

Social Categories and Claims in the Liberal State

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THE VERY COMPLEXITY of social differentiation in advanced societies is the source of a little-examined problem. Let us call it the political reduction of social complexity. Out of the myriad differences among persons, roles, groups, and other formations in complex societies, only a small number, defined in specific ways, are accepted as legitimate categories in politics, law, and official statistics. Which distinctions in social life are officially recognized, recorded, and used, which merely permitted, which ignored or even suppressed; the criteria for defining categories, the names they are given, and the means of identifying membership in them; the uses of such categories and information organized around them in the making of decisions about people—these are all aspects of social classification in modern societies and states that ought to receive as much attention from students of developed societies as classification systems in preindustrial cultures have received from anthropologists.

Unlike folk or scientific classifications, official classifications—the categories officially adopted or approved by the state and incorporated into law and administration—raise problems of political decision. How do states with different political systems shape the established categories and their practical uses? In making categories, what rules should they follow?

States have no choice but to categorize. Every state must draw lines between kinds of people and types of events when it formulates its criminal and civil laws, levies taxes, allocates benefits, regulates economic transactions, collects statistics, and sets rules for the design of insurance rates and formal selection criteria for jobs, contracts, and university admissions. The categories adopted for these institutional purposes do not float above society in a "superstructure" of mental life. They are sewn into the fabric of the economy, society, and the state. They are "entrenched," to use Nelson Goodman's phrase, not merely in habit, but in the structure of institutions.¹ For example, through its practices of social classification, the state defines groups with common interests, such as licensed occupations, regulated industries, and pension recipients. These lines drawn by the state mark out directions of social and political action. Around the official classifications are framed movements, organizations, and even personal identities. Thus official categories influence everyday understandings and even scientific thought, since the social sciences commonly draw on official sources for much of their data. To be sure, this officially defined structure of society is not all the structure that might usefully be imputed to a social order. However, the more any state intervenes in economic and social life, the more its classifications leave an ineradicable imprint upon it.

Understanding official social classification requires an analysis that takes into account historical context, collective action, and political choice. Historical context is essential because we never start out with a bare slate. As Goodman says, "The stuff that worlds are made of . . . [is] made from other worlds."² Categories accumulate. We neither ordinarily think

¹ N. Goodman, *Fact, Fiction, and Forecast*, 4th ed. (Cambridge: Harvard University Press, 1983); idem, *Of Mind and Other Matters* (Cambridge: Harvard University Press, 1984); M. Douglas, *How Institutions Think* (Syracuse: Syracuse University Press, 1987).

² N. Goodman, *Ways of Worldmaking* (Indianapolis: Hackett, 1978).

about nor act upon the categories of social life; we act and think within them. At any given time, the legal and other official categories are like geological deposits, with layers of varying age, bearing traces from their period of formation.

Unlike geological deposits, however, social classifications are subject to regrouping and rearrangement as a result of changes in culture and social structure and the collective mobilization of social classes and other interests. As people assert claims to common interests and identities, they confront other groups and other members of their own group with different versions of the world. Power tells in the outcome of these struggles, but the outcome hinges not only on power, at least not in the narrow sense of the power that one group can deploy against another. The overall structure of political choice—the system for adjudicating conflicting claims, its rules, presuppositions, and organizational form—shapes the process by which the state “edits” an official version of the social world.

Broadly speaking, official classification poses two kinds of political choices. First, governments must decide what categories they will use or allow to be used. I shall call this the problem of *legitimate classification*. It subdivides into the following issues: What principles of classification will the state recognize, generate, or even possibly forbid? What groupings will it recognize within classificatory domains? What names will it give them? And how, if at all, will it rank them in priority or status?

Second, there is the problem of *legitimate inference*—that is, whether and how to use classifications (and often statistical information organized around them) to evaluate or predict the behavior of particular individuals, such as the risk they represent of committing a violent crime after release from prison or dying prematurely after being insured. In predicting parole and insurance risks, for example, what classifications are legitimate bases of inference—race? sex? disability? parental histories? genetic characteristics? marital status? sexual orientation?

Social classification presents especially thorny problems for liberal states. By liberal I mean those states with political traditions and institutions that set limits on state power and emphasize respect for personal autonomy and individual rights, including the right of free association and equality before the law. Precisely because of those rights, the liberal state does not, as a general rule, claim any authority to define and constitute social groups. Ideally, the groups constitute themselves and guide their own organizations independently of the state. Moreover, in the enforcement of justice and allocation of rewards, the liberal state, in principle, attempts to treat people as individuals rather than as members of a class. In other words, one's membership in particular social categories (racial, sexual, etc.) ought to be irrelevant in many contexts, as when standing trial, running for office, or applying for a job.

Of course, the politics of social classification is far more complicated than those ideal principles suggest. Like all regimes, the liberal state cannot avoid shaping social groups and employing classifications in decisions about individuals. The political conflicts arise over the choice and use of categories. Of particular importance are the conflicts that have arisen over what in American law have come to be called "suspect classifications." Race provides the paradigm, but the concept has been extended to language groups, legitimacy of birth, and several other bases of categorization. A suspect classification is a distinction that has been deployed historically to disadvantage certain classes; its use now triggers "strict scrutiny" by the courts to determine whether constitutional rights to equal treatment are being violated. In the interests of disentrenching suspect classifications, American law has prohibited their intentional use to harm historically victimized groups, but it has also reasserted the distinctions in compensatory efforts, such as affirmative action. The result is a condition that might be called classificatory tension.

Suspect classifications provide one example of political

intervention in the prevailing social rules of classification and inference. The example illustrates the larger argument here that these rules are shaped politically over long stretches of history. I turn now to develop that argument in more detail.

Understanding Social Classification

Sociologists and anthropologists have long been concerned to understand patterns of social classification, although generally not in the restricted sense at issue here—the official framework of social categories built into the structure of institutions. Moreover, the perspective taken here, emphasizing political choice, departs from the traditions most influential in the study of classification, which tend to view classifications as an expression of a deeper social or symbolic structure not mediated by the state or any political will.

