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Inequality and Indignation

I. OVERVIEW

Every society contains countless inequalities. Some people have more money than others. Employers have authority over the livelihoods, and many daily decisions, of their workers. Some people are well-educated, while others are not. In some nations, convicted felons are not allowed to vote. Many inequalities are found acceptable, but some produce indignation, which often is a function of perceived injustice. The perception of injustice is a frequent basis for contests over the appropriate content of law, which can, in turn, fuel indignation or diminish it. Even if law is rarely enforced, it might offer signals that will transform or entrench an unequal status quo. A key variable here is the moral authority of law within the relevant community. When the law lacks moral authority, it will not have significant behavioral consequences unless it is aggressively enforced.

In this article we use some simple tools from game theory and behavioral economics to cast light on the maintenance and disruption of unequal relationships through private action and through law. Unequal relationships are often sustained simply because it would be harmful, to the disadvantaged as well as the advantaged, to alter the status quo, and

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both sides are aware of that fact. Consider an imaginable system of sexual hierarchy, in which women are systematically subordinate to men, but which is to the benefit of women as well as men in the sense that both sides would lose if the status quo were changed. Or consider a system of labor-management relations in which a rebellion by low-income workers would lead to depressed wages or unemployment. In situations of this kind, unequal relationships tend to be stable and self-sustaining. Members of disadvantaged groups would suffer from a change, and they know it. Our argument is that while inequalities are often stable, because those seeking equality stand to lose still more from change, indignation can nevertheless lead to disruption by making members of disadvantaged groups willing to accept the material losses that are likely to accompany the disruption. We also contend that law, by virtue of its expressive function, can promote or undermine indignation, and hence encourage or discourage efforts to disrupt inequality.

We tell a tale of a successive chain of events. The first link in the chain consists of unequal but stable states of affairs. Under certain conditions, these states produce indignation among members of the group disadvantaged by the inequality. Next we show that indignation may pose a credible threat to the stability of an unequal status quo. Noting that those who are advantaged by the inequality will seek to weaken that threat, we turn to the problems faced by members of the disadvantaged group. We identify these as collective action problems, and we explore how the disadvantaged group might deal with those problems. The last step in the chain concerns the law, which the advantaged and disadvantaged will both attempt to use to their advantage. When the law is on the side of those seeking to entrench the status quo, we refer to it as entrenching law; when it is on the side of those seeking to upset it, we refer to it as transformative law. It is mostly in connection with transformation that we claim a role for the expressive function of the law, altering behavior through signals alone.

The first step in our chain requires focus. We note that inequality does not always generate indignation, and also that inequality is not the only possible cause of indignation. Even when indignation is generated by inequality, it need not be confined to those who are disadvantaged by the inequality: the privileged may be indignant too. In noting these points, we engage in clearing up some issues, both terminological and conceptual, involving the idea of indignation, as we understand it here. Our emphasis is on cases in which inequality is the cause of indignation

among members of disadvantaged groups, and in which the indignation is such that it credibly threatens to destabilize the status quo.

The second step in our proposed chain requires evidence. Our claim is that indignation will, under appropriate circumstances, lead the disadvantaged to disrupt an otherwise stable situation by sacrificing their material self-interest for the sake of increased equality or punishment of the advantaged.¹ To help establish this claim, we take advantage of some striking empirical findings from behavioral economics (in particular we adduce findings relating to the so-called ultimatum game). The findings indicate that people are indeed willing to act on the basis of indignation, sacrificing their material self-interest in order to punish perceived unfairness. And this willingness to sacrifice turns out to be in people's strategic advantage, and to promote more equal divisions, if one condition is met: it is anticipated.

Crucial for the next stage is the observation that indignation, and the willingness to act on it, will vary greatly across populations. Some people will be indignant and willing to act; others will be unwilling to incur the costs of acting on their indignation; others will not be disturbed at all; others will be between these various alternatives; and still others will be unsure about the appropriate attitude. Also, the beliefs and actions of members of disadvantaged groups will depend partly on the perceived beliefs and actions of other members. As a result, people who seek to upset the status quo face some serious collective action problems: many members of disadvantaged groups will be tempted to stay on the sidelines and to benefit from the actions of others. This problem is perhaps best solved through norms of solidarity by which indignation is brought to bear once more, in the form of moral pressure on free riders. We discuss these problems and show that law can help by virtue of its expressive function, which we understand to refer to the statements that law makes and to the effects of those statements on people's behavior independent of actual enforcement activity.² A law may make statements by, for example, outlawing

1. For an early treatment of this problem from a different angle, see Edna Ullmann-Margalit, *The Emergence of Norms* (Oxford: Oxford University Press, 1977).

2. See Amy Wax, "Expressive Law and Oppressive Norms," *Virginia Law Review* 86 (2000): 1731–80, from which we have learned a great deal. Wax's treatment builds in turn on Ullmann-Margalit, *ibid.*, as well as on Robert H. Frank, *Passion Within Reason: The Strategic Role of the Emotions* (New York: Norton, 1988). Our current emphases, however, are different from those in these other discussions.

flag-burning, banning smoking in public places, or forbidding discrimination on the basis of disability or sexual orientation. We suggest here that in merely expressing certain views, law can shift the terms of individual as well as collective action by making indignation seem appropriate or inappropriate.

Political actors on both sides know that law may influence behavior, partly through what it does and, no less important, partly through what it signals. Consider laws forbidding the discharge of union members or outlawing sexual harassment: even if infrequently enforced, such laws can both promote indignation and make people more willing to act on it. For their part, advantaged groups may enlist the law to offer the opposite signals and to produce contrary effects. Consider laws banning union members from requiring workers to join unions as a condition of employment. In such cases, the expressive function of law may be sufficient; enforcement may be unnecessary. But this possibility depends on the moral authority of law, and there is significant social heterogeneity here as well; sometimes law's signal will be very far from what was sought. As we shall see, groups that reject the moral authority of law will have to be met not merely with expression, but with enforcement as well.

Our elaboration of these points comes in five parts. Section II establishes the particular connection between inequality and indignation that we wish to explore. Drawing on experimental evidence, Section III sheds light on the willingness to sacrifice material self-interest for the sake of increasing equality and punishing unfairness. Section IV deals with the collective action problems faced by the disadvantaged. We discuss in this connection the efforts of "indignation entrepreneurs" and the possibility of "indignation cascades." In Section V we take up the role of law. We aim to show that even without much in the way of enforcement, law can embolden members of disadvantaged groups and strengthen their resolve. We also show that, conversely, law can shore up the status quo of inequality, either by suggesting that indignation is unjustified or by raising the cost of acting on it. We discuss the relevance of law's moral authority and some of the resulting dilemmas for those seeking to use the law to transform the status quo or instead to entrench it. Section VI offers a brief conclusion.

