

Offences against Status

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Abstract—Philosophical accounts of status understand it either pejoratively, as social rank, or laudatorily, as the dignity possessed by all in virtue of our shared humanity. Status is considered to be something either we all have or no one should have. This article aims to show that there is a third, neglected, sense of status. It refers to the moral rights and duties one holds in virtue of one's social position or role. Employees, refugees, doctors, teachers and judges all hold social roles in virtue of which they have distinctive obligations, rights, privileges, powers and the like. This article aims to do two things: first, to distinguish the role-based notion of status from ideas of social rank, and to identify the various ways in which it constitutes a distinct category of moral wrongdoing; and second, to show that status, thus understood, is justified on egalitarian grounds even though, unlike dignity, not everyone has it. The moral point of status, I argue, is to regulate asymmetrical relations in which one of the parties suffers from background vulnerabilities and dependencies. Status as a moral idea vests both parties with a complex set of rights and duties, whose aim is to restore moral equality between the parties.

Keywords: status, legal and moral equality, legal rights, social hierarchy, contract, Henry Maine, Jeremy Bentham.

1. Introduction

Can you wrong a person by offending their status? This article argues that you can. The claim will appear either trivial or objectionable at first. It is trivial if we interpret status to mean the dignity and inviolability inherent in all human beings.¹ On this interpretation, largely familiar from deontological ethics, *all* moral wrongs constitute an offence against status. The claim will sound objectionable, on the

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¹ On the status-based theory of rights, see Thomas Nagel, 'Personal Rights and Public Space' (1995) 24 *Philosophy and Public Affairs* 83; Frances Kamm, *Intricate Ethics* (OUP 2007).

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other hand, if status refers to one's high ranking within an arbitrary scheme of social ordering. The value of human equality is nowadays taken, rightly, to condemn preferential treatment of a group (eg the gentry or the aristocracy) simply in virtue of its perceived social superiority. By promoting the idea of offences against status, one risks being perceived as an apologist for unjust orders of social ranking. Status, it seems, is something either we all have or no one should have.

This approach to status dominates contemporary philosophical thinking. It underpins the development of human rights law and adds to its legal and political currency. We are nowadays suspicious of person-specific entitlements, and rightly so. But this dominance comes at a cost; it eclipses an older notion of status which is person-specific, but nevertheless has genuine moral appeal. It is a notion that sits between the dignitarian and the ranking concepts. By status, we can refer to the set of moral rights and obligations a person holds in virtue of the social position or role that they occupy. This notion, which I shall call *role-status*, is unlike the dignitarian concept in that not everyone has it. But it is also unlike the ranking concept in that it is not morally objectionable. Doctors, teachers, judges and parents hold social roles in virtue of which they have distinctive obligations, rights, privileges, powers and the like. *Qua* doctor, one has the obligation to respect patient autonomy, the privilege not to testify in court about a patient's communications and the power to prescribe medication. What I have in mind here is not the descriptive fact that doctors are treated as having these rights and duties, but a *normative* fact that—morally speaking—this is as it ought to be.

The idea of status as a set of normative powers attached to one's social role is by no means novel. It underpinned the use of the concept in Roman law and the work of legal theorists in the 19th century, particularly Jeremy Bentham and Henry Maine, who sought to classify the different kinds of rights and duties recognised in law. It was also prominent in the thought of the American sociologists of the 20th century who employed a role-based analysis.² It is striking that, writing in 1831, the legal philosopher John Austin remarked that 'to determine precisely what a status is, is in my opinion the most difficult problem in the whole science of jurisprudence'.³ But the intellectual trajectory of this notion of status has been eclipsed by the contemporary emphasis on equal human dignity, which is seen as having replaced status in its pejorative, ranking sense.⁴

The role-based notion of status, however, has hardly disappeared. Consider the following three cases from current affairs:

² Unlike the classical sociologists of the 19th century, American sociologists tended to focus on micro-level inquiries and situational interactions between persons. When the anthropologist Ralph Linton introduced the concept of role to sociology, he noted that 'there are no roles without statuses and no statuses without roles'. See Ralph Linton, *The Study of Man: An Introduction* (D Appleton Century Co 1936) 114. Role analysis subsequently became a standard sociological tool, used by leading figures in American sociology such as George Herbert Mead, Talcott Parsons and Erving Goffman.

³ John Austin, *Lectures in Jurisprudence: Or The Philosophy of Positive Law* (New York: Henry Colt and Co., 1875), p. 355. Status is not even a topic in general jurisprudence these days, let alone its most difficult problem.

⁴ See Stephen Darwall, *The Second Person Standpoint* (Harvard UP 2006); Stephen Darwall, *Morality, Authority and Law: Essays in Second-Personal Ethics* (OUP 2013); Stephen Darwall, 'The Social and the Sociable' (2014) 42 *Philosophical Topics* 201.

1. A multinational ride-hailing company refuses to accord its drivers employment status and treats them as self-employed contractors. Drivers complain that this is unjust.
2. The government imposes tasks of immigration enforcement on academics, requiring them to monitor attendance of overseas students. Academics complain that this is incompatible with their status as lecturers.
3. Healthcare practitioners lobby successfully to be able to use the title ‘doctor’. Medical doctors complain that this offends their status.

What, if anything, can justify these complaints? Why should institutions recognise statuses in the first place? Contemporary political philosophy studies extensively the ethical issues surrounding specific statuses (eg that of a refugee or an employee), but it is much less common to reflect on status as a general moral category. Presenting these long-standing ethical concerns under a unified category might be fertile philosophical ground.

This article aims to rehabilitate offences against status as a perspicuous category of moral wrongs. The main claim is simple: status is a way to protect weaker parties in enduring social interactions. How it does so is far from simple, but the main idea is that it vests both parties with a package of relation-specific moral rights and duties. Employees, patients, litigants—all have statuses whose aim is to restore a relation of moral equality. So do employers, doctors and judges, whose status often includes rights held against third parties. Status-based rights and duties are not grounded on promissory principles or principles of tort, and they often call for these principles to be set aside. Employees may agree to waive their privacy at work, but their status protects them against that waiver. My main claim is that what unifies status as a category of moral wrongs is the value of relational equality: parties find themselves in non-episodic social relations within which they suffer from dependencies or vulnerabilities. These, in turn, increase substantially the likelihood of wrongs towards the weaker party, such as abuse, exploitation or unfair treatment.

The concept of status is rich, complex and philosophically contested. My approach here is interpretive, seeking to reconstruct an account of status that both fits the history of the concept and has independent moral appeal. In the next section, I begin by presenting three different ways in which status can give rise to a moral offence,⁵ drawing on the cases above. The aim is to show that the idea of status has wide political currency and to present the different forms that status wrongs take. Section 3 introduces and defends a crucial distinction between role-status and rank-status, clearing some of the conceptual ground. It argues that role-status is the more basic notion and does not have the troubling inegalitarianism of the idea of rank. Section 4 fleshes out the positive account that takes relational equality as the foundation of role-status. Section 5 defends this account against possible objections, before the final section concludes.

⁵ I use the term ‘offence’ in the title and throughout the article in the sense familiar from legal doctrine, to refer to a family of deontic wrongs (as in ‘offences against the person’). As I will argue in section 3, status-based wrongs have nothing to do with the idea of offending one’s honour or rank.

2. Claiming Status

A. Failure to Recognise One's Status

Take the first claim of wrongdoing, the failure to recognise one's status. Uber, a multinational corporation, argues that its drivers are self-employed contractors rather than employees, and deprives them of employment protection. Being an employee is a recognised legal status that vests workers with several rights, such as sick leave, paid holidays and protection against unfair dismissal. Uber bases its argument on the claim that it merely mediates between drivers and passengers. The drivers have challenged this claim in court, on the ground that Uber's role is much more dominant than a mediating one.⁶ They argue that they ought to have the same package of workplace rights as other workers, and demand that the government, ie the legislature and the courts, recognise their status as employees.⁷

The Uber drivers' complaint is not based on some legalistic technicality. It is not the case that Uber is disregarding some statutory provision which clearly stipulates that ride-hailing companies count as employers. Nor is their complaint merely one of equal treatment under law. If the law did away with the status of an employee altogether, then others too—and not just Uber drivers—would complain that law fails to accord them the protection to which they are morally entitled. The core of the Uber drivers' grievance is that they ought to be recognised as employees because they already possess the attributes that normatively justify having this status in law. They are alleging not only a legal wrong, but also a moral wrong. We may, tentatively, put this point as follows: Uber drivers claim that they are entitled to the legal status of an employee because they already possess the underlying *moral* status.

I will say more about what I mean by moral status in section 4. What is important to note here is that the idea of a moral entitlement to a status underlies many other historic grievances against government. It was once the norm in western legal systems to refuse to recognise children born out of marriage as legitimate. As a result, these children were deprived of several rights that pertain to the legal status of a legitimate child, such as rights to inheritance or child maintenance. As modern attitudes towards the institution of marriage started to shift, the failure to accord legal status to children born out of marriage was seen as an injustice and a human rights violation. In 1979, Alexandra Marckx took her nation state, Belgium, to the European Court of Human Rights for failing to recognise, upon birth, a legal bond between her and her mother. In a landmark judgment, the Court found a violation of the right to family life and paved the way for the recognition of legal status to all children born out of marriage in Europe.⁸

⁶ See *Uber BV v Aslem* [2021] UKSC 5. The claim in English law was made under the status of 'workers' rather than employees, a separate statutory category which, however, is still afforded employment protection.