Beginning with Durkheim, much of this work argues that *all* kinds of classifications, including those of plants, animals, and even the basic categories of time, space, force, and causation, reflect the structure of society. At the root is a theory of correspondence or isomorphism between society and thought. In their 1901 essay “Primitive Classification,”³ Durkheim and Mauss tried to demonstrate that the “collective representations” of nature among the Australian aborigines, the Zuni, and Sioux reflected the divisions of their tribes into moieties and clans. They argued that the very practice of classification itself was a reflection of social structure: “It was because men were grouped and thought of themselves in the form of groups, that in their ideas they grouped other things.”⁴ Durkheim and Mauss said the same of the hierarchical structure of primitive classifications: “It is because human groups fit into one

³ E. Durkheim and M. Mauss, *Primitive Classification* (Chicago: University of Chicago Press, 1963).

⁴ *Ibid.*, p. 82.

another—the sub-clan into the clan, the clan into the moiety, the moiety into the tribe—that groups of things are ordered in the same way. . . . Thus logical hierarchy is only another aspect of social hierarchy.”⁵

The objections to this approach are formidable. First, social groupings do not need to be introduced to explain the grouping of things into categories. The world is rife with particularity; only by ignoring most of the countless differences among objects and events are language and understanding possible. Human beings could not cope with their environment, much less communicate, if they did not group sets of discriminable stimuli as equivalent.

Equally unacceptable is the simple correspondence that Durkheim and Mauss posited between social morphology and categories of thought. They assumed that, at least in “primitive” societies, the lines of social division have no ambiguity whatsoever and, therefore, enjoy a kind of epistemological precedence. However, in all societies, even tribal societies, there are a variety of distinctions among individuals: Some are tall, some short; some strong, some weak; some old, some young. Why one rather than another of these distinctions becomes a basis of classification the Durkheimian view does not explain. We can hardly assume that more complex societies have a self-evident structure that imposes itself on thinking. Durkheim himself did not extend to modern thought the social determinism he attributed to the primitive mind. With greater differentiation and increased contact between cultures, Durkheim and Mauss wrote, society had progressively loosened its hold. But granting this exception, so flattering to the modern mind, scarcely seems an adequate way to frame the boundaries of the sociology of knowledge. Durkheim began with too broad a claim of social influence on thought and ended with too severe a limitation.

⁵ *Ibid.*, pp. 83–84.

Both the subject matter and the orientation of this paper are different from those represented in the Durkheimian tradition. My concern is not with the possible social foundations of the categories of logic or nature, but with the self-classification of society itself. Hence it is unnecessary here to enter upon the general and vexing question as to whether any "natural kinds" may be found among biological species or inanimate objects. We may also set to one side any questions about the effects of "objective" differences among people upon the practices of social classification. No one, I trust, will argue that the categories written into institutional structure are a simple reflection of natural differences among individuals. History makes readily available a record of conflict and change in the practices of institutional classification: which, therefore, would be the categories inscribed in nature?

Social categories differ from the classifications of the natural world in an undeniable respect. Classifications of the natural world are one-way relationships in the sense that only people categorize plants: the plants are in no position to protest. People, however, have their own ideas about group membership—not only ideas, but strong sentiments. When institutions classify, therefore, they often confront the self-conceptions of the subjects. Moreover, institutional classification involves more than two actors—the classifier and classified; there is typically a third intermediary agent to apply classificatory rules or prototypes to cases.

Here we require some clarification of terms. Classification, as Robert Sokal points out, describes two different processes: first, "the ordering or arrangement of objects into groups or sets on the basis of their relationships"; second, the assignment of objects to groups in a previously established classificatory system.⁶ I will call this latter process "assignment" to distinguish it clearly from the establishment of the system in

⁶ R. R. Sokal, "Classification: Purposes, Principles, Progress, Prospects," *Science* 185 (1975): 115–123.

the first place. Moreover, since either function may be undertaken by the subject, I will use the terms "self-classification" and "self-assignment" to distinguish the subjects' categorizations of themselves.

These distinctions are important sociologically because they help to discriminate the various agents of classification. The powers of classification and assignment are often located in different institutions or at different levels of a social hierarchy. The design of classificatory systems is typically the prerogative of legislatures, higher-level bureaucratic officials, and governing bodies of professional associations, whereas the function of assignment belongs to the intermediary agents, such as the judges, "street-level" bureaucrats, and clinicians who decide cases, certify eligibility for benefits, and make clinical diagnoses. Organizations vary in the authority they give these agents: the more complex the decision-making problems, the greater likelihood that the intermediaries' role will be far more than routine. Administrative and statistical systems also vary in their treatment of the subjects' own accounts. At one extreme, some accept self-descriptions at face value; at the other, some classify and assign cases without attending at all to the subjects' beliefs or any evidence that they might present about themselves. Between the two are countless variations: some fixing the classificatory schema but allowing the subjects to assign themselves, or to present documentation, or to choose examiners who will assign them. Such variations in classification practices testify to the widespread recognition that classifying people is a political process in which the relative power of officials and subjects matters a great deal.

Official classification does share some features with all classification in everyday cognition. Indeed, some institutional functions of classification may be viewed simply as extensions at a higher level of organization of the basic cognitive and communicative functions of classification. For just as ordinary thinking, communicating, and acting would be impossible without classification, so would institutional decision-making.

If, as Sokal writes, "[a]ll classifications aim to achieve economy of memory,"⁷ so, too, do institutional classifications help to achieve economy in record-keeping, calculation, the manipulation of data, and institutional problem-solving. Moreover, although institutions do not face the same cognitive limitations as individuals, they face the same imperative to reduce complexity to manageable proportions, while maintaining cognitively productive discriminations. In Eleanor Rosch's terms, they have to find a compromise between overdiscrimination and overabstraction.⁸ However, there is certainly no guarantee that institutions will find the most efficient compromise, that is, the classifications that secure the most information with the minimum cognitive effort.

Official classification has more in common with science than everyday thinking in another respect. Both science and bureaucracy strive for systematization. Systematic classification—that is, the methodical arrangement of already-formed categories and the assignment of all objects or events to classes—seems to be associated with such historical developments as the rise of literacy and bureaucratic administration. Literacy, Jack Goody argues, both invites and facilitates reflection on classificatory schema, and he notes that a large proportion of surviving records of early literate societies consists of administrative documents and especially of lists, not texts.⁹ An early preoccupation of literate societies, Goody writes, is "making explicit the hierarchies of classification implicit in linguistic usage and in man's perception of the world, and developing those systems into more elaborate, and

⁷ *Ibid.*

⁸ E. Rosch, "Classification of Real-World Objects: Origins and Representations in Cognition," in P. N. Johnson-Laird and P. C. Wason, eds., *Thinking: Readings in Cognitive Science* (New York: Cambridge University Press, 1977), pp. 212–222; idem "Principles of Categorization," in E. Rosch and B. B. Lloyd, eds., *Cognition and Categorization* (Hillsdale, N.J.: Laurence Erlbaum, 1978), pp. 27–48.

