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Bureaucratic Respectful Equality

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Abstract

Ian Carter has recently argued in a series of papers that a certain form of respect, called ‘opacity respect’, gives a moral grounding to people’s equality. This type of respect involves abstaining from making or acting on judgments about others. Aside from arguing for its justificatory role, Carter also argues that, in this role, it has a series of implications for our thinking about liberal politics.

I argue, first, that the theoretical implications of the view that opacity respect grounds equality are narrower than they first appear. This is because, in order to put the view into action, one must make a certain kind of empirical claim. Second, I show that this point reveals an important structural aspect of Carter’s view, concerning the way that principles can be limited in practice. Third, I argue that the practical implications of the view are potentially much broader than they first appear, threatening absurdity. This is because the position’s repercussions naturally extend into day-to-day transactions.

1. Introduction

Ian Carter's paper 'Respect and the Basis of Equality'¹ does three things. It lays out a problem, which has not yet been solved. It offers a solution. And then it discusses some of the implications of this solution.² I am going to focus on the third of these things, though I shall begin by sketching the first two.

The problem that the paper discusses arises because, while egalitarian theories prescribe equality, people vary on almost any measure. We need to find a feature in virtue of which persons are to be treated equally. If we can't find such a feature, then our theories about equality seem more arbitrary and less justified. The feature we are seeking is one that persons possess equally: if people possess the feature differently, then they ought to be treated differently. But it seems that there isn't a relevant feature that we all possess equally.

Perhaps we can say that we all possess some important feature, such as rationality, to some *sufficient* degree. We may vary in how far we pass the threshold, but we equally possess the property of at least meeting it. However, justifying any one level is problematic, for two reasons. First, there are difficulties in justifying the selection of any particular level. It would not do to justify some level simply because we want to reach

¹ Ian Carter, 'Respect and the Basis of Equality', *Ethics* 121, no. 3 (1 April 2011): 538–71.

² Other implications are developed in further articles. See 'Basic Equality and the Site of Egalitarian Justice', *Economics and Philosophy* 29, no. 01 (2013): 21–41; 'Are Toleration and Respect Compatible?', *Journal of Applied Philosophy* 30, no. 3 (1 August 2013): 195–208; 'Distributing Freedom over Whole Lives', in *Arguing about Justice: Essays for Philippe Van Parijs*, ed. Axel Gosseries and Yannick Vanderborght (Presses univ. de Louvain, 2011).

an egalitarian conclusion. That would be circular. It also wouldn't do to justify some level on the grounds that what matters is the possession of the variable property on which the threshold sits. This would not tell us what is special about the threshold, as opposed to the variable property. Second, even if that problem can be avoided, we would need to explain why all the other features of individuals do not count in our assessment. Even if we do possess something important equally, we possess many other important things unequally. An explanation of our basic equality must explain why we should ignore many features of individuals that do seem to have moral significance.

The solution Carter offers is compelling. The basis of a certain sort of respect is also the basis of equality. We show *opacity-respect* to X when, once X has reached a certain level of capacities, we refuse to consider further his or her capacities or internal endowments. There can be value in deliberately ignoring what would otherwise seem pertinent. A commitment to equality reveals a commitment to the value of displaying this form of respect, in the relevant sphere. For instance, if one believes in the value of more equal distributions of goods, then one can justify this belief by appeal to the idea that, in matters of distributing goods, we ought, for reasons of respect, to abstain from making judgments about persons, but rather should treat them in this matter just as persons.

This insight supplies an independently justified threshold, and so it avoids the first problem I described, that of circularity. This is because the threshold is justified by the independent requirement of respect. And the insight also gives a reason not to take account of other properties of individuals, since it explicitly demands that features of a person that might otherwise be relevant are ignored. So it avoids the second problem, that of excluding other features.