⁷ This complaint is common in the so-called gig economy. In various forms of what is called precarious work (eg fixed-term contracts, agency workers, zero-hours contracts), workers complain that they offer employers (usually major companies) essential services on a par with those of permanent employees, but without the protection that those employees enjoy. See Valerio De Stefano, 'The Rise of the Just-In-Time Workforce: On-Demand Work, Crowdfund, and Labor Protection in the Gig-Economy' (2016) 37 *Comparative Labor Law & Policy Journal* 471.

⁸ See *Marckx v Belgium* (1979) Series A no 31; *Keegan v Ireland* Appl no 16969/20 (ECtHR, 26 May 1994); *Odievre v France* Appl no 42326/98 (ECtHR, 13 February 2003).

As the failure to recognise one's status as a child is primarily a moral complaint, it need not involve any legal institutions. In the early years of granting legal recognition to children born out of marriage, many moral conservatives would have continued to treat these children as illegitimate family members. They would have excluded them from family gatherings and conversations, and expressed moral disapproval towards their biological parents. Such behaviour was wrongful, even though the law fully recognised the legitimate status of children born out of marriage. We find, in this case, a clear instantiation of the idea of moral status and the wrong in failing to recognise it.

The wrong of failing to recognise one's status, be it personal or institutional, need not involve a material setback to the victim's interests. It can be expressive. Suppose that grandparents include a child born out of marriage in all material family benefits. But they refuse to address the child as 'grandchild' and the child's parents as 'mother' and 'father'. They pointedly use their first names instead. They treat the child as the passive recipient of benefits, rather than the holder of rights grounded on the child's position. The child would rightly complain that the grandparents fail to show respect for their status as a family member. Their status entitles them not just to material benefits, but also to the recognition of the relation they have to other family members.

We should add to this first category of offences against status cases of withdrawing, rather than withholding, the recognition of status. An example is the practice of banishment. Since ancient times, political communities would expel individual members deemed unwanted or dangerous, and withdraw their status as citizens. The practice continued for centuries until the late 19th century and the emergence of nation states. It is nowadays generally accepted that citizenship ought to be a secure status, at least for native-born citizens.⁹ Arbitrary revocation of one's status as a citizen is considered unjust and not just in breach of international law standards. As with previous examples, citizenship is not just seen as a mere creation of the law, but primarily as a moral status held by members of a political community.

B. Undue Interference with the Functions of One's Status

The second category of offences against status covers cases where one is put by others in circumstances that prevent, or unduly burden, the exercise of the functions of one's status.

In 2014, government in the UK started to introduce measures that require employers, landlords and universities to check the immigration status of employees, tenants and students respectively.¹⁰ The official rationale was that sectors which benefit from immigration must share the burden of immigration enforcement. Many complain, however, that the real point of such measures is to create

⁹ See Matthew J Gibney, 'Should Citizenship Be Conditional? The Ethics of Denationalization' (2013) 75 *Journal of Politics* 646.

¹⁰ See Immigration Act 2014; Immigration Act 2016.

a hostile environment towards immigrants.¹¹ Universities are required to monitor attendance of overseas students and report absences to the government that are in breach of visa regulations. In practice, the burden falls on lecturers to monitor class attendance, through taking a register. Some universities have asked lecturers to take drastic measures of enforcement to counter the possibility of fraudulent absences, such as checking the photo ID of overseas students in class. Many academics complain that such measures are incompatible with their status as teachers and educators.

The academics' complaint is an implicit appeal to the set of normative functions that are attached to their role. The relation between teachers and students is typically unequal. Students value the judgment of their teachers for several intrinsic and instrumental reasons. Not only does their academic progress depend on it, but so do first-personal attitudes like self-esteem. Teachers, on the other hand, have responsibilities towards their students (such as to facilitate their pursuit of knowledge), powers (such as to set assignments), permissions (such as to request an explanation for an absence) and the like. Part of these normative functions includes the duty not to exploit students and to establish trust in the relationship with them. The exercise of this duty is inhibited when universities require academics to check the photo ID of students on a visa during class, as part of immigration control. When UK-based academics complain that it is not their job to be immigration officers, they do not mean that it is beneath them to carry out mundane administrative tasks. Their complaint is that asking students to prove that they are who they claim to be amounts to a form of mistrust, which is incompatible with the role of an academic teacher. The same cannot be said of border guards, whose power to check people's passports raises no eyebrows.

C. Status Appropriation

The third category of status offences comprises cases that I will call *status appropriation*. It is the wrong of seeking and/or achieving social recognition of a status to which one is *not* entitled.

Various experts complain that complementary and alternative medicine therapies—such as homeopathy, nutritional therapies, acupuncture, chiropractic treatment—are often placebos, not based on medical evidence.¹² But they are also concerned about the use of the title 'doctor' by healthcare practitioners who are not medical doctors.¹³ The concern is partly motivated by the fact that the use of the title is often illicit, made by unscrupulous practitioners who aim to deceive the public about their medical qualifications and who pose a threat to patients' health.¹⁴ But sometimes the concern is wider. In the USA, nursing schools

¹¹ See Melanie Griffiths and Colin Yeo, 'The UK's Hostile Environment: Deputising Immigration Control' (2021) 41 *Critical Social Policy* 521.

¹² See RB Bausell, *Snake Oil Science. The Truth about Complementary and Alternative Medicine* (OUP 2007).

¹³ See David Colquhoun, 'Doctor Who? Inappropriate Use of Titles by Some Alternative "Medicine" Practitioners' (2008) 121 *New Zealand Medical Journal* 6.

¹⁴ See A Gilbey, 'Use of Inappropriate Titles by New Zealand Practitioners of Acupuncture, Chiropractic, and Osteopathy' (2008) 121 *New Zealand Medical Journal* 15.

nowadays offer a professional doctorate in nursing practice (a DNP). This is not equivalent to a PhD, but it nevertheless confers on graduates the title ‘doctor’. Nursing practitioners think it is important that holders of a DNP are able to use the title ‘doctor’ in their nursing practice.¹⁵ But medical doctors are worried that losing the exclusive use of the title ‘doctor’ within the healthcare sector will result in losing control over the profession, with nurses gaining powers to treat patients directly, without a referral by a medical doctor.¹⁶ They believe that, because of their extensive training, they should be the sole gatekeepers of patients’ entry into medical care.

The doctors’ claim, just like the previous ones, may or may not be justified. What interests me here is its character. It is true that, due to their extensive medical training, there is a set of medical functions that are unique to the status of medical doctors. They clearly have standing to complain if patients are harmed or receive inadequate care by practitioners who have lower qualifications. But they also have standing to complain if other healthcare practitioners appropriate their title. The use of the honorific title ‘doctor’ in the healthcare sector is regarded as a recognition of their role and the special responsibilities that they have towards patients. When other professionals appropriate that title without having the respective responsibilities, doctors feel that the importance of their role is diminished.

The logic of the doctors’ complaint is similar to arguments made in the context of merit-based competitive practices, such as sports and exams. It is often argued that it offends the status of a winner of a competition if everybody is called a ‘winner’ or gets a trophy.¹⁷ Insofar as the winner of a competition has the right to the recognition of their achievement (say, because it was the implied agreement between contestants and the judges of the competition), giving everyone a prize amounts to an injustice towards those who excelled. Likewise, insofar as we owe collectively a duty to recognise the importance of doctors’ role, then allowing others to appropriate their title could amount to an injustice against them. Finally, the wrong of status appropriation too can be personal, rather than institutional. It would arguably offend one’s family if a third party fraudulently appropriated the title of one of its members, even if the appropriation caused no risks of harm, reputational or otherwise.

3. *Role-Status and Rank-Status*

The plausibility of the idea of offences against status as a category of moral wrongs depends on whether status can be understood as an attractive moral idea. The preceding section explored cases of people expressing moral-reactive

¹⁵ See Nancy Dirubbo, ‘Words Matter’ (2019) 31 *Journal of the American Association of Nurse Practitioners* 280.

¹⁶ Gardiner Harris, ‘When the Nurse Wants to Be Called Doctor’ *New York Times* (New York, 1 October 2011) <www.nytimes.com/2011/10/02/health/policy/02docs.html> [last accessed 14 December 2022].

¹⁷ Betty Berdan, ‘Participation Trophies Send a Dangerous Message’ *New York Times* (New York, 6 October 2016) <www.nytimes.com/roomfordebate/2016/10/06/should-every-young-athlete-get-a-trophy/participation-trophies-send-a-dangerous-message>. [last accessed 14 December 2022].

attitudes of indignation and anger with respect to their status. Underlying these cases is what I shall call a *role-based* account of status. Employees, teachers, doctors and parents hold social positions which shape the way they are required to behave. ‘Role’ was once seen as synonymous with status¹⁸ and while there is a rich tradition in moral philosophy around the idea of role obligations,¹⁹ it has not been tied to the notion of status. I am here hoping to connect the two strands, particularly because the idea of role obligations does not immediately imply hierarchy or ranking.²⁰ By contrast, a large part of contemporary discourse about status regards it in ranking terms. We hear that private jets and yachts are status symbols, that people in capitalist societies suffer from anxiety about their social status²¹ and that one’s social status determines the level of health one enjoys.²² Many people see status as a problematic idea, in tension with the aspirations of an egalitarian society.