II. FROM INEQUALITY TO INDIGNATION

Our starting point is the situation represented by the following array:

$$\begin{array}{cc} (2;1) & (0;0) \\ (0;0) & (1;2) \end{array}$$

Figure 1

There are two equilibrium points here, the top-left corner and the bottom-right corner. As equilibrium points they are stable: once one of them is reached, no party gains by deviating from it alone. At the same time, the equilibrium states involve inequality, and symmetrically so: the value of the top-left box for Row Chooser is 2, as compared with 1 for Column Chooser, and the reverse holds for the bottom-right box. It is a matter of indifference at this initial stage whether the array is interpreted in terms of payoffs or of utilities; we shall have occasions below to note where it does make a difference.

For purposes of analysis, we shall assume that rather than contemplating the “game” represented by this array from the outside, the parties are already inside it, locked into one of its cells. Specifically, we shall assume that they are locked into the equilibrium that favors Row Chooser. The bold-faced top-left cell, then, represents the *status quo*. We shall assume that while in the status quo, each party is aware of the larger picture. That is, each party is aware of the other three alternative states that could be reached were Row Chooser, or Column Chooser, or both, to deviate from the status quo. In particular, they are both aware of the existence of an alternative, equilibrial status quo (represented by the bottom-right cell) in which their relative positions are reversed. This, as we shall see, bears on the strategic and manipulative aspects of the situation.

From this simple description, and even with the stipulated information, it is not at all clear how the parties will perceive their situation: the perception, interpretation, or “narrative” of the inequality is an all-important factor here. We are here interested in situations that, as a matter of objective fact, are unequal; whether or not they are experienced as unjust depends on a host of matters, some of them highly subjective. The unequal parties might not see themselves in a conflict, or in an unjust situation, at all. While the status quo is asymmetrical between the two parties, both parties may regard the inequality as trivial, or they may

think that the different payoffs are acceptable because they are a result of differences between them that justify inequality. Alternatively, the inequality of the status quo may be taken by them to be a matter of blind luck, not in itself seen as morally problematic. In a possibility of special concern to us here, the parties may realize the asymmetry of the situation and yet believe that both of them gain from it, even if the two sides do not gain the same amount or in the same proportion. And even if the parties see the inequality of the status quo as unfair, communication and good will between them might enable them to produce a simple remedy, for example through taking turns.³

But in many cases, and over time, the parties will see themselves as in a state of conflict. As examples of the sorts of opposing parties that we have in mind, consider the following: employees and employers; poor people and rich people within a single nation; people in poor nations and people in rich nations; handicapped and able-bodied; homosexuals and heterosexuals; African-Americans and whites; Arab citizens and Jewish citizens of Israel; untouchables and upper-caste members in India; and Catholics and Protestants in Northern Ireland. Let us now assume that the party disadvantaged by the inequality of the status quo (but not the other party) does experience the inequality as objectionable, or at least comes to experience it as such. If, in such situations, the inequality persists over time, and is not acknowledged and remedied by the advantaged, then the situation may breed in the disadvantaged the negative sentiment of *indignation*.

We use this term broadly, to refer to righteous anger produced by a sense of injustice to oneself or to others. As we understand it here, indignation grows out of a felt insult to the dignity of the disadvantaged, an insult that is perceived as unjust and sometimes as humiliation.⁴ Our fo-

3. Note that the original array is in fact the one representing the well-known BoS game: the Battle of the Sexes (or: "Ballet or Soccer"). You enjoy it more when we go to the ballet; I enjoy it more when we go to a soccer match; but we both prefer to go together than to go alone. See e.g., Ariel Rubinstein, *A Course in Game Theory* (Cambridge, Mass.: MIT Press, 1994), p. 15. Within the family, taking-turns strategies of this kind are familiar and have often been urged on equality grounds. Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989), pp. 170–86. Similar strategies have been suggested in the domain of political representation as well, with explicit reference to the notion of taking turns. See Lani Guinier, *The Tyranny of the Majority* (New York: The Free Press, 1997).

4. For a general treatment, see Avishai Margalit, *The Decent Society* (Cambridge: Harvard University Press, 1997).

cus on the relationship between indignation and inequality is not motivated by a claim that indignation is limited to cases of unjustified inequality; on the contrary, indignation can be, and is, produced by a wide array of perceived injustices. We do believe, however, that indignation plays a special role in challenges to unequal relationships, and that indignation, so motivated, has a distinctive set of interactions with social change and legal reform (the subject of Section V).

Nor is our focus on the relationship between indignation and inequality based on the claim that indignation is the only sentiment produced among the disadvantaged in cases they interpret as unjustifiably unequal. Indeed such cases may breed a host of distinct negative sentiments, which, in addition to indignation, include bitterness, outrage, resentment, rage, envy, vengeance, spite and more. From the standpoint of moral psychology there are interesting and subtle differences among these various sentiments, but there are also important overlaps, especially in how they might motivate the disadvantaged to behave and respond. With appropriate modifications, the analysis offered here could be applied to situations in which some sentiment other than indignation underlies the ensuing behavior.⁵ Our emphasis, however, is operational: our notion of indignation is meant to capture those cases where what is perceived as unjustified inequality breeds among the disadvantaged a negative sentiment that may motivate them to punish the advantaged and to decrease the unfairness of the situation.

To help isolate the strategic aspect of the point we want to make, let us now consider the following array (call it the extreme-case inequality array):

$$\begin{array}{cc} (2;1) & (0;0) \\ (0;0) & (0;0) \end{array}$$

Figure 2

5. Crucially, however, indignation and outrage are the only sentiments on this list that are not only first person but may be purely third person, i.e., experienced on behalf of others. (In his *Genealogy of Morals*, Nietzsche aims to expose the pretense of Judeo-Christian morality—which he scorns as ‘slave morality’—to be oriented on the third-person perspective, as no more than an expression of an underlying first-person resentment. See Douglas Smith, ed., *On the Genealogy of Morals—A Polemic* [Oxford: Oxford University Press 1998].)