Next, Carter draws some striking practical conclusions. Egalitarianism, properly construed, must not imply that we take direct account of people's internal capacities. All sorts of egalitarian theories do require that we consider people's internal capacities. These views should be rejected, since they fail the '*opacity test*': "a practice passes the opacity test if and only if the carrying out of that practice neither constitutes nor presupposes any violation of the requirement of opacity respect."³ For instance, the view that autonomy ought to be equalized is ruled out. This is because "it seems inevitable that autonomy will qualify as one of the scalar properties on which the range property of moral personality supervenes, or will at least be partly constituted by one or more of such scalar properties", and a demand that we equalize autonomy would therefore involve both a commitment to ignoring differences in autonomy, and a commitment to variations in people's autonomy.⁴ The goal of equality of people's overall endowments falls to similar reasoning, as does the capability approach, and luck egalitarianism.⁵ Thus, the requirement of opacity respect is a "surprisingly powerful filter" on what conception of equality we should select as the correct one.⁶

The idea of opacity respect has independent force. We can see and feel opacity disrespect in practice. When an authority arranges its rules so that they respond to our specific abilities, we feel invaded. We ask, 'who are they to judge us?' Arguably,

³ 'Respect and the Basis of Equality', 561.

⁴ Ibid., 563.

⁵ Ibid., 563–70.

⁶ Ibid., 570.

workfare requirements have met with especially stiff opposition due to a sense that it is disrespectful to require persons who are entitled to state benefits to prove personal and sometimes shameful facts about themselves, such as the fact that they are clinically depressed according to a predetermined points scale, or are 'virtually unable to walk' for reasons of physical and not psychological disability.⁷ They may be required to repeat demonstrations of these facts, under scrutiny, at public tribunals. These processes force public revelations about matters that respectfulness would leave for the private sphere.

Despite this force, I will present a challenge for Carter's position. I will argue that his position must either (a) abandon the dual role of the opacity test as both foundational and as providing an active filter on principles (sections 2, 4, and 5); (b) restrict the scope of the opacity test in a way that seems arbitrary and also understates the disvalue of widespread private disrespect (sections 3 and 6); or (c) commit to an eccentric egalitarianism that avoids an economic life that is ever at the same time social (section 7).

⁷ For example, 'Benefits Assessment Firm Causing "Fear and Loathing" among Claimants, Says MP', *The Guardian*, 24 July 2011, <http://www.guardian.co.uk/politics/2011/jul/24/atos-faces-critical-report-by-mps>.

2. The disrespect-charge

Carter is not the only author to have deployed the value of respect in order to argue against certain proposed principles of equality.⁸ The *disrespect-charge*, as I shall call it, argues that certain principles of equality violate the requirement that we show respect to one another. The relevant principles of equality are those that, in determining what to equalise, take direct account of people's exercise of agency or central capacities. Such principles are exemplified by, but not limited to, those referred to as 'luck egalitarian'. For instance, take a principle that demands equality in our levels of opportunity for welfare. In order to implement that principle, it seems that we would require a complicated state apparatus that could make accurate judgements about individuals' own welfare levels, and about individuals' degrees of responsibility for their own welfare levels, incorporating judgments about people's capacities to advance their own wellbeing. Call these judgments *internal judgments*. Such judgments strike us as intrusive, patronising, and disrespectful. So, it is argued, we ought to reject equality of opportunity for welfare, and other similarly invasive principles, as illegitimate descriptions of our egalitarian concerns. The principles demand institutional structures that are unacceptable to egalitarians.

For Carter, the force of the disrespect-charge arises from the fact that it is internal to egalitarianism. It is a charge of "conceptual incoherence".⁹ If the point was merely that equality and respect can come into conflict, then the luck egalitarian could legitimately

⁸ For example, Jonathan Wolff, 'Fairness, Respect, and the Egalitarian Ethos', *Philosophy and Public Affairs* 27, no. 2 (Spring 1998): 97–122.

⁹ 'Respect and the Basis of Equality', 564.

respond by saying, as G.A. Cohen does, that the demonstration of a conflict between two values does not, by itself, undermine one's conception of any one of those values.¹⁰ However, according to the disrespect-charge, the *very same* egalitarian impulse that tells us that it is fairer if people have more equal prospects, also tells us that it is unacceptable to foster demeaning judgments of people.