The examples discussed in the preceding section are so far insufficient to distinguish status from rank. Uber drivers demand the recognition of a set of rights but, at the same time, are in a lower socio-economic position than, say, doctors or lawyers. The demand for the status of employee might be seen as an aspiration for a higher social ranking. Likewise, doctors have a high socio-economic ranking and their complaint about status appropriation might be seen as an attempt to maintain it, by putting other healthcare professionals down. To sharpen the moral dimension of status, we need first to distinguish it from the problematic notion of ranking people.

The fundamental distinction I want to propose is between role-status and rank-status. Both notions track social positions, and both can be attached to the same person. But they are quite different. *Role-status* refers to the position one occupies within a pattern of social interaction. *Rank-status*, by contrast, refers to the position one occupies within a social ordering of esteem or prestige. The former notion seeks to capture standing interactions with certain morally salient characteristics, most notably the presence of a package of rights and duties.²³ The latter notion, by contrast, seeks to capture society’s beliefs about someone’s

¹⁸ Linton, who introduced the concept of role in sociology, wrote that ‘Role and status are quite inseparable, and the distinction between them is of only academic interest’: Linton (n 2) 114.

¹⁹ Philosophical accounts of role obligations include Dorothy Emmet, *Rules, Roles and Relations* (Macmillan 1966); Michael Hardimon, ‘Role Obligations’ (1994) 91 *Journal of Philosophy* 333; Stefan Sciaraffa, ‘Identification, Meaning and the Normativity of Social Roles’ (2009) 19 *European Journal of Philosophy* 107; Jeremy Evans and Michael Smith, ‘Towards a Role Ethical Theory of Right Action’ (2008) 21 *Ethical Theory and Moral Practice* 599. Hardimon’s account has been the leading point of reference in recent decades. The idea is, however, much older, going back to Stoic philosophy. See Julia Annas, ‘My Station and Its Duties: Ideals and the Social Embeddedness of Virtue’ (2002) 102 *Proceedings of the Aristotelian Society* 109. The British idealists, Bradley and TH Green, both used the phrase ‘my station and its duties’, which tracks the idea of status as a set of obligations.

²⁰ Hardimon discusses both concepts, but distinguishes them on the basis that not all statuses are roles: Hardimon (n 19). He has in mind, however, the dignitarian conception of status as something each person has, and notes, rightly, that being human is not a role.

²¹ See Alain de Botton, *Status Anxiety* (Penguin 2005).

²² See Michael Marmot, *The Status Syndrome* (Bloomsbury Publishing 2004).

²³ Not all roles are statuses. Some roles involve very little interactions with others (eg a gardener or a commuter) and some do not capture patterns of social interaction that trigger reciprocal rights and duties over and above what was agreed (eg a musician).

prestige or esteem. Consider Jeff Bezos. He has rank-status in that he is a celebrity that enjoys wide societal recognition that most people do not. But he also has role-status in that he is the CEO of one of the largest corporations in the world, employing 1.6 million workers.

A. Rank-Status

The contemporary meaning of rank-status is perhaps best exemplified in Michael Marmot's empirical thesis that one's social status determines the level of health one enjoys. Marmot's research has shown that the determinants of health are primarily social, rather than medical. The level of health one enjoys across their lifetime does not depend on some absolute level of material resources or health-care, but on the relative position one occupies along a social gradient. Things like education, occupation or class background serve as grounds of societal esteem which sort people out on a gradient. For each of these grounds, the higher one's position on the gradient, the better their health. This empirical co-relation is universal, found even in countries with a strong welfare state and egalitarian ethos, like Sweden. Marmot calls this empirical finding the *status syndrome*.²⁴

Rank-status, thus understood, has several characteristics. It is primarily a descriptive notion in that it purports to report a social fact about the attitudes of a given society towards different groups of people, based on attributes such as one's education, occupation or class. We collectively can be wrong about who should have high social status, but not about who currently has it.

Furthermore, rank-status tracks an attitude shared by most people at a given place and time, which we can call societal esteem. The attitude possesses positive valence at one end (admiration) and negative valence at the other (contempt). It is both emotive and propositional in content. On the emotive side, it is characterised by the desire—or, if not feasible, the counterfactual wish—to possess certain attributes that a group in their society possesses (or, at the low end of the scale,²⁵ the desire to avoid them). People might desire to be admitted to a top university or wish they had been born into an upper-class family. The desire or wish may, but need not, be malicious, harbouring hostile feelings towards those who possess the attributes. It need not be a form of invidious envy.²⁶ Its main object is not the holder of the attribute, but the attribute itself. Nor is it necessarily a moralised attitude, like resentment. It might coincide with the desire to emulate, if possible, those who possess the attribute. Most often, it consists in pleasant feelings (particularly a sense of superiority) at the thought of imagining oneself possessing it.

On the propositional side, the attitude contains two main elements. First, an element of common knowledge. One knows that most people in one's society

²⁴ Marmot (n 22) 8.

²⁵ For ease of exposition, I will focus on the positive valence of the attitude. The emotive and cognitive side of disesteem can be adapted accordingly.

²⁶ For the distinction between benign and invidious envy, see DM Farrell, 'Of Jealousy and Envy' in G Graham and H LaFollette (eds), *Person to Person* (Temple UP 1989). I follow here the view that benign envy is not envy at all. See J Darms and A Kerr, 'Envy in the Philosophical Tradition' in R Smith (ed), *Envy: Theory and Research* (OUP 2008).

also desire or wish they possessed the attribute. This comes about mainly through the public manifestation of how desirable the attribute is. Typically, societal esteem is not a privately held attitude. For someone to enjoy rank-status, it is not enough that most people have entertained the thought that they are more, or less, esteemed than others. The thought must drive some external behaviour which is publicly recognised as expression of the relevant attitude. This usually takes the form of a disposition to communicate, through conventions or norms of etiquette, that one is aware of another's position in the social hierarchy.²⁷ When the attributes are not immediately visible, rank-status holders typically make sure to exhibit them through signs, implicature or—in the case of material possessions—conspicuous consumption. It is the element of common knowledge that the familiar practice of constantly relabelling certain jobs (eg relabelling 'secretary' to 'personal assistant') seeks to escape, so as to shield workers from the low social esteem that their job (wrongly) attracts.

Second, the cognitive aspect of societal esteem contains an element of positionality.²⁸ One finds the attribute desirable mainly because not all those who desire it can have it. The desire is motivated by the thought that, by having what others want but cannot have due to scarcity, one is superior to them. Rank-status has a 'rub-it-in-their face' dimension. Most people value becoming a parent and owning a Picasso, but only the latter carries high social status because, unlike parenthood, very few of those who desire it can have it. Scarcity can be institutional (eg degrees or prizes), material (eg diamonds or land in prime location) or biological (eg ancestry or good looks). It would be a mistake to think that societal esteem tracks only desert-based attributes. Good looks or inherited wealth often attract societal esteem even though there is nothing one has done to deserve them. Nor is it necessarily the case that the attributes which attract social esteem correspond to objectively valuable qualities. A society may esteem media celebrities who, as the popular saying goes, are famous for being famous.

When philosophers tackle the notion of status, they usually have this notion of rank-status in mind. The idea that we transitioned from a ranking morality to an egalitarian morality is a familiar motif in political theory. It employs the contemporary notion of rank-status and projects it backwards as an account of the unjust pre-modern societies against which egalitarianism emerged. There have been two different ways to describe this transition. The first is as an extension in the scope of a legitimate moral outlook. Jeremy Waldron has argued that dignity used to be tied to the rank of nobility (eg dukes, earls and prelates), but with the advent of

²⁷ I draw here on Erving Goffman's deeply perceptive analysis of role behaviour, in Erving Goffman, *The Presentation of Self in Everyday Life* (Penguin Books 1959). Goffman's analysis, however, contains elements of both rank-status and role-status.

²⁸ Economists use the term 'positional good', but there is no agreement on its precise definition, particularly about whether the good must be desired *mainly* or *solely* because of its positionality, or whether it is enough that it has some positional aspects. See Michael Schneider, 'The Nature, History and Significance of the Concept of Positional Goods' (2007) 45 *History of Economics Review* 60. I follow here the narrower definition that the good must be desired mainly because of its positionality. For the use of the wider definition, see Harry Brighouse and Adam Swift, 'Equality, Priority and Positional Goods' (2006) 116 *Ethics* 471.

human rights the idea of dignity as rank has now been extended to everyone. ‘We look *up* on each other,’ Waldron says, ‘as if we are all earls, rather than peasants.’²⁹

The second, more robust, way has been to regard the modern outlook as a full-blown rejection of rank as a moral idea. In Richard Dagger’s words, ‘for the concept of rights to appear and gain purchase, the status concepts had to lose their grip’.³⁰ On this second view, the problem with rank-status was not that few people got to be earls and dukes and most people were peasants; rather, the problem was the very thought that being an earl or a peasant has anything to do with one’s moral entitlements. Stephen Darwall’s well-known account of morality as a second-personal standpoint is an example of this more robust view.³¹

These two approaches seek either to purify or to condemn the inegalitarianism of rank-status. I want to suggest, instead, that rank-status, as we understand it now, never had the historical significance that political philosophers nowadays attribute to it. What was central in pre-modern times was not rank-status but role-status, and it is no less central today.