⁹ J. Goody, *The Domestication of the Savage Mind* (Cambridge: Cambridge University Press, 1977).

sometimes more precise and 'accurate' classifications."¹⁰ The bureaucratic state impels this explicit, self-conscious classifying activity; for a bureaucracy is itself an elaborate classification, and much of its work consists of classifying and assigning.

Yet official classifications have several features that distinguish them from both everyday and scientific categories. Decision-making imposes peculiar demands. For example, in the development of a human fetus, biologists can identify no single point as the beginning of autonomous life. Similarly, dying involves a series of events that may or may not occur close together in time; from the biologist's standpoint, no single point constitutes the moment of death. Nonetheless, from a legal and medical standpoint, it is absolutely vital that definite criteria yielding single points in time be unambiguously identified to discriminate living persons from fetuses and corpses.¹¹ Decision-making demands "realizable" rules of classification to facilitate social coordination.

Second, official classifications become impersonal cognitive commitments. As definitions of life and death amply illustrate, official classifications often have profound effects on our relation to specific objects and events. Whether for an individual or a society, it is exceptionally difficult to recover what Bruner, Goodnow, and Austin call "preconceptual innocence."¹² Moreover, the assimilation of the categories into everyday thought is often unnecessary. If government statistical agencies count people in certain categories, the information often finds its way into countless decisions, private as well as

¹⁰ *Ibid.*, p. 103.

¹¹ M. M. Halley, "Medical vs. Legal Definitions of Death," *Journal of the American Medical Association* 204 (1968): 423-425. See exchange between R. S. Morison, "Death: Process of Event?" *Science* 173 (1971): 694-702, and L. R. Kass, "Death as an Event: A Commentary on Robert Morison," *Science* 173 (1971): 698-702.

¹² J. S. Bruner, J. J. Goodnow, and G. A. Austin, *A Study of Thinking* (New York: Wiley, 1958).

governmental, without the decision-makers having the slightest comprehension of the underlying categories that frame the numbers they use.¹³

Third, by virtue of their institutional use, official categories also become a framework of incentives. If a state organizes benefits around certain categories, those who can qualify may well adjust their self-descriptions and self-conceptions to fit the official ones. Conversely, if a state taxes a particular category, those who can escape it will likely alter their representation of themselves. In this sense, any institutional system of classification backed by power becomes an incentive for cognitive accommodation by those subject to it.

These and similar considerations impose distinctive burdens on official categories. Indeed, what makes for "rightness of categories"¹⁴ in the law and public administration is quite different from rightness of categories in science. It is no business of the scientist to worry about the incentive effects of any particular classificatory scheme; the lawmaker must be concerned. The biologist is free to observe the complex phases of birth and death; the legal system must draw boundaries, even if somewhat arbitrary. Inevitably, the boundaries are policy choices. Opponents of abortion want to redefine the fetus as a person, if necessary by constitutional amendment; those who want to facilitate the removal of organs for transplantation have sought to substitute brain death for the cessation of the heart as a criterion for distinguishing between the living and the dead. It would be impossible to evaluate the validity of official social categories separately from the merits of the claims made with them. Determining the rightness of those categories depends primarily on the faculty of moral and political judgment.

If we think of official classification as political choice rather

¹³ P. Starr, "The Sociology of Official Statistics," in W. Alonso and P. Starr, eds., *The Politics of Numbers* (New York: Russell Sage, 1987).

¹⁴ Goodman, *Ways of Worldmaking*.

than some unconscious expression of social or mental structures, our attention turns to a variety of empirical phenomena. We see that categories enter and exit from official classificatory schemes; that their names and criteria for membership change; that the positions of particular groupings rise and fall; and that great conflicts take place, such as struggles for equality, over the legitimate uses of contested classifications, such as condition of birth, nationality, and sex—in short, that classification conflicts are pivotal events in the history of social structure.

Social Classification as Historical Process and Political Choice

Classifications have consequences. Some cause damage; some advantage. That is, above all other reasons, why people fight over them. Official categories carry particularly serious consequences. For an individual or a group, assignment to a specific category may constitute qualification for or disqualification from jobs, government benefits, or tax exemptions. Classifications may create strong symbolic associations with groups of high or low status or represent the achievement or imposition of a new identity. Thus it would be impossible to explain the patterns and practices of social classification without understanding how social actors seek to shape the classificatory system and the payoffs and risks of being categorized in specific ways.

Consider the development of the system of racial classification in the United States. Unlike much of the world, American society today does not recognize any mixed or intermediate racial category between black and white. With some limited, local exceptions, the United States has since the turn of the century followed the so-called “one-drop” rule—that is, one drop of “black blood” makes a person black—as the criterion for racial assignment. The one-drop rule dates from the era of Jim Crow, and it is clearly an instance of unequal treatment

(people with one drop of "Jewish blood," or of "Asian blood," are not defined as Jewish or Asian). Yet the rule remains the law of the land. In the famous 1896 case *Plessy v. Ferguson*, where the Supreme Court first articulated the "separate but equal" doctrine, the plaintiff Homer Plessy contended that because he was only one-eighth black, he was entitled to ride in train seats reserved for whites. The justices rejected this claim, and even when the Court overturned the separate-but-equal standard in the 1954 case *Brown v. Board of Education*, it left standing the one-drop rule. Despite its plainly racist origins, the rule today enjoys virtually universal acceptance, even by the black community, which regards efforts by those with light brown skin to distinguish themselves as a separate group as a form of treason and an invitation to political division and weakness.¹⁵

Yet the system of bipartite racial classification now followed in the United States did not prevail in the nineteenth century, particularly in certain parts of the South before the Civil War. Mulattoes, also called people of color, constituted a separate community and social category. Special laws applied to them, and they were counted statistically as a distinct population, before they were absorbed into the black population.