3. 'Through the eyes of the state'

There are contexts in which individuals as private persons should treat one another with opacity respect, and there are contexts in which they positively ought not to do so. It is not difficult to think of examples: compare the way one behaves towards strangers on a bus, to the way one behaves towards one's close friends. There are, similarly, contexts in which the state should be blind to a person's specific attributes, and contexts in which it would be wrong for the state to take that attitude. For Carter, the contexts in which opacity respect is appropriate are those in which *agents should be treated just as agents*. One such context is pertinent: "the relation between political institutions (in their role as guarantors of basic political entitlements) and citizens (considered as bearers of those entitlements)."¹¹ Thus, Carter also argues that the state is a special case: "the state owes citizens a stronger form of opacity respect than that which

¹⁰ Thus Cohen writes: "Gathering the information needed to apply unqualified equality of resources might well involve less intrusion, and that would be a reason for preferring unqualified equality of resources to unqualified equality of welfare, but not one which impugned the egalitarian character of equality of welfare." 'On the Currency of Egalitarian Justice', *Ethics* 99, no. 4 (July 1989): 910.

¹¹ 'Respect and the Basis of Equality', 560.

individuals owe to each other”.¹² Call this the ‘strong opacity test’. Carter explains with reference to several core contractualist liberal ideas:

that society is a system of social cooperation, that justice concerns the proper distribution of the benefits and burdens of that social cooperation, and *that the tasks of the state include the coercive enforcement of that distributionthe ‘fact of pluralism’* and the consequent view that the state should abstain from evaluating citizens’ capacities, conduct or situation in terms of any but the thinnest conception of the good.¹³

Taken together, from these points we should conclude that:

the stability of the social contract, by appeal to which the system of social cooperation is regulated under the sway of coercive state power, depends on the ascription to individuals of a particularly robust form of outward dignity vis-à-vis the state.¹⁴

Thus the state should not, in matters of basic entitlements, make assessments of my contribution to society; it can only respond to the fact that I am the kind of being that can be a contributor to society. Opacity respect is due in many contexts, including non-state contexts, but because of this contractualist liberal view, the demands of opacity respect are especially strong with respect to the state. The state owes this stronger kind

¹² ‘Basic Equality and the Site of Egalitarian Justice’, 33.

¹³ *Ibid.*, 33–34. Italics added.

¹⁴ *Ibid.*

of opacity respect to individuals than an individuals does to any other, “except insofar as that individual views others through the eyes of the state”.¹⁵

A key issue now is, *when* does the state look at you? What is the referent of the metaphor of the state’s eyes? In applying respect as a filter on our practices, this is a question about who or what is expressing the relevant kind of respect or disrespect: what would count as a state evaluating an individual’s basic agential capacities? There are two kinds of answer. One kind of answer is *formal or bureaucratic*. It says that the relevant sort of expresser of disrespect is any formally designated representative of the state, acting in his or her capacity as such. A state shows opacity disrespect when and insofar as official state-agents show attitudes of opacity disrespect. The other kind of answer is *functional*. It designates the relevant kind of expressers of disrespect as those agents acting in capacities that are associated, in some given way, with state activities.¹⁶

There are serious objections to limiting the strict version of the opacity test only to official state employees. Representatives or agents of the state do not always have formal state employment contracts. Government may outsource elements of its functions to contractors. We would balk at the possibility that the employees of the contractor can legitimately make and act upon private judgments where civil servants cannot: objections to the practices of an outsourced benefits agency are never met with the response that the demeaning judgments involved are only *private* judgments, and are therefore not (unacceptably) disrespectful. Similarly, it does not seem worse,

¹⁵ Ibid., 40.

¹⁶ A third possibility is that a principle fails or passes the test just in itself, independently of any actual expressions of disrespect. That view seems difficult to explain or defend.

holding treatment equal, to be personally insulted by a Police Community Support Officer than by an agent of a private security firm that is acting on behalf of the police force.

The second, functional, account is the natural one. It is not deferent to states' self-designations. That account draws within its scope agents who, in function if not in name, are state actors. That account also raises more questions. What exactly is the given function? I return to this issue shortly. First, let us consider more closely the workings of the disrespect charge, with the purpose of better understanding the force of the claim that opacity respect is the grounds of equality, and in particular, how Carter can answer the question of where the state's eyes are located.

