What’s Wrong with Benign Apartheid?

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It is standard to think that people who are members of the same state should have equality in the formal sense entailed by equal status or equal membership. If every member is bound by the same fundamental laws and has the same bundle of fundamental rights and access, I will say they have equal membership.

Now consider a hypothetical state where equal membership is violated, though not on the basis of race or ethnicity. In this state a group of members is unilaterally excluded from the application of many laws, and has weaker rights to participate politically and in the scheme of social goods. These members are denied access to most welfare programs and, importantly, are deprived access to inessential goods, including many public spaces and much public land; correspondingly, their obligations to contribute through taxation are scaled back. Such a state can be called a “benign apartheid” state.

What, if anything, makes benign apartheid wrong? To put the question into sharper relief, conditions similar to what I’m calling benign apartheid presently exist on the global level. People who live in a given state, X, can be (and often are) unilaterally denied equal (or, more typically, any) membership in other states. Yet few find this situation objectionable. While it is commonly maintained that we have obligations to protect the basic human rights of everyone regardless of the state where they reside, most do not believe that people in state X are entitled to have equal membership with people living in another state, Y.
A variety of theories have attempted to distinguish the obligations members of the same state have to one another from the obligations they have to nonmembers, but two strands of theories have arguably become dominant. These now-familiar views argue that members of the same state must stand in relations of equality to one another. The first type appeals to the *prima facie* wrongness of state coercion, and the second to the principle of fairness in mutual cooperation.¹ I will first demonstrate why the coercion and cooperation views, as opposed to other existing views in political philosophy, have the best chance of showing that a benign apartheid state is morally wrong. In particular, I will show that other potentially more *obvious* objections to benign apartheid, including the objection that it violates a right to freedom of movement, raise the need to address views that argue that members of the same state must have equal status—that is, they raise the need to address the coercion and cooperation views.

Then, unlike other work that has tried to refute either the empirical or normative claims of the coercion or cooperation views², I will largely accept their central premises but show that they do not, in the end, challenge a benign apartheid state. Additionally, I will show that appealing to natural duties to include others in the state, as commonly conceived, fails to provide the assistance these views require.

In general, I hope to demonstrate that, despite the differential access entailed by benign apartheid, it is surprisingly difficult to criticize. Two sorts of conclusions are available: There is nothing wrong with a benign apartheid state, suggesting we should explore it as a viable type of legitimate state. Or, there is something wrong with it, but we require a more simple or subtle view to criticize it. Though not the central thrust of the paper, I will suggest the beginnings of such a view based in the notion that we have a
duty not to exclude those who would like to join, on equal terms, our political association or community.

1. The Argument from Basic Human Rights

An immediate worry is that an apartheid state, even a benign one, would be unjust because some citizens would be effectively stateless, and thereby treated poorly. We need only recall the abuse, instability, and appalling violence of, for instance, the post-Civil War south in the U.S. and apartheid South Africa to be moved by this worry. Moreover, recent and prominent empirical studies have been taken to confirm that there’s an extremely strong (if not “normally necessary”\(^3\)) relationship between equal political rights and the satisfaction of basic human rights, especially security rights, such as those against torture and persecution.\(^4\) So, it seems people in the same state must have at least equal political participation in order for their basic human rights (“BHRs”) to be protected.

This picture of the connection between equal participation and BHRs, however, isn’t always accurate. What the empirical studies show is that non-democratic states fail to secure BHRs, leading to the common inference that equal political participation—something that characterizes democracy—is important for the protection of BHRs. However, for starters, the failure of non-democratic states to secure BHRs doesn’t mean that equal political participation is a necessary, or even an important part of the story. For there may be a different plausible explanation for the confirmed relationship between non-democratic states and the non-satisfaction of BHRs: non-democratic states tend to be “burdened”\(^5\), and thus lack the general institutions and capacity for securing BHRs at
all. It may be a mistake to infer that institutionally capable states couldn’t protect BHRs without being democracies. Moreover, even assuming we interpret these studies as having adequately controlled for capacity differences, and therefore as showing that democracy has distinct explanatory value for BHRs, these studies would still not show that every person living in a democratic state must have equal participation. More cautiously, they would show that living in a democratic state (or at least a state that is largely democratic) is important for having one’s BHRs protected.

In fact, some institutionally capable, largely democratic states today have conditions approaching benign apartheid, yet the full scope of their members’ BHRs are protected, including not only security rights, but also rights to shelter, subsistence, own property, and to religious freedom and freedom of expression. The most telling case may be Estonia, where at least 12% of the population doesn’t have citizenship in any state whatsoever and possesses weaker rights to participate than citizens of Estonia. Holders of so-called “gray passports” are of Russian nationality. They aren’t allowed to occupy office, vote in Estonia’s parliamentary elections, and are not entitled to full participation in the scheme of goods. Yet—despite the additional problematic feature of their status potentially being determined on the basis of ethnicity—it seems that both their BHRs and their comparatively limited domestic rights are protected as well as these rights are protected in states where all members have equal status.

Setting the concerns about BHRs-violations aside, many would likely find a benign apartheid state objectionable on grounds more directly related to its inequality. I therefore shift to consider those objections. In order to get there, I must task the reader’s
patience by constructing an idea of a state that may be unrealistic in certain practical ways—though examples like Estonia remind us it is not too unrealistic.

2. Benign Apartheid and “B-membership”

Consider a state where a group of people enjoys protection of the full scope of their BHRs but lacks equal/full membership. Call these people “Bs”, and their partial membership “B-membership”, in contrast to “As”, who have full membership. We need not assume that Bs form any kind of identity-group based in, for instance, culture or political ideology. Assuming that Bs simply comprise a numerical minority (or even majority) won’t change the analysis.

Though some of the details of their membership could vary, here’s a rough framework:

(I)  “Partial Inclusion”

Bs are excluded from many welfare laws (see below) and from the application of laws not bearing on anyone’s BHR’s. Possible exclusions include curricula requirements, much family and personal law, and many employment laws.

(II) “Partial Participation”

*Political:* For their BHRs-protection, Bs have full civil and due process rights, but lack full political participation.