The disappearance of mulattoes as a social category exemplifies how group action and political choice shape official practices of social classification. In the early nineteenth century, the status of mulattoes varied across the South. In the upper South, where they were especially numerous, many mulattoes were free but were treated by the white elite as if they were black, perhaps because their white parents primarily came from the lower classes. On the other hand, in the lower South, where mulattoes were fewer and perhaps more likely to have been born of affluent white fathers, the white elite, at least before the 1850s, treated mulattoes "as a third class, an

¹⁵ For an extensive historical and sociological analysis, see J. F. Davis, *Who Is Black? One Nation's Definition* (University Park: Pennsylvania State University Press, 1991).

acceptable and sometimes valuable intermediate element between black and white, slave and free."¹⁶ Several key legislative actions testify that the distinctive status of mulattoes resulted from a conscious choice of the white elite. In the 1820s, for example, a South Carolina legislative commission, investigating a slave rebellion, reported that mulattoes, as industrious property owners who disdained any association with blacks, would side with whites in an insurrection; hence the commission decided in favor of preserving a three-tier society.¹⁷

The three-tier structure broke down with the approach of the Civil War. The mulattoes became subject to more frequent political attacks, particularly by whites in economic competition with them. Their rights were gradually cut back, forcing many of them to flee to free states.¹⁸ After the war, Americans continued to make a distinction between mulattoes and blacks; the Census counted mulattoes separately from blacks until 1920. However, the mulattoes themselves, facing an insuperable barrier against entry into white society, found that opportunities for economic and political advance lay among the blacks they had earlier disdained. The end of slavery also meant that there were fewer new-issue mulattoes born of white fathers, and through increased intermarriage with blacks, the mulattoes became less racially distinct. Yet even the light-skinned came to think of themselves as black. Although not all state laws eliminated the category mulatto, whites ceased to differentiate the lighter-skinned from the darker-skinned black population. The abandonment of the category mulatto by the Census in 1920 no more than registered a social fact.¹⁹

While the one-drop rule continues to prevail, the story is not

¹⁶ J. Williamson, *New People: Miscegenation and Mulattoes in the United States* (New York: Free Press, 1980).

¹⁷ *Ibid.*

¹⁸ M. P. Johnson and J. L. Roark, *Black Masters: A Free Family of Color in the Old South* (New York: Norton, 1984).

¹⁹ Williamson, *New People*.

over. The recent emergence of the category Hispanic (now already renamed Latino in some contexts) may be producing a successor to the mulatto, that is, an intermediate grouping in the predominant black-and-white color code. Formally, the Census Bureau treats Hispanic as an ethnicity, asking race as a separate question; in 1970, Hispanics overwhelmingly listed themselves as white, but in 1990 a majority said they were "other," refusing any of the racial designations. In many contexts today, Hispanics are considered a third, distinct group. The arrival in the United States of significant numbers of immigrants from Pakistan and India has also opened up the previous bipartite color code to new categories. On college campuses, some students from racially mixed backgrounds have taken to calling themselves "multicultural," which may herald the full-fledged return of an intermediate racial category under a new, more acceptable name.

The emergence of the category Hispanic exemplifies another aspect of the phenomenon. The Census Bureau and other government agencies have effectively legitimated claims to a common ethnic identity for the previously separate groups originating from Mexico, Puerto Rico, Cuba, and elsewhere in the Caribbean and Latin America. These populations were scarcely homogeneous; the very same people in their countries of origin did not think of themselves as belonging to the same racial and ethnic group. Indeed, rather than their Hispanic heritage uniting them, it might be more accurate to say that American society united them in an ethnicity they had not shared before.²⁰

The consolidation of Hispanic identity reflects the same forces that have resulted in the consolidation of previously separate American Indian tribes into a "Native American" ethnicity. Americans of East Asian heritage are undergoing the same bulk incorporation, at least in governmental affairs

²⁰ W. Petersen, "Politics and the Measurement of Ethnicity," in Alonso and Starr, *Politics of Numbers*, pp. 187–233.

(although the different national and cultural groups among Asians insist on their distinct identities). These consolidations are not being produced by a dynamic internal to the groups. Rather, the structure of American politics promotes political coalition. The groups could not effectively compete if fractured along as many lines as their cultural differences might otherwise divide them. Moreover, the political system now invites mobilization around broad ethnic rubrics.²¹ If in the nineteenth century the mulattoes were forced to give up their separate identity because more powerful forces deprived them of any advantage from it, so, too, in recent years the development of ethnic representation and affirmative action has favored the amalgamation of related minorities.

The development of racial and ethnic categories illustrates how the structure of political choice and group action help to shape the practices of classification. Individuals and families do not form identities because of some essential similarity of cultural practices; the similarity they sense takes shape against the backdrop of a larger world. These similarities are not fixed and absolute; they depend, as Patterson argues, on choice and context.²² The overall system of political choice promotes particular forms of attachment and entrenches them in daily life. Through their lives in the United States the children of immigrants from Cuba and Mexico will fill out countless forms as Hispanics. Soon enough, Hispanic must become part of their identity, regardless of the deep differences in culture and class that separate them. At one moment a political choice, the category Hispanic gradually becomes fixed as a cognitive commitment and component of social structure.

The politics of official classification can be broken down into a series of choices, each a potential source of conflict. "To

²¹ D. Bell, "Ethnicity and Social Change," in N. Glazer and D. P. Moynihan, eds., *Ethnicity: Theory and Experience* (Cambridge: Harvard University Press, 1975), pp. 141-174.

²² O. Patterson, "Context and Choice in Ethnic Allegiance: A Theoretical Framework and Caribbean Case Study," in Glazer and Moynihan, *Ethnicity*, pp. 305-349.

admit all classifications on an equal footing amounts to no classification at all," writes Goodman. "Classification involves preferment"²³ The first preferments are (1) the definition of the domains or underlying principles of classification and (2) the identification of individual groupings within a domain. Further choices arise from (3) the naming and (4) the arrangement of the domains and groups.

(1) *Domain definition.* Domains do not simply exist. They must be constructed out of the myriad differences in any population, and the differences themselves take shape historically. It seems obvious today to classify people by occupation and to distinguish between the employed and unemployed. But occupational classification began to make sense only when the division of labor became sufficiently advanced. Indeed, when proposed in 1790 for the first American census, occupation was rejected in Congress on the grounds that many Americans could not answer the question.²⁴ They did too many things to have one occupation. The concept of unemployment began to make sense as a principle of social classification only when working for wages became sufficiently widespread. Domains of classification, therefore, are doubly constituted: first through the unfolding differentiation of society; and second, through a political reduction of social complexity.

The reduction of complexity involves not merely selecting a few domains for official classification out of the many that a differentiated society presents. It also involves conceptualizing the underlying principle. For example, race, nationality, national origin, caste, religion, and ethnicity represent alternative or overlapping principles of classification.²⁵ They define not only different types of groups, but also different types of

²³ N. Goodman, *Languages of Art* (Indianapolis: Hackett, 1976), p. 32.

