? (When people compete). Second, when do inequalities

242. ETHICS IN THE PUBLIC DOMAIN, supra note 84, at 160-63.
243. Multiculturalism is a fancy word for separate but equal. It bears the potential for so much evil. It was invented by white men. (I saw it in South Africa!). It's used to fragment societies and pit cultures against cultures to achieve political ends. It explains racial strife in America, see Robert Penn Warren, The Briar Patch, in I'LL TAKE MY STAND 246-64 (1930) and the insoluble nature of the problems in Bosnia. Ferfalia & Paul Phillips, supra note 166; High Stakes in Bosnia, supra note 164, at 11.

Let me take you back a century. In America, white scalawags used black men to oppress white men. Warren, supra, at 248. Between 1865 and 1880, Black men were duped into believing that they were equal to all men. They were force fed the noble idea that they could achieve freedom, justice, and equality in their life-time. W.E.B. Dubois, BLACK RECONSTRUCTION IN AMERICA, 1860-1880 182-236 (1935). What did they get? A separate-but-equal doctrine adulterated by prejudice and discrimination. Warren, supra, at 248, 254, 257. See A. Leon Higginbotham, Racism in American and South African Courts: Similarities and Differences, 65 N.Y.U. L. REV. 479, 490-91, 493-97 (1990). Then, as now, people thought that they would be separated from one another, in perpetuity, by prejudice and discrimination. Americans used science and statistics to prove that Anglo-Saxons were at the top of the evolutionary heap. E. Digby Baltzell, THE PROTESTANT ESTABLISHMENT: ARISTOCRACY AND CASTE IN AMERICA, 104-08, 170-74 (1966). See also PAUL E. WILSON, A TIME TO LOSE: REPRESENTING KANSAS IN BROWN V. BOARD OF EDUCATION 51-61 (1994). In this situation, folks sought and concocted schemes to uplift everybody. What did they produce? They produced the separate but equal doctrine (a legal-psychological mechanism for treating people like equals), industrialism (a plan that provided the down trodden with work), and philanthropy (charities that helped despised groups achieve economic independence through education). Id. at 251-64.
become unacceptable? And the answer? (1) When people in authority use
differences to justify violence. (2) When people in authority use
differences to justify arbitrary action. (3) When people in authority use
difference to justify religious bigotry. (4) When people in authority use
difference to justify the denial of rights allotted to some people.

67

Now, in this case, Haitians competed against Haitians on social and
economic justice issues. The trophy was government and the refugees (the
plaintiffs) were the losers. In 1980, Congress furnished the losers (I mean
all losers) with asylum against political persecution. Now the Presi-
dent wants to take it away. (Think about it.) Here is a situation where
Congress allotted asylum rights to all the people and the President wants
to take them from some. That's wrong. On a broad view (i.e., overcom-
ing an adulteration of the properties linked with equality) or narrow view
of equality (asylum rights granted to everyone by the United States),
asylum rights should be restored to the plaintiffs. The President's order
should be enjoined and the Coast Guard should be barred from repatriating
these people.

68

Now, in my dialogue with Raz, liberty was an issue for me. Raz saw
it as a realm populated by autonomous people. I (saw) see it as doing
something without fretting about what other people think. Liberty is
like a skyscraper's capstone. It's a sign that society has achieved some-
thing. What has it achieved? Freedom for all. How is that done?
The answer is negative legislation; i.e., the thou shall not statutes covering
monopolies, murder, mayhem, manslaughter, larceny, arson, robbery, and
rape which create a social situation where people live without
anxiety.

Political equality—the freedom to speak, discuss, trade information, and
vote—and social equality—access to the fruits of a legal system like
contracts and property rights—are manifestations of this liberty. Raz's definition of liberty doesn't account for this stuff. Frankly, I can't

245. MORALITY, supra note 2, at 369. See Waldron, supra note 2, at 1105 n.30.
246. Carritt, supra note 16, at 133.
247. Id. at 136.
248. Id. at 134, 137-38.
249. Id. at 134, 139.
250. Id. at 132.
251. Id. at 132-40.
tell whether his proposal transforms your realm into a (highly desirable) descriptive state, something you might want, or something else.

69

Now, looking at his advice critically, I surmise that he wants to transform your realm into a descriptive state. What is that? It amounts to a group (you and others) that's acknowledged, by those being ruled, to have supreme authority within a defined territory. The group determines what a person ought to do. There is room for autonomy under this arrangement because (1) there's a set procedure for promulgating authoritative commands and (2) room for negative legislation to promote liberty. If authoritative figures ignore the set procedure, the ruled may exercise their autonomy. If a command amounts to negative legislation that promotes an atmosphere where people live without anxiety, autonomy will give way to the command. Do you want that? If the answer is yes, you must come to terms with equality.