B. Role-Status

It is true, of course, that dukes, earls and prelates enjoyed high societal esteem in pre-modern times. But crucially, they also occupied a social position as owners of large estates that controlled production. That social position placed noblepersons at a standing interaction with the people who worked in those estates and whose livelihood depended on it; they were key players in a pattern of social interaction. They had role-status and not just rank-status. This is manifested in the concept of *noblesse oblige*. Nobility had the capacity, due to their socio-economic power, to affect the well-being of dependent parties, and in virtue of that capacity, they acquired a set of moral responsibilities.³² The societal esteem they enjoyed super-vened on this role.

Role-status picks out very different social facts to rank-status, as early sociologists pointed out. TH Marshall, writing in the middle of the 20th century, complained about using status to denote ‘a position in the hierarchy of social esteem’. He expressed his preference for the traditional use of the term, as used by lawyers and earlier sociologists, which has ‘no direct or necessary reference to position on a scale or in a hierarchy’.³³ Marshall sought to defend the older use of status by

²⁹ Waldron, *Dignity, Rank and Rights* (OUP 2012) 59.

³⁰ Richard Dagger, ‘Rights’ in Terence Ball, James Farr and Russell L Hanson (eds), *Political Innovation and Conceptual Change* (CUP 1989) 292.

³¹ See Darwall, *The Second Person Standpoint* (n 4). Darwall has sought to contrast morality with rank-determining attitudes like esteem, annoyance or contempt. He calls such attitudes *third-personal* because they are not used as the basis for making demands on people; rather, they merely report the perception of merit or demerit one has towards third parties. Morality, by contrast, involves what Darwall calls a *second-personal* perspective, a practice of placing demands on one another. Darwall reaches the conclusion that societies organised around the idea of rank-status are orders of ‘honor respect’, which—he claims—is not an inherently normative idea.

³² I am grateful to Chris Essert for discussion on this point.

³³ Marshall wrote: “‘Status’, as used by Linton, Parsons and others, has no direct or necessary reference to position on a scale or in a hierarchy. It embraces all relationships, not only those of superiority and inferiority. But “social status” is now in general use to denote position in the hierarchy of social prestige ... My own preference is for the retention of the term “status” as used by Linton and Parsons, that is without any necessary reference to hierarchical position.’ See TH Marshall, *Class, Citizenship and Social Development* (Doubleday 1964) 207.

sociologists, who were interested in standing social interactions one has with others, in virtue of their role. Role, in this sense, is a set of normative requirements about how a person should treat others, in virtue of some enduring aspect of the role-holder's circumstances, such as one's profession, vocation, circumstances, capacities or age. Though societal esteem is inevitably attached to roles (no less than to everything else we do), it is not a constitutive part of them.

For example, there is a whole range of obligations that one owes students, *qua* teacher, which have nothing to do with the societal esteem attached to the role. Teachers' esteem might go up or down, as it has done historically, without affecting the core of the teacher's role obligations. Contrariwise, a person may enjoy high societal esteem without having any standing social interaction with anyone. A modern-day aristocrat who leads a solitary life off the proceeds of the family wealth may enjoy high social esteem without having a social relation with anyone outside close family and friends. There is no one to whom that person owes a set of obligations *qua* aristocrat; no set of role obligations attached to their rank. By contrast, it is constitutive of being an employee, a doctor or a teacher that one has a standing social interaction with employers, patients and students respectively.³⁴ The concept of role-status has a constitutive dependence on stable and widely known social facts about the background circumstances of the role-holder.

I should emphasise here that I use the term 'role' in a thin sense, to mean simply a distinct pattern of social interaction, rather than the collective beliefs, expectations, norms, etc with respect to how parties within that pattern ought to behave.³⁵ And I am interested in a subset of roles, those that are bilateral and inherently asymmetrical, such as the roles of employer and employee. This conception allows us to compare the role of nobility who owned large estates with that of multinational corporations, even though background cultural norms surrounding the role-holder are, of course, very different between, say, the Duke of Westminster and Jeff Bezos.

C. Differences between Role-Status and Rank-Status

The precise connection between role-status and rank-status is much more complex than the preceding remarks suggest. But the two notions are sufficiently distinct to allow us to draw several significant contrasts. First, role-status cuts across social ranking. The status of an employee is possessed by esteemed professions such as doctors, lawyers and judges. But it is equally possessed by cleaners, waiters and rubbish collectors. Likewise, the status of a self-employed contractor is currently assigned to certain low-income jobs, such as Uber and Deliveroo drivers. But it is also possessed by famous painters and musicians.

³⁴ That such roles track existing social relations can be further evidenced by the fact that people who achieve an institutional qualification (eg doctors or lawyers) yet never practice are reluctant to self-identify socially as role-holders. They typically use locutions such as 'I qualified as a lawyer, but do not practice'.

³⁵ I depart here from the widely held view that roles are necessarily social kinds, identical with a set of descriptively identified mental states of collective intentionality. People may be in massive error about what a particular role-holder is required to do. For an account of roles as social kinds, see John Searle, *The Construction of Social Reality* (Free Press 1995). For a discussion of Austin's equivalent thesis about legal status, see CK Allen, *Legal Duties and Other Essays in Jurisprudence* (Clarendon Press 1931) ch 2.

Second, role-status is relational rather than holistic. The Uber drivers' claim for employment status concerns the bilateral relation they have with Uber, and the way it is regulated by law. By contrast, the social prestige attached to, say, the CEO of a multinational corporation is a function of the relative societal esteem CEOs enjoy *vis-à-vis* all other professions in society.

Third, role-status is not commensurable. It is not possible to compare role-statuses, understood as a package of rights and duties attached to different social roles, in the way it is for rank-statuses. It makes little sense to say that the status of an employee is better or worse than, say, the status of a citizen or a parent. Each status contains a package of rights and obligations that is unique to the role and incommensurable with the set attached to other roles.³⁶ By contrast, status as a ranking notion is directly commensurate to the degree of societal esteem one enjoys relative to everybody else.

But the most important difference lies in the way the two notions relate to the value of equality. Rank-status, as explicated here, is clearly not a morally acceptable basis for recognising moral rights. If it is used in this way, it can only offend the value of equality. Role-status, by contrast, necessarily raises the important moral concern of whether the two role-holders in a given pattern of social interaction treat each other as equals. The value of equality is only pertinent to rank-status as a result of a moral mistake. But it is fundamentally pertinent to role-status. It would be a moral mistake to ignore it.

4. *Status as a Moral Idea*

Pre-modern law protected and solidified the prevailing socio-economic power of nobility over whole classes of persons, such as slaves, servants or peasants. But it did so with a view to regulating a pattern of social interaction with certain morally salient characteristics, most notably the dependency of these classes on landowners.³⁷ Modern law does the same when it seeks to regulate the power of large multinational corporations, such as Uber and Amazon, over precarious workers. The difference between ancient law and modern law is that the latter, unlike the former, seeks to balance this unequal relation and protect the weaker party. The transition at issue here relates to role-status, and it is far more complex than philosophical pre-occupation with rank-status suggests. Law can, as it did in ancient times, intervene and protect the position of owners of large economic resources against vulnerable workers. It can also, as it did in the early period of liberalisation, stay out of the employment relation and treat it as purely

³⁶ It is possible, however, to compare the ethical significance of the interests underlying different statuses. We might say that the interest in being a family member is greater than the interest in being employed. But that is different from saying that we can compare and rank the packages of rights and duties attached to the status of a parent and an employee. For example, it is not possible to compare employees' right not to be unfairly dismissed with children's right to be educated. I am grateful to Massimo Renzo for discussion on this point.

³⁷ This explains why ancient legal statuses were a poor proxy for societal esteem. According to Tristan S Taylor, 'Social Status, Legal Status and Legal Privilege' in Paul J Du Plessis and others (eds), *The Oxford Handbook of Roman Law and Society* (OUP 2016), 'the legal categories under the Roman law of persons tell us relatively little about social status'.

contractual, turning a blind eye to its underlying asymmetry. Or it can, as it does in late modernity, intervene with a view to protecting the weaker party through the creation of employment status. The historical progression has been to turn the role-status relation on its head, by seeking to help the weaker, rather than the stronger, party.

Jeremy Bentham was the first philosopher to use the phrase ‘offences against status’ to describe a separate category of legal wrongs.³⁸ Bentham captured very well the idea that status picks out unequal social interactions which precede the law. Unlike Austin, he did not believe that status is simply a taxonomical concept which law uses to group together rights and duties for the sake of convenience. He observed in this respect that when a power is vested in a superior for their own benefit, the superior is called a *master* and the inferior is called a *servant*. But when the power is vested in a superior for the benefit of the inferior, then the former is called a *guardian* and the latter is called a *ward*.³⁹ We might say, using Bentham’s distinction, that the transition that took place historically is that masters became guardians and servants became wards. The distinction suggests that status relations display a stable social asymmetry across time, having superior and inferior parties, and that the law can either protect this asymmetry or seek to mitigate its effects.⁴⁰ It is this asymmetry that I take to be the core of the moral dimension of status, and that has been overshadowed by the emphasis on rank-status.