4. The disrespect-charge and empirical claims

Recall, the disrespect-charge says that no principle should be endorsed as egalitarian whose implementation would be disrespectful. In its crude form, the line of reasoning followed by the disrespect-charge is too quick. The conclusion turns around the idea that putting in place a principle involves certain outcomes. But whether or not the implementation of a principle *involves* some given policy must partly be a practical issue. Here is an example. Suppose we are considering the specific principle of 'equal opportunity for welfare'. Does this principle demand intrusive and disrespectful judgments? It does if the following empirical claim is true:

Equality of opportunity for welfare would be most effectively implemented by putting in place an institution whose representatives make many internal judgements about persons.

Absent a presupposition of this kind, it is not at all clear that an implementation of equal opportunity for welfare would involve disrespectfulness.

This may be of little interest if the empirical claim is obviously true, as some have insinuated.¹⁷ However, there are several sorts of reason to think that the claim could be false. I will mention two. First, anyone very sceptical about the efficacy of large bureaucracies might argue that the creation of a body devoted to assessing and then equalising each individual's responsibility for his or her own welfare levels would in practice undermine its own goals. Perhaps the bureaucracy would inevitably become self-serving and inegalitarian – and perhaps its desired outcome would in fact be better approximated by a simpler, less involved redistributive taxation scheme based only on earnings. Or perhaps the information and coordination problems faced by any centralised bureaucracy are so great that, even if the bureaucracy's constituents are fully cognisant of its rules and willing to act upon them, the goal of equal opportunity would still be poorly served, and a better job would be done by an organisation that does not directly attempt to measure people and their characteristics. The disrespect-charge denies these possible facts.

Second, perhaps there is a possible scheme that responds to people's internal states through an *impersonal* mechanism. There may be feasible institutional schemes that are effective at collating and aggregating information without a grand central brain. Some

¹⁷ For example, Jonathan Wolff writes: "on an opportunity conception of fairness...in order to implement genuinely fair policies a great deal of knowledge of individual circumstances is required. Often one cannot know what would be fair without looking at issues of past history and current merits and reasons for action." (Wolff, 'Fairness, Respect, and the Egalitarian Ethos', 107.)

socialist literature provides examples.¹⁸ We may picture a society organised along the lines of G.A. Cohen's camping trip, a society that achieves equality in a respectful manner using, where appropriate, systems that do not reveal facts about people that should remain private. Where people are motivated in the way that Cohen supposes, such systems are easy to imagine. If people will generally provide, more or less, for free, the level of labour time that they would provide under a selfish scheme of incentives, then they can also be expected to take, more or less, what they are due, without coercion from the state, and in particular, without the internal judgments that may be involved in state coercion.

There are, then, broadly, two (compatible) ways in which one might proceed in denying the empirical claim at work:

(a) One can claim that we have reason to be *sceptical* about the relative capacity of bureaucratic mechanisms to achieve sensitivity to persons' internal states. This may be for reasons of (i) structure (such as insurmountable coordination and informational problems), or (ii) inevitable non-compliance.

(b) One can claim that we have reason to be *optimistic* about the relative capacity of impersonal mechanisms to achieve sensitivity to persons' internal states. These mechanisms may be based upon people acting philanthropically, socialistically, or otherwise non-egoistically.

These two possibilities are consistent with each other, and one sometimes hears versions of both together. In order to deny the implicit empirical claim that I have

¹⁸ G. A. Cohen, *Why Not Socialism?* (Princeton Univ Press, 2009); T. M. Wilkinson, *Freedom, Efficiency and Equality* (Palgrave MacMillan, 2000).

identified, one may hold a strong version of either (a) or (b); that is, a forceful scepticism about bureaucracies, or a forceful optimism about non-personal mechanisms. Alternatively, one may hold a moderate version of each of (a) and (b) together, with the cumulative effect that one is left with a forceful reason to deny the empirical claim at stake.