This is not a coordination situation. Once again assuming that the status quo is the top-left cell, it is here the single equilibrium point:⁶ it has no counterpart at the bottom-right corner. So from the point of view of immediate self-interest, the status quo looks like it is everyone's best choice in the situation. Those who deviate from it will sacrifice what little they have. And yet it is possible that even in this situation, action will nonetheless be taken to upset the status quo. The reason is that if the narrative of the inequality, from the point of view of those disadvantaged by it, is such that it produces indignation among them, they may come to interpret the situation as one in which they have "nothing to lose but their chains." Of course objectively they do have something else to lose—the material payoff of the status quo—but by hypothesis that material payoff, though not worthless, is worth less to them than the cost of remaining in a situation of perceived injustice.⁷

What this means is that although the status quo appears, from the point of view of material payoffs, strategically stable, it might yet be vulnerable to what we might call a desperate rebellion. This rebellion, if it occurs, is driven by indignation, not by a belief that it will have strategic advantages, in the short-run or the long-run. To the extent that members of the disadvantaged group may come to prefer equality of (or in) misery to perpetual inequality, the threat exists that they will wish to drag down the advantaged with them. Consider the possibility that workers will engage in a aggressive strike activity, knowing that they might well lose their livelihood if the plant closes as a result, but willing to face that risk because of indignation generated by what they perceive as flagrantly unfair division of profits by management.⁸ "Let my soul die with the Philistines," cried the Biblical Samson, choosing to bring down

6. Or rather, it is the single *strict* equilibrium point. The bottom-right cell, with a payoff of (0;0), is a weak equilibrium: no one gains from deviating from it alone, but then no one loses either.

7. Note that this analysis of the extreme-case inequality array begins by depicting it in terms of material payoffs rather than utilities. When indignation builds up, the disadvantaged derive disutility from the fact that they receive less than the advantaged. If we are now to "translate" this array to utilities, the top-left cell would become, say, (2;-2) and the top-right cell would perhaps become (0;2). The disparity between the two arrays helps explain the rebellion of the indignant.

8. See Michael Harper and Samuel Estreicher, *Labor Law* (Boston: Aspen Law and Business, 1999), pp. 94–97.

the roof and kill his Philistine captors along with himself, rather than to stay alive in captivity.⁹

III. INDIGNATION AND SELF-INTEREST

Is it plausible to think that people will sacrifice their material self-interest for the sake of increased equality? Will this happen only under extreme and most extraordinary circumstances? Actually indignation frequently inclines people to sacrifice, by punishing, at their own expense, people who have behaved unfairly. As we shall see, indignation may turn out to have strategic advantages, and in a way that bears directly on acting against inequality.

The Ultimatum Game

To understand the operation of indignation, it is best to move from game theory to behavioral economics. Consider the results of the ultimatum game, a much-discussed test of the relationship between material self-interest and moral motivations, in the context of proposed distributions of resources between two sides.¹⁰ In the ultimatum game, some subjects, called proposers, are asked to suggest a division of a certain sum of money between themselves and other subjects, called responders. Proposers might propose a division of 90–10, 80–20, 50–50—whatever they wish. But in this game, responders have a choice too: They can accept or reject the proposed division. If the responders agree to the proposal, players receive money in accordance with the allocation. If they say no, no one receives any money at all. Proposers are aware of this fact. No bargaining is allowed.

The standard economic prediction is that outcomes will be extremely unequal: that proposers will make offers approaching zero, and that re-

9. Judges 16:30. Note the disturbing analogy between Samson and today's suicide bombers and other terrorists, willing to lose their life for the sake of punishing their enemy. While indignation appears to be a part of their story, inequality as such may or may not be playing a role. (For evidence that it may, see Cass R. Sunstein, "Why They Hate Us: The Role of Social Dynamics," *Harvard Journal of Law & Public Policy* 25 [2002]: 429–40.) Our account of indignation and willingness to sacrifice material self-interest applies, with suitable variations, to a great deal of activity designed to disrupt an otherwise stable status quo, emphatically including terrorist activity.

10. For an overview, see Richard Thaler, "The Ultimatum Game," in his *The Winner's Curse* (New York: The Free Press, 1992), 21, 22–35.

sponders will accept any positive offers. And if people care only about their material self-interest, this is the set of results that should be observed. But the prediction is not borne out by the experimental data.¹¹ Typically proposers propose a relatively equal division, with median proposals tending to be in the proportion of 60–40. Typically responders reject divisions that they perceive as highly unequal and therefore palpably unfair. Often they reject offers of less than 50–50. The ultimatum game is ordinarily played for small stakes, but the same pattern of results holds even when the stakes are quite large. The ultimatum game has been played for several weeks' or even months' salary in poor nations, and here too relatively equal decisions are proposed, and conspicuously unequal divisions are rejected.¹²

All this is well known. But we want to draw attention to two rarely explored features of these findings, both of which closely connect to our argument here. The first point is that responders are quite heterogeneous, in the sense that they will accept with a diverse range of minimum offers. Only a small percentage of responders will accept an offer of 10–90 or less; most responders will not require a 50–50 split, although many do (typically about 35 percent); some people will not agree to less than 30–70, whereas many others will set a 40–60 floor (typically about 60 percent).¹³ What does this mean? It means that indignation itself, in the face of what is perceived as injustice, is variable. Some people are offended by distributions that others find acceptable—or, possibly, some people who are equally offended are more strongly motivated by their sense of indignation than others. Also, it means that the willingness to

11. See Christine Jolls et al., "A Behavioral Approach to Law and Economics," *Stanford Law Review* 50 (1998): 1471–1550, esp. pp. 1491–92.

12. See Colin Camerer and Richard Thaler, "Ultimatums, Dictators, and Manners," *Journal of Economic Perspectives* 9 (1995): 202–19, esp. 210–11; Vesna Prasnikar and Alvin Roth, "Considerations of Fairness and Strategy," *Quarterly Journal of Economics* 107 (1992): 865–88, esp. 873–75; Robert Slonim and Alvin Roth, "Learning in High Stakes Ultimatum Games," *Econometrica* 66 (1998): 569–96. Note that the last paper shows that when repetition is combined with very high stakes, offers decrease somewhat, although they remain far above the standard predictions. *Ibid.*, 573, 588 fig. 3A.