*Goods:* Bs have full access to “essential” public goods and spaces (e.g. security, roadways, infrastructure, sanitation, police stations). Otherwise, their participation in the system of benefits and services, including welfare programs, is only at a level needed to secure their BHRs (e.g., they might not have access to public education past a certain age). Moreover, they’re denied access to inessential public goods and spaces, such as public museums, state parks and beaches. Obligations to contribute through taxation are correspondingly scaled back.
That Bs pay lower taxes and are excluded from the application of many laws doesn’t mean that B-membership is advantageous. For many individuals, it may be far more advantageous overall to have full inclusion, especially when we consider access to welfare programs.

One might object that some of the possibilities under (I) and (II) would be ruled out because they’re incompatible with the protection of BHRs. The point of (I) and (II) is to describe a society where—apart from some minimal level that satisfies BHRs—one group of members has weaker inclusion and participation. Unless one thinks any such inequalities would not be BHR-compatible, we could construct different examples as needed. The exception to this is if one thinks that (II) violates a BHR to freedom of movement: it’s a basic condition of benign apartheid that Bs are denied access to inessential public goods, spaces, and land. I will show, however, that this doesn’t violate their freedom of movement.

3. Differential Membership

There are many types of what we might call “differential membership”. Here I discuss how each of the four significant types typically presents one or more important departures from benign apartheid.

First, most obviously, many states have what are called “group-differentiated” benefits and burdens, sometimes even on the basis of ethnicity. But such differences are established to protect certain cultures and historically disadvantaged groups, such as the Amish in the U.S. and native peoples, and aren’t typically involuntary: the groups are not excluded from anything. Indeed, they prefer their bundle of benefits and burdens.
Second, federalism almost always implies that people living in different domestic subunits have differential rights and responsibilities. In the U.S., residents of Virginia might have weaker welfare rights than residents of Massachusetts. But such differences aren’t typically determined unilaterally by one group; instead, they emerge because of the agreed-upon division of power between the center and domestic subunits. Furthermore, a resident of one subunit can typically choose to relocate to another, making any differences not ultimately involuntary.

Third, some benefits and responsibilities vary across individuals according to specific needs and interests. These range in significance, from motorcyclists having to pass additional driving tests, to tax-breaks for property-owners. But these differences aren’t necessarily formally unequal, even in the more significant cases: anyone who acquires property qualifies for the tax-breaks.¹⁸

Fourth, the type of membership possessed by permanent alien residents comes closest to resembling benign apartheid—e.g., in many states, aliens are involuntarily assigned weaker political participation than citizens. But an important distinction is that Bs are denied access to all goods and benefits above the minimum needed for BHRs, and this is not typically the situation of permanent alien residents. To the extent that this distinction collapses, the situation of alien residents could approximate the situation of Bs.

4. Initial Objections

Before discussing objections based in coercion and cooperation, I’ll briefly consider what might seem to be more obvious objections. I’ll show that these objections raise the need to address considerations having to do with the basic inequality of benign apartheid, and therefore that we should turn to discuss the main existing views (viz., the coercion and cooperation views) that purport to show why inequality among members of the same state is wrong.

“Doesn't Benign Apartheid just violate Freedom of Movement?”

Because Bs are restricted from accessing many public spaces and lands, a seemingly obvious objection is that benign apartheid simply violates Bs’ BHR to freedom.
of movement. This objection doesn’t work. First, the objection can’t be that Bs’ right to free movement is violated in virtue of their facing any constraints on their movement, since it’s implausible to think that there’s an unlimited right to free movement. Most theorists rightly think that there are justifiable restrictions, including restricting unauthorized movement onto private property and restricting movement through traffic laws and through public building-closing hours.\(^\text{19}\) So the objection needs to claim that the particular kinds of limits on movement that Bs face are impermissible, and the problem the objection encounters is that their movement isn’t restricted when it comes to essential goods and spaces (e.g., roadways and infrastructure). It’s not plausible that it’s impermissible to limit movement pertaining to inessential goods and spaces—unless, that is, the impermissibility derives from the fact that those limits in movement represent unequal limits (i.e., limits not faced by As). But invoking a right to free movement won’t settle whether such inequality is objectionable.

**“What about Territorial Rights?”**

One thought is that such inequality, and benign apartheid more generally, is objectionable for reasons related to territorial rights. As I understand them, there are two components of territorial rights that might be implicated here.

One concerns occupancy rights, recently defended as not only the right to permanently reside in a geographical place, but also to access spaces for the sake of engaging in shared activities.\(^\text{20}\) Since Bs are not denied access to all shared spaces, and of course are able to possess, and gather on, private property, it’s unlikely that they’re
deprived of all opportunities to pursue shared projects, associate with others, and participate in social practices. And it’s a common feature of life in the state that everyone faces some limits on accessing shared spaces. To say that it’s wrong for Bs to experience differential limits in access requires considerations not based in the general importance of engaging in shared activities, but once again in the inequality of their situation.

Another relevant component of territorial rights is the collective right of self-rule, or the right not to be ruled by “others” (typically meant to refer to non-group members or foreigners). Several theories maintain that a group has a right to self-rule in the particular territory to which it has historical or cultural ties. If self-rule is understood as a right to establish a set of coercive legal institutions, however, this is thought to belong to groups capable of (and under some accounts, with a history of) being a justice-administering political entity (i.e., a state), and not just to some number of people. Simply put, Bs might not comprise any sort of cohesive group capable of being a state. More importantly, theories of self-rule won’t help us criticize our real-world approximation to benign apartheid—i.e., the case of Estonia. Since the Russians living there are overwhelmingly descendants of recent Russian settlers, or are themselves recent immigrants, Estonia’s Russians would presumably fail to have the requisite historical or cultural ties to the territory, especially as compared to native Estonians.

“Why not appeal to Democracy?”

Lastly, one might think that by appealing to democratic rights, we can better diagnose the problem. Unlike self-rule rights, democratic rights are individual rights.
Because benign apartheid violates the democratic principle that every individual must have equal participation, it might appear easy to condemn.

But a central question for any theory of democracy is: what are the morally significant conditions that generate the demand that some person must have equal participation in some particular democratic system? Specifically, democracy theories have had to contend with the problem of how and where to draw the “boundaries” of a democracy’s domain—that is, the problem of who should have equal participation rights in some state and who should not. So to criticize benign apartheid on the basis of democratic principles, one must first say why Bs must have equal participation rights in our society. That is, they must say what are the morally significant conditions that generate this demand concerning the rights of Bs. We now turn to examine those potential conditions.