A. The Pluralistic Basis of Status Asymmetries

What is asymmetrical about role-status relations? The main idea is that one party suffers from vulnerabilities or dependencies *vis-à-vis* the other.⁴¹ These two terms are not synonymous, but nevertheless capture a unified source of moral concern. Dependency, as I understand it here, refers to objective needs that everyone has (eg for food and shelter) but which some classes of persons (such as children or persons with disabilities) cannot satisfy on their own, having instead to rely on others. Vulnerability refers to weaknesses of one group relative to another, with respect to the aim of a particular social interaction.

Consider the case of employees. It is well known that lack of bargaining power within a market economy makes them vulnerable to accepting unfair or unjust

³⁸ This was originally published in French as ‘Vue générale d’un corps complet de législation’ and appeared in Jeremy Bentham, *Traité de législation civile et pénale* (Étienne Dumont ed, Bossange, Masson et Besson, 1802). The French word Bentham used for status was *condition* (‘contre la condition’). In the English edition by John Bowring, this was translated as ‘offences against condition’. It was clear, however, that the two were treated as synonymous at the time as in discussing the French edition, Austin uses the term ‘status’, rather than condition. ‘Offences Against Condition’ receives a longer treatment by Bentham in *The Collected Works of Jeremy Bentham: An Introduction to the Principles of Morals and Legislation* (Clarendon Press, 1996), ch. XVI (hereinafter *IPML*). Some passages from the French edition, however, do not appear in *IPML*. I am grateful to Philip Schofield for very helpful discussion and guidance on Bentham’s writings.

³⁹ See Bentham, *IPML*, 238.

⁴⁰ This explains why the use of status to pick out morally evil legal statuses of the past (such as villeinage or tutelage) is not conceptually a mistake. The ancients correctly identified an asymmetrical relation, but made a moral mistake about how to regulate it.

⁴¹ I shall set aside here the rare cases of standing interactions where both parties suffer from vulnerabilities and dependencies, as is the case, for instance, with friendship and spousal relations. These cases also fall within the category of status because there is reciprocal asymmetry that triggers egalitarian requirements.

terms of employment. But it is also the case that people depend on employment to promote several instrumental and intrinsic interests. Employment is a social relation that forms a significant part of the employee's well-being. Most people socialise through their work, and one's performance at work is a significant source of self-esteem. Unemployment typically carries a social stigma. These background economic and social factors, creating vulnerabilities and dependencies on the part of employees, are constitutive of the employment status. They are encapsulated in the powerful motto of the International Labour Organization that 'labour is not a commodity'.

The central cases of status relations display similar characteristics. To be a teacher is to engage in a pattern of social interaction that is shaped by the economic and social significance of education. Students' sense of self-esteem, as well as their future success in life, depend on the judgment of their teachers, who are typically more mature. Based on their knowledge and expertise, teachers are in a position of power whose limits they might be disposed to exceed for personal gain. Looking at most of the statuses that the law recognises, one observes that they too involve social relations that are marked by background dependencies and vulnerabilities. Infancy, insanity, geographical displacement, and bankruptcy would be the obvious ones. But the same holds, perhaps somewhat less obviously, for the statuses of being a citizen and being an alien. Being a citizen or an alien is not only a legal relation. As a matter of social fact, both are subject to the coercive power of a state and, in the case of aliens, they do not even have the capacity to affect how that power is exercised, say, through voting or other political action.

It would be a mistake to restrict the relevant dependencies and vulnerabilities solely to economic and political factors. Clearly, the cases of employees and refugees fall into this category. But some factors are cultural, to do with the social importance attached to the relevant social interaction. For instance, nowadays there is significant social importance attached to education, employment and solvency, and, conversely, social stigma attached to illiteracy, unemployment and bankruptcy. Other factors relate to psychological dispositions that are common to most societies throughout history. There is a natural disposition, for instance, to feel embarrassed and ashamed when exposing one's ill body to others. This disposition makes patients vulnerable *vis-à-vis* doctors, regardless of the background social conditions surrounding the practice of medicine. Finally, some vulnerabilities are not relative to specific background conditions or social meanings, but have mainly a biological basis, such as infancy or lack of mental capacity. I want to advocate here a type of pluralism about the empirical sources of vulnerability and dependency, departing from a monistic account that focuses solely on economic and political factors.⁴²

⁴² The Marxist tradition offers such a monistic account, focusing on how the economic structure creates vulnerabilities which are further reinforced and solidified by prevailing legal and political norms. But see s 5A for why juridical vulnerabilities are excluded from my account.

B. Risk of Wrongful Harm, Non-instrumental Wrongs and Duty of Recognition

The presence of vulnerabilities and dependencies increases systematically the likelihood of moral wrongdoing within the relevant pattern of social interaction. Wrongs such as exploitation or abuse can occur episodically, outside standing social interactions. A savvy scammer may exploit my momentary lapse of judgment and get me to give my bank details. An aggressive stranger on the train may abuse me and get me to vacate my seat. But in the context of role-status, these wrongs become substantially more common because the relevant social interaction is enduring⁴³ and inherently asymmetrical. Teachers are prone to exploiting students. Employers are prone to treating employees unfairly. Doctors are prone to abusing patients. Though these wrongs are not unique to the underlying social interaction, they are nevertheless central to it. The endemic risk posed to the weaker party is constitutive of the relevant role. It is part of what makes the social roles of, say, patients or students distinct.

The endemic risk of wrongful harm has important implications for the moral profile of both parties. It triggers a set of additional rights and duties on both sides. Within role-status, this package of rights and duties, a core feature of role obligations, is grounded on the idea of relational equality: its point is to balance the relation at the moral level.⁴⁴ But the specifics of this normative change to the parties' profiles have received insufficient attention in the literature.

Some of the status-based rights and duties are mainly instrumental, a prophylactic measure to reduce the likelihood of wrongful harm. The right of employees to form and join trade unions, for example, is of this instrumental character. It strengthens the bargaining power of employees and therefore reduces the risk of downstream wrongs such as unfair dismissal or exploitative wages. But other status-based rights and duties are of a non-instrumental nature.

Consider the duty of doctors not to engage in an intimate relation with their patients. This is not merely a means to prevent or minimise exploitation. The mixing of different roles creates a heavy moral burden of having to integrate competing moral demands within one's life. But within status relations, this burden falls unevenly on the weaker party. The patient would have to assess how *their* illness affects the intimate relation they have started with their doctor. That is much harder than the balancing the doctor has to do. Even when the patient can successfully navigate through the demands of the two roles without suffering any

⁴³ Philosophers commonly use time duration as a proxy for further factors that are of normative significance. Being an employee, a patient or a student are enduring social relations in part because they relate to significant and universal interests of well-being. But I do not mean to suggest that status relations capture *all* interactional vulnerabilities, or that episodic interactions do not impact on significant interests of well-being. The reason why status, as a moral idea, only tracks non-episodic interactions is because the risk of wrongful harm within them is greater and widely known, triggering distinctive egalitarian requirements to balance the relation.

⁴⁴ For this relational understanding of equality, see Samuel Scheffler, *Equality and Tradition: Questions of Value in Moral and Political Theory* (OUP 2010). We should note, however, that if citizenship is also a role-status, then the idea of relational equality extends upwards, to how citizens can use government institutions (primarily the courts) against one another. The distinction between relational equality and top-down, governmental equality then becomes less important.

wrongful harm, they have nevertheless been placed under an additional moral burden. Doctors have a duty not to compound the already asymmetrical position of patients by inflicting this extra burden.⁴⁵ As this duty applies even in the absence of any risk of wrongful harm, it cannot be explained by the moral principles underlying the downstream wrongs.

Status instantiates a further non-instrumental requirement which is also grounded on the value of equality. It registers publicly that certain interpersonal interactions are asymmetrical and that there is moral imperative to balance them, not only on the part of the stronger party, but also collectively, through political action. This public recognition has expressive value. It is itself a form of balancing the unequal relation, quite apart from any beneficial effects, such as mobilising the weaker party to fight for their rights. It tells the weaker party: ‘you may be vulnerable to the stronger party, but you are their equal’.

As weaker parties typically suffer from multiple vulnerabilities, the normative principles underlying the threatened wrongs (such as fairness or autonomy) are too diffuse to serve this expressive function. Presenting the set of rights and duties that status relations trigger under a single heading (eg employee, refugee, patient or student), as the law does, serves this important normative function. It calls our moral attention to an asymmetrical relation while leaving open what specific rights and duties are triggered within it. This is particularly important in light of the fact that the background social factors which create vulnerabilities are dynamic and their effects on the asymmetry of the relation require constant moral attention.

Let me return to the Uber case. Drivers are not merely campaigning for a beneficial legal regulation, in the way a particular sector might campaign for a state subsidy. Their vulnerability within the gig economy is well established and systematic. The claim that they already possess the status of an employee is also an appeal to the moral responsibility on the part of others (Uber and the courts) to recognise their vulnerability and act as the guardian of their interests. A benevolent owner of a business may grant precarious workers a number of benefits (such as periodic holidays with pay) out of charity, not duty; a government may abolish employment protection, but strike a deal with the business sector to provide tax reliefs when they treat contractors *as if* they had employment status. In both these cases, the employment relation would suffer from the point of view of the value of equality, even if the position of contractors was materially no worse than that of (protected) employees. The public recognition of the role of the employer projects the following message to the employee: ‘You may work for someone, but you are still their moral equal.’⁴⁶

Legal recognition of role-status is therefore more than an instrument to prevent downstream wrongs. The value of relational equality triggers a number of

⁴⁵ I offer this equality-based account as an explanation of the common intuition that certain interactions, such as starting a romantic relation with one’s student, are incompatible with the nature of one’s role. For a similar claim about the role of teachers, see Amia Srinivasan, *The Right to Sex* (Farrar, Straus and Giroux 2021) ch 5.