13. See Jolls et al., 1491–92; Werner Guth et al., "An Experimental Analysis of Ultimatum Bargaining," *Journal of Economic Behavior & Organization* 3 (1982): 367–88, esp. 371–72, 375 tables 4 and 5; Daniel Kahneman et al., "Fairness and the Assumptions of Economics," *Journal of Business* 59 (1986): S285–S300, at S291 table 2. The most subtle test of people's willingness to trade off fairness and absolute income shows similar heterogeneities in both the United States and Spain. Gary Charness and Matthew Rabin, "Understanding Social Preferences with Some Simple Tests" (manuscript, 2001. <http://papers.ssrn.com/sol3/papers.cfm?abstractid=224577>).

sacrifice as a result of indignation has a price,¹⁴ and the necessary amount varies across individuals. The second point is that those who are perceived as especially prone to indignation, and as especially willing to sacrifice to punish unfair treatment, will receive more generous offers from self-interested proposers, thus producing more equal outcomes.¹⁵ This point emerges from comparing the results of the ultimatum game with the results of a simple variation, the dictator game.¹⁶

In the dictator game, the proposer/dictator is allowed to impose any allocation she chooses; the responder/subject must accept that allocation. It turns out that in the dictator game, the median offer is significantly less egalitarian than in the ultimatum game—not in the proportion of 99–1, but typically closer to 80–20. The far more equal allocation in the ultimatum game shows that the power of response matters a great deal, and that the anticipated indignation of responders is driving a significant amount of proposers' behavior in the ultimatum game. If rational proposers anticipate that responders will reject grossly unequal allocations, then proposers will propose more equal allocations, even if proposers are entirely self-interested. At this point the relationship to our concerns here should be clear: If advantaged people anticipate indignation from the disadvantaged, they should be expected to offer more equal divisions.

This last point has received its most direct empirical confirmation in a remarkable study in Israel, designed to test the effects of ethnicity in the ultimatum game.¹⁷ Israeli Jewish society consists largely of two main ethnic groups, Ashkenazim (European and American immigrants and their

14. See the model of fairness in Matthew Rabin, "Incorporating Fairness into Game Theory and Economics," *American Economic Review* 83 (1993): 1281–1302, showing that the willingness to act to punish unfairness will increase as the material cost of doing so decreases. In the context of labor–management relations, where anticipated shirking by workers deters wage cuts, see Truman Bewley, *Why Wages Don't Fall During a Recession* (Cambridge: Harvard University Press, 2000); in the context of free-riding, see Ernst Fehr and Simon Gächter, "Altruistic Punishment in Humans," *Nature* 415 (2002): 137–41.

15. Note that while they received more generous offers, they might not be better off. Someone who receives 40 out of 100, and is willing to accept that offer despite feeling some indignation that he did not receive 50, might be worse off than someone who receives 30 but feels no indignation at all.

16. See, e.g., Camerer and Thaler, 213–15; Alvin E. Roth, "Bargaining Experiments" *The Handbook of Experimental Economics*, ed. John H. Kagel and Alvin E. Roth (Princeton: Princeton University Press, 1995), 298–302.

17. Chaim Fershtman and Uri Gneezy, "Discrimination in a Segmented Society: An Experimental Approach," *Quarterly Journal of Economics* 351 (2001): 351–77.

Israeli-born offspring) and Sephardim or Eastern Jews (Asian and African immigrants and their Israeli-born offspring). How, the experimenters asked, do Ashkenazi players treat Sephardic players? The answer is that they treat the Sephardim better than they treat fellow Ashkenazi players, not because they like them more, but because they believe that Eastern players are especially likely to reject offers perceived as unfair. In the dictator game, Sephardim and Ashkenazim received the same amount. But in the ultimatum game, Eastern players were offered significantly higher amounts—indeed, almost 50 percent more than Ashkenazi players. In the authors' words: "There is ethnic discrimination in the ultimatum game. Eastern players receive larger transfers than Ashkenazi players. This discrimination is probably the outcome of a common ethnic stereotype in Israeli society, according to which men of eastern origin are believed to react more harshly if treated unfairly."¹⁸ It is worth emphasizing that in their capacity as responders eastern Israelis were not in fact more indignant and spiteful than Ashkenazi Israelis. The two groups did not differ in their willingness to accept unequal offers. The perception that led to more generous offers was not rooted in reality. But for purposes of ultimate outcomes it was the perception, not the reality, which mattered.¹⁹

To be sure, there is ongoing debate about the sources of indignation in the ultimatum game.²⁰ Some evidence suggests that relative position is important—that some responders simply do not want to have less, or much less, than proposers.²¹ Other evidence suggests that responders greatly care about proposers' motivations—that if proposers are perceived as behaving in a selfish way, many responders are willing to punish them.²² This view is supported by the finding that people are far more willing to accept unequal offers if the experimenter constrains the pro-

18. Ibid., 369–70. A related interpretation of the findings couches them in terms of honor and humiliation rather than in terms of injustice and unfairness. See Avishai Margalit, "A Just Peace or Just a Peace" (manuscript). The idea of indignation as used here covers perceived insults to honor as well as perceived injustice.

19. Interestingly, the researchers also report that as proposers both Sephardic and Ashkenazi made more equitable offers to the Sephardim. (Uri Gneezy, e-mail communication, May 29, 2002.)

20. For a good overview, see Gary Charness and Matthew Rabin (manuscript).

21. This is the interpretation in Robert H. Frank, *Luxury Fever* (New York: The Free Press, 1998), p. 116. See also Dirk Engelmann and Martin Strobel, "Inequality Aversion, Efficiency, and Maximin Preferences," (manuscript, 2001).

22. Armin Falk et al., "On the Nature of Fair Behavior," *Economic Inquiry* (forthcoming). A more complex account emerges from Charness and Rabin (manuscript).

posers' choices, by, for example, saying that the proposer can only choose between 20–80 and 80–20; in these circumstances, 80–20 is far more acceptable.²³ There is also some evidence of cultural effects on outcomes. While members of all societies diverge from the standard economic prediction, the extent of the variation is culturally variable.²⁴ Our main focus here, however, is on the fact of indignation and its consequences for outcomes. We have seen that when people are indignant, they are liable to sacrifice material self-interest to punish what they see as unfairness. And when indignation is anticipated, and when it is backed by strategic ability to punish people in a position of power, those in that position will allow for more equal distributions.

Self-Interested Redistribution

What are the implications for the advantaged? We assume that those seeking to maintain the unequal status quo are akin to entirely self-interested proposers in the ultimatum game, seeking to perpetuate their privileges if they can.²⁵ To the extent that they perceive the threat to existing arrangements by the disadvantaged as real, they may consider redistribution, the analogue to a more equal distribution in the ultimatum game. It remains to ask how much redistribution will suffice. The answer depends, in large part, on the nature and extent of the indignation involved. In the context of the labor market, employers pay employees somewhat more than the market will bear (the “efficiency wage”) because of a belief that individual workers will punish perceived unfairness through slacking.²⁶ In the context of U.S. labor law, relatively modest steps toward increasing union power have been thought both necessary and sufficient to secure industrial peace. The preamble to the National Labor Relations Act refers explicitly to the reduction of “industrial strife” as one of its purposes,²⁷ a purpose that it has mostly achieved.