5. Coercion

The first major defense of equality (and democratic rights) appeals to the role of coercive state power in people’s lives. The central idea is that, because all members are bound by the state’s coercive power—or its de facto authority to impose duties, laws, directives, and to assign rights—members must stand in relations of equality to one another. The view has two main variants: power-subjection and power-engagement. Defenders of both variants define equality in terms of egalitarian distributive justice, but for our purposes, we can interpret it formally as equal participation without specifying the nature of particular distributive principles or the content of particular laws.
5.1. Power-Subjection

This argument starts with the claim that the state imposes its laws, policies, and institutions on its members and enforces that imposition through threats and sanctions, thereby subjecting members to its ongoing coercive power. There is an intrinsic and instrumentalist interpretation of this argument. Both forms share a commitment to grounding equality in the fact that a state subjects its members to its power, but differ in how they see that fact as morally relevant.

The intrinsic interpretation claims that being subject to the state’s power invades our autonomy, or our ability to be part author of our lives. It does this by narrowing the set of options available to pursue and by subjecting our will to the will of the state. This is prima facie wrong and can only be justified under conditions of equality. Without it, we could not be seen as governing ourselves or as authorizing the power that governs us. Under this interpretation, equal participation is construed as a condition for autonomously living one’s life.

The instrumentalist form claims that being subject to state power makes us vulnerable to exploitation or domination. In order to distinguish this concern from a concern about rights-violations (e.g., BHRs-violations) we can define exploitation as actions that fall short of being rights-violations but that are nonetheless mistreatments. The state could lower general taxes, and offset the shortfall by increasing taxes specific to certain members. Or it could impose onerous conditions for obtaining professional licenses on certain members. Under the instrumentalist interpretation, equal participation is construed as something one requires to be protected from these kinds of mistreatments.
There are two main aspects of the power-subjection argument. The first is that it is because someone is subject to state power that either (on the intrinsic interpretation) her autonomy is invaded, or (on the instrumentalist interpretation) she is exposed to exploitation.

Before discussing the second main aspect, numerous authors have observed that states often coerce outsiders, often in ways resulting in pervasive and deep impact, especially through coercively enforced border control. But more generally, domestic public law (e.g., criminal, anti-trust, environmental law) can have extraterritorial application, and domestic laws of intellectual property constrain outsiders, who can be tried in domestic courts. Additionally, states often impose export taxes on raw materials and primary commodities. Outsiders must either pay these taxes or face the cessation of trade, resulting in debilitating loss when key industries rely on those materials. Finally, there’s a long list of occasions where powerful states coerce members of weaker states through economic, military, and diplomatic measures to alter their practices and behavior.

Although outsiders are often subject to the state’s coercive power, it’s typically not thought that outsiders are entitled to equal participation. Of course there are clear differences between the magnitude of power to which outsiders might be subject and the magnitude to which any insider, including a B, might be subject.

This raises the second main aspect of power-subjection: insiders are subject to widespread state power. Their life options are extensively constrained and given shape by the state, resulting in far more significant autonomy-invasion. In contrast, since there is a vast amount of state laws, rules, institutions and actions ("power-instances") with
which outsiders are simply not made to comply, a state at most eliminates some options from the scope of options available to them. And because of the power-instances with which only insiders are made to comply, there are potentially numerous scenarios where a state could exploit an insider in ways it couldn’t exploit outsiders. For instance, since the state’s licensure laws don’t bind outsiders, they’re immune from being mistreated under those laws.

It’s safe to say that the power faced by any insider is significantly greater and more systematic than that faced by any outsider. But it doesn’t follow from this that Bs are entitled to full/equal participation with As. This is because Bs are not equally bound with As in the first place. There are different ways of arguing this point.

The first contains a few simple steps: If the state power to which outsiders are subject doesn’t qualify them for full participation (and may not qualify them for any), then the relation between state-power subjection and participation cannot be that any extent of power-subjection implies one must have full participation. What then is the relation? Without yet distinguishing between different kinds of power-instances (more on this below), if insiders are entitled to participation and outsiders aren’t, the justification for this from the perspective of power-subjection must be that insiders are more extensively subject to state power than outsiders. Apart from identifying some above-any-but-short-of-full threshold of power-subjection that entitles one to full participation, this means that all we can say about the relation between the magnitude of power-subjection and participation is that it is positive (and perhaps proportional): the more power-subjection someone faces, the more participation she’s entitled to.
We might think that the fact that states currently subject outsiders to their coercive power without granting them participation doesn’t legitimize the practice and therefore isn’t relevant to how we ought to conceive of the appropriate relation between power-subjection and participation. Indeed we might think outsiders are owed participation to varying degrees or in different ways. This plausible view is something others have defended.\textsuperscript{36} Still, unless one thinks that any magnitude of coercion to which an outsider is subject entitles them to full participation, the reasoning concerning the relation between the magnitude of power-subjection and participation stands.

Independent of considerations regarding outsiders, maintaining that that relation is positive seems right for several reasons. First, and less controversially, it’s simply implausible that any extent of power-subjection ought to give one a claim to full participation, since that would suggest that people who are subject to a state’s power in only a few ways or in a few domains, (and thus with varying degrees of interest-implication), must have an equal say over all sorts of domains of state law, policy, and institutional design that don’t actually apply to them.\textsuperscript{37} More importantly, proportional participation seems exactly right if participation is conceived either as a condition for autonomously living one’s life or as something instrumentally needed to be protected against exploitation.

To see the point about autonomy, imagine you and I work at the same firm. The demands of our work and on our time are roughly equivalent, except that you’re required to stay an additional hour each day and not because you’re less efficient or have fewer skills. Even just by demanding an additional hour from you, the firm constrains more of your ability to pursue valuable opportunities outside of work. Although the firm doesn’t
employ strict coercion or force to back up its demands, we would still think you should have greater “participation” at work—a greater share of the firm’s goods (e.g., by having a higher salary) and a greater say in the firm’s decisions (e.g., by being made a supervisor, being included in more organizational meetings, or by at least having more opportunities to present your concerns to management). Without having greater participation, the firm’s demanding an additional hour from you seems unjustified.

The point may be amplified when considering the state’s ability to use force: by being bound by more power-instances than Bs, As have more of their life options forcefully constrained and shaped, and the sense in which their wills are bent is more pronounced. It’s not just that As must comply with a higher number of power-instances—which by itself might be of little significance—but that they’re subject to a greater magnitude of state power overall, including over morally and personally important aspects of life (e.g., in family and education policies). The state narrows and influences the options available to them to a greater degree in significant domains, warranting their having a greater say in the structuring of those options and a greater share of state goods.