⁴⁶ For an egalitarian account of the employment relation along similar lines, see Sabine Tsurada, ‘Working as Equal Moral Agents’ (2020) 26 *Legal Theory* 305.

non-instrumental requirements, the most important of which is the duty to recognise one's status, ie to register publicly the asymmetry of enduring social relations and the need to balance it morally.

As role-status is grounded on the value of relational equality, it might appear paradoxical that it should generate rights on the stronger party. But the rationale is still to balance the relation at the moral level. By interfering with the moral responsibilities of the stronger party towards the weaker party, one wrongs both. The distinction between instrumental and non-instrumental rights applies here as well. Some duties of non-interference minimise the risk of wrongful harm inflicted by the stronger party against the weaker party. Universities, for instance, undermine the responsibility lecturers have towards students by imposing on them tasks of immigration enforcement. They exacerbate the risk that overseas students will be excluded or discriminated. The stronger party to a status relation is not only a passive recipient of obligations, but also the bearer of rights against third parties. They may demand that others respect their normative role and refrain from unduly interfering with it or appropriating its functions.⁴⁷ This is precisely why status is an attribute not only of the weaker party, but typically of the stronger party as well.⁴⁸

What is more controversial is whether the rationale for the need to recognise statuses publicly extends to the exclusive use of titles when no actual function is appropriated. This seems problematic, particularly when it is claimed by the stronger party. In the third case I examined in section 2, medical doctors claimed the right to exclude nurses from using their title. And this is against the background that nurses assist with, rather than undermine, the responsibilities of doctors towards patients. Social titles, moreover, are typically regarded as a *positional* social good. Their value lies in the fact that others lack it. It appears that the claim to have one's role recognised through the exclusive use of a title is one about social *rank* and cannot qualify as a moral entitlement.

Sometimes, however, it seems obvious that the stronger party has the moral right to be publicly recognised as the holder of the role to the exclusion of others. It would strike us as wrong if we collectively failed to recognise parenthood, say by using the same title ('carer') for all the different people who look after children. Similarly, there would be something inappropriate in the appropriation of the title 'parent' by a nursery worker or a babysitter. The idea here is that children must be able to distinguish the level of responsibility of their parents from that of nursery workers or babysitters. Exclusive titles are a way to signal to children the substantial degree of control that parents exercise over their lives and, in turn, the moral responsibilities that this control triggers. This is, again, for both instrumental and non-instrumental reasons. Ensuring that social titles track distinctive role-statuses is a way to give notice to the

⁴⁷ Bentham included in his list of offences against status the wrong of 'usurping' someone's status, which is analogous to what I called status appropriation in s 2C.

⁴⁸ It should be noted, however, that not all status relations are bipolar. Since some statuses (such as lack of mental capacity) capture vulnerabilities that the relevant class has towards *everyone*, there is no corresponding status assigned to the stronger party.

weaker party of the distinct vulnerabilities and dependencies they face in different social interactions. It enables them to demand the right level of respect in their various interactions. But it has expressive value as well. If carers and babysitters appropriate the title 'parent', it would diffuse the significance of the asymmetrical relation between parents and children and the imperative to balance it.

Perhaps we should not generalise from the case of children and parents. In the case of parenthood, few people seek to acquire the role mainly to get the social esteem that comes from being called mum or dad. By contrast, doctors may seek the exclusive use of a title mainly in order to enjoy rank-status. Yet it seems to me that patients too must be able to know which standing interactions pose a threat to them when they fall ill. They must be able to understand that medical doctors have a set of responsibilities towards them precisely because doctors are in a position to take advantage of their illness. The role of nurses is sufficiently close to that of doctors to exhibit the same range and types of threat to patients' vulnerability. The doctors' claim therefore appears to be exclusively about rank-status lacking any moral merits. But how about the case of a massage therapist with a doctorate who wants to be called a doctor? The concern here starts to be less about the rank-status of doctors and more about the role-status of patients. In principle, status can justify the type of claim medical doctors make without relying on the problematic notion of rank.⁴⁹ This is because the duty of public recognition of status relations entails a duty to allocate social titles in a way that matches, as far as possible, the asymmetrical interaction of the relevant role.

It is beyond the scope of this article to provide a comprehensive list of role-statuses. The examples discussed here (employees, patients, students, citizens, refugees, children) are central cases which serve as useful paradigms. It is an interpretive question whether other social interactions are sufficiently stable and enduring, and display a sufficient degree of vulnerabilities, to trigger the status requirements of relational equality. I am here concerned with the general phenomenon, not its various instantiations. The law can only serve as a rough guide since there are bound to be mismatches between the moral and the legal dimension of status. The three general ways in which one may offend one's role-status (failure to recognise, interference and appropriation) that I identified are sufficient to establish that status offences constitute a distinct phenomenon. We may call them primary status offences, as they are not fully reducible to the moral principles that justify the downstream rights and duties of the parties. But status offences also encompass the downstream wrongs that the weaker party risks suffering (which we may call secondary), because the need to prevent them is also in part grounded on the value of relational equality.

⁴⁹ It is important to observe that title appropriations, when they do constitute a status wrong, wrong both status parties, and primarily the weaker one, whose vulnerable position triggers egalitarian demands. By contrast, claims of rank-status are made typically by the stronger party alone.

5. Objections

In this section, I address three objections that can be raised against the account of status I have put forward in this article. The first objection, which I will call the *fiduciary view*, acknowledges that status is about asymmetrical relations but takes a different view about the nature of this asymmetry: it holds that the asymmetry is necessarily of a fiduciary nature, whereby a person is required to further the ends of another and restrict their own. The other two objections, by contrast, reject the thesis that status is about asymmetrical relations. What I will call the *deflationary view* holds that status is purely a taxonomical notion, a morally neutral way to describe a set of institutional rights and duties that the law has grouped together for convenience. And the third objection, which draws on Henry Maine's well-known account and which I will call the *non-volitional view*, holds that what is central to status is not asymmetry, but absence of volition. In what follows, I aim to show that these competing accounts are either over-inclusive or under-inclusive.

A. The Fiduciary View

To my knowledge, Arthur Ripstein has provided the only account in the literature that recognises status as a distinct category of moral offences since Bentham. Ripstein argues that status covers cases where people pursue their ends interdependently but, unlike contract, non-consensually. An interaction is non-consensual either because a person is unable to give consent (say children) or because their consent—though competently given—is problematic due to the nature of the relation (say, students consenting to run errands for their teacher).⁵⁰ On Ripstein's account, certain relations based on contract are nevertheless status relations. Following Kant,⁵¹ he draws the following distinction between status-based and non-status-based contracts: in a purely contractual case, I give you a right over the use of my services so that you can pursue your own ends (and you do the same). In a status contract, by contrast, I am required to pursue your ends and, within the confines of our relation, set my own ends aside.

An example might help to illustrate Ripstein's view. Suppose you agree to paint my house for a fee. I now have a right to use your services to make my property prettier and you have a right to use my money to make yourself wealthier. Each is pursuing one's own ends and neither is burdened with the task of furthering the other's ends. The pursuit of ends is interdependent, but not shared. It is not my end to make you wealthier, but a side effect of wanting to have my house painted. In status relations, by contrast, I have no right to use your services in pursuit of my ends but must instead act to safeguard your ends. I may not request my students to paint my house because, as a teacher, I must treat them in a way that advances *their* ends, not mine. This is so even though the teacher–student relation begins contractually and even if the students were to agree to my request. As a

⁵⁰ Ripstein, *Force and Freedom* (HUP 2009) 73–74.

⁵¹ It is not an accident that Kant, like Bentham, was very familiar with Roman law, within which the notion of status was central.

teacher, my students' education is an end I share, not a side effect of my seeking to earn an income, and my power to direct their action cannot be used for non-educational purposes.

Ripstein's account is substantially wider than Kant's, who only recognised three status relations: parent–children, spouses and master–servant. It tracks all relations in which one of the parties have, for whatever reason, fiduciary obligations to further the ends of others, while at the same time restricting the pursuit of their own ends. The basis for the fiduciary obligation may be as simple as the fact that someone agreed to be a trustee. Or it may be because one is a parent or a teacher. This is the sense in which, for Ripstein, all status relations are asymmetrical: one is in a situation where one cannot act solely in pursuit of one's own ends. The baseline of comparison is the purely contractual case where one is free to pursue one's own ends without constraints from the ends of others. Ripstein's account, like Kant's, is juridical in nature, seeking to identify normative relations that have a fiduciary element.