23. See Falk et al.

24. See the overview in Alvin Roth et al., “Bargaining and Market Behavior in Jerusalem, Ljubljana, Pittsburgh, and Tokyo: An Experimental Study,” *American Economic Review* 81 (1991): 1068–95.

25. One option open to them that is not available to proposers in the ultimatum game is to “divide and rule,” that is, to exploit differences and splits that might exist among the disadvantaged, deal with those who are easiest for them to deal with, and neutralize the others. (We are indebted to John Ferejohn for this point.)

26. For one account of efficiency wages, see George Akerlof, “Labor Contracts as Partial Gift,” 97 *Quarterly Journal of Economics* (1982): 543–69.

27. See Harper and Estreicher, 101–02.

And might not the disadvantaged at some point consider that they already have something to lose by pushing further and taking the risk of losing everything? This is hardly unfamiliar; again consider the context of labor-management relations, where self-interested workers often settle for much less than they deem entirely fair. The case of civil rights reform can be understood in similar terms, for compromises are often deemed acceptable even if far from optimal. In the ultimatum game, however, over one-third of responders insist on a 50–50 division;²⁸ in some circumstances, the disadvantaged will do the same. What then is the limit?

These questions are empirical in nature: what will or might or is likely to happen, under differently specified conditions? They are also a bit abstract, because people are typically complaining about a particular dimension of inequality (race or sex discrimination, for example, or an absence of certain rights in the workplace, or poverty), and not arguing for equality in general, whatever that might mean. But for our purposes, the important point is that even though in terms of material payoffs the status quo is in a game-theoretical equilibrium, it is nevertheless liable to being disrupted by an indignant underdog.²⁹ Furthermore, pure self-interest may lead the advantaged, in anticipation, to decrease the gap between themselves and the disadvantaged.

IV. COLLECTIVE ACTION PROBLEMS OF THE DISADVANTAGED

We have emphasized that there is no reason to expect group members who face a situation of inequality to agree in their reactions. To understand the relationship between inequality and indignation more precisely, and to see the possible role of law, it is important to recognize that in seeking to change the status quo, members of the disadvantaged group potentially face, simultaneously, two types of strategic problems.

28. See Jolls et al., p. 1491.

29. There are also questions about the basic goals of the disadvantaged. Is their goal to achieve an equitable distribution or instead to ensure that the advantaged are stripped of their privileges? The first may be seen as a noble principle, potentially with broad appeal; but the second might be seen as mere spite. We do not explore these issues here, nor the possible permutations in acceptable payoffs. There is some relevant empirical evidence: see the findings in Gary Charness and Matthew Rabin.

Specifically, they may face both a coordination problem and a prisoner's dilemma-type (PD) problem.

Coordination Problem and Indignation Entrepreneurs

In order for their action to succeed and for social change to take place, almost certainly more than one member of the disadvantaged group will have to deviate from the status quo at the same time. This is a coordination problem. To solve that problem, members of the disadvantaged group need explicit discussion and agreement, or proper signaling. A pervasive question for disadvantaged groups is how to give that signal. The coordination problem in hand actually entails a series of subproblems. There is the difficulty of agreeing on a shared understanding of the situation (is indignation the right response?), and there is the difficulty of agreeing on a course of action (is it worthwhile to incur the potentially high costs of acting on the basis of indignation?).

In some circumstances, a few people will act as a result of indignation, and others will follow—not mostly from indignation, but because of their belief that they owe loyalty, or have some other kind of obligation to follow the first movers (who may be relatives, friends, or neighbors).³⁰ Another possibility involves the efforts of moral leaders and dissidents, who might be described for our purposes as “indignation entrepreneurs.” As diverse but salient examples, consider Thomas Paine, Martin Luther King, Jr., Malcolm X, Yassir Arafat, Catharine MacKinnon, and Ward Connerly (influential opponent of affirmative action programs in California). The goal of indignation entrepreneurs is to convince people that indignation is appropriate and that the costs of expressing such indignation are worth incurring.³¹ The signals thus given may help to overcome the coordination problem.³²

A self-sacrificing leader, dedicated to the cause of the disadvantaged, might be among the first to act in defiance of the status quo. Consider,

30. This appears to have been a pattern in Eastern Europe. See Roger Petersen, *Resistance and Rebellion: Lessons from Eastern Europe* (Cambridge: Cambridge University Press, 2001).

31. See the analogous discussion of political entrepreneurs in the general category of extremism in Albert Breton and Silvana Dalmazzone, “Information Control, Loss of Autonomy, and the Emergence of Political Extremism,” in *Political Extremism and Rationality*, ed. Albert Breton et al. (Cambridge: Cambridge University Press, 2002), pp. 44, 57.

32. In providing those signals, indignation entrepreneurs sometimes take the special step of sacrificing themselves or (the extreme form of self-sacrifice) of becoming martyrs to the cause. See Wax, p. 1744. Calling such people martyrs, however, should not make us think that all such entrepreneurs deserve our approval: your martyrs may be our terrorists.

for example, the actions of Martin Luther King, Jr., seeking to promote civil disobedience and often emphasizing his own willingness (demonstrated in practice) to go to jail in response to his violations. King's frequent, highly publicized episodes of imprisonment represented a kind of martyrdom and hence produced a powerful signal, helping to solve the coordination problem by suggesting to thousands and even millions of people that civil disobedience would be justified and could be a widespread practice. If acts of this sort succeed in focusing attention on the cause of the disadvantaged, they may well ennoble that cause, fueling indignation. Moreover, they may in fact provide the signal for the entire group, encourage its members, and stir them to action.³³

Indignation entrepreneurs also attempt to alter behavior by promoting discussion among like-minded members of disadvantaged groups, in an effort to inculcate emerging norms.³⁴ This approach is likely to work: It is well-established that when like-minded people speak with one another, they tend to end up believing a more extreme version of what they antecedently thought.³⁵ If leaders succeed in engaging members of disadvantaged groups in internal dialogue, and in isolating them within enclaves of group members, coordination will be much easier. Indignation and the willingness to act on it are highly likely to grow.³⁶ People typically learn from the informational signals given by others, and it is easy to imagine "indignation cascades," in which B learns to be indignant because A is indignant, and C comes to share in the common indignation of A and B, and D, E, and so forth, do too.³⁷ Reputational pres-

33. See the general discussion in Dennis Chong, *Collective Action and the Civil Rights Movement* (Chicago: University of Chicago Press, 1991).