Turning to the exploitation concern, if it’s thought insiders are made more vulnerable than outsiders because of insiders’ greater subjection, thus requiring (more) protection via (greater) participation, then it seems that As, through their greater subjection than Bs, are made more vulnerable than Bs, potentially requiring more protection via greater participation. Just because As, taken as a group, might be less vulnerable to domination or exploitation than Bs, taken as a group, doesn’t mean that individual As aren’t vulnerable. In particular, some As could be exploited by other As
under laws in which Bs aren’t included.\textsuperscript{38} Not being bound by some law greatly reduces, or even eliminates, the risks of being exploited under that law.

The argument from power-subjection, and especially concerns about exploitation, may certainly account for why Bs must have participation (especially political) under any law that applies to them—that they should, for instance, have representation under those laws. But power-subjection doesn’t yet justify their having full participation overall, where this refers to both full political and full goods participation.

To show why Bs must have A-membership while claiming there’s no similar demand concerning the status of outsiders, defenders of power-subjection have two options. They can either (1) make their case based in something like the morally important nature of the domains of power in which Bs, but not outsiders, are subject, or (2) argue that failing to include Bs under the full scope of state power in the \textit{first place} is wrong. Option (2) is examined in §6. There are two issues casting significant doubt on the success of (1).

First, even if the instances of power-subjection over outsiders are vastly fewer or the magnitude much less, outsiders can be subject in a wide variety of morally important domains, ranging from security (e.g., military engagement, border control) to market behavior (e.g., taxes, economic sanctions,) to property (e.g., border control, domestic physical and intellectual property law), and to social norms (e.g., “foreign corrupt practices act”\textsuperscript{39}) and we’ve seen that Bs might be exempt in some especially morally important areas (e.g., family law) and we could imagine others.\textsuperscript{40} This dual observation raises skepticism as to whether Bs in fact are (or must be) subject to power in domains distinct from outsiders.
Second—to stress the point—one would have to show why any domain in which Bs but not outsiders might be subject would entitle Bs not just to significantly greater participation than outsiders, but to equal participation with As. With both issues in sight, we can see that this would be a very challenging task.

5.2. Power-Engagement

Perhaps a more complex understanding of the moral significance of state power provides the needed ground for equality. This other account—“power-engagement”—emerges from considering how members of a state are not just subject to, but are part authors of, its coercive system. This is the view expressed by Thomas Nagel, who claims “the society makes us responsible for its acts, which are taken in our name” and expects our compliance with is rules, policies, and institutions, even in the absence of force.\(^{41}\) In return for our “normative engagement” with the state’s power, we’re owed justification, and the justification must take the form of equality.\(^{42}\)

Several discussions have explored whether the state (or its officials) must have a particular belief about those it coerces in order for the coerced to qualify as normatively engaged.\(^{43}\) Making the requirement to offer justification conditional on the state having some belief is deeply problematic, for it suggests that states can suspend the requirement just by having different beliefs.\(^{44}\) To avoid this implication, the more plausible reading is that simply by complying with the state’s system of coercion, one’s will is morally implicated in that system.\(^{45}\)

In light of our earlier discussion regarding how states can coerce outsiders, proponents of power-engagement would likely claim that the account supplies a reason
for why Bs, but not outsiders, are party to the coercive relationship relevant for grounding equality: Since outsiders are only subject to some state power, the state’s coercive system isn’t carried out in their name and they therefore don’t bear responsibility for it. In contrast, Bs are only excluded from a range of laws and that doesn’t exonerate their moral responsibility for the system in which those laws are embedded. It seems there are two forms this argument might take.

The first claims that one’s willing compliance with a large set of laws—in the sense of not having to be forced into compliance—helps to instrumentally support the coercive system whether or not one intends to support it. In short, one’s willing compliance allows the state to avoid the significant costs of monitoring and enforcement. This way of construing the power-engagement argument shares much in common with the cooperation view, explored later, but differs in both its definition of support (here, law-observance) and explanation for why support is morally relevant (here, because it confers responsibility on the law-observer).

It isn’t difficult to identify the problem this argument encounters: any time one observes a state’s power-instances, they support its coercive system to some degree. My conforming to speed limits, for instance, frees up police and other resources that would otherwise be used to enforce my compliance with speeding laws, my observing of the state’s museum-closing times relieves security guards from having to usher me out, saving them time and the state money, and whenever I refrain from using illegal drugs I support, whether intentionally or not, the state’s stance on drugs. But then outsiders can also be said to support, to varying degrees, the system of coercion whenever they willingly comply with any power-instances to which they are subject. Assuming
everyone willingly submits to any state power they face, since Bs face considerably more power than outsiders, Bs’ instrumental support is considerably greater, plausibly entitling them to significantly greater participation than outsiders. But we encounter the same kind of problem confronting power-subjection: Bs’ greater instrumental support doesn’t yet justify their participation being equal with As, whose instrumental support—in virtue of facing greater power—is greater still.

Rather than focusing on the magnitude of state power to which one might willingly comply, the second form of the power-engagement argument draws our attention to the moral implications of being exempt from having to comply with a law. The rough idea is that just because someone is exempted from having to perform a duty doesn’t mean that her responsibility for that duty’s intended purposes, for example, is relinquished; being released doesn’t damage the sense in which one’s will is implicated. For instance, if at work I’m one of the people tasked with planning a trade show and, knowing that I don’t like meetings, the others tell me I need not attend the planning sessions, I’m not thereby relieved of being responsible for the trade show’s outcome.

Similarly, when someone’s exempted from having to act in accordance with a law or institution, she’s already granted a performative immunity. If we also say that she’s not morally answerable for that law, she’s granted an additional—moral—immunity that those who must comply aren’t afforded. It could be that she bears more of the moral burden in virtue of her exemption, but in the least she would seem just as morally accountable for it as others who aren’t exempted. And if someone is equally answerable for a law even from which she’s exempted, this means she’s equally answerable for the system of laws.
There’s something right about this: if a state requires everyone to do military service but relieves you from having to serve merely because you prefer not to serve (that is, not for religious or moral reasons), you don’t thereby wash your hands of the state’s military policies. But this example works because you’re given the choice, based simply in preference, of opting out of military service. Likewise, I’m given the choice not to attend the trade-show meetings simply because I don’t like meetings, and not because I have urgent family matters to attend. These sorts of cases involve being exempted from an obligation out of sheer preference, and thus seem fully voluntary, and so it’s plausible that one’s will is implicated and one’s responsibility persists. But it’s not plausible that responsibility for a law survives one’s involuntary exclusion; we would hardly think Estonia’s Russians are morally answerable for the Estonian laws and institutions that they’re not permitted to be included under. Consequently, we wouldn’t think they’re equally morally answerable (if at all) for the full Estonian coercive system.