²⁴ P. C. Cohen, *A Calculating People: The Spread of Numeracy in Early America* (Chicago: University of Chicago Press, 1982).

²⁵ Glazer and Moynihan, *Ethnicity*.

social structures. A state that recognizes different nationalities is not itself a nation in the same sense as one that recognizes different ethnicities. The concept "caste" has still other implications for social structure. In different societies, the same group may be assigned to different domains. Jews, for example, have been variously classified as an ethnicity, a race, or a religion. It is only in the last generation, as Robert Blauner points out, that the concept of Jews as a biologically distinct race ("the Hebrew race") disappeared from general use and was replaced by the concept of Jews as an ethnic group.²⁶ Blauner suggests that a similar shift, transforming the concept "black" from a race to an ethnic group ("African American"), could have equally important implications. A change in domain definition might help shake the false premise of biological difference that now underlies discussion of African Americans in the United States.

(2) *Grouping*. Grouping, or categorization proper, means putting individuals in sets. It need not concern us here whether categorization entails the establishment of formal definitions with criteria for inclusion and exclusion (that is, boundaries) or whether it proceeds by the recognition of "prototypes" or "tacit knowledge" of "family resemblances."²⁷ Bureaucracy and law press toward formal definitions, but categories coded by prototypes are undoubtedly important in political thinking. At stake in official classification, as I have suggested, are not merely categories of thought, but often the shape of political alliances and coalitions, social movements, and interest groups. On the one hand, such groups may seek official recognition of a common identity; on the other, official categories may join together people in a common legal or

²⁶ R. Blauner, *American Prospect*, no. 10 (Summer 1992).

²⁷ E. Rosch and F. B. Mervis, "Family Resemblances: Studies in the Internal Structure of Categories," *Cognitive Psychology* 7 (1975): 573-605; R. Needham, "Polythetic Classification: Convergence and Consequences," *Man* 10 (1975): 349-369; G. Barden, "Discriminating Classes," *Man* 11 (1976): 345-355.

administrative status who have never thought of themselves as being "in the same category."

Here a critical variable emerges. Some official social categories are full-fledged social groups; they exist as communities recognizable to each other and to outsiders. They may have been groups before any relevant state action, or their "groupness" may have resulted from or been reinforced by official designations. Other social categories are categories only—brackets or mere legal classes—with no independent group structure in social interaction. Or the official categories may encompass more than one social group. The greater use the state makes of any particular category (for example, in distributing social welfare benefits), the greater likelihood that it will breathe life into legal classes. But this result is not guaranteed.

The effect of official categories in transforming legal into social classes needs to be considered in relation to the Marxian distinction between a "class in itself" and a "class for itself." For example, in late-nineteenth and early-twentieth-century Germany, according to Jürgen Kocka, the development of separate social-insurance provisions was critical in the social entrenchment of the contrast between *Arbeiter* (blue-collar worker) and *Angestellte* (white-collar employee).²⁸ The development of the category *cadres* in France reflected an official mapping of social structure.²⁹ The idea of a "class in itself" presumes that social categories exist apart from any actor or observer, as if the category inhered in the material conditions. But this is untenable: a class in itself is actually a class in the eye of the theorist. Classes acquire common interests and become manifest in part through the category choices of official agencies.

²⁸ J. Kocka, "Class Formation, Interest Articulation, and Public Policy: The Origins of the German White-Collar Class in the Late Nineteenth and Early Twentieth Centuries," in S. Berger, ed., *Organizing Interests in Western Europe* (New York: Cambridge University Press, 1981), pp. 63–82.

²⁹ L. Boltanski, "Taxonomies sociales et luttes de classes: La mobilisation de 'la classe moyenne' et l'invention des 'cadres,'" *Actes de la recherche en sciences sociales*, no. 29 (1979): 75–103.

(3) *Naming*. Different names often indicate different groupings, but even when referring to the same group, two names may suggest entirely different attributes. From a formal taxonomic perspective, a name is just one of many properties of a category. However, by virtue of the web of associative memory, names call to mind other objects and events and color the perception of any category. They thereby often trigger the damages or advantages that categories bring. In the analysis of social deviance, sociologists have emphasized the importance of "labeling" as a source of the characteristics often associated with deviant actions in and of themselves, such as illegal drug use or disapproved sexual practices.³⁰ Although the argument may be overstated, labeling is clearly vital to the construction of a social identity ("gay," "alcoholic," etc.) out of particular social practices.

Pierre Bourdieu and Luc Boltanski argue that where names become detached from the other properties of a category, discrepancies open up between the nominal and the real.³¹ For example, it is possible to hold a post "in name only." Because of the investment in names, those in authority may use the nominal as a substitute for the real, perhaps leading those given nominal rewards to feel cheated and to attempt to bring their status more in line with expectations.³² Or, conversely, through euphemisms people may try to cleanse categories of their past connotations. The euphemism, perhaps more than any other practice, underlines the capacity of names to alter a category's social frame.

(4) *Ordering or ranking*. All classification involves some arrangement of categories, but the kinds and degrees of order vary. Trees, tables, and other graphic devices may help to grasp the underlying arrangements, but they may also

³⁰ E. Lemert, *Social Pathology* (New York: McGraw-Hill, 1964).

³¹ P. Bourdieu and L. Boltanski, "The Educational System and the Economy: Titles and Jobs," in C. C. Lemert, ed., *French Sociology: Rupture and Renewal Since 1968* (New York: Columbia University Press, 1981), pp. 141-151.

³² P. Bourdieu, *Distinction: A Social Critique of the Judgment of Taste* (Cambridge: Harvard University Press, 1984).

exaggerate the degree of structure, in part by assuming a consistency or consensus in ordering that may not exist.

Once again, I set aside the question of whether any category or structure of categories may be said to exist objectively or naturally. From the standpoint of official classification, the problem is the degree of order already socially configured at any given time and place. Surely, one might say, the distinction between male and female is so widely agreed upon as to be "virtually" objective. But not so: a San Francisco health-care system requires six categories for its classification of sex, depending on the patient's genetic type, bodily type (which may be surgically altered), and presentation of self. While unusual, that case is instructive. Depending on the context, domains vary in clarity, consistency, and complexity. For example, a society divided into castes is likely to exhibit a greater clarity in the definition of both groups and the hierarchical order than a society divided into ethnicities. In the United States in the mid-1970s, according to General Social Survey data, some 10 to 15 percent of white Americans said they belonged to no ethnic group; another 35 to 40 percent cited two or more ethnic strains and of these 11 to 12 percent could not choose between them.³³ If a classificatory system simply puts individuals into classes without allowing for different kinds of membership in classes, it may impose more order than it discloses.