We should note that bureaucracies are not the only systems that make intrusive personal judgments. Public cultures of making such judgments can exist. One sort of decentralised socialist dystopia imagines neighbours and workers closely spying upon one another on behalf of the state. A centralised government is not necessary for such intrusions. We can conceive of a close-knit idealistic community, where each member knows all the others' behaviours, abilities, and inclinations, and where goods are shared among the members.¹⁹ Perhaps the disrespect-charge could proceed by defending the claim that this latter kind of society would be the most effective way to implement equality of opportunity, and that such a society would manifest a great deal of disrespectful judgments.²⁰ I return to this point below, in section 6.

In general, it is at least conceivable that the implementation of some scheme that is very concerned with people's internal states would involve fewer internal judgements than

¹⁹ There may even be a culture that encourages *self-judgments* that would be objectionable in the same way that widespread inappropriate judgments of others can be objectionable. That is, a culture that encourages one to judge one's own abilities and take goods for oneself on that basis.

²⁰ For an application of a version of the disrespect-charge against G.A. Cohen's vision, see Emily McTernan, 'The Inegalitarian Ethos: Incentives, Respect, and Self-Respect', *Politics, Philosophy & Economics* 12, no. 1 (1 February 2013): 93–111.

some scheme that is little concerned with people's internal states. A claim that the respect requirement *itself* undermines principles of equality would smuggle in a claim about institutional design.²¹ Put another way, the goal of equality of opportunity for welfare does not by itself imply, a priori, that the state ought to assess each person's level of opportunity welfare, any more than utilitarianism implies, a priori, that the state ought to assess persons' utility levels. The implementation is one thing, and the principle another.

5. Disrespect in principle

How does Carter deal with such possibilities, while retaining critical bite? One approach would be to deny them. Rather than taking that route, Carter narrows his scope, covering in the first instance 'egalitarian practices' and not, necessarily, ultimate principles. However, he intimates a connection between the two. In this section I emphasise the deontological nature of the opacity test, and thereby the way the connection between the principle and its practice will function.

In explaining the relation of his view to ultimate principles, Carter writes:

The commitment to opacity respect does not rule out any egalitarian principles in a logical sense, considered in isolation from egalitarian practices. However, it

²¹ Carl Knight makes a similar point: "Luck egalitarians...are not information fetishists. The decision whether or not to collect data is based solely on whether doing so will further luck-egalitarian ends;...sometimes it will not." Carl Knight, *Luck Egalitarianism: Equality, Responsibility, and Justice* (Edinburgh University Press, 2009), 133.

does affect the plausibility of certain egalitarian principles indirectly, in its implications for the justifiability of given egalitarian practices.²²

In particular: “An egalitarian principle will lack a justificatory basis if, as a matter of contingent fact, there is *no* way of acting on it that passes the opacity test.”²³

Significantly, Carter confines subsequent discussion of the implications of his thesis to practices, not principles.²⁴ An egalitarian practice is “any attempt to act on an egalitarian principle”.²⁵ The focus on practices is an important restriction of the discussion, especially in regard to those egalitarians who claim to be seeking more ultimate principles—including, ways of assessing of outcomes—rather than, for example, sets of policies that ought to be adopted by the Treasury, or targets to be achieved by proactive government intervention, or ideals of public culture. It is of interest for the purposes of this paper that the opacity test can limit principles and not just practices, and in particular that one might coherently endorse a principle of equality that one knows cannot fully be implemented consistently with opacity respect.

²² ‘Respect and the Basis of Equality’, 561.

²³ He adds: “Where only *some* of the ways of acting on the principle pass the opacity test, the principle will be more or less plausible, depending both on the efficacy of those ways of acting on it and on their implication for other values.” Ibid. (*italics in original*). This claim is made against the background assumption that it will hold at least when by ‘principles’ one means what G.A. Cohen means by ‘rules of regulation’. In this section I examine Carter’s thesis while that background assumption is relaxed.

²⁴ Ibid., 562.

²⁵ Ibid., 560–561.