Similarly, even if one thinks that Bs are morally responsible for the laws they’re expected to abide by, it’s implausible to think they’re morally accountable for all laws, or for the full coercive system, when they’re not included in the full system in the first place. Like power-subjection, power-engagement justifies a level of participation that is increasing in, perhaps proportional to, inclusion. But it doesn’t explain why partial inclusion entitles one to full participation.

6. Duties to Include

If there were a way to block partial inclusion in the first place, this would be a more promising way of objecting to benign apartheid. Does the coercion view provide
the resources for saying that we have a duty to include someone under a non-BHRs related power-instance? In this section, I’ll briefly show that it does not. Moreover, traditional views based in natural duties of assistance or of justice don’t seem to supply the needed resources either.

It should be clear that the coercion view maintains that being subject to an instance of state power is some sort of normative cost to the agent. Under power-subjection, it invades her autonomy or exposes her to exploitation. Under power-engagement, it makes her morally accountable. If being subject were not a cost to the agent, there would be no need to justify its imposition on her. If coercive power is a straightforward cost, however, the state wouldn’t seem to have a duty to the agent to impose on her any instance of it, and this seems true independently of the content of a power-instance—that is, whether it is family, education, or welfare law, for example.

Proponents of the coercion view may argue that the proper way to construe an instance of state power is that its imposition is a “net” benefit to the agent: autonomy-infringement or moral responsibility is merely a pro tanto or initial cost, but the state has a duty to compensate the agent for the initial cost (and this is the sense in which the state owes justification in some form). As a result of this compensation, the imposition of power is “converted” into a benefit in the end. So including someone under a law only imposes an initial cost on her; but including her provides her a net benefit once the state satisfies its duty to compensate her. Under this construal, however, one is owed compensation because one is antecedently subject to some law. It would get things backwards to say that the state has a duty to impose some law on someone in order to compensate her.
Perhaps the benefit of being subject to state power must be construed in a non-compensatory manner—that is, that being subject is a *straightforward benefit* and so the state doesn’t owe us any compensation. A common view with strong pedigree is that submitting to state power is essential for gaining security. There may be multiple varieties of this idea, but we’ll survey what are arguably the principle varieties—Hobbesian and Kantian. According to either Hobbesian or Kantian views, we have a natural duty to enter into states with others to gain mutual security.

Under Hobbesian views, the relevant security is defined as protection against harm, bodily injury and, more generally, the hazardous and uncertain conditions characterizing the “state of nature”. Even under an expansive understanding of what one needs for this kind of security—viz., BHRs-protection and basic public goods-provision—the sense in which one must be included under the state’s power is fairly minimal, and doesn’t plausibly provide the basis for criticizing the kind of inclusion that Bs have.\(^49\)

Kantian views of the benefit gained by subjection are more complicated. Security pertains to the conceptual matter of a ‘rightful condition’ made possible by public law, and characterized further by three specific conditions: (1) omnilaterally authorized rights (and thus entitlements to restrain the conduct of others); (2) a system of mutual assurance producing an obligation to enforce those rights; and, (3) a universal, and thereby stable, determination and application of those rights.

The last condition in particular might be thought to block partial inclusion. However, this condition refers to the casuistical problems of applying general laws to particular circumstances in a consistent manner, and thus pertains to the need for a
judging authority. Given this, (3)’s correct interpretation seems to be that where law is applied and when rights are possessed, they must be applied and possessed uniformly, not that any particular law must be applied to some particular person.

Still, assuming an alternative interpretation whereby condition (3) (or one of the other conditions) blocks partial inclusion, we would need to first settle the question of to whom the advantages conferred by full inclusion must apply. The question of “who?” must be addressed by any account claiming that we have special duties to confer others the benefits of states beyond the minimal conditions of BHRs-protection owed to every person.

Under Kantian views, we need not have a preexisting relationship to someone in order to have a duty to provide her state benefits beyond the minimum. Simple relations of proximity seem to be all that’s required: we have a duty to enter into a rightful condition with those with whom we “cannot avoid living side by side”. But even interpreting proximity broadly so as not to refer only to immediately adjacent neighbors, we would still face many questions concerning the limits of the rightful-condition duty. For instance, would we have such a duty toward people living in domestic subunits that are geographically distant from all other subunits? What about people on islands, like Hawaii, who are cut-off from us by large bodies of water? Would the duty exist between residents of across-state border towns who engage in extensive interaction?

Without identifying a more ultimate relation that proximity tracks, it seems we lack the resources to answer these questions. To what other relation might we appeal? Apart from returning to the moral significance of coercive relationships, an obvious
option would be to say that proximity has relevance because it tracks relations of mutual cooperation. It is these relations to which we now turn.

7. Cooperation

The most promising way to object to benign apartheid might be based in the idea of fairness in mutual cooperation. Defenders of this idea maintain that equality, and in particular egalitarian distributive justice, is something that is owed between fellow members because they cooperate together in the joint production of important goods. There have been numerous variants of this basic idea but the contemporary variant, cogently defended by Sangiovanni, is arguably the most capable of restricting the scope of equality obligations within the state. This view maintains that equality is a demand of reciprocity in the mutual provision of the basic goods needed for acting on a plan of life. Specifically, other members are owed reciprocity for their support and maintenance of “the state’s capacity to provide the basic collective goods necessary to protect us from physical attack” and of “a stable system of property rights and entitlements”. Members contribute to these goods both financially through taxation and by observing laws.

Before simply concluding that what Bs are owed in return for their cooperation toward these basic goods must be scaled to correspond to the extent of their inclusion, the view deserves more attention. In considering a fictitious wealthy citizen who believes she’s entitled to her full market wages, Sangiovanni, following Rawls, rejects the claim that everyone is owed a return proportional to their individual marginal contribution, as measured by the marginal product of their labor. The cooperation view maintains that the wealthy citizen’s ability to develop and make use of her talents depends on the
contribution of other members because they supply the background legal and political framework needed for a stable market. If they’re not to be taken advantage of or treated unjustly, their support must be reciprocated. The account concludes that neither the wealthy citizen nor other members are owed a return proportional to their marginal contribution. Rather, each person is owed a “fair” return.