These problems are especially conspicuous where official classification attempts systematically to order a domain that varies in clarity from one region to another. The development of occupational classification in government statistical surveys exemplifies these problems in systematization. Some occupational roles are highly defined because of what may be called the primary processes of classification that take place in the educational system and the economy. Systems of credentialing, professional qualification, collective bargaining, and so on help to

³³ T. W. Smith, "Ethnic Measurement and Identification," *Ethnicity* 7 (1980): 78-95.

demarcate many occupations by generating job titles, occupational definitions, and barriers to entry. These processes are by no means prepolitical. But, in addition to them, there is a set of secondary procedures in which official agencies—for purposes of taxation, statistics, or social insurance—attempt to get from this partial structuring of occupations to a total, systematic mapping of the occupational structure.

At this secondary level, several problems characteristically arise. First, inconsistencies need to be reconciled. The job classifications in one firm or city do not match those in others; or they may change from one period to the next; or what is worse for the classifiers, the names may not change but the occupational roles do. For example, a skilled occupation in one census becomes unskilled by the next. Second, the classificatory schema must find a way to treat the less defined regions of the domain. Just as people vary in ethnic identification, so they vary in occupational identification—hence the problem of classifying when the subject does not have an occupational self-definition. (“What do you do?” the interviewer asks. Says the respondent: “I work for the Goliath Company.” The interviewer: “What do you do for them?” The respondent: “Whatever Goliath tells me to do.”) Third, the classificatory schema must generate an arrangement, in this case typically an occupational hierarchy. However, while the primary processes of classification yield hierarchies within firms and among professional occupations, they generally do not do so for the occupational domain as a whole. That ordering requires the imposition of some conceptual framework by the observing state on a partially structured domain of society.

The historic shifts in the occupational ordering of the U.S. Census, as Margo Conk analyzes them, offer a case in point.³⁴ In 1870, when the Census first attempted a comprehensive and detailed occupational classification, it adopted what Conk calls

³⁴ M. A. Conk, “Occupational Classification in the United States Census,” *Journal of Interdisciplinary History* 9 (1978): 111–130.

an artisanal classification—that is, a schema with categories based primarily on products made or materials worked with rather than level of skill or position in the relations of production. Categories such as carriage-maker, cabinet-maker, or brass-worker or generic terms such as butcher and baker predominated. By the turn of the century, this artisanal classification was increasingly irrelevant, and in 1910 the Census replaced it with what Conk calls an industrial classification—a system that emphasized skill levels and that distinguished employers, wage workers, and so on. But the Census was unable to perform any detailed analysis of the skill levels of some 20,000 reported occupations (reduced to 428 categories in Census tables). As Conk shows from statements by Census officials, the coders were directed to determine skill levels in ambiguous cases by reference to the composition of the categories by age, sex, and race. Indeed, some occupations initially judged to be skilled were downgraded when the coders discovered that they were filled largely by women, blacks, or youths. What appears to be a rank ordering by technical complexity was confounded with other dimensions of social hierarchy.

Of course, in exposing these bases of inference, Conk is making a point that is as political as scientific. Social status seems to us today not only an inaccurate measure of skill, but an illegitimate one as well. There is something amiss here in the rightness of classifications, as we have come to conceive them. And so we return to our concern with the legitimacy of social categories and claims in the liberal state.

Liberalism and Legitimate Classification

Social categories, I have been arguing, are shaped, manifested, and entrenched through the state. But some states are involved in this process more actively than others. Taking a broad view, states have two general alternative models for conceptualizing and organizing the relation of social categories

and groups to governmental decision-making. At one extreme, the organic model regards a particular set of social groups as constitutive of the state. These groups possess distinct corporate status and may be entitled to separate political representation and varying rights to scarce resources and positions. The traditional organic state is hierarchical, as in feudal societies or the three estates of the *ancien régime*. A modern counterpart is the corporatist political order, where the state designates particular organizations as the exclusive representatives of social groups or interests (for example, labor, industry, occupational groups, or ethnic minorities) and integrates them directly into decision-making. Corporatism, in Philippe Schmitter's definition, is a system of interest representation where the constituent interests "are organized into a limited number of singular, compulsory, noncompetitive, hierarchically ordered and functionally differentiated categories, recognized or licensed (if not created) by the state"³⁵ Fascism had a corporatist organization, but corporatism does not exclude the possibility of political democracy. In what Arend Lijphart calls the consociational democracies,³⁶ various nationalities or ethnic groups enjoy shares of political representation and may be equals in status, if not in power.

The ideal-typical liberal state, at the other extreme, does not recognize any preexisting, organic, or transcendent structure to society. Liberalism insists on the right of association, but the right belongs to individuals, and precisely to uphold that principle, freely organized associations do not enjoy the official status of groups in a corporatist order. They are not licensed by the state and given formal legislative or administrative representation. In direct contrast to corporatism, Schmitter defines pluralism (which we may take as the predominant form

³⁵ P. C. Schmitter, "Still the Century of Corporatism?" in P. C. Schmitter and G. Lehmbruch, eds., *Trends Toward Corporatist Intermediation* (Beverly Hills, Calif.: Sage, 1979).

³⁶ A. Lijphart, *Democracy in Plural Societies* (New Haven: Yale University Press, 1977).

of the liberal state) as a system of interest representation where the constituent interests are unspecified in number, voluntary, competitive, nonhierarchically ordered, and unlicensed.³⁷

These two types of political orders offer a vivid contrast in their classificatory practices. The organic or corporatist models not only make the state the explicit classifier of social interests; the interests so designated are far more deeply embedded in the structure of the state itself. On the other hand, the liberal state generally does not accord groups any constitutional status. Organizations claiming to represent particular groups may achieve power and recognition, but neither the groups nor their representatives have any permanent guarantee of a seat at the table. Of course, the dichotomy between corporatism and pluralism is not exhaustive of political alternatives. States vary across a spectrum according to the degree to which they officially classify social groups, accord special privileges to their representatives, subject those representatives to controls, and incorporate them into decision-making.³⁸ An index ranking societies on this dimension is not difficult to construct.