34. See Brett C. Stockdill, "Forging a Multidimensional Oppositional Consciousness," in *Oppositional Consciousness*, ed. Jane Mansbridge and Aldon Morris (Chicago: University of Chicago Press, 2001), pp. 227–28.

35. See Roger Brown, *Social Psychology: The Second Edition* (New York: The Free Press, 1986); Cass R. Sunstein, *Designing Democracy* (Oxford: Oxford University Press, 2001), pp. 13–47; Cass R. Sunstein, "The Law of Group Polarization," *J. Polit. Phil.* 10 (2002): 175–95; Sharon Groch, "Free Spaces: Creating Oppositional Consciousness in the Disability Rights Movement," in *Oppositional Consciousness*, pp. 65, 67–72.

36. For an emphasis on physical segregation and the rise of indignation, see Aldon Morris and Naomi Braine, "Social Movements and Oppositional Consciousness," in *Oppositional Consciousness*, pp. 20, 29–30. Cf. Russell Hardin, "The Crippled Epistemology of Extremism," in *Political Extremism and Rationality*, pp. 7, 14–19 (discussing the effects of limited information on extremism).

37. See the general treatment of informational cascades in David Hirshleifer, "The Blind Leading the Blind," in *The New Economics of Human Behavior*, ed. Mariano Tomasi et al. (Cambridge: Cambridge University Press, 1995), p. 188.

tures also play a role, especially within groups of like-minded people. We shall return to these points presently.

PD Problem and Reputational Sanctions

At the same time that the disadvantaged, as a group, have to solve their coordination problem, they also have to worry about the possibility of free-riders. This is a particular worry for indignation entrepreneurs, even for martyrs. Sometimes where there is a martyr everyone else is a free-rider. The martyr to the cause is the only one who willingly incurs personal costs, while all the others enjoy the fruits of his or her self-sacrifice if it succeeds, and lose nothing if it fails. But usually a martyr cannot alone do all that must be done. Assume, for example, that protest requires certain acts, from verbal protests to civil disobedience, from which protesters might suffer. Because of the risks, everyone will be tempted not to join the action but to remain on the sidelines. Of course indignation can help overcome the temptation. But we have emphasized that indignation will vary within the population of the disadvantaged, and also that the expression of indignation, for most people, has a price. Even when indignation is playing a significant social role, some people will refuse to join the action.

If the critical mass of actors is reached anyway, then the nonjoiners stand to benefit from the success, and if it is not reached and change is not brought about, then they do not pay the personal price (legal or other sanctions) that the dissidents stand to pay. The strategic problem of overcoming this temptation, then, is the PD problem that the disadvantaged have to solve in order for their desired social change to take effect. The standard solutions to this problem come from social norms and through law.

Without law, reputational sanctions are a good way of solving the collective-action problems through a new form of indignation. Those who fail to participate in the collective action might be subject to indignation as intense, in its way, as the indignation directed against the advantaged. If nonparticipants face ostracism or ridicule—if they are treated as traitors, cowards, scabs, or Uncle Toms—the PD problem might well be solved. Indeed, groups often take steps to impose sanctions on free riders.³⁸ We can better understand those steps, and the intensity of the

38. See Laurence R. Iannaccone, "Sacrifice and Stigma: Reducing Free-Riding in Cults, Communes, and Other Collectives," *Journal of Political Economy* 100 (1992): 271; see also Fehr and Gächter, p. 137 for empirical evidence of willingness of groups to punish free-riders, even if the punishment is costly for the punishers.

feelings that underlie them, if we see that they may be indispensable to collective success. Here indignation is playing a double role. It is aimed against the advantaged group, but it is aimed, with equal or greater force, against fellow group members who free-ride on the actions of others. Notice as well that it is important to inculcate not only indignation against free-riding members of the disadvantaged groups, but also a form of second-order indignation directed at those who do not express indignation against free-riders. Thus, for indignation to do its work here, an additional free-rider problem must be solved.³⁹

One reason why members of the disadvantaged groups may remain skeptical or ambivalent is that they may suffer from pluralistic ignorance, understood as an absence of knowledge about what others like them are thinking. If people's beliefs are a product of the perceived beliefs of others ("social proof"), this form of ignorance, of course variable across circumstances, is a real disability.⁴⁰ In order for the collective action to succeed, much argument is needed on this count, alongside recruitment efforts, "consciousness-raising" efforts, and more. At the same time, pluralistic ignorance is also an opportunity for strategic actors. Members of disadvantaged groups will have an incentive to exaggerate the extent and intensity of their indignation, whereas members of advantaged groups will minimize both of them. Here too indignation entrepreneurs can play an important role, as can deliberative enclaves and indignation cascades discussed above.

V. A ROLE FOR LAW

Both sides to the resulting conflicts are likely to want the law to be on their side. The disadvantaged will want the law to legitimate their indignation and to decrease the cost of acting on it. The advantaged will want the law to do the opposite. Our emphasis here is on the possibility that laws, even those that are little enforced, will have effects on norms and attitudes, so as to strengthen or to weaken indignation. Of course law, if aggressively enforced, can increase or decrease the cost of expressing indignation; and sometimes such aggressive enforcement will be neces-

39. This lesson can be drawn from Fehr and Gächter, p. 137.

40. In many cases of resistance movements, the members of the group know each other well, and their concerted action reflects prior commitments and mutual knowledge. See Petersen, *Resistance and Rebellion*.

sary. But in some cases law will have sufficient moral authority to affect behavior simply by virtue of its expressive function. We will separate the circumstances in which expression, via law, is likely to do a great deal, from the circumstances in which such expression is likely to be unhelpful unless accompanied by public enforcement.

For the law to affect indignation itself, it will have to have a degree of moral authority. Typically the extent of its authority will vary across the population, often with large asymmetries between members of advantaged and disadvantaged groups. For example, law might well have authority with the advantaged while lacking authority among the disadvantaged; and even here the existence and extent of its authority might depend on its content in a particular case. A legal rule, designed (for example) to establish the legitimacy of an unequal status quo, may have the opposite of its intended effects, by spurring indignation when it is intended to defuse it.

Whatever the law does, astute indignation entrepreneurs will use the law strategically. If it supports their efforts, they will invoke its moral authority to intensify indignation; if it attempts to entrench the status quo, they will claim that the very attempt is reason for intensified indignation and a testimonial to the rightness of their cause. For their part, supporters of the status quo will invoke the law to reduce indignation. This they will do either by urging that significant changes have been made in the interest of the disadvantaged, thus making indignation senseless, or by suggesting that if law directs itself against change, its moral authority demonstrates that the collective action is unjustified.