70

In a modern state, like this one, I see socially constructed situations where people's differences get muted to accommodate desired behaviors or acceptable degrees of deviation. This situation will produce arrangements that overlap and conflict with one another. The question is: how do you (we) choose one arrangement over others? Analogies? Maybe. Reasons? Probably not. Values? Yes. I recommend that you use human life, intelligence, mental health, equality, and liberty to make your choices. You should do what you can to promote human beings to see how mankind's experiment turns out.

71

Let me write the unspeakable. What Raz advocates—in his essay on multiculturalism—is a nightmare to me. What he wants to establish

252. This is a phrase borrowed from language in Wolff's Text. ROBERT PAUL WOLFF, IN DEFENSE OF ANARCHISM 5 (1970).
253. Id. at 6.
254. I wrote an essay on this. Ronald C. Griffin, Employment Discrimination Cases: Something's Blowing in the Wind, 30 WASHBURN L.J. 458 (1994). My focus was America. James Cook, The Molting of America, FORBES, Nov. 22, 1982, at 161-67. Americans, I said, were refitting their businesses for global competition. The nation's views on affirmative action—i.e., lending a hand to some ethnic groups and figuring the cost of doing so—had become a part of the refitting process. I highlighted drifting, shifting, mutating views about affirmative action in labour relations, the building and construction industry, and employer-and-employee relations. White men, I said, managed or controlled the world's wealth. In a global economy, I said, they were loosing control to Asians. To protect their "stake in things" they'd assembled international economic confederations. On the national scene, they had re-interpreted their laws to: (a) cut their economic losses and (b) identify people who could help them economically.
is a jungle-like atmosphere, with rough-and-tumble rules for everybody, to build a world for the strong and fit. I dread a world populated by rock-em-and-sock-em men and women. They’ll sire children who will spend too much time crowing when they win something and carping when they lose. Now, I know that I can’t prove this. For the moment it’s in “the differend.” Having said that: here is my recipe for you. First, you should make equality your core value. Second, men and women should be treated as equals. Third, everybody should be furnished with liberty. Fourth, people should be granted some autonomy. Fifth, people should be encouraged to act on their impulses. Sixth, people should be discouraged from acting on their impulses when their actions tract with the hideous side of man or practices condemned by all mankind. Seventh, you should build a descriptive state. Finally, you should avoid the temptation to impose vindictive solutions upon man’s problems to give mankind a fighting chance on the earth.

Now writing this memorandum was burdensome to me. My fear was that “I would leave something out.” I know so little about your society. Is it traditional or liberal? Is it old fashioned or modern? There are properties floating about in your society that could affect the recommendations we’ve offered you. What are they? It could be superstition, poverty, unbridled emotions, illegal underground commerce, poor farming, slavery, cruelty, and violence. Is capitalism an organizing principle? It’s a source of inequality. It creates dependency relationships which the down-trodden undermine with ceaseless protest. Law is a remedy. It blocks a dominant group (capitalists) from imposing its will upon
subordinated groups. Justice is another remedy. It springs from clashes between formidable groups. (Do you have some?) It democratizes people, muting their differences, so their common qualities stand out.

That brings me to the last item in my memorandum—economic equality. It's bound up in personal autonomy, personal power limited by legalisms, and the public ordering of commerce. These days autonomy describes a deep-seeded idea about individualism—people serving themselves first and taking on projects with themselves as ends.\textsuperscript{28} The question is: where does personal autonomy end and public ordering begin? The answer is commerce. People can't use their autonomy, and their influence over others, to deny still others their autonomy over basics. American Family Mutual Insurance Co. \textit{v. N.A.A.C.P.} is an example.\textsuperscript{29} The Seventh Circuit said that adopting practices to avoid doing business with homeowners on the basis of race and geographical area was unlawful.\textsuperscript{30} There must be cases from other countries like this. (One can't use his autonomy to degrade the autonomy of others in commerce). This and other items will get discussed in another submission to you. What's the title of the memorandum? \textit{Affirmative Action}.

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{29} American Family Mutual Ins. Co. \textit{v. N.A.A.C.P.}, 978 F.2d 287 (7th Cir. 1992).
\item \textsuperscript{30} \textit{Id.} at 293, 302.
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