The Constitution of the United States exemplifies the liberal model of the state, as I am using the term liberal here. The Constitution speaks, not of any social groups or classifications, but only of "persons" and "citizens," except in obsolete passages referring to Negro slaves and "untaxed" Indians. It is also striking that the Constitution proscribes any titles of nobility: official classifications of honor are forbidden. Paul Brest writes, "If a society can be said to have an underlying political theory, ours has not been a theory of organic groups but of liberalism, focusing on the rights of individuals, including rights of distributive justice." He adds, "We grant

³⁷ Schmitter, "Still the Century of Corporatism?"

³⁸ C. Offe, "The Attribution of Public Status to Interest Groups: Observations on the West German Case," in Berger, *Organizing Interests*, pp. 123–158.

rights to associations or treat them as fictitious persons only to protect the rights of their individual members."³⁹

To be sure, social categories long entered into the interpretation and application of the Constitution. From the time of the Founders, unwritten presuppositions about the proper role of women and the relations among the races limited the apparent universality of constitutional language. However, the abstract language of liberal individualism could later be quoted in defense of expanded rights and powers for women, blacks, and others originally excluded from full citizenship. The United States has been able to maintain the same Constitution over two centuries partly because its restrictive presuppositions were inexplicit, while its explicit language was elastic. The constitutional abstention from social classification both permitted change and provided a foundation for it, undergirding claims that differential treatment by race and other categories represented discrimination—that is, an illegitimate form of social classification.

However, the United States has by no means purged all forms of social classification from the legal order. Social presuppositions still mediate the application of legal principles, even principles of equality.⁴⁰ For if like cases are to be treated alike, there must be grounds for determining likeness and difference, and these entail categorizations. Withholding from children the right to vote is not considered deprivation of a fundamental right because the cases of children and adults are not thought to be alike in respect to competence and maturity. In this instance, the state has preserved a relatively arbitrary classification, a "bright-line" rule setting a specific age (now eighteen) as the criterion for attainment of maturity. No one seriously argues that the government ought to abolish this

³⁹ P. Brest, "Foreword: In Defense of the Antidiscrimination Principle," *Harvard Law Review* 90 (1976): 48–52.

⁴⁰ O. Fiss, "Groups and the Equal Protection Clause," *Philosophy and Public Affairs* 5 (1976): 107–177.

arbitrary "age discrimination" in favor of examining every child and young adult for evidence of voting competence. Bright-line classifications have the advantages of minimizing state scrutiny of individuals, not to mention administrative expense.⁴¹

The very idea of the rule of law dictates the use of social categories, but not what kinds. In a liberal democratic order, the kinds depend on the twin activities of the state and privately organized interests seeking remedies from the state. As Lance Liebman puts it:

First, laws work by creating groups and by assigning consequences to being placed in particular groups. Laws apply to categories of events and to classes of people. They make one rule for optometrists and another for oculists, one subsidy for raspberry growers and another for the artichoke industry.

...

Second, groups come to law. Law makes groups, but it also responds to groups. As legislatures are lobbied by groups of constituents . . . so opportunities arise to advance common interests by lawsuit, and every sort of economic, geographic, and social group sues and is heard.⁴²

Of course, not quite every sort is heard: recognition, like memory, is selective. This is the problem of legitimate classification.

Several screens filter everyday classifications admissible into the liberal state. First, the liberal commitment to individual liberty raises barriers to any official classification that turns on private, personal choices and that threatens to make such choices publicly accountable. Exactly what belongs to this protected private sphere is a matter of intense dispute. Religious belief is probably the most universally agreed upon. The liberal state has, in effect, adopted what Stephen Holmes

⁴¹ L. H. Tribe, *American Constitutional Law* (Mineola, N.Y.: Foundation Press, 1978).

⁴² L. Liebman, "Anti-Discrimination Law: Groups and the Modern State," in N. Glazer and K. Young, eds., *Ethnic Pluralism and Public Policy: Achieving Equality in the United States and Britain* (Lexington, Mass.: Lexington Books, 1983), pp. 11-31.

refers to as a "gag rule" on any political discussion of eternal salvation.⁴³ Although not all liberal states maintain a separation of church and state, there is a strong liberal impulse to resist any official distinction among persons on grounds of religion. In the United States, the prohibition of religious classification extends to the national census. On the one occasion when the Bureau of the Census asked a survey question about religion, it was prevented from publishing any data on the grounds that even a statistical inquiry into religious practices overstepped the state's authority.⁴⁴

The second set of screens concerns social classifications regarded simultaneously as an involuntary status and a historical axis of civil and political inequality. In the United States these are the "suspect classifications" that draw strict scrutiny by the courts to determine whether the rights of historically disadvantaged groups are being abridged. Oddly enough, the concept of a "suspect classification" originated in the U.S. Supreme Court's 1944 decision in *Korematsu v. United States* (overturned forty-one years later) to uphold the federal government's mass internment of Japanese-Americans. The Court was willing to accept internment on racial criteria only because it accepted the government's argument of a "compelling" state need. The principle that race was a "suspect classification" then took on great importance in 1954 when the Court ruled in *Brown v. Board of Education* that no such compelling state need justified racial segregation in the schools. In the ensuing years some interpreted racial equality to require a "gag rule" on racial classification; thus, for a time, college admissions offices and employers omitted any questions about race on applications. But the notion of a totally "color-blind" society ran up against the reality that racial

⁴³ S. Holmes, "Gag Rules or the Politics of Omission," in J. Elster and R. Slagstad, eds., *Constitutionalism and Democracy* (Cambridge: Cambridge University Press, 1988).

⁴⁴ C. R. Foster, *A Question on Religion*, Inter-University Case Program, no. 66 (Indianapolis: Bobbs-Merrill, 1961).

inequality could not be abolished solely by removing the classification from formal decision-making. Amid great conflict the United States moved not only to accept but to require racial classification as the only practical means of ascertaining whether equal protection of the law was, in fact, being assured.⁴⁵

Thus a suspect classification is by no means a forbidden classification. Such classifications have been upheld when used intentionally to benefit the disadvantaged group (as under affirmative action) and prohibited when used intentionally to discriminate adversely against the historically victimized class. If there is no evidence of intent, but the minority is hurt by a suspect classification, the courts have not held suspect classifications to be unconstitutional, except in those areas, such as voting, held to be "fundamental" rights.