Transformative Law

The disadvantaged, or at least those inclined to act within that group, would like the law to solve their free-rider problem. They will also want the law to recognize the normative weight of their claim, to reduce inequality to some degree, and to fuel the view that the inequality of the status quo, or the equality-denying practice to which they object, is a form of injustice. If the law carries moral authority, successful legal reform is liable to turn their struggle from a mere assertion of interest to a push for change that is perceived as just. Under the right conditions, legal support can increase the likelihood that the threat to upset existing arrangements will appear something other than a spiteful and irrational move against self-interest. If the law is on their side, then their struggle

will likely be ennobled: legal sanction can make their action appear not for personal gain but in order to vindicate principle. Consider the frequent plea of Martin Luther King, Jr.: "All we are saying to America is, be true to what you said on paper."⁴¹

But what might law do? The most obvious possibility is to outlaw a practice that contributes to inequality, not only providing sanctions against those who engage in that practice, but also emboldening those who act against that practice. Consider civil rights laws banning private discrimination in employment. The effects of these laws go well beyond their (comparatively rare) legal enforcement, whether public or private. If promotions and transfers are not allowed to reflect racial discrimination, people are more likely to object to discriminatory practices, merely because of the legal prohibition.⁴² These objections in turn have effects on behavior. By publicly advertising and affirming the rightness of the new convention, the law can increase the perception that an existing practice is unjust, add momentum to private indignation, and provide a focal point around which players can rally and affirm their commitment to change.⁴³

Or consider the effort to see sexual harassment as a civil rights violation.⁴⁴ Before the civil rights law was understood to forbid sexual harassment, there was of course sexually harassing behavior. But there was no concept, or term, to stigmatize that behavior, which was seen, socially as well as legally, to be a private matter, not a pervasive practice that contributed to inequality. In these circumstances, it was not impossible to be indignant about the behavior; but indignation was undoubtedly more difficult. A central effect of the new legal understanding is to give both advantaged and disadvantaged a morally charged vocabulary that embodies the belief that sexual harassment is a valid reason for indignation. The expressive effect of the law continues to be important. Many of those who object to sexual harassment stand to lose a great deal from the objection. This was and is so partly because lawsuits are expensive and grueling, and partly because those who object to sexual harassment

41. Of course King also urged civil disobedience, but in doing so, he typically urged that he was trying to promote compliance with higher law, including constitutional principles.

42. See the discussion in Stockdill, pp. 227–28.

43. See Wax, p. 1743.

44. See Anna-Maria Marshall, in "A Spectrum in Oppositional Consciousness," *Oppositional Consciousness*, pp. 99–126.

are not likely to improve their employment prospects as a result. Actual and anticipated indignation played, and plays, a crucial role in reducing the extent of the behavior. (Recall the ultimatum game, where proposers give better offers precisely because they anticipate indignation.) And because the law supports that indignation, people are all the more likely to be indignant.

In this way we can cast a new light on the contested idea that law has an expressive function:⁴⁵ that law is important for what it says, independently of what it does. Sanctions, as well as costly enforcement, may not be necessary in order for the law to play a significant role in facilitating normative change. The expressive power of the law may well be sufficiently effective here. It may be effective, first, because it suggests that indignation is in fact appropriate. An important point here is that the very enactment of law will tend to dissipate pluralistic ignorance:⁴⁶ If the political process has chosen to forbid certain conduct, this is a good signal that most people, especially but not only disadvantaged people, object to it.

The law may be effective, second, if and to the extent that it increases the benefits and decreases the costs of acting on the basis of indignation. If a civil action is available for victims of discrimination, the benefits of challenging discrimination are increased. It is well known that in certain circumstances, compliance with the law will occur even without enforcement, because when conduct violates the law, private persons are emboldened to sanction violators.⁴⁷ The same point holds for laws that forbid discriminatory practices. Whether or not the government acts to punish unlawful conduct, the legal rule is likely to trigger reactions from third parties and to stiffen the spines of those who would not otherwise act on the basis of their indignation.

Of course there are no guarantees here. The law might lack moral authority within the relevant community and hence the relevant expression may have little or no effect.⁴⁸ If those supporting the status quo

45. See Mathew Adler, "Expressivist Theories of Law: A Skeptical Overview," *University of Pennsylvania Law Review* 148 (2000): 1363–1502.

46. See Richard McAdams, "Norms Theory: An Attitudinal Theory of Expressive Law," *Oregon Law Review* 79 (2000): 339–90.

47. See Robert Kagan and Jerome Skolnick, "Banning Smoking: Compliance Without Enforcement," in *Smoking Policy*, ed. Robert Rabin and Stephen Sugarman (New York: Oxford University Press, 1993).

48. See Dan Kahan, "Gentle Nudges vs. Hard Shoves: Solving the Sticky Norms Problem," *University of Chicago Law Review* 67 (2000): 607–46.

think that the law lacks legitimacy, in general or in particular, enforcement will be required, not merely expression. In some areas of the United States it is not so important that the law forbids racial discrimination or sexual harassment. The relevant law is seen as an imposition from a kind of elite. It is reasonable to speculate that without a good deal of enforcement, laws forbidding domestic violence may have little effect because the relevant law lacks much moral authority among those prone to that form of violence, and also because the victims are mostly unable to turn their indignation into action. Even if transformative law has moral authority, it might weaken the efforts of those seeking social change precisely because the legal reform, minor though it may be, may defuse indignation and encourage the disadvantaged to believe that the new status quo is acceptable. This effect has been observed with respect to what many see as modest gains, in the form of court decisions, from the women's movement in the United States.⁴⁹

In short, the expressive effect of a transformative law cannot simply be read off the enactment. Such a law might be taken as a reason to stop social change or instead as a reason to deepen and extend work on its behalf. Indignation entrepreneurs will attempt to move social understandings in their preferred directions. Specific predictions cannot be made in the abstract. But if the law has general moral authority within both advantaged and disadvantaged groups, and if the particular law, however controversial, will have moral authority as well, the terms of collective action are likely to be altered merely by virtue of law's expressive effect. In the context of civil rights violations in the United States, with its admittedly modest efforts at transformation, this has been the usual pattern.

Entrenching Law

For those who enjoy or otherwise support the inequality of the status quo, and seek to protect it against upheavals, law might not be necessary. Private sanctions and norms may be sufficient. Employers might be able to fire employees who seek a larger share of profits or even to unionize. Civil rights workers might be beaten or at least ostracized. General norms against malcontents, or particular norms in favor of certain unequal practices, may do the work of law. There is of course the

49. See Gerald Rosenberg, *The Hollow Hope* (Chicago: University of Chicago Press, 1991).

technique of naturalizing the status quo, of making it appear unthinkable that it could be otherwise. Social norms and conventions, often religious in nature, are recruited for this purpose.