I think Ripstein is right in locating the concept of status in the asymmetrical nature of certain relations. But I disagree with his conception of asymmetry. It picks out any relation where, in juridical terms, one serves as a fiduciary for another. It covers, for instance, bailment and trusts. But this seems to me over-inclusive. A wealthy individual may set up a trust for their family or leave their expensive car with a free valet service (bailment). On Ripstein's account, the relationship between trustees and beneficiaries or between bailees and bailors is necessarily one of status, simply because trustees and bailees must hold and manage assets for the benefit of others, setting the pursuit of their own ends aside. Beneficiaries are vulnerable on this view because they are not able to consent to how trustees will manage the assets held for their benefit. Their vulnerability does not precede the trust, but rather is the result of it. Absent the interaction, there need be nothing vulnerable about beneficiaries or bailors. They may be socially and economically powerful and, on average, more so than trustees and bailees.

My account of vulnerability is different, however. The first difference concerns cases that, on both accounts, are status relations. Consider the case of employees. On my account, they are vulnerable *vis-à-vis* the employer due to several background social, economic and ethical factors. These increase the likelihood that employees will fall victim to various injustices, such as exploitation, abuse or unfair dismissal. The status of an employee is a way to mitigate these vulnerabilities and to restore a relation of moral equality between the parties. It does so by imposing mandatory terms (such as safe and decent working conditions) and by limiting the scope of what parties can validly agree upon contractually, such as waivers of the employee's right to privacy at work. Status makes the employer the guardian of the employee's interests, by vesting the relation with a set of reciprocal moral rights and duties.

Ripstein's explanation of why the employment relation is one of status, by contrast, is quite different. On his view, the vulnerability pertains to the employer, not the employee. The employer is vulnerable because it is part of the nature of the relation that employees are required to advance not their own ends, but the

employer's. In doing so, they act in ways to which the employer is not able to consent. They might make representations to third parties that bind the employer or cause damage for which the employer will be vicariously liable. On Ripstein's conception of asymmetry, it is the employee, not the employer, who is the fiduciary of the other party's ends. The order of normative explanation is reversed.

The second difference between Ripstein's account and mine is that I do not consider a bailment or a trust to be a status relation. The fiduciary element in those relations is purely the result of a contract. Unlike employees, bailors and beneficiaries do not suffer from any background vulnerabilities. To put this point differently: the concepts of an employee or a patient have an inherent social dimension, picking out systemic vulnerabilities or dependencies that a group of people face as a matter of social fact. By contrast, the concept of a bailor is not tied to social facts in this way. It is simply a taxonomical concept that we use to refer to a particular kind of contract. On my account, it is only those background social facts that explain why a party is weaker and why the stronger party acquires status-based obligations.

Someone attracted to Ripstein's account might object in one of two ways.⁵² First, one might point to powerful employees who suffer from none of the dependencies or vulnerabilities I mentioned earlier. Celebrity TV hosts, for example, have bigger pockets than most TV stations can fill and are swamped with job offers. But, the objection goes, they still count as employees and are entitled to employment status. Second, it might be objected that the extent to which employers can impose unfair terms is contingent on and not constitutive of what employment is. In an ideal world, employees would not be vulnerable to accepting unfair terms.

With respect to the first objection, we must draw a distinction between the legal and the moral status of an employee. The former may be a poor approximation of the latter, as the Uber drivers example shows. The law typically allocates rights and duties based on the attributes that most people have in a certain position, rather than everybody. It caters for the average employee, not Oprah Winfrey. The fact that powerful employees might avail themselves of employment protection does not necessarily entail that, absent the law, they are entitled to that protection. It does not entail that they have the status of an employee in a moral sense. Insofar as a pure case of a nonvulnerable worker is conceivable, then the mere fact that they are under the direction of their employer seems to me insufficient to entitle them to employment status, understood as an additional set of rights and duties. Put differently, it would not be arbitrary for the law to exclude powerful celebrities from employment status, subject to conditions.

The second objection seeks to challenge that employees' social and economic vulnerabilities are constitutive of the employment relation. It is true that in a society of angels people would not seek to exploit the vulnerabilities and dependencies of others yet would still need to employ others. But we should be

⁵² I am extremely grateful to Arthur Ripstein for discussion on these points. The formulation of these objections is mine, not his.

careful about this hypothetical. If, and when, the background conditions that make employees vulnerable disappear, it would not follow that there would be no contracted labour. What would follow is that most, or all, employment contracts would in essence become contracts for services. Workers would no longer require the protective rights that employment status assigns since they would not be at risk of injustice. In Kantian terms, labour would move from a status relation to a purely contractual relation. I am sceptical, however, that any realistic scheme of labour economy can eliminate the vulnerabilities of workers. This is mainly because some of them are caused by factors that cannot be affected through legal and economic interventions. In the case of several role-statuses, such as patients, the relevant vulnerabilities track innate human dispositions.

Could Ripstein's account be modified to accommodate the sociological basis of the various vulnerabilities and dependencies? One might argue, for instance, that both the employer and the employee are vulnerable, but for different reasons.⁵³ The employer is vulnerable because they cannot consent to how employees will further the ends of the business affairs, whereas the employee is vulnerable because they have limited bargaining power. The first vulnerability is the result of the employment contract, whereas the second precedes it. I set aside the question of whether this hybrid view can be attributed to Ripstein. He says very little about vulnerabilities that precede the relation, and whether they can take the plurality of forms that I discussed earlier (economic, political, cultural, biological etc). Moreover, tying vulnerability to background sociological factors makes status hostage to empirical factors in a way that seems foreign to a Kantian moral framework.⁵⁴

The main problem I find with this hybrid view is that it runs together two very different moral phenomena. The vulnerability of bailors and trust beneficiaries is juridical, the result of a contractual agreement; the vulnerability of patients, employees, students and refugees is of a socio-political or biological nature. This difference has a normative upshot. The latter vulnerabilities are more significant politically. It is not merely a matter of having the right set of legal rights and duties in place. We collectively can have an impact on social vulnerabilities. We can exacerbate or mitigate them. Our tax scheme or scheme of welfare conditionality may make employees even more vulnerable to exploitation. The government's immigration rules may make students on a visa even more vulnerable to exclusion. A privatised healthcare system may make patients even more vulnerable to abuse. We collectively must monitor constantly how these background factors change and affect the asymmetry of the relation. This explains why status relations are high up on the agenda of social justice. Labour exploitation, child and patient abuse, student harassment, exclusion of persons with disabilities and the refugee

⁵³ I am grateful to an anonymous referee for raising this objection. This paragraph draws heavily on the referee's suggestion of a hybrid view about vulnerability.

⁵⁴ Kant included spousal relations in his short list of statuses, which include the right to consent to sex. Elsewhere, however, he took the view that sexual relations are governed by animalistic instincts that cannot be squared with the purposive nature of human freedom. As Ripstein himself observes in a footnote, this gesture towards the background biological vulnerabilities of spousal relations poses a problem for Kant's view: Ripstein (n 50) 74.

crisis are all central issues in public affairs and political theory. By contrast, there is no political concern about the rights of bailors or trust beneficiaries.

I do not mean to deny that both juridical and social asymmetries may be presented as falling under a general concern about equality within relations. In that sense, the hybrid view of status wrongs is perfectly coherent, whether or not it can be attributed to Ripstein. But we already have the concept of fiduciary obligations to account for relations with juridical asymmetries. It seems to me that the emphasis on the socio-political dimension of background vulnerabilities not only singles out a distinct moral phenomenon, but also fits better the history of the concept of status as a moral idea. As discussed earlier, political theorists took status to be central in describing the transition from the ancient world to the modern world. The more restrictive account I put forward can better explain why status has this political significance.

B. The Deflationary View

The deflationary view holds that status is identical with a set of rights and duties. For any fixed set of rights, duties, powers and the like, to have the relevant status *just is* to possess this set. Consider the following set: the duty to manage a university and direct its mission, the privilege to preside over university events and ceremonies, the power to sign off degrees, and so on. Having these normative attributes is what it means to be a provost. Status, on this view, serves as a shorthand for a given set of rights and duties.

The view is deflationary because it entails that any set of rights and duties grouped together can be a status. A human being, a citizen, a promisor, a tortfeasor, a dean, a manager—all can serve as shorthand for a set of rights and duties. It follows that each area of morality can be presented as status-based and, therefore, status is not a distinct sub-domain of morality. The category explodes to encompassing everything. John Austin, who held the deflationary view, was led to a similar conclusion about status in law:

After the best consideration which I have been able to give to the subject, and after extensive examination of the opinions of others, I still find no mark by which a status or condition can be distinguished from any other collection of rights and duties.⁵⁵

I have no quarrel with this use of status as shorthand for a given set of rights and duties. It is common, particularly within institutional contexts. ‘What your status within the organisation?’ we often ask. But we should attend here to a distinction between a given set of rights and duties and the normative ground of that set. Knowing that the status of a provost consists in a set of rights and duties does not tell us anything about what, if anything, justifies having this set. The normative grounds could be very many: one may have signed a contract; or someone needs to be in charge to co-ordinate management and one just happens to occupy that position; or one simply has a certain ability (leadership skills). Alternatively, it might be that nothing justifies the relevant set. The deflationary view tracks sets, not grounds.

⁵⁵ Austin (n 5) 348.