The evolution of civil rights has nudged the United States a short distance from the liberal toward the corporatist end of the political spectrum. Blacks, Hispanics, Native Americans, and Asian Americans qualify for separate representation in certain decision-making institutions; not so other minorities, including those who fare less well than do Asian Americans. This partial recognition of racial and ethnic groupings may help to maintain the varying intensity of ethnic identifications that I noted earlier. In effect, some racial and ethnic identities count in American society more than do others.

To varying degrees, the American courts have extended the concept of "suspect classification" to legitimacy of birth, alienage, language groups, sex, and age. Each of these involves a distinct set of policy concerns. For example, in prohibiting discrimination against children born out of wedlock, the Court has said, in effect, that the political objective of promoting the family cannot be pursued at the expense of inequalities in the

⁴⁵ N. Glazer, *Affirmative Discrimination: Ethnic Inequality and Public Policy* (New York: Basic Books, 1975); idem, *Ethnic Dilemmas, 1964-1982* (Cambridge: Harvard University Press, 1983); Tribe, *American Constitutional Law*.

rights of children.⁴⁶ When the Court prevented Texas from denying public education to the children of illegal aliens, it said that at least certain rights could not be denied on the basis of a citizenship classification.⁴⁷ To be sure, the Court has not treated citizenship classifications on a par with race. Although race was the paradigm, other suspect classifications have not been deemed quite as suspect. With respect to age and sex, the United States has adopted broad prohibitions of discrimination typically accompanied by broad exceptions.⁴⁸ Rather than adopt one doctrine to cover the use of all suspect categories, American law has been evolving specific rules for the use of each.

Thus the debate turns to the rules of legitimate inference, in particular the rightness of using suspect and other classifications to make predictions about individuals. This issue arises in all systems of predictive selection, such as are used by employers, insurers, lenders, parole boards, or universities to predict the future behavior of applicants. The problem arises in an especially conspicuous form when any such organization uses membership in a social category as part of a scoring system to determine eligibility for a benefit such as a job, a loan, an insurance policy, or admission to higher education. Critics often say, first, that the classifications in use are poor predictors of behavior and, second, that even if no better predictor is available, the use of a particular classification infringes upon individual autonomy. This infringement may take place in two ways. First, if the classification is based on an *involuntary* characteristic, individuals have no capacity to improve their standing; they may be penalized for their membership in a group over whom they have no control.

⁴⁶ R. L. Stenger, "The Supreme Court and Illegitimacy: 1968-1977," *Family Law Journal* 11 (1978): 365-405.

⁴⁷ P. H. Schuck, "The Transformation of Immigration Law," *Columbia Law Review* 84 (1984): 1-90.

⁴⁸ P. H. Schuck, "The Graying of Civil Rights Law: The Age Discrimination Act of 1975," *Yale Law Journal* 89 (1979): 27-93.

Second, if the classification is based on a *voluntary* characteristic that belongs to the realm of private choice, individuals may lose autonomy by virtue of the influence that powerful institutions gain over that realm.⁴⁹ These are the two cases already mentioned for which race and religious belief are paradigmatic.

These two types of limitation leave open classifications based on voluntary behavior outside the protected realm of private choice. Of these, the classifications considered by some reformers of selection systems to be the most desirable are those that are based on behavior considered to be worthy in its own right of being encouraged or discouraged. These reformers prefer, for example, to base auto-insurance premiums on past traffic violations, attendance at a driver-education program, and other previous actions rather than sex or age. In other words, instead of simply choosing predictors on the basis of accuracy, reformers want the choice to reflect the incentive effects of relying upon one classification rather than another. Barbara Underwood notes:

When prior convictions are used to predict parole failure, and that prediction leads to a decision to extend incarceration, the decision can alternatively be viewed as a decision to impose additional punishment for the prior blameworthy acts. Recent revisions of the federal parole scoring system have shown a clear preference for predicting failure with predictors that can also be viewed as blameworthy acts. Each time a controversial item has been deleted from the list of predictors, it has been replaced by a factor that gives additional weight to the fact of prior convictions.⁵⁰

In short, the interpretation of liberal principles in the United States has given rise to an emerging preference hierarchy in the use of social classifications. Least acceptable are religion and

⁴⁹ B. D. Underwood, "Law and the Crystal Ball: Predicting Behavior with Statistical Inference and Individualized Judgment," *Yale Law Journal* 88 (1979): 1408-48.

⁵⁰ *Ibid.*

race and then, to varying degrees, other kindred classifications that resemble religion in falling within the sphere of private choice or that resemble race in being both involuntary and the basis of historic victimization. At the other extreme, considered most acceptable, are classifications based on voluntary behavior that is deemed publicly accountable and meritorious or blameworthy in its own right.

These rules or policy preferences in turn rest upon the more fundamental classifications of public and private and voluntary and involuntary. The public-private distinction provides a language for the making of claims vital to liberal democracy, particularly rights to personal freedom. Similarly, the distinction between voluntary and involuntary delineates boundaries of personal responsibility. Liberal democracy is characterized by a series of such distinctions—the religious and the secular; the political and the technical; civilian and military—each of which marks out contested boundaries of authority and power. These classifications represent the permanent structure of the liberal state; they provide a framework for the rights and powers that liberal regimes attempt to protect and advance. Claims sustain classifications. The category “mulatto” disappeared because the claims to distinctive legal and social status were no longer recognized, but the later attempt to remove racial categories altogether from official recognition foundered because distinctive claims continue to be framed around race.

Of course, social classifications take on a life of their own apart from the claims initially advanced with them. They become diffused and standardized, even on an international scale. This diffusion may obscure their origins and make them appear to be objective, natural, and self-evident. But, however distant, their origins lie in political choice, and that dependence becomes apparent whenever novel circumstances generate new claims and cases that do not fit the existing framework. Although the conventional, hard-nosed view is that politics is about “who gets what,” the prior question is who “who” is.

Deborah Stone observes that public policy is “centrally about classification and differentiation” and that political reasoning is “primarily a reasoning of sameness and difference” and only secondarily a “reasoning of more or less.”⁵¹ She writes, “Policy arguments are convincing to the extent that they give a satisfying account of the rightness of treating cases alike or differently.” That sense of rightness does not spring up from self-evident similarities and differences in social practices and group identities. It emerges from distinctively political ways of world-making.

⁵¹ D. A. Stone, *Policy Paradox and Political Reason* (Glenview, Ill.: Scott, Foresman, 1988).