Note that the respect-requirement does not play a mere minimising role. If the test says only, 'show no opacity-disrespect, beyond what is strictly necessary for the implementation of the principle', or 'minimise opacity disrespect, subject to other values', then no principle is ever unimplementable. The test rules out principles and not just practices; recall: "An egalitarian principle will lack a justificatory basis if, as a matter of contingent fact, there is *no* way of acting on it that passes the opacity test."²⁶ If the minimisation view is true, then the antecedent of that conditional is never met. The opacity test rules out some principles in its application to the actions or policies of an agent or institution. It says: *Justified egalitarian principles do not, when one acts upon them, lead one to show opacity disrespect.* Contrast this with the obvious alternative: *In being enacted, justified egalitarian principles bring about states of affairs in which there is less opacity disrespect.* That latter view may be intuitive for some. It posits a value – respectfulness – and demands that it is given its due. If some amount of disrespect would, other things being equal, bring about less disrespect overall, the 'minimising' view would countenance disrespect.²⁷ But that latter view is not Carter's position. He holds that respect grounds other values – in particular, equality – and that it rules out some practices. The test has a deontological character.

In the next section I set out an objection to Carter's view that depends upon the deontological character of the opacity test. In the subsequent section I show how his

²⁶ Carter, 'Respect and the Basis of Equality', 561 (italics in original).

²⁷ For example, perhaps the establishment of the state inevitably leads to small displays of disrespect by state-agents, but also leads to a world in which there is less disrespect than there would be in a state of nature.

position has the resources to meet this objection, but that in doing so, it threatens absurdity.

6. An objection that the functional approach can meet

Given the extra limits placed upon states by the Carter's position, it is possible that it will imply that a state of affairs would be improved were there more internal judgments, if their existence is a way of eliminating inappropriate state opacity disrespect. We may have a society with a culture of petty judgment; so long as it is not a culture of *state* petty judgment, or in any case is not a culture of petty judgments that are attached to a legitimate coercive practices, then the especially problematic kind of judgment that exercises Carter would be avoided. This is no merely theoretical supposition. Compare the following two attitudes:

the invasive internal judgments that might flourish in the *widespread private philanthropy* of a political economy that has a flat tax and a low universal basic income;

the invasive internal judgments that might flourish under a complex system of *bureaucratic tax credits*.

Both *widespread private philanthropy* and *bureaucratic tax credits* can involve demeaning judgments about people's deservingness, culpability, intelligence, ambition, and ability to contribute to society or some section of it. Indeed, the system of private philanthropy may have eccentric or unpredictable criteria for receipt of aid, such as the personal whim of the philanthropist who favours those with certain kinds of character or family history. Holding all other factors constant (including the quantity of aid), is it

worse for states than charities or communities to prioritise the improvement of the lot of 'good hard-working families', to the detriment of others, and to implement tests before receipt of aid in assessing the degree to which those requesting help meet an ideal form of 'good hard-working family'? If we hold state actions to a higher standard in regard of respect, then the disrespectful judgments in the system of bureaucratic tax credits are of greater concern.

I will outline a problem with this implication. Suppose that we can choose between two kinds of polity. In the first, there is just enough state-originated disrespect such that the opacity test cannot be met, but citizens themselves are generally opacity-respectful towards one another. In the second scenario, if there is any state-originated disrespect, it is not attributable to state-agents in a way that violates the opacity test. But also in this second case, there there is also a vast amount of private opacity disrespect. It seems that the second polity is preferable on Carter's view. But that is extreme. Alongside the powerful institutional philanthropist, consider the judgmental community that privately ensures an ethos of equality of opportunity for welfare. In its practices its members say, daily, 'we recognise that you are capable but have made irresponsible choices, and so shall you shall receive less'. Is that to be preferred to some comparatively trivially invasive bureaucratic process? This seems contrary to the spirit of the test, which on the present interpretation allows one's fate to be determined with little outward dignity. Internal judgments might flourish in non-state apparatus. The problem for the opacity test is not merely that it holds the disrespect of *bureaucratic tax credits* is inherently worse, but that there are cases in which a very small amount of the disrespect of *bureaucratic tax credits* is deemed worse than a very large amount of the disrespect of *widespread private philanthropy*.