My account of status, by contrast, tracks a particular normative ground for a set of rights and duties, namely relational equality within asymmetrical social interactions. The same is true of Kant's and Bentham's account. Bentham listed offences against status alongside the familiar categories, still accepted today, of offences against *the person*, against *property* and against *reputation*. In line with the understanding of the term in Roman law, he defined status as the 'legal relation one bears to the persons who are about him' and divided it in two circles: domestic and civil. He went on to distinguish between the 'investitive' event that bestows status on a person and the rights and duties that the law attaches to it. Bentham's distinction is important because it suggests that status is not the artificial creation of the law or a way to classify obligations. Status, Bentham claimed, is 'an ideal base', 'about which are ranged rights and duties and sometimes incapacities'.⁵⁶

It is common, for instance, to invoke one's role-status elliptically by way of exerting moral pressure. When someone tells me that I must not date a student of mine because I am their teacher, they do more than remind me of the set of obligations attached to lecturers by university management. They provide me with a reason why I must not. By contrast, the deflationary use of status is descriptive, making no assumptions about what, if anything, justifies the relevant set. Talking about the status of slave catchers in colonial America is simply a way to report an institutional fact.

Those who use status in a taxonomical sense are not therefore conceptually confused. They use the taxonomical notion of status, rather than the justificatory one. On the other hand, I do not think that these two uses of status, justificatory and taxonomical, are mere homonyms. The explanation I want to offer here is similar to the analysis of rank-status. The taxonomical concept supervenes on the more basic notion of role-status. The law started to use status with a view to capturing the asymmetrical social interaction that triggered a unique set of rights and duties. But the law does not usually make explicit the normative grounds for packaging a set of rights and duties together. As a result, the term was corrupted over time to refer to an institutionally recognised set of rights and duties, regardless of its ground. This ambiguity explains why John Austin was so utterly perplexed by status. On the one hand, he thought that it was the most difficult problem in the science of jurisprudence. On the other hand, he argued that it is simply a taxonomical concept that the law uses for the sake of convenience. He could not explain, however, why it is convenient for the law to present the rights and duties of parents and children as a status, but not those of promisors and promisees or buyers and sellers. The taxonomical use of status has survived to some extent, but it is peripheral and not in competition with the justificatory understanding of status, which is my focus here.

⁵⁶ The suggestion that status is a non-legal quality inherent in a person infuriated John Austin, who thought that Bentham had betrayed two of the basic tenets of utilitarian philosophy: empiricism and legal positivism. Austin thought that talk of 'investitive' qualities was occult and mysterious, the kind of rubbish metaphysics that Bentham was seeking to debunk. For discussion, see Waldron, 'Does Equal Moral Status Add Anything to Right Reason?' <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1898689>.

C. Maine's Non-volitional View

Later attempts to capture the nature of status as a moral idea focused on a particular normative ground for holding a set of rights and duties, or, more accurately, its absence. In the mid-19th century, Henry Maine defined status as that legal position which, unlike contract, holds irrespective of one's volition.⁵⁷

Maine argued that the replacement of status relations with contractual ones marked a progressive transition from ancient law to modern law. The ancients typically restricted freedom to create legal obligations voluntarily, through contractual agreements. Consider Roman law. Romans burdened the head of a household (*pater familias*) with a wide set of obligations and responsibilities for all members of the extended family and the family estate. Dependent family members, in turn, lacked legal capacities to exercise rights in their own name and their legal relations were derivative from the power of the head of the household (*patria potestas*). Labour was mainly done by slaves, who could not legally contract to sell their labour in exchange for wages or choose not to work. Women were in a state of perpetual tutelage, being under the legal authority of the nearest male relative. Maine sought to document a substantive legal transition: modern law gradually stopped imposing these types of legal incapacity on categories of people based on accidents of birth. It does not take gender or kinship as the basis for restricting legal capacities or expanding legal responsibilities and recognises wide contractual and proprietary freedoms for everyone. Labour nowadays may only be contracted, never forced.

Maine's category of status is primarily descriptive, a way to capture a subset of legal norms that were later abolished as unjust. The mere absence of volition, however, fails both as a distinguishing feature of historic legal statuses and as an explanation of why they were unjust. Many legal duties apply irrespective of one's volition yet do not constitute a legal status in Maine's terms. Tort duties not to injure others or to compensate them when one does hold irrespective of one's volition and are morally justified. Moreover, many legal statuses that have survived to this day are morally unproblematic, such as infancy or bankruptcy. It is not the case that mere absence of volition is *sufficient* to make a legal status unjust. It was morally arbitrary to deprive a category of persons of contractual and proprietary freedoms because of their gender (tutelage) or kinship (slavery). But it is not morally arbitrary to do the same when one is born with severe mental incapacities or while one is a minor.

It might be suggested, alternatively, that non-voluntariness is a *necessary* condition for a legal status to count as unjust.⁵⁸ But this criterion is both over- and under-inclusive. First, it fails to capture all historic forms of slavery, which was not always a permanent state. It was possible for a free person to fall into slavery (eg following a lost war) or for slaves to achieve freedom (manumission). Second,

⁵⁷ Henry Sumner Maine, *Ancient Law* (OUP 1861).

⁵⁸ Waldron argues that historic legal statuses were inherently unjust insofar as they were *sortal*, fixing 'a person's permanent situation and destiny as far as the law is concerned', one that was not acquired, or lost depending on actions, or circumstances. See Waldron, *Dignity, Rank and Rights* (n 29) 59.

the criterion includes permanent exemptions to contractual and proprietary freedom which are arguably morally permissible. Citizenship burdens one with life-long legal duties and responsibilities irrespective of one's will. Non-nationals, for example, may be precluded from buying land in specific parts of the country. Individuals do not normally have a legal right to migrate to foreign states. Even if we should now think of statehood as morally problematic, the status of citizenship does not appear to be on a par with slavery or tutelage. Several citizenship-based restrictions which start at birth and last for life seem perfectly justifiable. Perhaps it can be suggested that, as a matter of *morality*, no one's moral profile should be fixed permanently, irrespective of their volition. But this too is over-inclusive; some moral statuses, such as one's filial duties, are arguably fixed at birth for life.⁵⁹

Maine's view suffers from a further weakness which is worth highlighting. It picks out a set of legal norms (eg slavery, tutelage, villeinage) which constitute an injustice based, in part, on their non-volitional character. This renders the concept of status a necessarily pejorative term. It is an attribute attached to a class of persons in a discriminatory and unjustifiable way. But this fails to account for cases where status is used in laudatory, rather than pejorative, terms. Recall that by demanding the recognition of the status of an employee, Uber drivers treat the concept of status as a positive moral attribute. The relevant moral offence is disrespecting their status, rather than forcing one on them irrespective of their will. Few people think that the idea of employment status is morally objectionable or that the very idea of morally justified statuses is an oxymoron.

Early readers of Maine were conceptual imperialists, seeking to preserve the term 'status' for the relevant injustices of ancient law. They viewed it as the antithesis of modern-day contracts, the two being mutually exclusive. The great labour law scholar, Otto Kahn-Freund, objected vehemently to the use of the term 'status of employment' on the basis that it flouts Maine's definition.⁶⁰ The worry was that if both slavery and employment are statuses, then the significance of the transition between ancient law and modern law would be lost. But, as shown by the claim of Uber drivers, this conceptual imperialism failed. We do not need to be conceptual imperialists about status to be able to understand that the abolition of slavery and its replacement with employment contracts constituted major social progress.⁶¹ Even though the battleground of social justice shifted from

⁵⁹ See the argument in Niko Kolodny, 'Which Relations Justify Partiality? The Case of Parents and Children' (2010) 38 *Philosophy and Public Affairs* 37.

⁶⁰ See Otto Kahn-Freund, 'A Note on Status and Contract in British Labour Law' (1967) 30 *MLR* 635. For a more recent criticism along the same lines, see Katharina Isabel Schmidt, 'Henry Maine's "Modern Law": From Status to Contract and Back Again?' (2017) 65 *Am J Comp L* 145.

⁶¹ It is further evidence of the limits of the non-volitional view that generations of legal scholars modified Maine's account to make it applicable within contractual relations. The influential school of the relational theory of contract relied on the notion of status to capture regulatory restrictions on freedom of contract, which coincided with the rise of the welfare state and the retreat from the libertarianism of unrestricted free markets. The thought was that even in domains where people rightfully exercise contractual freedoms, there are objective limits to what they can agree. Status here is not deployed to capture *absence* of volition but *presence* of volition, whose significance must nevertheless be seen in the light of the asymmetrical nature of the relation. On the relational theory of contract law, see Ian R Macneil, 'Values in Contract: Internal and External' (1983-84) 78 *Northwestern University Law Review* 340; Manfred Rehbinder, 'Status, Contract and the Welfare State' (1971) 23 *Stan L Rev* 941.

the inequalities of feudalism to the inequalities of unrestricted free markets, the notion of status survived. Our modern struggle against social inequality found something in the concept of status worth preserving and reorientated it to the new threats posed to moral equality by unrestricted free markets. Any adequate philosophical theory of status must account not only for the ancient use of the term, but also for its modern one.

6. *Conclusion*

Status is often viewed as something either we all have or no one should have. In this article, I have defended a moralised notion of status which is neither about ranking people nor about the foundations of each person's moral rights. This notion has both political currency and a long pedigree. It is not merely about a set of rights and duties grouped together by law for the sake of convenience. Status-based demands arise in the context of enduring social interactions, in which one of the parties suffers from background dependencies or vulnerabilities. The sources of these vulnerabilities are diverse and widely known. The point of status offences is not only to prevent wrongful harm against the weaker party, but also to project the value of equality within these asymmetrical relations.