Authors have objected to the cooperation view on different grounds, but I want to press an objection that is of direct relevance to the present inquiry: Let’s accept the plausible argument that what one is entitled to for their contribution to collective goods—basic or otherwise—is more than a return proportional to their individual marginal contribution; one is entitled to fair reciprocation. The argument advances quickly from the idea of fair reciprocation to a demand for distributive equality. But it’s not obvious that a fair return in a system of joint production must take the form of an egalitarian share (whatever one thinks this is), and more importantly, it’s not obvious which goods must be distributed fairly. To begin, consider this case:

Evan is one of a hundred people shipwrecked on a deserted island. In order to survive, everyone divides up the tasks of gathering food, building and designating shelter, preparing campfires, and securing the camp from attacks by wild animals—call this set X. Everyone abides by the same rules concerning life on the island and does their part in the basic tasks, with some variation depending on their health, strength and stamina. For instance, Evan has a debilitating back injury, so he does less than many of the others.

Of the group of Islanders, twenty met for the first time on the ship during a series of games (Evan is not one of them). After some days on the island, they decide to form a social association (“Leagues”). Over time, when not contributing to the basic tasks, Leagues gather materials to make comfortable beds and special plants for particularly nutritious meals—call this set Y.
What is Evan owed in return for his cooperation in the production of the joint goods needed to survive? It seems clear that he’s entitled to receive a share of X since he’s contributed to these. And although Evan’s contribution to X is partial, since his inability to be a full contributor is the result of bad luck and he tries to do what he can, he might be entitled to a fair share of X. But even if we can work out what a fair share means, is Evan entitled to be included in the fair distribution of the full scope of goods created by everyone on the island, including the set of special goods, Y, produced and collected by Leagues?

From the perspective of reciprocation obligations, it’s hard to see why Y’s distribution must include Evan. And this isn’t because Evan’s marginal contribution to X is partial. Christine, another non-League whose contribution to X is full, would also not seem entitled to be included in Y’s distribution. Although Evan, Christine, and other non-Leagues contribute to X, it doesn’t seem that it’s a violation of fairness in cooperation for Leagues to reserve certain joint efforts and the resulting goods for themselves. It could be that there’s another sense of unfairness here, which might be inclining some of us to say that Leagues are not being “fair”: there is, it seems, something not quite nice, and potentially insulting, about Leagues excluding non-Leagues. This comes close to the explanation for benign apartheid’s wrongness that I will suggest, but it is a decidedly different notion than the notion of a fair return in the mutual provision of goods.

The island parallels our benign apartheid society in relevant ways: Bs contribute to the set of basic goods (X_1). If their tax support toward X_1 is lower than As’ tax support, Bs’ contribution could turn out to be partial. But since Bs also contribute
through abiding by laws covering $X_1$, they might be owed fair reciprocation. Leaving aside the question of what share counts as fair reciprocation, under what *scope* of goods are Bs owed fair reciprocation? As was the case with Leagues, it’s far from clear that it’s a violation of the conditions of a fair return for As to say that they prefer to reserve many cooperative efforts and the resulting goods ($Y_1$) for themselves (e.g., above-partial welfare, above-partial education, and nonessential public goods and spaces). Someone’s contribution to a first set of goods doesn’t obviously bear on the question of whether she’s entitled to reciprocation under a second set. If her contribution to the second set is zero, it’s hard to see why she has any claim to the second set at all.

A proponent of the cooperation view would likely object that there’s an important difference between the cooperative activity on the island and in our society: Leagues are procuring $Y$ on their own and in their spare time, and so it’s accurate to say that non-Leagues’ contribution toward $Y$ is zero. But the goods As jointly produce depend on (and in some cases, are expansions of) the basic goods generated through joint cooperation with Bs. Since Bs contribute to $X_1$, and $Y_1$ depends on $X_1$, it isn’t accurate to say that Bs’ contribution to $Y_1$ is zero; consequently, $Y_1$’s distribution must include Bs under conditions of fair reciprocation.

This objection exaggerates the differences between cooperation on the island and in our society. The spare time in which Leagues procure $Y$ is only made possible because Leagues have access to $X$—goods that are generated by everyone on the island. Without the cooperative efforts of people like Evan and Christine, the time and effort that Leagues expend toward $Y$ would need to be redirected toward securing $X$, since $X$ consists of basic goods needed to live. In this very important sense, $Y$ depends on non-
Leagues’ cooperative efforts just as much as $Y_1$ depends on Bs’ cooperative efforts. Indeed, it could be that $Y$ depends much more on the cooperative activity of non-Leagues, than $Y_1$ depends on Bs: Leagues make up a small fraction of the island’s total population, and so their marginal contribution to securing $X$ may constitute a small proportion of the total contribution; in contrast, if As compose a majority in our society, their collective contribution would represent a much greater proportion of the total contribution to $X_1$. Because of these considerations, the proponent of the cooperation view would face significant difficulty explaining why $Y_1$’s distribution must include Bs while $Y$’s distribution need not include non-Leagues.

The view’s proponent could maintain, of course, that $Y$ must be shared with non-Leagues. As already suggested, however, Leagues procure $Y$ during time that intuitively counts as leisure time. If $Y$ must be shared, that would imply that, in general, goods procured during leisure time must be shared with others in the relevant society. Consider, for instance, in your spare time building a deck, baking a pie, or painting a picture. These activities result in goods that would need to be inclusive, under fair reciprocation conditions, of others who make your leisure time possible. To be clear, the goods themselves need not necessarily be divided and shared with others, for that would be senseless in a large modern economy. But such goods would need to be, for instance, traded or sold, and the returns distributed widely. As with the procurement of $Y$, activities like painting a picture occur during time that’s made available because of the society’s joint efforts toward providing basic goods--you have the time and energy to paint in large part because others’ cooperative efforts with you secures the essential goods you need to live.
Importantly, it’s not central for the argument that we characterize the efforts toward Y as occurring during *leisure* time. We can characterize those efforts differently—e.g., as consumption (in contrast to production) activities, or as personal (in contrast to public) undertakings. The point is that if Y’s distribution must include non-Leagues, then goods that result from similarly structured activities, such as those in the previous paragraph, must be shared with others in the society, and important distinctions such as between leisure and labor would seem to collapse. To avoid these counter-intuitive results, it must be that Y need not be shared with non-Leagues. But then one faces significant difficulty explaining why Y₁ must be shared with Bs.