How might we account for the problem of non-state disrespect? As we saw earlier, *legitimate coercion* is a function that motivates the stronger opacity test.²⁸ It might therefore be replied, in defence of the opacity test as the basis for equality, that the distributive practices of the judgmental philanthropic community are in effect coercive, and so are subject to the same strong test of opacity respect that is faced by state practices. I now turn to that idea.

7. The asocial economy

There are resources within his position that may allow Carter to dodge the extreme implication that state disrespect is heavily dispreferred, but at the cost of a surprisingly dramatic expansion of the territory of the opacity test. The proper reach of the strong opacity test may go beyond just (as I have argued it does) those with employment contracts with the state, or those acting as employees of state agencies, and also extend to actors within the economy itself, acting with no immediate state involvement.

How far are people acting merely as private citizens when they engage in economic activity? Perhaps those making exchanges of goods or labour are not engaging in direct acts of coercion – a status that would place them within the remit of the opacity test – but they nonetheless are properly construed as acting as agents of a structure that itself is unchosen and therefore coercive in the relevant sense. This structure may be constituted by the backings of the market, including the institutions of property and contract law. If so, then the same reasons against disrespectful judgments in the case of the state may also apply in the case of trade. On this reading, the market is part of the

²⁸ See the discussion accompanying footnotes 11-15 above.

sphere to which the opacity test applies, and agents *qua* economic actors can be agents of this sphere; individuals making economic transactions also fall under the opacity test. Moreover, in selecting an economic structure, states ought themselves to select systems that eliminate personal judgments that actors within that system make as part of that structure.

This would be a dramatic expansion of the implications of Carter's view. It would imply that, just as we ought not to have a system in which those those distribute unemployment benefits make their decisions depend upon intrusive personal judgments of claimants, nor should employers make such judgments towards their employees, and nor car salesmen, estate agents, bank managers, lawyers, retailers, or bar staff make such judgments about their clients. Transactions between people who recognise one another seem to be all but prohibited. *In extremis*, one would expect an economy that functions only through a series of anonymisation techniques: actuarial calculations, online transactions, decentralised currencies, collection boxes, and laws against data fusion. The point does not apply only to markets: if the structure of distribution is an element of the state, then on this expansive understanding of the opacity test, any version of that structure that involves internal judgments is prohibited.

To be sure, Carter resists this extreme implication. There are certain human relationships that are neither the appropriate subjects of opacity respect, and nor do they have equality as an "appropriate feature": student-teacher relationships are one such kind of relationship; and interviewer-interviewee relationships may be another.²⁹ Similarly, as we have seen, Carter is keen to argue that states face a stronger test of

²⁹ 'Respect and the Basis of Equality', 556–57; 'Basic Equality and the Site of Egalitarian Justice', 31.

opacity respect. It seems, however, that because of the way distributive schemes must be selected, created and sustained, individuals view each other, in the relevant functional sense, through the eyes of the state, in their day-to-day lives, wherever they take part in economic activity. This threatens absurdity because it rules out a large portion of the internal judgments that make up our social lives.³⁰ The alternative is to commit to a bureaucratic or formalistic reading of the scope of the opacity test – and we have seen that that brings its own problems.

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- Carter, Ian. 'Are Toleration and Respect Compatible?' *Journal of Applied Philosophy* 30, no. 3 (1 August 2013): 195–208.

³⁰ Carter also suggests that internal judgments in the employment market do not undermine the requirement of opacity respect, since such assessments need not involve judgments of actual agential capacity, only characteristics that at most might correlate with it. ('Basic Equality and the Site of Egalitarian Justice', 31.) One wonders how sustainable the distinction is for many professions and human interactions. Moreover, this argument would defang the opacity test in its central context: equality of opportunity for welfare might be implemented with a focus on similar kinds of characteristics. On 'indirect' pursuit of equality, see 'Respect and the Basis of Equality', 562–564.

- . 'Basic Equality and the Site of Egalitarian Justice'. *Economics and Philosophy* 29, no. 01 (2013): 21–41.
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