Nonetheless, those seeking to protect the status quo may be expected to use the law to this end. They may, for example, seek legal authorization for the punitive steps taken against those who act on the basis of indignation. As a prominent example, consider the effort to treat labor strikes as crimes or as subject to injunctions.⁵⁰ In the same vein consider the early twentieth century effort to authorize employers to discharge members of labor unions, and the contemporary effort to enact “right to work” laws, which forbid unionized workforces from requiring new employees to join the union.⁵¹ If employers are allowed to discharge union members, and if the law recognizes that right, it might be harder, for some or many, to hold onto indignation against nonunionized firms: the law signals that indignation is misplaced. Or even if indignation is retained, the cost of expressing it has increased, as people may lose their jobs. One may expect walls of sanctions, both formal and informal, to be erected around the status quo.⁵²

The basic goal here is to change the incentive structure underlying the situation in such a way that deviation from the status quo becomes, or at any rate appears to become, prohibitively costly. The price should be such that the notion that “I have nothing to lose but my chains” turns unsupportable. In Communist Eastern Europe, for example, dissidents were deterred not only by increasing the penalties on them for any subversive activity, but also by threats to the welfare and educational prospects of their children. Recall that the expression of indignation has a cost, for most people most of the time, even when indignation is intense.⁵³ If the law sufficiently raises its cost, indignation is less likely to be expressed even when it exists. And when indignation is less often expressed, people who care about the beliefs and acts of others may silence themselves as well, potentially leading to a kind of spiral in favor of the status quo.⁵⁴

50. See, e.g., *Hitchman Coal & Coke Co. v. Mitchell*, 245 U.S. 229 (1917).

51. See *Coppage v. Kansas*, 236 U.S. 1 (1915) in the first instance; see, e.g., Henderson and Estreicher, pp. 1070–80 in the second.

52. See Ullmann-Margalit.

53. See the analogous discussion of fairness in Rabin, p. 1282.

54. See the discussion of the movement from the unthinkable to the unthought in Timur Kuran, *Private Truths, Public Lies* (Cambridge: Harvard University Press, 1997), pp. 176–95.

But here too there are no guarantees. In fact there is an interesting alternative possibility: If the law is perceived as grossly unfair, the very fact of unfair legislation may increase indignation and make some people willing to act when they would otherwise decline to do so. The law's expressive signal will be the opposite of what was intended. Consider, as a case in point, the effort by the state of Colorado, in the mid-1990s, to forbid localities from outlawing discrimination on the basis of sexual orientation.⁵⁵ By saying that localities could not treat that form of discrimination as a civil rights violation, Colorado was attempting to entrench a form of inequality. But did the effort actually serve to strengthen discriminatory norms, or did the opposite occur? There is no clear evidence on the precise question. But there is no doubt that the law produced an intense and indeed national public outcry on the part of advocates of gay rights. It is certainly plausible to think that the law actually strengthened indignation on the part of those who were inclined to object to discrimination on the ground of sexual orientation. A similar point can be made with regard to laws that restrict the right to abortion. Just as transformative law might weaken a social movement by reducing indignation, so an entrenching law might strengthen that movement by increasing it.

For a group that is intensely motivated by indignation, the law is likely not to have a great deal of moral authority. For such a group, a law that attempts to entrench the status quo might have effects by virtue of actual enforcement, but not by virtue of its expressive function. Of course it is possible that over time, aggressive enforcement activity will dampen potential protest, making people unwilling to act on the basis of indignation whether or not diminishing the actual sentiment. In the early part of the twentieth century, this was the general pattern with respect to efforts to prevent unionization in the United States; the relevant laws, invoked against the union movement, reduced union activity, but apparently without reducing indignation and very possibly increasing it. As expressive measures, those entrenching laws were disastrous failures. The idea is not unfamiliar to protest movements, whose members are occasionally aware that legal repression may be very much in their interest.

55. The background is provided in *Romer v. Evans*, 517 U.S. 620 (1996), in which the Supreme Court struck down the state law.

VI. CONCLUSION

Unequal relationships are often stable simply because it is in the material self-interest of the less well-off to maintain them. Change becomes possible if, as a result of indignation, people are willing to sacrifice their self-interest to produce change. As the experimental evidence suggests, it is not uncommon for people to show a willingness to lose materially in order to visit losses on those who seem to have been unfair. Real heterogeneity can be found, not only in the basic impulse, but also in diverse conceptions of when it is appropriate to be indignant, and in diverse judgments about how much can or should be sacrificed in order to express indignation. We have also seen that when advantaged people are aware that disadvantaged people are prone to express their indignation, even at their own expense, they will be prompted to fend off their action by offering more equal distributions. We have extended these points to cases involving large numbers of disadvantaged people with varying levels of indignation (ranging to none at all) and with willingness to incur varying costs to express it. An ironic implication is that the more stable, strong, and immune to change the oppressive conventions and norms that protect a status quo of inequality may appear to be, the more vulnerable to change they may in fact be. This is so because under the right circumstances oppressive conventions are especially likely to breed indignation. And the more intense the indignation, the more credible the threat of the oppressed to disrupt the status quo becomes.

Law can be important both in assisting and in preventing the disruption. Law affects the two crucial variables: the extent of indignation and the costs of expressing it. If the law allows or requires equality-abridging practices, members of the disadvantaged group may be less likely to see those practices as unjustified. If the law bans equality-abridging practices, more people are likely to be indignant about them, partly because of the moral authority of law, partly because the law can decrease the costs or increase the benefits of objecting to those practices. Both the phenomenon of “compliance without enforcement” and that of “reduced inequality without rebellion” can be better understood in this light.

By virtue of its expressive power, law can lend legitimacy to the indignation and hence increase the credibility of the threat to upset the status quo. Law can also play a pivotal role in providing a rallying point and

thus in functioning as a coordination device for the disadvantaged. For this reason, law is contested terrain, and we have emphasized that a crucial variable is the moral authority of law within the relevant communities. The advantaged will press for legal initiatives that will give moral support to the status quo and raise the cost of acting on the basis of indignation. But legal victories on either side might turn out to be counterproductive. Such victories might demobilize social activists, suggesting that indignation is no longer appropriate. At the same time, legal repression may increase indignation, thus aggravating the very problem that the advantaged seek to solve. When indignation is on the rise, both sides, seeking to enlist the expressive power of the law, face some recurring dilemmas.