8. The Seed of an Alternative Explanation

The main aim of this paper was to demonstrate that benign apartheid is surprisingly difficult to criticize. Since we have so far been unable to identify what might be wrong with benign apartheid, one might conclude that there is nothing wrong with it. This position would warrant exploring benign apartheid as a plausible model of the legitimate state. Most philosophers, however, will likely still have the intuition that there is *something* wrong with benign apartheid despite the difficulty of pinpointing what that is. In this final section, I want to suggest the beginnings of a possible alternative explanation.

From the start we’ve assumed that Bs' status is involuntary. But what if some members were to choose partial inclusion and participation? Recall our very early discussion of differential membership, and consider paradigmatic cases of “group-
differentiated” membership, such as the Amish in the U.S. Because of their religious and moral beliefs, traditional Amish communities in the U.S. abstain from most forms of political participation, including voting, and they’re exempted from having to participate in many welfare programs. For instance, they don’t participate in social security and in some states refrain from participating in the provision of worker’s compensation and unemployment benefits. In addition to welfare programs, they’re also exempt from a range of laws and regulations, including certain child-labor laws, compulsory education past the eighth grade, a variety of occupational safety regulations, and from performing military service. Finally, they remain geographically separate from other U.S. members, largely restricting their movement to the areas where they reside and avoiding most public buildings.

A major distinction between the Amish and Bs is that the Amish choose to have partial inclusion and participation in the ways just described. Because of this consideration, there doesn’t seem to be anything wrong with the kind of membership the Amish have, at least, that is, with respect to other groups (though there could be concerns about the moral relations within Amish communities). If this is right, we must ask why the group’s choosing their situation matters for our inquiry.

One possibility is that since it’s their choice to opt out, the Amish can always opt back in, making their situation provisional in some sense, whereas the situation of Bs is permanent. It’s an important difference that the Amish can decide to opt back in. However, the significance of that fact doesn’t seem ascribable to the idea that the Amish’s situation is provisional. For the reality is that their situation is remarkably stable, largely due to their religious and moral beliefs but also because of within-group
norms and pressures. They abstain from political participation, for instance, in a very stable and comprehensive fashion. Full participation in the state is typically seen as a form of defection from the community, one that is met with significant cultural and personal costs.\textsuperscript{62} This doesn’t mean, however, that the Amish’s situation is involuntary in the \textit{relevant} sense—importantly, they are not \textit{excluded} by other groups. The previous point was just that the within-group pressures the Amish face weakens the case that their situation is less \textit{permanent} than that of Bs. Considerations of the relative permanence of their situations, therefore, don’t seem to account for the moral difference between the situations of the Amish and the Bs.

Alternatively, the moral difference might be explained by the thought that excluding someone who would like to fully join a political association or community is wrong. Though such a view would take work to properly defend, reflecting on the differences between the Amish and Bs provides it some initial support: apart from the fact that Bs are \textit{excluded} and the Amish are not, there doesn’t seem to be morally relevant differences between their situations. And apart from the fact that As \textit{exclude} Bs, it’s very difficult to identify what might be wrong with benign apartheid—as we’ve seen throughout this paper. The idea that it is wrong to exclude those who would like to join the political association on equal terms need not entail that it is always wrong to do so. Instead, we might construe the idea in terms of a prima facie duty not to exclude that could be morally outweighed by competing concerns.\textsuperscript{63} Additionally, different kinds of interaction could generate duties not to exclude of varying types and strengths. But such a position would still seem to be in stark contrast to a dominant philosophical position
that claims that groups have the moral right to unilaterally exclude others from their political associations or communities.⁶⁴

There could be different sorts of reasons for the potential wrongness of excluding, but consider how excluding might express a kind of public disrespect for the excluded. It is as if As say to Bs, “we don’t want you to join us in our efforts to realize collective goals and values.”⁶⁵ An important thing to notice here is that it’s not just excluding Bs from the political association at all that might express disrespect for them. In order to employ the suggested explanation, it must be that wrongful disrespect is expressed by excluding them from the full association. Upon reflection, that exclusion from the full association is what might express disrespect makes sense, because it involves exclusion not from the essential goods needed to live—which might be fairly invariable in shape and content across different societies—but, rather, from the goods that embody a particular range of social, political, economic, and cultural values. Exclusion from the full association, therefore, excludes people from the goods that might have the most expressive content.


Christiano observes that in the studies he relies on, wealth (arguably a measure of capability) has been controlled for (p.154).

Many of these are included in Rawls’ list of rights that, he argues, states must secure to be considered “decent”.

Another example with similar circumstances is Latvia.

There’s considerable reason to doubt this since not all descendants who speak the Russian language are considered “ethnic Russians”. Moreover, the literature frequently refers to Russians living in Estonia as “Russian speaking minorities” rather than as “ethnic Russians”. See: Nørgaard, Ole (ed.) 1999. *The Baltic States After Independence.* Edward Elgar Publishing.

Historical Outlook, 2009.

11 E.g., laws concerning marriage, divorce, euthanasia, abortion and drug use.

12 These might include requirements to contribute—above the partial level needed for BHRs—to worker’s compensation for employees who are also Bs.

13 E.g., they might have rights to vote at the local level but be unable to hold office; at the state level they might only have special representation.

14 This thought seems indefensible in light of the discussion at the beginning of the paper.

15 For instance, one might think that BHRs require that people must be able to attend all years of public school. But we could shift the example by imagining that only As can participate in state-subsidized college, trade school, etc.

16 It’s useful to distinguish moral concerns pertaining to the relations between members of the same group (within-group concerns) from between-group concerns. The former raises a host of questions that won’t be addressed here. (On the difference, see: Will Kymlicka.1995. Multicultural Citizenship: A Liberal Theory of Minority Rights. Oxford: Clarendon Press).

17 See Kymlicka, 1995.

18 In contrast, restrictions on who can acquire property (as in many pre-19th century democracies) would represent inequality.


21 For this way of defining “self-rule”, see Christopher Morris’ paper, “What’s Wrong with Imperialism?”

22 Stilz, 2011.

Under the major types of views, the group that has this right in some particular territory is either: (1) a nation or cultural group who is historically tied to the territory (e.g., Meisels, Tamar. Territorial Rights, Dordrecht: Springer, 2005; Miller, David. Citizenship and National Identity. Cambridge: Polity, 2000; National Responsibility and Global Justice. Oxford: Oxford University Press, 2007.); or, (2) a people with a history of shared political institutions/interactions in that territory, (e.g., Stilz, Anna. 2011. “Nations, States, and Territory,” *Ethics* 121,3:572-601).


Sangiovanni defines power, or de facto authority, in a similar way (13-15).

Following Raz, these authors define coercion as stopping someone, or issuing a threat serious enough to stop someone, from performing some action she would otherwise perform. (Raz, Joseph. 1986. *The Morality of Freedom*. Oxford: Clarendon Press).

Blake, 2002. Since the state is not able to garner explicit consent from us, justification must take the form of hypothetical or rational consent.


This depends on the rules of what’s called the “effects doctrine”. As opposed to “public international law” which includes treaty law, the law of seas and international criminal law, “private international law” is not a separate body of law but a field that attempts to harmonize different domestic laws and determine questions of jurisdiction regarding different states’ laws, suggesting that ultimately domestic laws have juridical priority. See Dogauuchi, Masoto. 2001. “Private International Law on Intellectual Property: A

31 As Thomas Christiano observes regarding property rights in general, “all the rights I have as a citizen are protected against all persons, not merely fellow citizens.” (2008, p. 940.)

32 According to “exclusive subject-matter jurisdiction” rules, the state that grants or recognizes the IPR has exclusive jurisdiction to address any claims. Ubertazzi, Benedetta. 2012. Exclusive Jurisdiction in Intellectual Property. Max Planck Institute.

33 Moreover, when a state levies duties on essential goods like medicines and food, the poor in other states who have no effective choice but to purchase these products must pay those duties since they’re already incorporated into the products’ final prices.

34 See Julius, 2006, for numerous examples.

35 On one view, being subject doesn’t imply outsiders must have any participation since, it’s argued, there are alternative ways of justifying power-subjection. (Miller, David. 2009. “Democracy’s Domain,” Philosophy and Public Affairs 37(3): 201-228).


37 Moreover, proportional or scaled status might be more compatible with equal respect. (Brighouse, Harry and Marc Fleurbaey. 2010. “Democracy and Proportionality,” Journal of Political Philosophy (18): 137-155.)

38 For instance, more stringent curricula requirements could be imposed on those from a certain socio-economic background or certain As could be forced to make disproportionate contributions to social welfare.

39 If any non-U.S. company does business with the U.S., the U.S. has the power to fine the former if it engages in what the U.S. deems as corrupt practices even when the former conducts business with or in other states. But really the long list of occasions where powerful states pressure weaker states to alter their social practices is near endless.

40 To take a few more, they might be excluded from most workplace regulations and housing practices in locations populated by other Bs, and from state laws and standards regarding media.

41 Nagel, 2005, p. 129.
Some of Nagel’s language implies that in order to be in the position of owing us justification, the state must *intend* to speak in our name or hold us responsible, and the state must *believe* that we morally accept its policies.

For this line of critique, see Abizadeh, 2007, and Julius, 2006.

A very recent criticism of all coercion-based accounts is that they cannot explain why or how our compliance fixes the *content* of the justification we’re owed. Specifically, it’s far from clear whether this justification must issue in equality (beyond equal protection of BHRs). (Sangiovanni, 2012)

You may still not be liable, but that would seem to depend on further facts, such as whether you voice protest or try to influence the state’s military policy.

Nagel makes a similar suggestion. (p.133). Voluntary exclusion for religious or cultural reasons is discussed in the final section of the paper.

Some circumstances, such as training someone, generate an obligation to impose burdens on others, but it’s unlikely such circumstances apply here—for they would suggest an implausibly paternalistic picture of the state.

Given cases like Estonia, it’s highly doubtful that *equality* is needed to escape hazardous state-of-nature conditions.

Kant, 6:307.

There may be a cosmopolitan reading of Kant’s duty to enter into a rightful condition. See n65.

To proximity, Jeremy Waldron adds the condition that the effective governing organization in a territory is “supposed to” (e.g., p.13) or “purports to” (e.g., p.18) include someone under its justice-administering institutions. (1993. “Special Ties and Natural Duties,” *Philosophy and Public Affairs* 22(1): 3-30.) The first expression is somewhat mysterious, and the second is similar to the discarded reading of Nagel’s account where the state must have certain attitudes or beliefs about those it coerces.

By focusing not on commerce and other intermittent forms of interaction but rather on the stable cooperation needed to support the state’s essential functioning, the contemporary reading bypasses many of the objections (e.g., Beitz, 1979, and Pogge, 1989) that were applicable to the older variants.

Some of Sangiovanni’s remarks make it tempting to focus on the ways Bs might contribute to the state through their activities in the market. But Sangiovanni recognizes that through the global market, outsiders contribute to the opportunities one has to develop their talents, and he emphasizes that the distinctive goods to which insiders contribute are (1) security and (2) a stable system of property rights. (p. 35). On p. 34, he also mentions the welfare goods and services that members provide each other, but these aren’t critical for his argument since members of a night-watchman state—viz., where members do not provide each other welfare goods and services—are also, according to Sangiovanni, under obligations of distributive equality.

While Sangiovanni allows that particular conceptions of justice can define distributive equality differently, he seems to assume that some form of distributive equality is required by fairness. (p. 27)

A somewhat similar idea has recently been defended by Lea Ypi in a different context. Ypi argues that a duty to associate on grounds respecting equality and reciprocity can explain the wrongness of colonialism independent of any considerations having to do with territorial claims. Kant has also maintained that we have a duty to form political associations, of varying types, with those with whom we come into contact. On Ypi’s interpretation, it could be that Kant’s duty to form the particular kind of association needed to live in a “rightful condition” with others is wider in scope than discussed in §6. (2013. “What’s Wrong with Colonialism?” Philosophy and Public Affairs 41(2): 158-191)

65 Christiano (2008) makes a similar argument about the wrong of this sort of public expression of disrespect, however there’s an important difference: He argues that people have a deep interest in the public expression of equality, but this requires a “common world”, or a unitary system of law. Since we have seen that such a condition fails to obtain in a benign apartheid state, a different ground must account for why it is wrong to exclude others from equal inclusion.